ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

REGIONAL REPORT OF INQUIRY INTO UNDERLYING ISSUES IN WESTERN AUSTRALIA

BY COMMISSIONER P.L. DODSON

ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

Secretary: John Gavin
Assistant Secretary: Jill Sheppard

45 Flinders Street
ADELAIDE SA 5000

GPO Box 1005
ADELAIDE SA 5001

Reference:

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

30 March 1991

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

Your Excellency

In accordance with Letters Patent issued to me on 27 April 1989 and subsequently varied, I have the honour to present to you the report of Commissioner P.L. Dodson of his inquiry into underlying issues associated with the deaths of Aboriginal people in custody in Western Australia in the period 1 January 1980 to 31 May 1989.

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

Secretary: John Gavin
Assistant Secretary: Jill Sheppard

45 Flinders Street
ADELAIDE SA 5000

GPO Box 1005
ADELAIDE SA 5001

Reference:

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

30 March 1991

His Excellency the Honourable 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 P.L. Dodson of his inquiry into underlying issues associated with the deaths of Aboriginal people in custody in Western Australia in the period 1 January 1980 to 31 May 1989.

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

ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

Commissioner: Patrick Dodson
Secretary: John Gavin

Unit 2, 1st Floor
14 Napier Terrace
PO Box 1548,
BROOME WA 6725.

Telephone: (091) 935511
Facsimile: (091) 935512

30th November, 1990

Commissioner The Honourable E.F. Johnston Q.C.,
Royal Commission into Aboriginal deaths in custody,
Second Floor, Flinders House,
45 Flinders Street,
Adelaide, S.A. 5001

Dear Commissioner,

In accordance with Letters Patent issued to me in the name of the Sovereign by His Excellency the Governor-General on 28 June 1989, and varied on 24 September 1990, and the Commission issued to me by his Excellency the Governor of Western Australia on 8 August 1989, and varied on 9 October 1990, I

furnish herewith, for your consideration, a report of my inquiry into underlying issues associated with deaths in custody of Aboriginals and Torres Strait Islanders in the State of Western Australia between 1 January 1980 and 31 May 1989.

Yours sincerely,

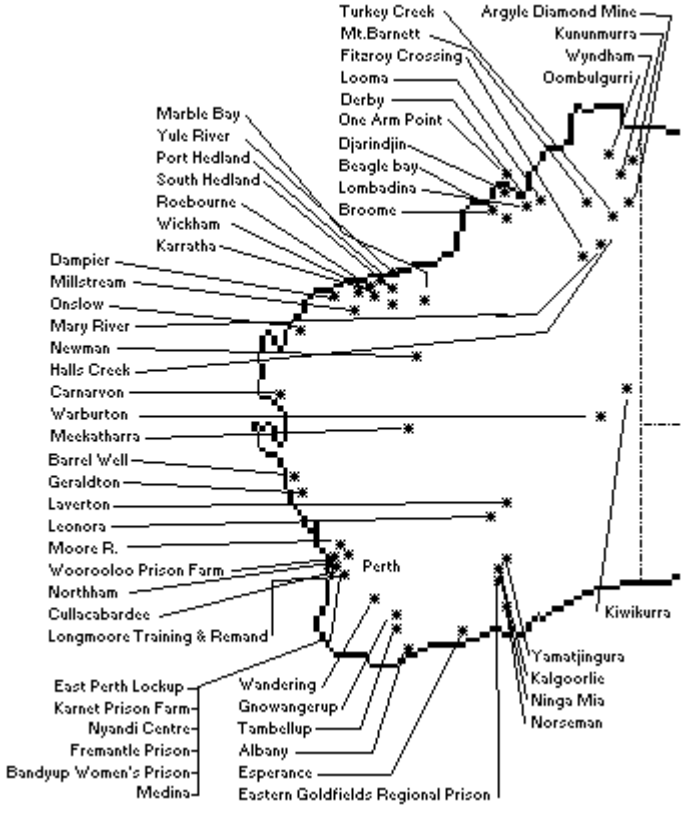
Patrick Dodson
COMMISSIONER

PREFACE

This report pays tribute to the twenty-nine Aboriginal men, and three Aboriginal women who died in custodial settings in this State throughout the period 1980-1989.

Their lives and deaths should not end with this Commission. They offer to us all, the beginning of a new and better chapter in our relationship, and in the history of what is now known as Western Australia.

Map 1 Indicating location of conferences and meetings in Western Australia, 1989-1990.



EXPLANATORY NOTES

The following matters need to be taken into account when reading this report:

(i) There is a distinction between the transcript and conference material from my Commission, and that which was undertaken during the hearings and conferences conducted by Commissioner O'Dea. Where material is referred to in terms of 'RCIADIC Transcript', it usually refers to meetings and conferences held on behalf of my Commission. Where individual report material is referred to, it is generally that which was produced through the investigations carried out by Commissioner O'Dea, Johnston, Wyvill or Muirhead. In each case, the relevant Commissioner is indicated as the source of that material.

(ii) The spelling of Aboriginal language names and groups is consistent with the way in which that name is most commonly spelt. Where there are known variations, those variations are recorded (e.g. Nyungar, variously spelt Nyoongar, Nyoongah; Walmajarri, variously spelt Walmatjeri, Walmadjeri; Pintubi, variously spelt Pintupi; and so on).

LIST OF GRAPHS, MAPS AND TABLES

GRAPHS

1. State comparisons of Aboriginal deaths in custodial settings (see Section 1.5)
2. ALS survey: outcomes (see Section 5.3.4)
3. ALS survey: penalties (see Section 5.3.4)
4. Aboriginal income, Western Australia, 1986 (see Section 7.1)
5. Aboriginal housing, Western Australia, 1986 (see Section 13.2)

MAPS

1. Commissioner Dodson's conferences and meetings in Western Australia (see Section 1.7)
2. Location where those who died in custody spent their formative years (see Chapter 4)
3. Location of last place of detention for those who died in custody in Western Australia 1980-1989 (see Chapter 4)

TABLES

1. Aboriginal population in Western Australia (see Chapter 3)
2. Sentences of imprisonment: Ginger Samson 1979-1988 (see Section

5.1.1)
3. ALS survey: imprisonment according to gender (see Section 5.3.2)
4. Average cost per prisoner (see Section 5.14.2)
5. Average cost per person in non-custodial settings (see Section 5.14.2)
6. State government expenditure: criminal justice system (see Section 5.14.2)
7. Factors influencing per capita expenditure on justice (see Section 5.14.2)
8. Aboriginal family income with dependents (see Section 7.1)
9. Comparison of services and utilities (see Section 7.2)
10. Admission to secure centres (see Section 10.3.3)
11. Children in 'substitute care' in Western Australia (see Section 10.3.7)
12. State and Territory differences in Aboriginal schools and TAFE participation rates 1986 (see Section 12.3)
13. Aboriginal rental applications in Western Australia 1990 (see Section 13.2)
14. Retrenchments and redundancies (see Section 15.4)

ACRONYMS

AAG	Aboriginal Advisory Group
AAPA	Aboriginal Affairs Planning Authority
ABS	Australian Bureau of Statistics
ABSTUDY	Aboriginal Study Assistance Scheme
ADC	Aboriginal Development Commission
AEHW	Aboriginal Environmental Health Worker
AEP	National Aboriginal and Torres Strait Islander Education Policy
AEW	Aboriginal Education Worker
AHDG	Aboriginal Health Development Group
AHPRT	Aboriginal Health Policy Review Team
AHS	Aboriginal Health Service
AHW	Aboriginal Health Worker
AHWEP	Aboriginal Health Worker Education Programme
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
AIC	Australian Institute of Criminology
AIH	Australian Institute of Health
AITAP	Aboriginal and Islander Tertiary Access Programme
AIU	Aboriginal Issues Unit
AL0	Aboriginal Liaison Officer
ALRC	Australian Law Reform Commission
ALS	Aboriginal Legal Service
AMS	Aboriginal Medical Service
ANOP	Australian National Opinion Poll
ASSPA	Aboriginal Student Support and Parent Awareness
ATSIC	Aboriginal and Torres Strait Islander Commission
AVS	Aboriginal Visitors Scheme
BRAMS	Broome Regional Aboriginal Medical Service
CAH	Council of Aboriginal Health
CALM	Conservation and Land Management
CAMS	Carnarvon Aboriginal Medical Service
CCHS	Community and Child Health Service
CDBR	Committee to Defend Black Rights
CDEP	Community Development Employment Programme
CEAAC	Catholic Education Aboriginal Advisory Committee
CEC	Catholic Education Commission

CEO	Catholic Education Office
CPI	Consumer Price Index
CRP	Community Release Programme
DAA	Department of Aboriginal Affairs
DAS	Department of Aboriginal Sites
DCH	Department of Community Health
DCS(1)	Department for Community Services
DCS(2)	Department of Corrective Services
DCSH	Department of Community Services and Health
DEET	Department of Education Employment and Training
DET	Department of Employment and Training
DPUD	Department for Planning & Urban Development
DSR	Department of Sport and Recreation
DSS	Department of Social Security
EOC	Equal Opportunity Commission
FMWU	Federated Miscellaneous Workers Union
GEHA	Government Employee Housing Authority
GRAMS	Geraldton Regional Aboriginal Medical Service
HACC	Home and Community Care
HDWA	Health Department of Western Australia
HIV	Human Immunodeficiency Virus
JP	Justice of the Peace
JsP	Justices of the Peace
JPA	Justices of the Peace Association
KALCC	Kimberley Aboriginal Law and Culture Centre
KAMSC	Kimberley Aboriginal Medical Services Council
KLC	Kimberley Land Council
LAC	Legal Aid Commission
LRC	Law Reform Commission
MOA	Municipal Officers Association
NADU	Northern Australian Development Unit
NAEC	National Aboriginal Education Committee
NAHS	National Aboriginal Health Strategy
NAHSWP	National Aboriginal Health Strategy Working Party
NAILSS	National Aboriginal and Islander Legal Service and Secretariat
NCC	Nulungu Catholic College
NHMRC	National Health and Medical Research Council
OAH	Office of Aboriginal Health
OIC	Officer in Charge
PAMS	Perth Aboriginal Medical Service
RADGAC	Research and Development Grants Advisory Committee
RAHLO	Regional Aboriginal Health Liaison Officer
RANZCP	Royal Australian and New Zealand College of Psychiatrists
RATE	Remote Area Teacher Education Programme
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
RFDS	Royal Flying Doctor Service
SECWA	State Energy Commission of Western Australia
SJAA	St John Ambulance Association
SNAP	Support Network for Aboriginal and Islander Parents
SSPA	Student Support and Parent Awareness
SWEHAC	State Wide Ear Health Advisory Committee
TAFE	Technical and Further Education
WAADA	Western Australian Alcohol and Drug Authority
WAAECG	Western Australian Aboriginal Education Consultative Group

WACEO	Western Australian Catholic Education Office
WAN	West Australian Newspaper
WATC	Western Australian Tourism Commission
WGIP	Working Group on Indigenous Populations (UN)
WHO	World Health Organisation

THE 'WHY' OF THE ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

1.1 BACKGROUND

Toward the end of 1987, the Federal Government established the Royal Commission into Aboriginal deaths in custody (RCIADIC). While it was initially anticipated that the work of the Commission would be completed in twelve months, it was found, after preliminary investigation, that the 'true dimensions of the tragic situation' (Muirhead, 1988:1), demanded that the Commission be given greater time and resources in order to attempt to examine the complexities of the 'deaths in custody' issue.

In July 1989 I was appointed by His Excellency the Governor-General of the Commonwealth of Australia and his Excellency the Governor of Western Australia to conduct an inquiry into the 'underlying issues associated with deaths of Aboriginals and Torres Strait Islanders in custody in Western Australia' (Letters Patent 4 July 1989). Appendix 1 provides a copy of those Letters Patent, as well as those later issued by their Excellencies on 24 September 1990 when the RCIADIC was granted a two month extension. In accordance with the Letters Patents issued, I was also required to submit the outcome of my inquiries and findings, to the National Commissioner, Commissioner the Honourable Elliott Johnston, Q.C., initially by 30 September 1990 (Letters Patent, 4 July 1989) and then amended to 30 November 1990 (Letters Patent, 24 *September* 1990). There was no jurisdiction to inquire into the actual deaths that have occurred in Western Australia. That task was given to other relevant Commissioners. Commissioner Daniel O'Dea conducted the major number of inquiries into the deaths that occurred in Western Australia. This also involved him in inquiring into underlying issues as they were seen to impinge upon those deaths during the hearing processes. These matters, as well as those that arose in connection with the other relevant Commissioners, will be referred to throughout.

What follows is a report of my investigation concerning the underlying issues that give rise to the disproportionate levels of custodies for Aboriginal people in Western Australia and the deaths in custody. In undertaking that investigation throughout Western Australia, and in having a substantial amount of research findings and evidence put before me by both Aboriginal and non-Aboriginal people, I can only conclude that the majority of Aboriginal people in this State remain not only in a destabilised and powerless position compared to the dominant non-Aboriginal population, but also in a position where their powerlessness remains remarkably unrecognised. This lack of recognition occurs at human, socio-cultural, economic and structural levels. In a number of ways, my findings have demonstrated that there has been no possible alternative to what has actually occurred given the past and the present circumstances of the Aboriginal population in this State, especially in relation to the high imprisonment rates and

premature death of Aboriginal people both inside and outside custodial settings. In a sense, it can be argued that the 'scene has been set' for what we are witnessing today. This tragic state of affairs will continue into the future unless there is change on both the part of non-Aboriginal and Aboriginal societies. Aboriginal people need to have control of certain processes and resources to direct and manage their legal, social, cultural and economic affairs. A proper constitutional recognition of Aboriginal peoples unceded indigenous rights should be realised. Anything less will maintain the imbalanced relationship that has persisted since British colonisation, and the rise of Australian States and the Territory, and, ultimately, Federation.

This report will demonstrate the appalling extent to which premature death has reached, and record the continuing powerlessness of Aboriginal people. It will show that to continue treating Aboriginal people as minors, and at the same time demanding they carry responsibilities as adults, without recognition of their indigenous rights, will be to make the original injustices to the rights of Aboriginal people even more intolerable.

I have not included recommendations in this report. Other Commissioners are doing likewise. It was felt by Commissioners that conflicting recommendations (which might well be justified by different conditions in different regions) and similar recommendations, but inevitably differently expressed by different Commissioners, would lead to confusion. Pursuant to my Letters Patent, Commissioner Johnston will be consulting with all other Commissioners as to the final report of the National Commission. That report will contain recommendations and, where the recommendations are different for different pans of the country, will explain the basis for such differences. I strongly urge all levels of government to seriously consider those recommendations. We cannot afford, in human, socio-cultural, political or economic terms, to ignore the powerful expressions of pain and conflict any longer.

1.2 THE INTERIM INQUIRY INTO ABORIGINAL DEATHS IN CUSTODY IN WESTERN AUSTRALIA

On 20 November 1987, the Hon. E. Bridge, MLA, State Minister for Aboriginal Affairs, the Hon. J. Berinson, MLC, State Minister for Corrective Services, and the Hon. G. Hill, MLA, State Minister for Police, established an Interim Inquiry into Aboriginal Deaths in Custody in Western Australia. The Inquiry was chaired by Mr Philip Vincent, an experienced lawyer, who was required to present an Interim Report to government by January 1988. On 21 January 1988, 32 recommendations from the Vincent Report were submitted to Government. Some of these recommendations, and the degree to which they have, or have not, been implemented are examined throughout my report. For more precise details concerning the Inquiry's recommendations and matters with regard to implementation, the report of Commissioner O'Dea should be examined.

1.3 TERMS OF REFERENCE

The Terms of Reference provided to me by Government, required that I consider 'social, cultural and legal' factors as they have a bearing on deaths in custody, and as they relate to 'underlying issues'. At the outset, the interpretation I am applying to these factors needs to be understood in order to make best use of the material

which follows.

With regard to matters 'cultural' I am referring to a system of knowledge, ideas, beliefs and practices that are independently shared and experienced by members of Aboriginal and non-Aboriginal society. It is important to recognise here that cultural traditions come from 'inside' the society or group (that is, they are meaningful only to that society or group) and these beliefs and practices are reproduced and maintained over time, albeit within certain changes and continuities.

With regard to matters 'legal' I am referring to what is generally known as a 'body of rules' which are recognised by society as binding on all members of that society. This 'body of rules' seeks to regulate social behaviour and establish principles that enable matters such as the adjudication of disputes and the punishment of offenders, to be dealt with by persons charged with the responsibility and authority to maintain order. A paradox which exists for any system of law, and one to which attention shall be paid in later sections, is to consider whether societal rules are applied and enforced for the protection of its members, or whether the laws serve to sustain inequalities within that society. This is especially crucial when we are examining both the historical and current situation for Aboriginal people in Western Australia.

With regard to 'social' matters I am generally referring to the people and the institutions who comprise the group or society under discussion: that is, Aboriginal and non-Aboriginal Australians. By 'social' I have taken the need to consider the structural bases of behaviour that constitute the interdependent world of social relationships, and social institutions.

By placing the Terms of Reference into a considered context, and by addressing the matters which have been placed before my Commission throughout various conferences and meetings with Aboriginal and non-Aboriginal people in Western Australia, I find that I am required to also place 'economic' factors within my task. To not consider economic factors when Aboriginal people are arguably the most economically marginalised people in Australia today, would be to disallow a proper recognition of the underlying issues that lead to deaths in custody for Aboriginal people, and which my findings seek to redress.

Hence, with regard to 'economic', I am fundamentally referring to the way in which a society sustains itself. I am using the term in the broadest possible sense within the Australian economy, and taking the view that economic interests concern making choices about the production and allocation of scarce resources, competition for resources (such as employment, housing, income, property ownership), and the maintenance of those resources.

1.4 UNDERLYING ISSUES

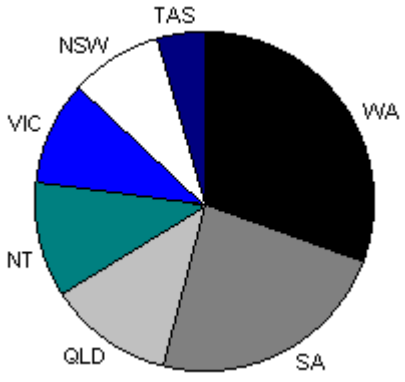
In determining what constitutes an 'underlying issue', I have examined all social, cultural, legal and economic matters as they directly and indirectly affect the constantly high rate of imprisonment of Aboriginal people in this State. In sum, an 'underlying issue' can be defined as understanding the '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 missions 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 inter-relatedness to it.

1.5 PREMATURE DEATHS INSIDE AND OUTSIDE CUSTODIAL SETTINGS

Western Australia is the setting for thirty percent of the known deaths in custody for the period January 1980-May 1989: that is, some thirty two deaths have been under investigation by Commissioners Muirhead, Wyvill, O'Dea and Johnston. This number is a significant fact in itself, especially as Aboriginal people in this State comprise only 2.7% (around 38,000 people, see Chapter 3) of the total population. The number of thirty two deaths needs also to be seen in the context of other states. For instance, Western Australia has seen more Aboriginal deaths in custody per head of the Aboriginal population than any other state: 85 per 100,000 compared with South Australia (84), Queensland (44), Northern Territory (26), Victoria (24), New South Wales (25) and Tasmania (15) (RCIADIC Criminology Research Papers). The very high rate of deaths in custodial settings has been linked with the over-representation of Aboriginal people in police and prison settings. When compared with the minority population that Aboriginal people comprise in Western Australia, the figures become even more alarming: Aboriginal people are over-represented 26 times in prison settings (RCIADIC Criminology Research Paper 19, 1990), and over-represented 43 times in police custody (RCIADIC Criminology Research Paper 13, 1990). In sum this suggests that to be an Aboriginal person in Western Australia means not only to run the risk of being arrested and placed in custody more so than non-Aboriginal people, but also more than Aboriginal people in other states and territories. According to Broadhurst and Mallet (1989) an Aboriginal person, over the span of a lifetime, is three or four times more likely to die in custody in Western Australia than a non-Aboriginal person. The following graph illustrates the situation for Aboriginal people in Western Australia in relation to the deaths in custody issue.

Graph 1: Rates of Aboriginal deaths in custody



States - Rates of Aboriginal Deaths in Custody per head of Aboriginal population

However what needs also to be considered, is the number of premature deaths among Aboriginal men, women and children, which have occurred, and continue to occur, outside custodial settings. While I had no jurisdiction to inquire into these particular deaths, and the material contained in this report will refer to some of these deaths, it is necessary to cite some recent examples: throughout 1989, in the Eastern Goldfields region of Western Australia, seven children under fifteen years of age died from difficulties associated with substance use; in November *1989 an* adolescent male committed suicide, by hanging, in the main street of Derby, a north-western town; in February *1990* five adults and three children died, when their vehicle broke down on their return to Punmu, a remote community in the State's Pilbara region; also in February 1990, a young man committed suicide, by hanging, in one of the back streets of Broome in the northern part of the State; in March 1990 a young woman, from a north-eastern community died after being physically assaulted by her de facto husband; in April 1990, three teenage youths died in Perth when the vehicle they were driving, lost control; in September 1990 another young man died, by hanging himself, in a back yard in Broome; and in October 1990 a young woman died from self-inflicted wounds at a community ten kilometres outside Derby in the State's north-west.

Hence, as observed earlier, not only have premature deaths in custodial settings been an issue of tragic significance, but so too have the premature deaths which have continued to occur outside custodial settings. Again it needs to he stressed that in a number of significant ways, the 'scene has been set' for the tragic events which have occurred in Western Australia, and which have now become the focus of this report.

1.6 ABORIGINAL ISSUES UNIT

In 1989, in response to a number of expressed concerns that Aboriginal people needed to be more closely involved with the Commission, Aboriginal Issues Units (AIU), staffed solely by Aboriginal people, were established in all states and in the Northern Territory. The Units had a particular role to work directly with Aboriginal people throughout the states and Territory to ensure Aboriginal views were heard. Mr Rob Riley headed the Unit in Western Australia from its inception, until he was appointed Director of the Aboriginal Legal Service in Western Australia in July 1990. Mr Riley was succeeded by Mr Darryl Kickett, who had previously acted as

Assistant Head of the AIU. Members of the Unit liaised with Aboriginal people throughout the State, and some of their findings, contained in a report titled 'Fighting for Rights' (1990), are documented throughout.

1.7 ORGANISATION OF THE REPORT

This report represents views of various Aboriginal and non-Aboriginal people in this State. Views were expressed both at conferences and meetings, throughout Western Australia during the past twelve months, in the written and spoken word. Map 1 provides details concerning where meetings and conferences were held in this State. While I primarily worked from my office which was located in Broome, I also worked out of the RCIADIC's Perth office, and undertook meetings and conferences throughout the State. Sometimes meetings were held in open settings, whereas at other times individuals chose to make available to the Commission 'confidential' statements. Appendix 2 makes available details concerning individuals and groups who were witnesses, or provided submissions, to this Commission. I have treated confidential material on the terms with which it was provided to me.

During the course of my inquiries it was made clear that I had adopted an 'investigatory' position and to this end sought to encourage all sections of the community to put forward their views, which in turn would be subjected to questioning by myself as Commissioner. Leave to appear by Counsel was not approved at any of my conferences, nor were there any applications made for leave. Counsel were encouraged to put forward any views they wished. Only the Western Australian Aboriginal Legal Service (ALS) and Counsel for the Committee to Defend Black Rights (CDBR) did so.

The report is organised from two major inter-connected perspectives. The first section (i.e. Chapters 1 to 5) focuses on describing some of the background material in relation to Aboriginal people in this State concerning historical matters, demographic characteristics, those who died in custody, and Aboriginal experience of the criminal justice system. The second section (Chapters 6 to 2 1) focuses on, and further develops, the greater 'why' of those matters by describing contemporary Aboriginal social life, and some of the factors which impinge on that life, such as the effect of race relations, institutionalisation, powerlessness, exclusion and marginalisation. Initially, I shall describe some of the historical processes of colonisation as they have occurred in what is now known as Western Australia.

HISTORICAL PERSPECTIVE: KNOWLEDGE OF THE PAST TO INFORM THE PRESENT

Before commencing this Chapter, I wish to advise that Appendix 3 makes available an historical chronology of some of the major legislative and historical events which have occurred in Western Australia following colonisation.

To place the present circumstances of Aboriginal people into a context, it is necessary to provide some information about the past. In particular to examine: the consequences of a series of ethnocentrically designed policies and legislation which have been applied to Aboriginal people throughout the often violent

colonisation of Western Australia; the way in which Aboriginal people have attempted to resist colonisation; and the ongoing processes of colonisation. The legacy of particular policies and legislation have certainly left their impact, but so too have various Aboriginal forms of resistance. In sum, an understanding of how colonisation has been consolidated is intrinsic to an appreciation of Aboriginal matters in this State, and especially to the task of considering those people who have died both inside and outside custodial settings, and of their families.

It is well documented that Aboriginal people occupied and traversed what is now known as Western Australia many thousands of years prior to colonisation. The level of resource management was considerable, with a viable hunting, gathering and fishing subsistence pattern. There is also evidence of husbandry and farming which were to successfully provide countless generations with a productive and spiritually rich existence. Seasonal exploitation of regional resources, and the maintenance of socio-cultural ties and religious practices ensured the continuation of Aboriginal people and their cultural integrity.

Aboriginal Law regulated relationships between individuals and groups. The demarcation of a group's land or 'country' was clear and respected. Everything that existed, whether living or inert, had meaning and integration to a world that not only constituted the here and now, but also that which continued from before. The land gave and sustained, not only life, but also the basis for meaning and intelligence to questions of order, responsibility and obligations for Aboriginal people. There was nothing to conquer in the land because the people belonged to the land. Their power and sense of being came from it. Pride and esteem emanated from celebrating the land which included the cosmos and the intricate interaction of spiritual beings, whose continuing action gave meaning, purpose and strength to all living and non-living things. Indeed, to life itself. Knowledge and practice of these mysteries is what gave pride and wisdom, not material possessions. In to this intelligently balanced material and spiritual world of early 19th century Aboriginal Australia, came the British colonisers, with their perceived superiority and arrogance which informed their denial of the rights of indigenous peoples.

Western Australia was invaded by the British in 1829, and claimed by the British without the negotiation of a treaty. The concept of a treaty remains a crucial matter which has yet to be fully addressed in order for Aboriginal people to have any confidence and faith in the concept of natural justice. That form of natural justice could emanate from governments or from the institutions that symbolise from where justice should be dispensed.

It is by now well documented that the colonisers refused to acknowledge prior ownership of Western Australia to its Aboriginal inhabitants. To the colonisers, the hunting, gathering and fishing economy, as well as socio-cultural and religious ties to the land maintained by Aboriginal people were not fully understood or valued. Hence Aboriginal people were regarded as 'without property' and consequently without authority and status to contest British imposition (see e.g. Chisholm and Nettheim, 1974:6-8). The colonisers knew

what they wanted, and the land and Aboriginal people would he progressively subordinated to meet those ends.

Europeans were enticed to Western Australia (the 'Swan River Colony') by advertisements that advised potential newcomers they would not have to pay for their lands, and that the land grants would be conveyed to them in fee simple

descending to their 'assignees and heirs forever' (Durack, 1975: preface). Clearly, pursuing such a practice, the colonists did not recognise Aboriginal sovereign rights. They saw only domestic agriculture and pastoral endeavours as proper purposes for land, and they therefore regarded their own usurpation of Aboriginal territory as quite justified. The idea that they may have been involved in theft and receiving stolen property was shrouded from them in the mysterious legal concept of 'terra nulluis'. 'The Crown' and its edifices of power and authority were the touchstone of validity for the colonisers. For Aboriginal people the land, law and culture, not ossified in bricks and mortar, were the obvious testimony to power and authority.

From such opposing views, competition for land began and so to a history of misunderstanding and conflict. From the colonisers perspective, Aboriginal people were seen as a threat not only because they did not understand their language, social, cultural and legal structures, but also because they did not use the land as the colonisers thought it should be used. In addition, their continued occupancy posed an obstacle to the colonisers plans for expansion and total control of the future directions of the colony.

Some of the early colonisers wrote compassionately about the effect of non-Aboriginal intrusion on Aboriginal people. For instance, the Reverend Gribble (1886/1987:2) observed:

> But that Australia itself, professedly the new home of liberty and light, should also have become the theatre of the dark deeds of oppression and cruelty; that a land not only blessed by the Great God ... should have become the nursing mother of oppression and injustice, and that deeds of infamy should find toleration therein, is not only a cause for the greatest astonishment, but in itself constitutes the foulest blot that could possibly rest upon the escutcheon of Australia's fame.

However, entrenched colonial attitudes more commonly involved an ethnocentric disregard for the Aboriginal people. Aboriginal oral histories, published and unpublished works detail accounts of this attitude which often resulted in overt cruelty. For instance, in 1833 an Aboriginal male from the south-west, Yagan, was shot and killed, and his smoked head removed and placed on public exhibition in Britain. There was also a punitive raid, in Pinjarra, led by Governor Stifling where many Aboriginal people were killed. Fear of the Aborigines and a continual quest for stability and domination largely directed the relationship of the colonists to the Aborigines.

From an Aboriginal perspective, dispossession of land not only involved severe dislocation to cultural and social links with the attendant meaning and purpose of life, but also access to bush food and medicine which, prior to occupation of their lands, had been a natural and plentiful source of health and preventative care. Interestingly, this point was not entirely lost on all of the early colonisers. For instance, with regard to Moola Bulla, a 'Native Settlement' established in the East Kimberley by Government in response to pastoralists demands about the fear of cattle spearings in 1910, it was noted that:

> Unfortunately through want of forethought past governments have totally ignored the aborigines [sic] in dealing with the pastoral lands of the East and West Kimberley, with the present consequence of forcing bush natives to raid the cattle, simply because there is no other meat for them ... in the early days, before the country was stocked ... both Kimberleys were a

> paradise for natives ... [now] ... they have no meat, so is it any wonder they have taken to cattle killing ... the present state of affairs and heavy gaol, police, and indigent expenses would not exist ... if in the early days before stocking up the place, the government had reserved large blocks of good virgin country ... where there was plenty of natural food [Moola Bulla native station file: 65395118: Battye State Library, Perth].

As the colonisers power increased and they took up more land and more stridently imposed their own values, the destabilisation and alienation experienced by Aboriginal people intensified. The protection of the rights of the colonists is what the demand was. The Aborigines were considered without rights and barely distinguishable from the landscape which colonists now wanted re-shaped to their ends. So too would Aborigines have to be re-moulded to what the non-Aborigines wanted. The physical distance and space between Aboriginal and non-Aboriginal people would rapidly diminish making way for an imposition which saw Aboriginal freedom cramped and denied by non-Aboriginal imperatives.

From these early beginnings, tension, fear and aggression resulted. This often found brutal expression in overt violence between the two groups, primarily stemming from conflict over access to land (see e.g. Reece and Stannage, 1984). The non-Aboriginals gained eventual control over Aboriginal affairs with their technologically superior instruments (such as rifles) and by the introduction of diseases such as tuberculosis (through contact and by the consumption of cows milk), smallpox, measles, venereal disease, and influenza, to which Aborigines had little or no immunity (see e.g. Haynes, Barrett, Brennan and Brennan, 1973:26-28, for comments regarding the toll of epidemics among Aboriginal people in Western Australia).

Brutality and disease, and the suffering and alienation of those who survived, had a profound and devastating effect on Aboriginal people: the seeds of social, cultural, legal and economic marginalisation were sown and consolidated. The processes of disempowerment and destabilisation ensued. The extent of this powerlessness, and the brutal way it was often maintained, is evidenced by the following account, taken from 'Aborigines Protection Board Minutes', 1891:

> Response from G.M. Straker, J.P., Roebourne, request from Aborigines Protection Board on 'Report of Prisoners on work outside gaol':
>
> Number of prisoners: 37 male, 6 female.
>
> Employment: The men are employed as under. ,Seventeen are wheeling or carrying stone from hillside to police quarters ... Eleven natives are occupied between Roebourne and Cossack at work cutting or clearing out water drains to carry surplus water from tramline.
>
> Chains: The whole of these natives are worked in chains. The method of chaining the natives is as follows. Each native had around his neck a leather collar beating a numbered label. This collar is connected by light handcuffs locked to a chain of seven to eight feet in length. In the case of natives at work with the wheelbarrow, the end of the chain is made fast to the handle, and where natives are carrying stone, the chains are secured together by a lock, thus coupling the natives with a chain of about fourteen feet. The natives carry the stone on their heads and each one has a pad made out of sacking between the skull and the stone. If the hands of any

> native become blistered by the harrow handles, he is taken off and given a few days carrying the stone fill the hands are all right.
>
> Clothes: All natives wear a strong shin and kilt. When a native is working singly the loose end of the chain is woven around his body but the shin prevents it burning him at all.
>
> Necessity of chains: It would he absolutely impossible to dispose of the use of chains. A native has no thought whatsoever of the consequences and his one idea is to escape, and I am perfectly certain it would be utterly useless to attempt to keep these men prisoners unless they are secured. I find that even whilst at work in chains, native persons have on several occasions escaped taking their chains with them.
>
> No cruelty in use of chains: With the present method of using leather covered collars and strong shin to prevent the chain, when hot, from burning the skin. The hardship of the chaining is more apparent than real. The prisoners do not complain so far as I can gather from observation. There is neither inhumanity or cruelty in the chains as now used [Battye State Library, Perth. AN 1/1 Ace. 388: Minutes of the Aborigines Protection Board, 1891-1893].

The above extract has been recounted in detail as it provides not only insights into the cruelty imposed on Aboriginal people, but also into the Aboriginal desire to escape from conditions where they were virtually powerless to do so. Aboriginal prisoners were directly substituted for the convicts who were not considered durable enough to work north of the 26 parallel.

Throughout the latter part of the nineteenth century and the early twentieth century, many Aboriginal people were coerced into missions as part of continuing government and church policy which was aimed at 'de-Aboriginalising' and 'evangelising' Aboriginal people (see e.g. Swain and Bird-Rose, 1988). Missions, supported primarily by religious orders of the Catholic Church and the United Aborigines Mission, included New Norcia, which was established in 1848, Busselton which was established in 1878, Beagle Bay in 1890, and Balgo Hills in 1939 (see e.g. Biskup, 1973 for details). In addition to missions and reserves, many Aboriginal men were transported to Rottnest Island and forced into a penal institution, which was established in 1841. Archival records, currently held by the State's Battye Library, show that 'cold weather and overcrowded and filthy conditions claimed many lives ... nearly 400 Aboriginal men died on Rottnest Island' (correspondence received from the Hon. Premier of Western Australia, Dr Carmen Lawrence, MLA, dated 27 April 1990).

Aborigines were considered less than the transported convicts and were soon enslaved as labour for the colonisers descendants. Aboriginal men and women were also used as a labour force on properties as agriculture and pastoral workers and domestics. In this regard, it is useful to observe the following comments made in relation to a 'Native Settlement' in the Kimberley:

> As it will be impossible to keep all the natives constantly employed on the station ... it is further proposed to train the children to become useful servants, and the settlement will eventually become a labour-recruiting centre for the adjoining stations [Annual Report, Department of Native Affairs, 19101.

It is essential to observe here too that many non-Aboriginal pastoral and agricultural developments were established by the use of Aboriginal labour (see e.g. Crawford, 1989:35-38; Hawke and Gallagher, 1989; Hodson, 1989). Until 1968 when the Federal Pastoral Industry Award was introduced, theoretically ensuring Aboriginal people received 'equal wages for equal work', Aborigines were 'paid' for their labour only in the form of rations. There is no other way to describe the misery, fear, exploitation and injustice experienced by Aboriginal people during the days before the 1968 Federal Pastoral Industry Award Decision than as a 'master/slave' relationship.

During the early period of colonisation, relatively few Aboriginal people were allowed to live near town sites, although large numbers resided in nearby camps or close to towns. In the 1840s, the colonial government issued a direction that Aborigines should not be admitted to towns. By the mid 1920s Aboriginal people were completely banned from entering towns, and it was not until 1954 that the official ban was lifted i.e. Aboriginal people were not allowed into Perth until 1954 (Biskup, 1973:256; Howard, 1981:22).

Of increasing importance also was the exploitation of Aboriginal women for sexual services, a pattern encouraged by the non-Aboriginal male view of Aboriginal women. The fact that there was only a small proportion of women in the non-Aboriginal population, encouraged this form of exploitation. While it is simplistic to assume that all relationships between non-Aboriginal men and Aboriginal women were exploitative, because such a position denies the fact that Aboriginal men were sometimes compliant with non-Aboriginal men regarding the sexual services of women over whom they held certain authoritative ties, as well as the fact that relationships of intense affection and loyalty occurred between men and women of both races, the results of such unions were an increasing number of 'mixed descent' children. Officially, government concern about miscegenation increased. Ideas began to emerge concerning the removal and institutionalisation of Aboriginal children away from their natural parents, in order to gradually 'wean them from their present erratic habits' (Reynolds, 1981:141).

The results of the oppressive measure of removing children from their natural parents were to sow the seeds of biased racial doctrine, which commenced a process whereby Aboriginality was defined in terms of non-Aboriginal perceptions. These perceptions found their way into legislative and administrative conditions and procedures. In sum, there emanated an all pervading ethnocentric philosophy, reinforced by the then prevailing perspective on indigenous peoples and later by the biogenetic influence of social Darwinism, which directed and dominated the processes of colonisation. The aim of all this was to portray and treat Aborigines as creatures of the lowest material order, and not as intelligent human beings.

Throughout the latter part of the 19th century, the government made an attempt to 'pacify' Aboriginal people. During this period, Aboriginal people themselves probably remained uncertain whether British colonisation was a permanent or temporary measure (Biskup, 1973:8-9; Reynolds, 1981:5-61). Contrary to some views, the spread of colonisation to places throughout Western Australia took place in an uneven manner. Aboriginal people were not always familiar with who or what the British Empire was nor of its designs upon their lands. The congregation of non-Aborigines into a Government in Perth may well, in the eyes of Aboriginal people, have been a mob of ship wrecked foreigners surviving until rescue came from their own country. Coastal Aboriginal groups had seen many strange non-Aborigines come and go over the centuries which preceded the ultimate British invasion.

In addition there were various forms of resistance powerfully enacted by Aboriginal people toward their colonisers. For instance Gill (1974:15) notes that police stationed in the north-west during the 1890s 'frequently discharged their firearms against Aborigines in attempts to arrest and 'disperse' them and to prevent them from destroying European settlers property', and O'Brien (1960:46) states that 'spearings by nomad natives [sic] continued; in 1889 blacks [sic] attacked another station in the Roebourne district and murdered Dr Vines'. However, one of the most striking expressions of resistance can be seen by relating the following account of Jandamarra.

Aboriginal people in the Kimberley today still recount vivid narratives concerning Jandamarra, also known as 'Pigeon', a member of the Bunuba language group, who challenged the authority of the colonisers by carrying out raids on sheep and cattle stock in the late 1800s. In 1894, at what was known as the Windjana Gorge Rebellion, Jandamarra was captured, along with several others, chained by the neck and taken to nearby Derby. Eventually he was released on the grounds that work assisting the police, caring for horses and tracking, was undertaken.

Jandamarra's work with the police proved to be 'successful' in that the police became reliant on his skills and knowledge of the country, enabling them to track down Aboriginal people who were killing and removing stock. However, Jandamarra's time assisting the police was shortlived. For a variety of reasons, including news that police in parts of the Kimberley were carrying out unmitigated killings on Aboriginal people throughout the region, Jandamarra escaped, and retained a retreat at Windjana Gorge. Eventually, leading an attack on the Oscar Range Homestead, Jandamarra was pursued by the police and killed by Mingo Mick a 'black tracker' from Roebourne.

Historian Howard Pederson, who has undertaken extensive research regarding Jandamarra's relationship with Aboriginal and non-Aboriginal people, advises that Jandamarra was decapitated during this attack, and his head transported to England (personal communication, Howard Pederson, 24 September 90). In addition Pederson (1984: 14) writes, 'In Pigeon's short life he had witnessed and achieved much. He had seen the invasion by Europeans, the enticement of his people into their industries and, finally, a courageous resistance against them. The one thing that Pigeon never saw was the dispossession of his country. Shortly after his death, the Europeans were able to stock Leopold Downs Station, which was in the heart of Bunaba country' (for an account of Pigeon's life, see Pederson, 1984:7-15).

Despite the efforts of men such as Jandamarra, the pastoralists maintained a strong position against Aboriginal people and their aspirations, and the government increased its power by continuing to develop and implement legislative and administrative reforms. One of these (originally set in place in the 1830s, abolished in the 1850s, and reinstated in 1905) was the appointment of 'protectors', who were instituted in order to mitigate potential conflict between Aborigines and the colonisers. Protectors (primarily men drawn from police ranks, or local settlers who had an interest in forming an alliance against Aboriginal interests) ostensibly had a role to safeguard Aboriginal well-being. Among other writers, Eggleston (1976:130-13 1) points out that one of the major problems with the protector system was the dual role that the officers played, in fulfilling a task as a police officer, alongside that of a protector. Eggleston writes, 'the main objection to the police protector was that it was impossible for one person to combine satisfactorily and fairly the functions of prosecution and defence' (ibid). This 'dual

role' was to set the scene for current day Aboriginal/police relations as material contained in later chapters and sections indicates. For instance, Aboriginal people in the Kimberley today still recall the actions of 'Pilmer' or 'Sergeant Pilmer', a police officer who is cited as being responsible for many senseless killings in the region during the early 1900s (see e.g. Pederson, 1984:11; Gallagher, n.d.:4).

Pilmer was not alone in his activities, and them is further material to indicate that many punitive raids were carried out by police throughout various parts of the State (see also Durack, 1969; Gill, 1977; Hawke and Gallagher, 1989; Foley, 1984). The impression gained of this time is that of the police being used by pastoralists and sectors of government against Aboriginal people in the way the Cavalry in the United States of America (USA) was used against the Indian Nations.

Miscegenation continued to occur overtly during the time when it was not considered by the colonists to be safe or advisable for large numbers of European women to live in the colonies. From most accounts, this took the form of non-Aboriginal men exploiting Aboriginal women for sex, which was to have massive consequences on gender relations between Aboriginal and non-Aboriginal people in general, and, in particular, on preventing friendships, or forms of solidarity, between Aboriginal and non-Aboriginal women (see e.g. McGrath, 1987:68-94).

Concern about the increasing numbers of children who were described by non-Aborigines as 'half-caste', resulted in the Aborigines Protection Act (1886), by means of which the government sought greater regulation and control of the Aboriginal population. Such powers extended to all people of Aboriginal descent including 'part-Aborigines who were habitually living and associating with other Aborigines' (Biskup, 1973:44). The powers contained in the 1886 Act were later extended by sections in future Acts, notably those of 1905 and 1936, and they had massive consequences for Aboriginal people in the northern and southern parts of the State. An Aboriginal view of this system, recounted by a senior Aboriginal male some years later, conveys the devastating effect of this cruel and oppressive measure:

> I never got a chance to meet my two eldest brothers because they were taken away before I was born, when they were only 9 or 10 years old. My sisters and another brother were sent away to the Catholic Mission School at Beagle Bay. My parents had no say in that, it was Government policy. Aboriginal children right around Australia were forcibly taken from their parents and placed in institutions. The police could take away any Aboriginal child with bits of colour in them, any kid with a bit of white blood in them. If they were taken away, it was often the last time their parents and relations saw them. It was a very bad thing! When it looked like the younger brother and I were going to be taken away as well, our parents got talking and decided that they weren't going to part with us. So, whenever a police party came out to Mt. Anderson they sent us off into the bush; sent us down to our father's and grandmother's country with some old people. That's why I'm able to speak my own people's language and several other languages. My sisters and other brothers missed out on that. Of course they can understand what's being said in language, but they can't speak it very well themselves [Watson in Marshall, 1988:220].

Although Western Australia attained self-government in 1890, the British Government continued to maintain control over Aboriginal affairs. This control is

believed to have been repealed through the use of Section 70 of the Constitution, and the responsibility for the protection of Aborigines was removed from the British and passed to the Colonial State Government of Western Australia in 1898.

Section 70 was introduced into the Western Australian Constitution in 1889. Basically it was contended that 'there shall be payable to Her Majesty in every year out of the Consolidated Revenue Fund, the sum of 5,000 Pounds (Five Thousand Pounds) mentioned in Schedule C to this Act and to be appropriated to the welfare of the Aboriginal natives ... (it) ... shall be issued to the Aborigines Protection Board ... and if and when the gross revenue of the colony shall exceed 500,000 Pounds (Five Hundred Thousand Pounds) in any financial year, an amount equal to one percentum on such gross revenue shall, for the purposes of this section, be substituted for the said sum of five thousand pounds in and for the financial year ensuing' (Statutes of Western Australia Vol. 11, 1883-1892, pp.384,385). This, in effect, enabled the British Government to retain control over Aboriginal affairs. However this was challenged by the then Premier of Western Australia (bearing in mind Western Australia had achieved self-government in 1890 and was in control of all matters apart from Foreign Affairs and Defence, and Aboriginal matters). It should be noted here that the repeal of Section 70, whether in fact it was legally repealed, remains a point of controversy (see McLeod, 1987; Seaman, 1984:245-247; Johnston, P.W., 1990).

At the turn of the century, as well as the encroachment of non-Aborigines on Aboriginal land for pastoral and agricultural endeavours, rich gold deposits were discovered in the northern and eastern parts of the State. These discoveries encouraged an influx of the non-Aboriginal population and hastened the colonisation process. It was around this time that colonial authorities saw the need to strengthen the police force to keep an 'effective check on the natives' (Gill, 1974:4).

By the end of the nineteenth century, official policies toward Aboriginal people in Western Australia had stabilised somewhere between the strategies of restriction and forms of humanitarian relief, and controversy and anxiety about the worsening conditions of Aborigines continued. These eventually gave rise to a number of inquiries and Royal Commissions which were to have significant implications for official policy and administration concerning Aboriginal people in Western Australia.

The first Royal Commission in the twentieth century concerned the general living conditions of Aborigines in this State. It commenced in 1904, and was headed by Dr W.E. Roth, an ethnographer, and the Chief Protector of Aborigines in Queensland. The Government failed to take up many of Roth's findings and eventually a selective parliamentary response to Dr Roth's work resulted in the 1905 Aborigines Protection Act. Among other things, the 1905 Act gave the Chief Protector of Aborigines the authority to compulsorily remove 'part-Aboriginal' children from their natural parents, and to establish Government settlements and missions for Aborigines. This Act, and the particularly oppressive measures it invoked, caused profound anguish, and the policies it introduced are still remembered with bitterness and repugnance by many Aboriginal people today. For example, the 1905 Act legalised the removal of children from their families, and it allowed the government to establish more missions, settlements and reserves. The role of protectors was again reinforced and the police were given power to arrest Aborigines without warrant for offences against the Act. Aborigines were prohibited from towns if they were not in lawful employment, and Section 42 of the Act prohibited cohabitation of European men and Aboriginal women (see especially

Biskup, 1973:59-65;

Woenne, 1980:333-334; and Haebich, 1988 for discussion concerning the 1905 Act).

It is significant to be aware that the parents and grandparents of many Aboriginal people who have provided comment to the RCIADIC, were to live under the severe conditions imposed by the *1905* Act which remained firmly in place until 1936, and was not completely repealed until 1963.

The second Commission to be established in Western Australia was the Royal Commission to Inquire into the treatment of Natives by the Canning Exploration Party, generally referred to as the 'Gale Commission' of 1908. This Commission dealt with allegations of maltreatment of Aborigines by an exploration party along the Canning Stock route in the north-west of Western Australia and, while acknowledging that incidents such as 'chaining Aborigines' and 'feeding them with salt beef without water' and 'running down prospective informants with horses' had occurred, Canning and all members of his survey team were exonerated (see e.g. Woenne, 1980; Gallagher, n.d.).

Also around this time, 1908, the Lock Hospital Scheme was introduced on Dorre and Bernier Islands off the Carnarvon coast, and Aboriginal women and men believed to be suffering from venereal disease were taken there so they could be isolated. This scheme was to remain in place until 1918 (see Jebb, 1984:68-87 for an account of this Scheme).

In addition, the appointment of A.O. Neville, as Chief Protector of Aborigines, was made in 1915. Neville's appointment was to have a profound and long lasting effect on Aboriginal matters in Western Australia, as he stridently fostered the strict implementation of the 1905 Aborigines Protection Act. Neville was to retain the position of Chief Protector for a period of twenty five years until 1940, when he was succeeded by F.I. Bray (see Haebich, 1988:153-187 and Jacobs, 1990 for detailed discussion concerning A.O. Neville's influence).

The third Royal Commission was established in 1927, titled the 'Royal Commission to Inquire into alleged killing and burning of bodies of Aborigines in East Kimberley'. This Commission was headed by a Mr George Wood, Magistrate of the Local Court in Perth, whose brief was primarily to look into the facts relating to the alleged killing and burning of Aborigines in 1926 in the Forrest River District. Evidence provided to that Commission found that there had been at least 'eleven natives' burned as a punitive measure in response to the killing of a 'settler' named William Hay by a 'native, Lumbia' (see also below).

Like the findings from the Gale Commission, there was only cursory acknowledgement of what had occurred, and no one was actually prosecuted (Rowley, 1970:200-202; Woenne, 1980:334-337).

By the 1930s, Aboriginal people were continuing to suffer the removal and institutionalisation of their children to Government settlements and missions, as the strategy aimed at 'de-Aboriginalising' people intensified and became more systematic and entrenched. This was facilitated by the encompassing powers contained in the 1905 Act (Haebich, 1982:44-65; 1985 and 1988 provides detailed discussion on the removal of Aboriginal children and their placement on missions and settlements in the south-west).

In 1934, H.D. Moseley was appointed Commissioner of the next Royal Commission in Western Australia. In his report Moseley indicated that he was relatively satisfied with conditions for Aboriginal people in the pastoral areas of the north-west, but he was concerned about the general ill-health of the increasing number of 'half-castes' in the south-west. Moseley's recommendations were eventually incorporated in the 1936 Native Administration Act, the main thrust of which was to extend the breadth of the 1905 Act to cover nearly all persons of Aboriginal descent and give the Chief Protector almost comprehensive control over their lives. There were, however, some provisions which represented a point of departure from existing policy. For instance, Native Courts were instituted where actions between 'natives' who had committed offences in pursuit of 'tribal law' could be taken into account in mitigation of the sentence.

However, as noted by Eggleston (1976:284-287), although these courts were instituted, through the insertion of Section 59 into the 1936 Native Administration Act (No. 43), they were not successful due to factors such as uncertainty about what could and could not be seen as actions within 'tribal Law'. Moreover, there was no allowance for right of appeal. These courts handled relatively few cases and the relevant Section within the Act was finally repealed in 1954. The following account provides an example of the ineffectiveness of the Native Courts system and, again, it serves the purpose of illustrating some of the background from where the history of relations between Aboriginal people and aspects of the criminal justice system have emerged:

> An Aboriginal male, Lumbia, is charged with the offence of murdering his wife. The court constituted for the hearing was a 'Native Court' under the relevant Section of the Native Administration Act 1936. There was no representative from Lumbia's 'tribe' present; the Commissioner of Native Affairs did not attend but sent a nominee; the nominee was subsequently made a Protector; the fact that the nominee was not already a Protector contravened the Act; the nominee was the local publican.
>
> Lumbia was represented by the Officer in Charge of the Hospital who: did not have any experience as a counsel; did not take proper instructions; did not consult with the witnesses; did not call any witnesses for the defence.
>
> Lumbia was eventually found guilty of murder, even though he had only been charged with the offence of 'unlawful killing' - the equivalent of the lesser charge of manslaughter. He was pardoned because of the error at law [Battye State Library File, Perth Ace. 993 85/45].

Aside from recommendations such as the introduction of 'native courts', which are also considered in Section 5.1.1 of my report, essentially the Moseley Commission discouraged any form of recognition of Aboriginal rights. He urged that wages were not to be paid direct to Aborigines, that Aboriginal camps should be entirely abolished and replaced by settlements where education could be provided, and that more stringent penalties should be introduced to protect Aboriginal women (Moseley, 1935:4-20). Although Moseley's report brought about some amendments to the 1905 Aborigines Act, the emphasis was still on control, that is regulation rather than assistance. The 1936 Native Administration Act which emerged as a result of Moseley's findings was primarily based on the underlying principle that, 'the destiny of the "natives of aboriginal origin" lay in their ultimate absorption by the people of the Commonwealth' (Biskup, 1973:188). By this was meant biological as well as social and cultural absorption which was seen as particularly necessary for the increasing number of 'de-tribalised' or

'part-Aboriginal' people as they were thought of and referred to as.

It is critical to observe here too, that in September 1942, the Australian Armed Forces formalised its control over Western Australian Aboriginal people by passing a proclamation under National Security Regulations requiring employed Aborigines over the age of fourteen years to be issued with a 'military permit'. Permits were, according to Hall (1989:126), issued in either red or black, with red indicating the bearer was believed to be 'subversive' and black indicating they could be considered 'trustworthy'. It is also important to observe, in relation to the country as a whole, that:

> at least one in every twenty Aborigines, 'part Aborigines' [sic] and Islanders (or 5% of the population) made a direct contribution to the war effort either as a serviceman or woman, or as a labourer. By the war's end, Aborigines had built or assisted the construction of airstrips at over seventeen missions. They had regularly unloaded fuel, bombs, ammunition, rations and other stores from ships, searched and rescued drowned airman and lost seaman, salvaged aircraft, located sea mines and provided general labour. Through their proximity to RAAF bases, some had been bombed. Unlike the bulk of the white Australian population, Aborigines - men, women and children -were in the front line of the air war [Hall, 1989:186-190].

The involvement and contribution of Aboriginal people in both the first and second world wars is yet another area where Aboriginal people have been denied recognition and associated rights. Just one instance, is that even after participating in the war effort, returned Aboriginal participants were among those who had to apply for Citizenship Rights.

In 1944 a Bill was introduced into the Western Australia Parliament which was ostensibly designed to provide 'citizenship rights' for Aboriginal people. The Bill was lobbied for by various members of parliament and others involved in Aboriginal affairs to give 'those aborigines [sic] prepared to adopt a higher standard of living an opportunity to uplift themselves' (Biskup, 1973:207). This Bill eventually became the Native (Citizenship Rights) Act 1944 and it provided for the granting of citizenship fights to Aboriginal people who could prove the following:

- for the two years immediately prior an applicant has adopted the manner and habits of 'civilised' (European) life;
- that full rights are likely to be desirable and conducive to the welfare of the applicant;
- that the applicant is able to speak and understand the English language;
- that the applicant is not suffering from leprosy, syphilis or yaws;
- That the applicant is reasonably capable of managing his (sic) own affairs (89/50). Natives (Citizenship Rights) Act 89/50.

The granting of citizenship fights could be suspended or cancelled if any of these stipulation’s were not met. It is also significant to note that this special type of citizenship did not extend automatically from parent to child, as persons from each

new generation reached adulthood, they too would have to make application for citizenship and be subjected to the same official scrutiny (Bolt, 1978: 1-47).

On the outward appearance, the movement toward greater citizenship rights, even if selectively, was a step in the right direction, but to properly appreciate the significance of this change, it is worth remembering two things. Firstly, as recorded above, many Aboriginal men and some women, fought for Australia in the Second World War, as they had also done in the First World War (see e.g. Hall, 1989), yet they were still not entitled to vote or receive the pension (Biskup, 1973:205-207). Secondly, many Aborigines were making a vital contribution in the civilian workforce, especially, as noted above, in the pastoral industry's contribution to the war effort, but they were denied normal industrial conditions and were usually only paid in the form of rations. A strike by Aboriginal workers in the Pilbara in 1946 was to see changes on this front, but those changes came slowly and uncertainly. 'Equal wages for equal work' would not be a reality for at least another two decades. The immediate ramifications of the strike were more keenly felt in the north-west of the State than in the south (Stuart, 1959; Biskup, 1973:219-222; Wilson, 1961; McLeod, 1987). The strike was also as much about working conditions, as it was about the rights, equality and justice Aboriginal people wanted extended to them from non-Aboriginal Government.

In 1948 a Perth magistrate, F.E.A. Bateman, was appointed to undertake a survey of Aboriginal affairs in Western Australia and to make appropriate recommendations to government. As a result of the 'Bateman Report' there was a reorganisation of the 'Aborigines Department'. There was also general support for the policy of assimilation, especially in the south-west of the State (Biskup, 1973:321). Bateman recommended the closure of camping reserves and the removal of Aboriginal people to segregated settlements for education designed to equip them for their eventual absorption into European society. He suggested 'that a policy of "no segregation" in schools should be loosely followed ... and education to train the natives in order to fit them into our own social and economic life' (Bateman, 1948:1-39). A quote from a representative of the Department of Native Welfare concerning the north of the State is also revealing here:

> I might mention that educational aspects will never be completely successful at this station until it is possible to transfer the camp children to special institutional accommodation and thus remove them from the camp influence of the adult full-bloods, parents and otherwise. This same influence, although often arising from the love of parents, and others, for the child, is completely undesirable from our standards and can only delay the progress of the child to such an extent that it becomes retrogression. Nomadic habits and tendencies must be eliminated if the child is to be given a sense of responsibility sufficient to take its place in the community both economically and in all other respects [Annual Report, Department of Native Affairs, 1950].

The emphasis on education was, however, a departure from previous policy and practice. In fact during the early part of the twentieth century, the Minister for Education had authorised the wholesale expulsion of Aboriginal students from most schools in the south-west following complaints from non-Aboriginal people (Biskup, 1973:152-153; Haynes et al, 1972:50-54).

In addition Bateman (1948:26), with regard to the south-west, where many 'half-caste' children were removed and placed in institutions and missions, by Department of Native Welfare officials, observed that 'there are approximately

3,500 half-castes representing an ever-increasing problem from day to day`. His comments reveal the prevailing attitude towards Aboriginal people, attitudes which have clearly influenced present day attitudes of members of Aboriginal and non-Aboriginal society.

Also in 1948, the government appointed S.G. Middleton Commissioner of Native Affairs. The Department was reorganised; the most significant change being the decentralisation and expansion of their field staff. While Middleton made a determined effort to reduce the number of prohibitions on Aborigines (Long, 1980:361), he encouraged and supported the policy advocated in the Bateman Report which was that, 'assimilation into the general community on the basis of reasonable equality in all factors of community life' be followed (Biskup, 1973:241). In order to fulfil his goal, Middleton initially decided to work through Christian missions, with their emphasis on the institutionalisation of Aboriginal children. This sort of emphasis is exemplified in the following comment, taken from a copy of the West Australian newspaper on 9 December 1940 (p. 10):

> All fair-minded citizens admitted the claims of the blackfellow upon them, the Reverend J.R.B. Love said at St. Andrew's Presbyterian Church last night ... There were three government native stations in Western Australia and thirteen Christian missions, he went on ... The natives were trustworthy, affectionate and easily managed. They had a religion, believing in supernatural powers which governed the course of nature and human life. The work of the missions was to preach the Gospel and heal the sick. The missionary must be trained for years for this work ... (where) ... the natives were taught to till the soil and encouraged to go out and hunt and teach their children bushcraft ... They were allowed to retain native customs that were good ... Money and labour spent on the blacks was more than worthwhile, Mr. Love concluded. Even if they were ungrateful and treacherous it would still be the duty of white people to look after them, but they were grateful and affectionate, and it was a sound investment to give money for the support of native missions.

The contrasting view of comments such as these, can be gauged by referring to the words of a senior Aboriginal man who was one of the children who was 'rounded up' during the period when government and mission authorities believed that mission life was the avenue whereby Aboriginal life could be made 'worthwhile':

> They picked up all the half-caste kids, from all over the Kimberley and put them in settlements ... They were picked up from all the cattle stations round this area and even the towns, any half-caste kids. They didn't care much for the full-blood, only for the half breed. Anyone that had a bit of colour was there. And we had to be Christianised. All new boys that came in were flogged on the Saturday rooming. Dick my brother and I, we got the biggest bloody hiding that morning. I don't know why. Don't ask me why it happened, what it was all about, but they had to Christian the boys by giving them a good flogging [Alfie Gerrard, cited in Gammage and Spearritt, 1987:55-56].

In 1953 a State Labor Government introduced a Bill to amend the 1936 Native Administration Act. This Bill was initially rejected by a hostile Upper House, and eventually passed the following year as the Native Welfare Act 1954. While it removed some of the more onerous and punitive measures of the prior legislation, such as abolishing employment permits and the prohibition on Aborigines entering

certain areas and towns, the Act failed to give Aboriginal people full citizenship rights and it continued to legalise the removal of children from their natural parents. Added to this, through the introduction of the Commonwealth Social Services Consolidation Act (1954), government continued to deny the granting of any form of pension or maternity allowance to any person who was 'more than one half Aboriginal unless he [sic] was for the time being exempted from the laws of the State or Territory relating to the control of Aboriginal natives'.

Until the introduction of the Native Welfare Act 1963, the regulatory policies as advocated by the Bateman Report continued. It was still an offence for Aborigines to leave their employment of their own free will, and to marry without the permission of the Commissioner of Native Affairs. When Aboriginal people breached these laws they were treated as criminals and the police were used to round them up and return them to their masters, or else prosecute those who married without permission.

The general trend evident in the Native Welfare Act 1954 continued through the introduction of the Native Welfare Act 1963 which, whilst stemming from assimilationist principles, was a break with the more oven and oppressive restrictions of the original 1905 Act. The 1963 Act provided for co-operation between the Department of Native Welfare and the State Housing Commission to develop a programme of reserve improvements and housing for Aboriginal people in towns and country areas.

Generally, what was happening to Aboriginal people during the 1960s lay outside the knowledge and interest of most non-Aboriginal Australians, although there were some notable exceptions. For instance, in relation to Government closure of Moola Bulla and the forced relocation of Aborigines to other parts of the Kimberley, the Labor Womens Organisation of Perth stated in a letter dated 18 June 1955 addressed to the Commissioner of Native Welfare: 'What benefits will the natives who have improved the reserve by their labour have received, or will receive, from the benefits of the sale?' (Battye State Library, Perth. File 993.3/53). In my view, it is apparent that Aboriginal people gained nothing from the sale of Moola Bulla (see e.g. Kimberley Language Resource Centre Oral History Project, 1987/1988; Rumley and Toussaint, 1990).

Aboriginal people who were deemed to be 'Australian Citizens' through the criteria of the 1944 Act became entitled to vote in 1961 although, unlike all other Australian citizens they were not legally bound to do so. Through the introduction of Section 41 into the Commonwealth Constitution, drinking rights were granted to Aboriginal people in the south-west of the State in 1964 through the repeal of Section 150 of the Licensing Act of 1911. In July 1971, Section 130 which replaced Section 150, was finally repealed, allowing Aboriginal people throughout Western Australia to consume alcohol.

In 1967 a national referendum was conducted where an overwhelming majority of Australians voted to amend the Commonwealth Constitution to give the Commonwealth Government the power to legislate in relation to Aboriginal matters. In Western Australia 319,823 voted in favour of the amendment, and 72,282 voted against. As a consequence of the results of the referendum, Section 127 of the Commonwealth Constitution was changed. What most Aboriginal people still do not realise is that this power is exercised rarely alone by the Commonwealth, but usually according to agreements between the Commonwealth, the States and the Territory. Aboriginals are not privileged as parties to these negotiations, discussions or decisions over their own affairs and

lives.

In 1965 the Federal Pastoral Industry Award was amended so that on 1 November 1968, Aborigines were to receive the same rate of pay as non-Aboriginal workers in the pastoral industry. The change in the Award, according to pastoralists, meant that it was uneconomical for station owners to maintain the same number of Aboriginal employees on full Award Rates together with their dependents. This was also during a time when greater mechanisation and division of properties through fencing was being introduced into the pastoral industry. The results of developments such as these were that many Aborigines were evicted from stations, while others walked off. Aboriginal people were forced to set up camps outside various town centres. This occurred primarily in the north-west pastoral region of the State, but there was also some impact on the agricultural south-west where Aboriginal labour had been used on agricultural and farming properties (see e.g. Hodson 1989). This era in Aboriginal peoples lives was profound for a number of reasons. Whilst life on stations may not have provided much personal income, Aboriginal people were able to visit their country, and social and cultural bonds remained strong. On stations, Aboriginal people were made to live away from the homestead and the working quarters. They came out of the camps to work, and then returned home at night time. This provided for some distance between the groups and, to a very limited extent, provided Aboriginal people with their own space, despite a regime that exploited not only the workers, but also their families.

Arriving on the fringe of various townsites, brought with it a lack of work, isolation from country, the introduction of social welfare entitlements, and citizenship rights which, in turn, served to increase surveillance and subjugation. The imperative for most non-Aboriginal people to police every Aboriginal person, created a cauldron of chaos, misery, loss of esteem and pride. It accelerated destabilisation and dislocation for Aboriginal people.

The good intentions that underlined the 1967 National Referendum and the Federal Pastoral Industry Award 1968, were not matched with an enlightened approach about the consequences to Aboriginal peoples social, cultural, legal and economic affairs. Aboriginal people were yet again the object of a gross act of ill-conceived social engineering that only governments can account for. There can be no doubt that the conditions of Aboriginal people needed improving, which Aboriginal people themselves wanted. However, they again had no say in how and to what ends the changes would be directed.

The Federal Government began providing assistance to the states aimed at enabling them to carry out various programmes to 'upgrade' the standard of living and education of Aboriginal people. Evidence of this was seen by the introduction of the Aboriginal Study Grant Scheme in 1969, and the Aboriginal Secondary Grant Scheme in 1970.

In 1972 the State Parliament passed legislation which abolished the Department of Native Welfare, whose functions were taken over by the Aboriginal Affairs Planning Authority (established by the Aboriginal Affairs Planning Authority Act 1972), the Department for Community Welfare (established by the Community Welfare Act 1972), and the State Housing Commission. The Aboriginal Affairs Planning Authority was set up as a small department with a role to co-ordinate Government activities in relation to Aboriginal affairs, to act in an advisory role to the Minister responsible, and to administer the Aboriginal Lands Trust (ALT). The ALT became the body which administered land held 'in trust' for Aboriginal people and organisations. However, without adequate legislative powers, it has proved in

practice to have little real meaning in facilitating Aboriginal access to, and control of, land.

Also in 1972 the Government introduced the Aboriginal Heritage Act giving the Western Australia Museum, through the Department of Aboriginal Sites, the responsibility to protect areas of cultural significance to Aboriginal people. The weakness of the Act was clearly demonstrated during the Noonkanbah crisis in Western Australia in 1980, when the Government of the day drew on its power, implicitly couched within the Act, to over-ride Aboriginal fights and aspirations, and against the advice of the Aboriginal Cultural Materials Committee, to ensure that mining exploration proceeded (see e.g. Berndt, 1982:233-253; Vincent, 1983:327-338; Hawke and Gallagher, 1989 for details).

Around this time there also developed the concept of 'self-determination', a concept officially adopted as the basis for policy during the period of the Federal Labor Government which held office in 1972-1975. The Liberal-Country Party Government, which replaced the Labor Government in late 1975, adopted a policy based on the concept of 'self-management'. However while both these terms have been widely used, they have never been fully defined, and appropriate mechanisms for implementing such policies have never been set in place (see e.g. Lippman, 1981:71-100; Heppell, 1979:19-21; von Sturmer, 1982:69-116 and Thiele, 1984:165-178).

In 1974 following further Government restructuring in relation to Aboriginal matters, another Royal Commission was established which was to look into all concerns, 'affecting the well-being of persons of Aboriginal descent in Western Australia'. The Commission was headed by a Queen's Counsel and former judge of the District Court, L.C. Furnell, whose findings drew largely on historical material and there was little real consultation with Aboriginal people (See Furnell, 1974; Woenne, 1980).

From 1974 to the present, most administration and funding for Aboriginal people has been carried out by the Federal Department of Aboriginal Affairs (DAA), now known as the Aboriginal and Torres Strait Islander Commission (ATSIC), with the Aboriginal Affairs Planning Authority (AAPA) functioning rather uneasily at a State level. Its charter is to consult and advise the State Government on Aboriginal Affairs. The AAPA is not given responsibility for a State budget allocation for Aboriginal Affairs.

In the mid-1970s the Federal Government introduced the Aboriginal Land Fund Act (1974) which eventually became the Aboriginal Development Commission (ADC) in 1980. Among the purposes of the ADC was to provide funding and advice for the purchase of land and relevant enterprises to incorporated Aboriginal groups. Applications were considered from the perspective of social advancement as well as commercial enterprise principles. These two aspects never seemed to sit easily with each other given the generally deprived socio-economic conditions of Aboriginal people. On 5 March 1990 the ADC joined with the DAA to become ATSIC.

In 1976 there was a further Royal Commission titled the Laverton Royal Commission, which was established to look into an 'incident' between Aboriginal people and police outside Laverton in 1974. This Commission, often referred to as the 'Skull Creek incident', is notable for the fact that although allegations of assault were made against police by Aboriginal people, it noted that the evidence from police was 'unsatisfactory'. The Commission concluded that 'no-one involved acted

improperly' (Report of the Laverton Commission, 1976).

For the purposes of the present Commission, it is relevant to quote here the following extract from the Laverton Commission's Final Report:

> While nothing can excuse what was done at Skull Creek or what was done to defend the untenable position in which the police officers then found themselves, it is proper that we should record that in the area to which this Commission has related, police officers have a very difficult and unenviable task. It is obvious ' that many of the problems develop out of the historical development of the relationships between Europeans and the Aboriginal people whose way of life and culture have been affected. The problems lie at the door of the whole society and not just at the door of the police force or any other section of society [Report of the Laverton Commission, 1976:200].

On numerous occasions, my Commission was told by police of their concerns with expectation by members of both non-Aboriginal and Aboriginal societies, to be the ones who are expected single handedly to solve or address the broader social, cultural and economic concerns that Aboriginal people are faced with. This is clearly beyond their domain and does require the constructive co-operation of private and public sectors of non-Aboriginal society, as well as participation by Aboriginal groups. Police and Aborigines become victims, albeit in different ways, when unco-ordinated and poorly devised development is thrust upon them. In my Commission's view, it is clear a proper social and cultural impact assessment should have taken place at Laverton before infrastructure developments were placed on the ground. Such matters are not given much weight, it appears, when time means money. If the focus remains upon the conflict between police and Aborigines alone, and does not shift to broader social, cultural, legal and economic considerations, then we are destined to see conflict continue between sectors of Aboriginal and non-Aboriginal society. Aboriginal people will remain subordinated to every other interest and powerlessly frustrated to affect change, and police will remain as those who have to enforce the laws. I shall return to these matters throughout the following pages of this report.

There were however, some signs of change towards the potential empowerment of Aboriginal people in the 1970s. For instance, there was the emergence in Western Australia of the Aboriginal Medical Service (AMS) which opened in 1973 and the Aboriginal Legal Service (ALS) in 1975. These bodies were set up to be controlled by Aboriginal people and to respond to perceived needs under their direction.

In 1976 at a Federal level, there was an inquiry into the National Aboriginal Consultative Committee (NACC) which had been established in 1973. The Inquiry recommended an alteration to the way in which the NACC was structured, and in 1977 the National Aboriginal Conference, with direct consultative and advisory access to Government, was instituted.

In 1978 at a State level, the Aboriginal Housing Board was created largely in response to the increasing numbers of Aboriginal people seeking government housing. The Board was given a special role to facilitate housing needs for Aborigines at both a policy and advisory level, and to function in conjunction with the State Housing Commission. Aboriginal chairpersons were appointed by Government to both the Aboriginal Housing Board and the Aboriginal Lands Trust. Also at a State level another Aboriginal controlled organisation was established, the Aboriginal Child Care Agency, with a brief to develop links between Aboriginal

parents and their children and the Department for Community Welfare. And in 1979, the Aboriginal Communities Act (1979) was proclaimed, allowing certain Aboriginal communities to institute 'By laws' to be upheld within their own communities. (See also Section 9.3 regarding this Act.)

While my brief for this Commission is to primarily focus on the period 1980-1989, a cursory glance at some of the more significant events throughout the 1980s is necessary. These will be further considered in later chapters (e.g. Chapters 6 and 12).

In 1983, a newly elected State Labor Government initiated three more inquiries. The first and most significant in relation to Aboriginal people was the Aboriginal Land Inquiry, headed by Mr Paul Seaman, Q.C.. The Inquiry was asked by the Government to make, 'recommendations for a scheme of legislation for land related measures for the benefit of Aboriginal people in this State' (Seaman, 1984a: 1).

The second was the Inquiry into Education in Western Australia, which was carried out under the Chairmanship of Mr Kim Beazley, A.O.. The Inquiry was given fourteen Terms of Reference. The most relevant to Aboriginal education was Term of Reference thirteen which was to assess, 'the extent to which schools are meeting the particular needs of Aboriginal children and children from non-English speaking backgrounds' (Beazley, 1984:xiv).

The third was the Community Services Review, which was asked to inquire into all matters concerning the operations of the Department for Community Welfare. Thus the Inquiry was required to make suggestions concerning the role of the Department for Community Welfare in relation to Aboriginal people in Western Australia (Carter, 1984).

All three Inquiries handed down their recommendations to State Government in 1984. In general terms these were:

(i) Aboriginal Land Inquiry: The final report of the Aboriginal Land Inquiry's findings were rejected by the State Government in October, 1984. Instead the Government put together its own set of recommendations which eventually found expression in the Aboriginal Land Tenure Bill (1985). An attempt was made to put this Bill through Parliament, but it was defeated in the Upper House and did not become legislation.

(ii) The Inquiry into Education in Western Australia: The Inquiry found that (1984:323) Aborigines are probably the most disadvantaged group in our community. Aborigines suffer disadvantages arising from cultural differences, history, living conditions and illness. These difficulties, and many others, are compounded by the remoteness of many Aboriginal settlements and by a general lack of interest, understanding and sympathy on the part of many in the non-Aboriginal community. These difficulties translate into severe educational disadvantages.

(iii) Community Services Review: The final report of the Community Services Review was published in October 1984 under the title, 'For the Well-being of the People' [Carter, 1984]. The report did not deal directly with Aboriginal matters, suggesting it had not had the time or

resources to do so, although findings in the report noted that '50% of The Department for Community Welfare's clientele are Aboriginal' [Carter, 1984:3.51,4.112].

Throughout the 1980s, further inquiries and reviews and potential indicators for change in relation to Aboriginal matters, have continued to occur, and, as observed, many of these will be referred to in this report. For instance, in 1985, at a Federal level, but with obvious implications at a State level, it became compulsory for Aboriginal people to vote at State and Federal elections. There was also another inquiry established to look into all aspects of Aboriginal employment and training (Miller Report, 1985). The National Aboriginal Conference (NAC), was disbanded following recommendations of a Government sponsored inquiry. The NAC was faced with the classic dilemma of being 'caught in the middle between the devil and the deep blue sea'. On one hand it faced growing concern, and to some degree resentment, within the Aboriginal community, because of perceived self-interest, incompetence and nepotism, and on the other hand it was increasingly becoming a political scapegoat and a convenient distraction for Government. However its opposition to government over broken election promises and failed understandings, especially to introduce National Land Rights Legislation, sat uneasily with its high operational costs and it was eventually swept away.

Finally there is now the Aboriginal and Torres Strait Islander Commission (ATSIC) which is to be made up of sixty regional councils elected by Aboriginal people. These in turn are grouped into zones where seventeen Commissioners are elected. The chairperson and two other Commissioners are appointed by government. With regard to Western Australia, ATSIC and the AAPA are established to serve the interests of Aboriginal people at both a Federal and State level. There are distinctions in the effective decision making roles of both these entities which in practice we have yet to see. ATSIC elections took place for the regional councillors on 3 November 1990.

In sum, by considering some of the processes and consequences of history, from 1829 to the present, it can be clearly seen that colonisation has been consolidated in this State through aspects of violence, and by the design and implementation of Government policies and legislation. What becomes most apparent, is the right of Government to create institutional control over Aboriginal peoples lives without too much emphasis being placed upon Aboriginal legal, social, and cultural requirements. This control, combined with powerful interest groups and representatives from law enforcement agencies, ultimately denied Aboriginal people any form of real empowerment. The entrenched nature of colonial attitudes and the quest for economic gain in the short to medium term, has, in my view, combined to thwart any real advance for Aboriginal aspirations in this State. The image on the whole of Aboriginal people being seen as in need of a 'fair go', and non-Aboriginals being well disposed to this, begins to change to non-Aborigines perceiving Aboriginal people as criminal, violent, and destructive of private property and, as a consequence, as a threat to the social fabric of non-Aboriginal society. An old fear is rekindled in the minds and hearts of non-Aboriginals about Aboriginals.

Possibilities may exist in a more mature relationship developing. These are, unfortunately, often viewed superficially and with suspicion and cynicism from both Aboriginal people and non-Aboriginals in general. My impression, however, from the inquiries that I have made, indicate that while many critical factors impinge on the relationships between Aboriginal and non-Aboriginal society, not all of them are

negative. There have been advances made by Aboriginal people themselves into professional areas of achievement in various types of courses, and a growing concern that further improvements must be made in all types of fields. Non-Aborigines themselves appear to want better and more accurate information about Aboriginal people, and often express Concern at the complexity of the situation that faces Aboriginal people.

There is very little recognition of the fact that it is only in recent times that there have been advances and opportunities in which Aboriginal people could become engaged. Some of the positive initiatives by government are sometimes seen as discriminatory against non-Aboriginal people. Non-Aboriginal people and government remain, however, largely informed and confounded by the work ethic and confused about why Aboriginal people do not always seem to help themselves.

I will further consider some of the points raised throughout the preceding discussion in my report. In the next chapter, information concerning the demographic characteristics of the present day Aboriginal population in Western Australia is presented.

DEMOGRAPHIC CHARACTERISTICS

The Aboriginal Affairs Planning Authority (AAPA) Annual Report (1988/1989) estimate that the total Aboriginal Western Australian population at 37,819 people (18,882 males, 18,937 females), indicating that Aboriginal people comprise only 2.7% of the total population in this State. This total was derived from the 1986 Census of Population and Housing conducted by the Australian Bureau of Statistics. In providing this figure it is important to recognise matters such as: the high mobility of Aboriginal people; the way in which Aboriginal people may or may not choose to identify; the appropriateness of the data collection system; and the high rate of homelessness of Aboriginal people. Hence, there is some concern about the accuracy of such a figure.

The following table provides Aboriginal population statistics by local government areas as outlined in the Aboriginal Affairs Planning Authority Annual Report (1988/1989).

Table 1: Aboriginal Population by Local Government Area, Western Australia

LOCATION	MALE	FEMALE	PERSONS
Perth;			
Total Division	4 868	5 219	10 087
South West;			
Total Division	763	822	1 585
Lower Great Southern;			
Total Division	688	676	1 364
Upper Great Southern;			
Total Division	422	402	824
Midlands;			
Total Division	832	765	1 597
South Eastern:			
Total Division	1 382	1 333	2 715
Central:			

Total Division	2 914	2 886	5 800
Pilbara:			
Total Division	2 171	2 106	4 277
Kimberley:			
Total Division	4 810	4 700	9 510
Migratory:	16	14	30
TOTAL WESTERN AUSTRALIA:	18 882	18 937	37 819

Source: AAPA Annual Report, 1988/89.

Having made available an outline of the demographic background of the present day Aboriginal population in Western Australia, as calculated by the Australian Bureau of Statistics and recorded by the AAPA, I now turn to the life and death of those who died in custodial settings during the period 1980-1989. In taming to their life and death, I am conscious that I can only provide glimpses of the individual, partly because so much about those who died will never be entirely known, or fully appreciated, and partly because there are certain matters which should remain solely within their own family network.

THE PEOPLE WHO DIED IN CUSTODY IN WESTERN AUSTRALIA, 1980-1989

Initially, I wish to apologise to all the families, relations and friends of those who died in custody because throughout this report, the life and death of those who died in custody is constantly referred to. Discussion concerning the 'why', and the connecting threads, will be considered in detail. In a number of the reports on individual deaths in custody, Commissioner Daniel O'Dea and 'relevant Commissioners' who have inquired into what actually happened when people died in custody, have referred matters to this part of the Royal Commission for further examination and consideration. The task of directly reporting on those who died in custody throughout the 1980-1989 period are fully dealt with in the individual reports produced by the 'relevant Commissioners' and Commissioner O'Dea. The bibliography contained at the back of this report provides details of those individual reports.

My Commission's report, as observed earlier, will examine the social, cultural, legal and economic issues that underpin deaths in custody and the disproportionate number of custodies for Aboriginal people. This is a vast and complex undertaking because we are often dealing with matters where the link, at times, may appear imperceptible. At other times, however, the link - the cause of incarceration, the cause of death - is more obvious. The impact from a maze of governmental structures and agencies, influences both in historical and contemporary settings, pressures and stresses from within and outside Aboriginal society, have been given importance in my considerations, as well as the most immediate matters that lead to custody or to death in custody.

Maps 2 and 3, over, provide a graphic outline of where the people who died in custody grew up, or spent their formative years, and where they were last held in detention.

Map 2: Indicating where those who died in custody grew up

[The locations shown are places where people who died in custody spent a great part of, but not all, of their format demands of Aboriginal social, cultural and economic life, as well as legislative and administrative constraints, those who died in custody, like Aboriginal people elsewhere, spent periods of their lives in a number of different, yet connected, places. Material contained in this Chapter provides details.]

Map 3, below, indicates the last place of detention of those who died in custody.

What follows is an account, or overview, of some of the major issues that concern and connect the people who died in custody for the identified period. The issues referred, are far from being an exhaustive list of the issues which have been extracted from the facts of each case, and the following list does not cover the breadth of those matters which were referred to my Commission. It does, however, provide some insight into the depth and complexity of a number of issues:

- the phenomenon of coronary artery disease among young Aboriginal men (see report on Daryl Garlett);

- homelessness, alcoholism, public drinking, unemployment, lack of non-Aboriginal education, poor material conditions (see the reports on Jimmy Njanji, Sir Charles Gairdner Hospital Case [name suppressed, from hereon will be referred to as the Sir Charles Gairdner Hospital Case] and Steven Michael);

- violence, mental health (see the reports on Paul Farmer and Ben Morrison);

- meal allowance, Police Aides Scheme, Customary Law (see the report on Robert Anderson);

- detoxification centres, alternative sentencing (see the report on Hugh Wodulan);

- humanitarian prison practices (see the report on Ronald Ugle);

- employment issues (reports on the deaths of the Sir Charles Gairdner Hospital Case and Jimmy Njanji);

- juvenile issues (report on the death of Paul Farmer).

In every case before the RCIADIC there is an element of family disruption or upheaval to some greater or lesser degree. This is a constant refrain about the lives of those who ended in prison or police cells. One Community Based Corrections Officer told my Commission in 1990 that little had changed:

> ... one thing that stands out is broken homes ... it seems to start out that you will ask about mother and father and usually they are quite separate or they are not a part of what we call a family, that seems to be the start [RCIADIC Transcript, Broome, 1990: 103].

Each of the deceased had some involvement with the police and Courts of Law. Mission life impacted on either the deceased him/herself, or the deceased parents

in almost every case. Institutionalisation is an issue in a number of the cases of the deaths of the younger men.

The deaths of individuals have been examined in detail by other Commissioners who have, to a greater degree, been reporting on the circumstances surrounding the deaths. Commissioners have to some extent examined the history of the deceased and the social fabric from which they came. As observed earlier, it is the task of my Commission to explore the themes pertinent to the 'why' of those deaths and to explore some of the connecting threads which emerge.

A statistical analysis of the tragic phenomenon of Aboriginal deaths in custody has been undertaken by the Criminology Research Unit of the RCIADIC, and certain matters can be analysed by examining the findings provided by that process. Commissioner O'Dea in his regional report is, in part, examining the cases in the light of that analysis. My Commission, although assisted by the statistical analysis that has taken place, does not wish to explore the statistics to any great extent as they do not always explain or make fully comprehensible the 'why' of the deaths.

From material put before me, it became clear that there is a lot of concern and confusion in the Aboriginal community about how and why the apparent self-inflicted deaths have taken place. Of Wongi (name suppressed, referred to from hereon as Wongi or the Wongi case, also referred to by Commissioner O'Dea as 'the young man who died in custody at Geraldton'), it was said:

> ... we had him at the hostel with us. Now I ask myself the question, why didn't he do it at the hostel, we were there, we probably could have helped him in any matter he wanted help. Why did it have to happen - he was brought back to the hostel -ended up back down the gaol - why didn't he do it there at the Hostel, because everything was pretty easy going, pretty - you know, relaxed atmosphere there, and as I say, it's so difficult for us to come to grips with [RCIADIC Transcript, Geraldton, 1990:496].

In my view, one of the most critical ways to gain insights into and, hopefully, understanding of, the phenomena of deaths in custody, is to take a longitudinal view. The deaths span at least three generations of Aboriginal men and women, the ages of men ranging from 16 to 62 years and of the three women, from 21 to 41 years. The issues resulting in the deaths of these generations of men and women in themselves derive from the abject conditions under which previous generations of Aboriginal people have struggled to survive.

Any number of assumptions have already been incorrectly made about the people who have died in custody. Some of these assertions require further investigation and analysis. For example, if one examines the deaths by hanging/self-inflicted injury, the youngest person to die was 20 years old, the oldest was 55 years. This insight challenges the police Union's assertion in relation to these 'suicides':

> Teenage males in Australia are reported to suicide at the highest percentage rate per capita in the world. Such a tragic state of affairs cannot in the most remote circumstances be blamed on custodial practices or individual police officers in this country [RCIADIC Police Union Submission, 1990:9].

This argument was elaborated upon in conference in Perth when it was suggested by one representative of the Police Union that:

> ... when you consider that Australia has the highest late teenage male suicide rate in the world on a per capita percentage, then 8 suicides in custody for the proportion of people in custody in that 8 year or 9 year period is almost insignificant [RCIADIC Transcript, Police Union Conference, 1990:761].

The only teenage males to die in custody were John Pat, Wayne Dooler and Ricci Vicenti, none of whom committed suicide. Not only is the argument inapplicable when one considers the age span of the deceased, but it is wrong to say there have only been 8 'suicides' as there have been 8 deaths by hanging and one by a severed jugular vein. Two of these deaths occurred in prisons rather than police lockups.

It is probably also incorrect to refer to those deaths as all being 'suicides', as from an examination of the Coroner's and Commissioner's findings, some of the deaths were arguably unintentional and there has been some revision of views that those who died from self-inflicted injury actually intended to kill themselves. For instance, in the case of Christine Jones, Commissioner O'Dea has reported:

> It cannot safely be concluded that Christine formed the intention to end her own life ... [RCIADIC O'Dea report on Christine Jones, p.22].

Commissioner O'Dea's observation conflicts with the finding of the Coroner who conducted the inquest, who was of the opinion that Christine Jones had intended to take her own life. This lack of conclusiveness about intention to suicide is raised again in the Stanley Brown case where the Coroner found that:

> having regard to the degree of intoxication and the incomplete securing of the mattress cover, it was possible that the deceased may not have formed the considered intention to take his own life ... Having regard to all the evidence ... death was by accident [RCIADIC O'Dea report on Stanley Brown, p.38].

Commissioner O'Dea thought it not possible to conclude that Stanley Brown intended the consequences of his actions. The Coroner speculated that Stanley Brown was attempting to draw attention to himself.

The Coroner at Benjamin Morrison's Coronial Inquest came to the same conclusions: that there was no evidence to disclose a considered decision to take his own life and that the circumstances were consistent with the intention of drawing attention to himself. Commissioner O'Dea concurred (RCIADIC report on Ben Morrison, p.39). In addition, at the inquest into the death of Hugh Wodulan it was concluded that it was 'uncertain' whether Hugh Wodulan had the intention of suiciding. The Coroner's finding is thus supported by Commissioner O'Dea.

Only in the report of the case of Paul Farmer, Commissioner Muirhead commented that Paul Farmer was an 'almost classical suicidal risk' (p.54), given his observed behaviour. Commissioner Muirhead found 'there is little doubt that Farmer was determined to kill himself (p.52).

The Police Union analysis of the press or media effect upon the issue of deaths in custody is not, in my Commission's view, helpful in providing the sorts of insights necessary for the task at hand. There are too many variables. No-one can be sure that any of these 'self-inflicted' injuries resulting in death are the result of a 'copy cat' syndrome. This syndrome is discussed further in Section 14.9 of my report.

The lives of the people who have died in custodial settings were like a tapestry around the State of Western Australia. For instance, one man died by hanging (Stanley Brown) in the Broome Lockup. He was aged 42 years and a sought-after traditional Law-man dancer. His contribution to dance and song will be missed. He came from a station background and had not received any non-Aboriginal education. Although held in high regard by Aboriginal people for his traditional abilities, he was not so esteemed by police, who arrested him frequently. In the lead-up to his death, he had been arrested on 17 June 1987, sentenced to six days for drunk on 18 June 1987, released on 21 June 1987; re-arrested on 24 June 1987 for drunk; fined $25 with no time to pay on 25 June 1987, released on 27 June 1987; arrested on 27 June 1987 for drunk; found hanging and dead at 6:30pm on 27 June 1987.

At the other end of the State, another man was found hanging in the Fremantle Lockup. He was Ben Morrison aged 55 years. He lived under bridges, had been educated at New Norcia and been removed on Warrant to Moore River Settlement. He had been considered troublesome at Northam. He was known as well read: 'he reflected upon what he read and liked to discuss the various topics' (O'Dea's report on Benjamin Morrison p. 10). Upon the death of his wife, Ben Morrison had tried to keep his child out of the Welfare's hands. He 'displayed sincere interest in the child ... he tried to make arrangements for her care, but these were not satisfactory' (ibid:9). He was however, known to the police in the derogatory term of 'warb'.

Christine Jones, a young woman, 7 days short of her 22nd birthday, with old razor marks on her arms, her two children in the care of her mother whom it had been said, neglected her own children with the result that they were removed to missions, died by hanging in the Midland Lockup. It can never he known for sure what motivated her to take her own life, although it is not hard to see the pain she must have endured throughout her short life.

Wayne Dooler, a young man from the same area as Christine Jones, grew up at the United Aborigines Mission (UAM) Hostel, Derby and then lived with his family at Carnarvon Native Reserve. Dr Williams' description of conditions on that Reserve, documented in the report on the death, provides ample background to explain why Wayne Dooler's life was lived under the cloud of alcohol. Dr Williams attributed the teenage alcohol problem as 'directly related to dispossession, displacement, poverty, unemployment, unpurposeful life and disintegration of culture' (O'Dea's report on Wayne Dooler, p.2). Dooler reportedly was left by his friends senseless on a Railway Bridge in the rain. He had been drinking very heavily and died of acute alcohol poisoning aged 19 years.

My Commission was told by a Justice of the Peace (JP) that in respect of the deaths in custody in the Carnarvon area (the particular JP thought there were two such deaths):

> It appeared to me that alcohol was the problem. In one case I think the amount of alcohol was about two and a half times clinical dead and the other one was around about two [RCIADIC Transcript, Carnarvon, 1990:132].

Further, the phenomenon of hanging/self-inflicted injury deaths cannot be explained by some easy equation about exposure to the brutality of an institutionalised or mission upbringing. Although Christine Jones, Wongi, Ben Morrison, Hugh Wodulan, Graham Walley and Paul Farmer were all exposed to

mission conditions and institutionalised, Bernard McGrath, Stanley Brown and Eddie Cameron were not so exposed. What can be said is that each individual who died was exposed to some degree of mission/welfare interference at a primary or secondary level, which, it may be posited, resulted in family disruption. The disturbance of family group support is a constant theme of the lives of those who have died in custody.

While the impact of missions is considered further in Chapter 10, it needs to be noted here that where the mission experience has impacted on people it was often unconducive to the 'welfare' of the individual. For instance, my Commission was told that being taken to the mission was disturbing:

> being very young at the time, and not knowing why I was taken from my mother and put out there ... there always was the question, why. Why didn't my Mum and Dad love me, and that was one thing that I had to live with over the years that I was actually there ... [RCIADIC Transcript, Geraldton, 1990:274].

Aboriginal people often reported to this Commission that the mission experience was a very disturbing and disruptive time but they did not always dwell upon it:

> ... many of us were placed in the Mission, not that it was our want, we were just placed in a home and then having been belted so much as kids then being ... some of us belted and then put into the bedroom with the door shut after being belted ... And what about our young youth today, feel strongly that that is a severe stress to them being locked up in a cell ... knowing that they are going to not only be there just for a couple of nights, but it is going to be months on end [RCIADIC Transcript, Esperance, 1990:31].

The mission background of Wongi was seen by at least one Aboriginal person as conducive to his death at his own hand:

> I knew the past of those kids [Wongi and Harris] and to know that they took their live, I can understand why they did it, because as a kid they were many a time belted for tiny little incidents, you know, and then being placed in a prison like that I guess ... that sort of gets them more worked up and then they take to the point where there's no more: gee there's no more life for me here, and I feel strongly then that they take their life because of that [RCIADIC Transcript, Esperance, 1990:32].

Donald Harris was, when lodged in the Eastern Goldfields Prison in May 1981, 'not expecting many visits' (case notes on Harris file, p.788), as he was taken away from his 'irresponsible' (according to government records) mother to the Norseman Mission by the Child Welfare Department. He had previously lived in a 'bushy hump freehold' with his mother and some siblings. His mother at that time was employed by a farmer. He last lived in a 'one room hut in poor repair'. He was taken to Norseman in 1961 and remained there for thirteen years.

Wongi was placed at Norseman Mission at the age of 11 months in 1961, his parents were declared to be 'irresponsible'. The housing was a one roomed house with only blankets on the floor. His parents were condemned as 'lazy and beyond rehabilitation' and were also allegedly addicted to alcohol. Wongi remained at Norseman Mission until 1974.

The Norseman Mission did not allow parental visits. Children were belted with 'old Charlie', a fan belt, for such transgressions as being outside the school grounds. Children were never allowed to explain things or 'answer back'. One informant to my Commission was resident at the Norseman Mission at the same time Donald Harris and Wongi were there, said of them:

> Donald had a lovely nature. He was very helpful. When it was time to hang out the clothes Donald would want to have a second lot to hang out. He would laugh and carry on ... Wongi was called 'squeaker' for the big bird around the place. They fought over the soap, who got to hang out the clothes. They fought and laughed ... Wongi was always kind, he always shared his things with other people, he would share his food even if he only had a bit. Donald was also a sharing boy [RCIADIC Transcript, Esperance, 1990].

From the age of eighteen years, Wongi served 25 sentences of imprisonment, the longest time he remained out of custody being five months. Wongi died in the Geraldton Police Lockup on 31 December 1988 having spent Christmas in the area trying to obtain a place in the Alcohol Rehabilitation Centre there. He died by strangulation when he was 28 years old.

The effect of the mission experience can also be seen in the following accounts:

> I know the parents need the security, even though (they) were Mission kids in the past and their kids are now kids of their own that have never been in touch with the mission [RCIADIC Transcript, Esperance, 1990:43].

And in Broome, my Commission was told of people being:

> dragged in(to) the missions and the settlements ... People were sort of hobbled up [RCIADIC Transcript, Broome, 1990:509].

The National Aboriginal and Islander Legal Services Secretariat (NAILSS) submission made to Commissioner Wootten in the New South Wales case of Malcolm Smith deposes to a situation which is universal for Aboriginal people in Australia. Families were fractured, and sectors of Aboriginal society disordered. Children were permanently separated from parents and siblings, kinship structures often irrevocably sundered. It must be acknowledged that, however one looks at the cases of deaths in custody in Western Australia, a number of people were removed to missions or foster placements, voluntarily or involuntarily and visiting rights of parents were as restrained as if children were in prisons or detention centres. The cases of Albert Dougal, Wongi, Christine Jones, and Hugh Wodulan are powerful illustrations of this.

Those of the deceased who were clearly extremely institutionalised include Paul Farmer, Donald Harris, Wongi, Steven Michael, Kim Polak, Robert Walker, Graham Walley and Hugh Wodulan. Thirteen of the deceased spent time in hostels or missions, namely The Sir Charles Gairdner Hospital Case, Robert Anderson, Nita Blankett, Albert Dougal, Donald Harris, Christine Jones, Wongi, Benjamin Morrison, Kim Polak, Roy Walker, Hugh Wodulan, Paul Farmer and Graham Walley.

NAILSS argues that the modern definition of 'genocide' as defined in the 'International Convention on the Prevention and Punishment of the Crime of Genocide' encompasses the Australian policy of assimilation. Types of acts

constituting genocide include:

(1) killing members of the group;

(2) causing bodily or mental harm to members of the group;

(3) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(4) imposing measures intended to prevent births within the group;

(5) forcibly transferring children of the group to another group.

Serious consideration of the assertion put forward by NAILSS will need to be taken up in the National Report by Commissioner Elliott Johnston, Q.C..

The assumption of 'the welfare' as the guardian and custodian of the best interests, 'the Protector', of the Aboriginal people in this and other states, resulted in the imposition of just such conditions as those complained of by NAILSS. Examples of 'the welfare's' misguided view of its function can be readily found in the cases of those who have died. These matters are referred to throughout this report, especially in Chapter 10.

Of the cases of deaths in custody the following can be said about the involvement of the welfare, institutions and institutionalisation: The young man whose case is titled the 'Sir Charles Gairdner Hospital Case' spent time in the Weerianna Hostel in Roebourne while his parents worked on stations. His parents stayed at what is known as 'the Woolshed' in Roebourne. He died of Tuberculosis Meningitis, a disease rarely suffered by non-Aboriginal people these days.

Robert Anderson attended the Wiluna Mission for rations from birth and was at Wiluna and Karalundi Seventh Day Adventist Missions from 1963-1972. His mother stayed at the Bondini Reserve in Wiluna. 'The Government decided if you get a house (at) Bondini' (RCIADIC O'Dea report on Robert Anderson, p.9). Robert Anderson died in a cell he was sharing with his step-father.

Faith Barnes spent some time at Kurrawang pending fostering. Her mother had been resident at Kurrawang Mission which was run by the Church of Christ. She later lived at Menzies Reserve. Faith Barnes never had any children but had an horrendous medical history of injuries. Faith Barnes lived at the Menzies Reserve at the end of her life.

Bobby Bates, father died of spear wounds to the thigh in 1962 when Bobby was 10 years old. Bobby spent time at the Esperance Hostel and was in Hillston (a juvenile detention centre run by the then Department for Community Welfare) from the age of 13-18 years. Bobby mainly spoke in his traditional language when first put in to Hillston in 1965. He had been placed outside the family area ostensibly because of 'a lack of parental control' (Departmental Report). Like many juveniles he was disqualified from holding a drivers license long before he was even eligible to apply for one because of motor vehicle offences. Bobby Bates, while still a child himself working at the Esperance Hostel was paying maintenance for his other siblings who remained in their mothers care. Bobby's mother stayed at Laverton Native Reserve and Kurrawang Mission and he and his family came from the Warburton Ranges. The Native Welfare Department obstructed Bobby's return to his family. Only at the age of 18 years did he return to the Laverton area. In 1969

he was resident at the Leonora Native Reserve.

Nita Blankett lived at the Roelands Mission from the age of 5-17 years. Her children were placed in care after the breakdown of her marriage. They were first placed with relatives and then with strangers. A. L. West (1955) in the monograph on the Roelands Mission, states:

> One of the important traits of this fundamentalist type is his chiliastic viewpoints. An unhealthy importance is placed on those portions of the Bible which deal with the return of Christ and the end of the world ... A Convention speaker addressing the children at the Mission, made the contradictory statement that although he wouldn't discuss dates, he believed that Christ would return to earth before the end of the year [1955:12]
>
> Another prominent trait shown by the Roelands staff was lack of warmth and generally sober attitude towards the whole of life [ibid: 13].
>
> A great deal of the work at Roelands such as scrubbing of verandahs was unnecessary and left the school aged children particularly, with little free time in which to play [ibid:14].
>
> Aboriginal mission work attracts ... two kinds of persons - men and women with ability ... and ... social misfits [ibid].
>
> The extreme religious position of Roelands promoted an 'incapacity for critical thought' [ibid:15]. West asserts that there were a large number of Roelands girls in the Perth area who were living immorally. The Superintendent denied most emphatically that the condition of these girls could be in part at least, attributed to their Mission background [ibid].

Nita Blankett had five children, all of whom were in care at the time of her death. She died in a prison van on the way to Hospital, suffering from an asthma attack which had left her gasping for breath for five hours before transfer to Hospital was considered. The prison van got lost on the way to the Hospital. Her last words were 'hurry'. She survived the mission experience to die in custody.

Stanley Brown came from De Grey Station and had worked at Yarrie, Strelley and Karalundi Aboriginal Communities. He and his wife had two children who were fostered through the Department of Community Services to live with his sister at Yandeyarra. He had himself worked at Yandeyarra in 1984-1986.

Eddie Cameron moved around a bit from Wiluna to Geraldton. He was made a Ward of the State. His father and mother ultimately separated, and his mother was in receipt of rations and later welfare maintenance. Cameron's father served time in custody for default on maintenance orders. His father also applied for 'citizenship rights' in the 1960s.

Donald Chatunalgi was born at Alice Downs in the Kimberley. Oral histories relate the story of a massacre of Aboriginal people who resided there. He spent much of his youth at the Halls Creek 'Native' Reserve. He appeared in the Children's Court on three occasions from 1975-1976, twice for breaking into the school and also for use of an unlicensed motor vehicle. He had the first charge dismissed, on the second charge received a fine, and in 1976 he was made a ward for the purposes of 'supervision' but he was not institutionalised. His mother had Aboriginal children

placed with her and, according to government records, was considered 'steady' and 'reliable'.

Wayne Dooler lived at the Carnarvon Reserve and his siblings were sent to the Ingada Mission by the Child Welfare Department. His parents stopped at Carnarvon Reserve, Gascoyne Junction and Mt Magnet Mission after the movement from pastoral stations in the Murchison/Gascoyne area in the 1960s. At the Reserve, Wayne started to drink at the age of 13 years. His father was gaoled for 6 months in 1960, for failing to pay maintenance for children in the care of the Department. In 1966, he wrote to the relevant Government Authority:

> I realise that the amount (of maintenance arrears) is getting very high. After talks with my wife we are firmly convinced that all my financial troubles could be sorted out if I am granted permission to have my two children returned to me as I'd like to have all my family brought up together.

Mr Dooler had a full-time job at the time he wrote that letter. The Department would not consider the return of the children as the three bedroom transitional house they occupied at 'Mt Magnet Native Reserve' was allegedly dirty, there was no furniture and the children were eating damper and jam. A police report had been sought on Mr Dooler.

Albert Dougal's parents had 'applied' to be married. From the time of his birth in 1956 to 1966 his parents were threatened with the removal of their children due to 'neglect'. In 1966, Albert was removed to Beagle Bay Mission. He then spent from 1966-1972 at Beagle Bay Mission after being removed from his parents' care due to lack of 'adequate support' when the family lived at the Broome Reserve. His father had been 'banned' from Broome on two occasions, once after undergoing a six month sentence for disorderly conduct and assaulting police. His father also served time in prison for failure to pay maintenance. His parents were sometimes allowed to stay at the Beagle Bay Mission to visit Albert and his siblings. The family also spent some time at Lombadina in the Kimberley.

Paul Farmer spent time at Tambellup Mission and at some juvenile detention centres. At his third Children's Court appearance he was sent to Longmore Juvenile Detention Centre. This placement had been recommended at his second appearance, but was not effected at that time.

Dixon Green was born at Halls Creek. His father worked as a stockman and had his own plant. Dixon Green appeared in Children's Court five times and was committed to the care of the Department for Community Welfare on four occasions. On the fifth, he was fined. And Daryl Garlett had been raised in Tammin and worked as a farm hand. His death in custody was said by his family to have broken his mother's heart.

Donald Harris was the eighth of nine children. He and his siblings had been raised at the Church of Christ Mission at Norseman which some Aboriginal people describe in fairly brutal terms. He and two other siblings were admired to the 'care' of the Department as his family accommodation was regarded as 'deficient in basic requirements'. The children were not kept together in the house system of the Mission. They worked at mission enterprises which returned 'substantial profits' (Comment of former Mission Superintendent - cited in Commissioner O'Dea's report on Donald Harris). The housing within the Mission was said to be substandard.

Christine Lesley Ann Jones was one of eight children. She was allegedly 'deserted' by her parents (Departmental Report). She was cared for by her grandmother until the age of four years, a not unusual feature of Aboriginal social life. At that age she returned to live with her parents but was removed from their care as her life was 'unsettled, unhappy and unsatisfactory'. She was briefly fostered after being declared a neglected child and was then placed in the Carnarvon Church of Christ Mission, an austere and segregated institution. Family contact was actively discouraged. Christine first met her sister at the age of 15 years when she had absconded from the Mission. She remained in missions for ten years. She showed 'behavioural problems', according to government documentation, and ultimately absconded from Morgunyah Hostel in Port Hedland. She had her first child at the age of 16 years, became alcohol dependent and started to mutilate herself in 1976 at the age of 17 years. At the time of her death by hanging in the Midland Police Lockup, she had been mostly unemployed since leaving school, she had no home and carried all her worldly goods around in the plastic bag she took into custody at the time of her last arrest. Her two children were being cared for by her mother. At the end of her life, she was said to be erratic and disturbed. Her earlier years had left her emotionally deprived, unprepared for adult life, in need of counselling and support, and deprived of confidence.

Charlie Michael and Steven Michael were brothers. Their mother came from Katanning and their father from Brookton. There were 10 children. They lived at the Native Reserve in Beverley. Early in Steven's life his father was imprisoned and the children placed in missions. At the time the father was in gaol, the mother was unable to get a Widows Pension for 6 months. The family lived on Child Endowments and rations in 1958. Their mother was of no fixed place of address and moved from place to place 'camping'. The children were placed in the Marribank Mission near Katanning because the welfare said their mother was 'irresponsible'. Commissioner O'Dea states that 'Juvenile offending by Steven and other siblings almost invariably followed' (report on Steven Michael, p. 1). Steven attended three schools between 1964-65. He was committed to the 'care' of the Department 25 separate times. Steven had been placed in the Pallotine Mission at Wandering Welfare Reception Home where comment was made:

> This lad is out of his element at CWRC ... He is suspicious of authority and gives the impression of having been consistently hurt by authority. He sees authority as a hostile thing and is constantly on his guard [Government Report cited in RCIADIC Report on Steven Michael, p.8].

Further comment was made by Commissioner O'Dea in his report that Steven Michael had been fined 'extortionate amounts' as a juvenile, which he had no prospect of paying and which, functionally, condemned him to delayed incarceration. This sentencing practice 'is far from unusual in Western Australia' (RCIADIC report on Steven Michael, p.25). When not in a mission or DCS(1) placements, the Michael children lived at the 'Beverley Native Reserve'.

Wongi had been placed in the Norseman Mission at the age of 11 months. His father was in custody and his mother was described as 'irresponsible'. The family lived in a one roomed house with no furniture and blankets on the floor. He remained at the Norseman Mission from 1961-1974. His parents lived at Coolgardie and the Kalgoorlie Reserve. He had a sister at Kurrawang Mission and another sister at Norseman. He graduated to Hillston, Riverbank, and Longmore after stints in Working Boys Hostel Boulder, Medina Hostel, Working Boys Church of Christ Hostel Condinup, and Boomerang Hostel. He had rebelled against the

Manager of the Condinup Working Boys Hostel and threatened him with a lump of wood. Wongi had also been to a number of alcohol rehabilitation centres, and sometimes stayed at the Kalgoorlie Reserve and the Little Sisters of the Poor, Kalgoorlie.

Bernard McGrath, like Eddie Cameron and Daryl Garlett (not a hanging death), had not had any personal exposure to a mission but he had spent time in institutions. His father came from Mt Margaret Mission. Government reports refer to his father as being very anti-authority and he had no particular religious affiliations even though, he received his education at Mt Margaret Mission. His mother came from Leonora but attended school at Kalgoorlie. Bernard had been committed to the care of the Department on his second court appearance in 1981. He had been sent to Longmore for a case conference in 1981 after breaking into schools.

Ben Morrison had spent his early years in 'camps' with his mother and father. His mother and his father were at one stage at the Moore River Settlement. His mother was told to leave in 1938, but she refused to do so until her daughter was well. She was referred to as a bad tempered woman. She was an 'expelled' woman and was not permitted to enter or allowed to see her children at the settlement. Ben spent his school years at New Norcia and at the age of 18 years was removed from Northam to Moore River Settlement on a Warrant. In 1958 he and his mother Annie Stack cleared 3,000 acres of land for a farmer at Toodyay. He later went shearing and played football for Toodyay, Mullewa and Moora. His father had been prohibited from entering Perth. Ben Morrison's mother was denied access to him at Moore River. After the death of his wife, his two children were placed in care even though he tried desperately to organise placement for them with a view to having them live with him. Commissioner O'Dea reports on this man's life:

> As a direct result of Government policy, the deceased throughout his childhood, knew deprivation, hard living conditions and years of separation from his parents [Report on the Death of Benjamin Morrison, p. 1].

Jimmy Njanji was brought in from the Desert to Jigalong and Wiluna Missions. He went to gaol for the killing of another man (see also discussion in Section 5.11 on Customary Law) and when he came out he gravitated to Port Hedland where he became a 'ditch warrior'. He also lived at Warralong, an alcohol-free, Aboriginal-owned station, but he used to come into Port Hedland for a 'holiday'. His children were never reunited with him. One of his daughters, Mary Njanji, is presently in custody for a serious offence, over which conviction and sentence there was much public anger.

John Pals life and death are the subject of an individual report by Commissioner Elliott Johnston. In that report, Commissioner Johnston considers in great detail the case of a young man whose life and death has been central to the RCIADIC process. John Pat died one month short of his 17th birthday in the Roebourne Police Lockup. He had been arrested for 'aggravated assault' which, in Western Australia, is described as an assault upon a police officer (as well as an assault on a woman and a boy under 16) (Criminal Code Section 322[5]).

Kim Polak was born at Mt Margaret Mission and spent his youth until the age of 12, at Mt Margaret Mission and Cosmo Newberry. Mt Margaret Mission was said to be very disciplinarian. One Aboriginal witness before Commissioner Daniel O'Dea, said that the people who came out of Mr Margaret Mission:

> didn't know the outside world ... because we lived in the Mission ... we got real discipline in those times ... [RCIADIC Transcript, Commissioner O'Dea, Roy Walker, p.80].

Missionaries at Mt Margaret often cared for him when his parents went bush. In 1969, upon the death of his father, Kim Polak was taken away from his family and he was committed to the care of the Department. His mother's place at the Cosmo Newberry Mission was described as 'very dirty and depressing'. His first recorded Court appearance was for the offence of use of an unlicensed motor vehicle. He continued to offend thereafter, when running away from institutions and hostels. He appeared in the Children's Court 26 times, often for multiple offences. When he was thirteen his mother reportedly cut her throat. She received immediate medical attention by the school teacher and recovered. Kim Polak spent his adolescence in and out of hostels and changed schools numerous times. He had limited literacy skills and traditional language was spoken at home. Commissioner O'Dea reports:

> He was said to have come from a tribal family but traditional life had, in large measure been destroyed by the incursion of white Australians - missions, pastoral and mining ventures all contributed to the destruction of fully functioning traditional culture. He can be seen to be a person caught in limbo between the two cultures and their differing imperatives and value systems [RCIADIC Report on Polak, p.6].

Polak stopped at Kurrawang Mission at one stage. At the age of 15 years, he was sentenced to three months imprisonment for use of an unlicensed motor vehicle. A 1980 Departmental Report described the family as 'disintegrated'. He lived at various times at the Kalgoorlie Reserve as did others of his siblings. His mother and brother were in custody at the time of his death, and attended the funeral under escort. Two years earlier, his sister died of acute alcohol causes.

Ginger Samson came from a local Aboriginal group around Roebourne. He was horn at Millstream, and lived in the Roebourne Village with his family, having been moved out of the Aboriginal Reserve. The Department of Child Welfare was very involved with his children, one of whom saw little future in Roebourne. At the age of 20 years, Ginger Samson was convicted of being 'idle and disorderly', sentenced to three months gaol with hard labour. In 1982 the DCS(1) noted he had given up drinking but he was still before the Court that year on two occasions for 'drunk'.

Ron Ugle was born near Shark Bay and lived most of his life around Carnarvon. His father died when he was 13 years old. Ronald was granted 'citizenship rights' in 1959. Housing assistance was denied in the 1960s when Ronald had 8 children and was living in a shearing shed. In 1972 the family sought ration assistance and was living in a tent at the Carnarvon Reserve. Some of the children were subsequently committed to 'care' under the Department of Community Welfare, and spent a short time at the Carnarvon Mission.

Ricci Vicenti was informally fostered out to non-Aboriginal people and was taken out of the State and Australia with his mother's consent. His mother had been a victim of the Roelands Mission, exploited as child labour for the State economy and subjected to enforced assimilation under a chiliastic version of Christianity. Vicenti was not a dangerous criminal. The offences of which he was convicted were petty ones. It is suggested that Vicenti was shot, not for his offence, but for attempting to escape legal custody. However, attempting to escape, and even escaping legal custody is not, and never has been, a capital offence. It is dealt with

by the Court of Petty Sessions. It is important to note in relation to the life and death of this young man, that recommendation 7 of the Vincent Report states 'shooting of escaping prisoners should be regarded as a measure of last resort and be effected non-lethally where possible'. Such was the policy of the Western Australian Prisons Department, but this did not prevent Vicenti from losing his life.

Misel Waigana was from the Torres Strait Islands. He came to mainland Australia to make his fortune working on railway construction. He died in the Fremantle Police Lockup allegedly suffering the Delerium Tremens. At the time he had, in his pocket, a Neurosurgeon's visiting card.

Hugh Wodulan spent some of his youth in the United Aboriginal Mission Hostel in Derby. His family lived at the Derby Reserve and One Mile Reserve near Broome. His mother was born at Noonkanbah. He was sent to Longmore for his first offence. In 1976, records show that the then Superintendent of Broome Prison, Mr Stan Lodge, said of Hugh Wodulan that, 'He (Wodulan) should go to Karnet or Woorooloo to learn basic mechanical knowledge as this could be the last chance in life he could get'. This comment needs to be contrasted with the comment of the judge who sentenced Wodulan observing, 'you have been sentenced to gaol for these things and in my view you have not taken any opportunity or learned anything from it, so I intend to send you to (Broome) gaol'.

Milton Wells' family came from Mt Margaret Mission. They also applied for, and were granted, 'exemptions'. His parents applied for permission to marry. Milton Wells was admitted to Wongatha Training Centre but did not remain.

Roy Walker came from the Mt Margaret Church of Christ Mission. He was born in 1918 in Laverton, where he went to school until the age of 14 years. His eight children were brought up at Mt Margaret Mission. Roy Walker's record of interaction with the police begins in 1942.

Robert (Robbie) Walker was part of the tent embassy protest when a young man. His parents came from South Australia. He had been incarcerated at the McNally Training Centre in South Australia. Born in 1958, Robbie Walker was placed under the control of the Social Welfare Department, South Australia. In a report for Court on Robert Walker, the following comments were made:

> Robert is part-Aborigine boy and herein lies the problem. He is associated with the Aboriginal Embassy Group, protests and land fights. This has given him a false sense of his own importance. He is arrogant, insolent and unco-operative. He is adopting stand-over tactics, bullying, insolence, disobedience problems. The development in unsocial behaviour has increased with publicity given to Aboriginal activity. A shrewd customer -he knows his privileged position and is making the most of it [note: report reference for Court].

In Government records, Robbie Walker is variously described as playful, immature, needs firm discipline, spirited, intelligent, sly, subversive, badly behaved and quite normal.

Graham Walley had been a lodger/tenant/placement at almost every Children's Home in the State - Beverley, Sister Kate's, Nazareth, Mt Lawley Reception Home, Hillston, Longmore, Riverbank and Bridgewater. His maternal grandfather had been 'reclassified' which resulted in his mother not being regarded as a 'native' at law. She had been described as '1/4 caste'. Walley's mother straggled to keep the

family together after separating from her husband. She was at one time described as 'destitute'. Welfare made her issue summons for default of maintenance before payment to her of the pittance allowed for raising children. His mother requested blankets and sheets from the welfare. The Housing Commission denied her access to permanent housing over a period of years. In 1975 there had been five changes of address for the family in three months. In one school record, Graham is described as the most difficult school discipline problem ever encountered by the Headmaster. In 1977, application for housing was supported by the Department of Child Welfare. The emergency housing application was unsuccessful. The mother was homeless and the children in care as a result. In 1978, the Housing Commission still refused housing until she displayed a 'more responsible' attitude. In 1979 the mother was housed in Meekatharra. She lived in single rooms and was hospitalised for nerves and associated problems. Walley's schooling was adversely affected for years by a hearing problem which was remedied by treatment. The Coroner stated that Graham's offending history was destructive of his self-respect, his education and resulted in him being unable to enter into any sort of worthwhile employment. He had no capacity to exist, except on the most basic level.

Three of the deceased also spent some time at Graylands Psychiatric Hospital, namely, Benjamin Morrison, Kim Polak and Paul Farmer.

Of the deceased, nine were placed in a juvenile detention centre following court appearances, namely, Bobby Bates, Paul Farmer, Wongi, Bernard McGrath, Steven Michael, Kim Polak, Robert Walker, Graham Walley, Hugh Wodulan. Of those nine, Paul Farmer, Wongi, Bernard McGrath, Graham Walley and Hugh Wodulan died of self-inflicted injuries and Robert Walker died as a result of restraint by prison officers as he was being taken to obtain treatment for slashing his wrists.

Dislocation was, and is, a major feature of contemporary Aboriginal society. That dislocation occurred as a result of a number of factors all over the State. Of the south of this state, my Commission was told:

> I see it that in the 60s ... a lot of Aboriginal people were out in the bush, out in the stations, out in the farms. They used to be at a place where there were old people, there were grandfathers that used to work for years and they were their role models, whether they be stockmen or farm hands or whatever out in the bush -their role models were their parents and grandparents.
>
> And they knew what their parents and grandparents worked at or what the job was because they were brought up ... with family, with cousins and that - relations that drove tractors and were shearing - and as you go to school, when you come back out from school, you go straight out to the tractors or out to the station or whatever and ride around with someone doing the windmill run.
>
> And by the time you finished school, you know what work was required in that area. Now, since they were taken from the area and were put on reserves outside of towns, they took a lot of people away from their work areas and because a lot of the old people didn't have cars, the farms used to be too far ... a big number of people were taken in to town and at the same time as the drinking rights and the unemployment came in. So you had a young generation that were just being brought up in town... and ...

> their parents couldn't get out of town ... [RCIADIC Transcript, Perth, 1990:999].

Beyond the issue of attempting to explain the self-inflicted injury deaths, one of the major concerns in the examination of the deaths is the alarming rate of Aboriginal incarceration in this State. It is clear from the above quote, that serious social, cultural and economic changes occurred for many Aboriginal families in the late 1960s. Up until that time, it is also clear that Aboriginal families were workers on farms, stations and other places. They were providing valuable role models for their young people. No doubt there were more valuable relationships between Aboriginal and non-Aboriginal families. This may not have extended beyond employer and employee, but at least the form of paternalism was more civil and humane.

Since the late 1960s, Aboriginal people have seen themselves portrayed as refugees in their own land existing as 'outcasts' in Australian society or 'poor and black and therefore criminals'. Life is often perceived as a constant battle to establish rights, dignity and cultural respect against an ignorant or intolerant non-Aboriginal society, the perceptions of which, encourage an unwittingly or orchestrated view of Aboriginal people in general but especially Aboriginal male youths in particular, as some type of criminal predators. If these perceptions hold any truth they have probably more to do with the low personal income and non-inclusion of Aboriginal people and their youth in the benefits of economic development and its infrastructure, than with race in the first instance. Racism gains life out of the fear of what is perceived to be threatened and is fed by imbecilic acceptance of an inheritance of negative stereotypes about Aboriginal people, which in turn associates itself with the colour of an Aboriginal person's skin. It is simplistic and abhorrent to condemn human beings on the colour of their skin. In a sense, it could be suggested that there is an 'imperative' to police Aboriginal people in this country. The following quote picks up my meaning here:

> When you're walking, all the time you can walk, but when you run you get shot. Those things happen in gaol (Vicenti case). There's a lot of things you can bring up now. If you're spitting inside, you get punished or if you're walking down the street and you spit on the street you get punished too (see R v Neal, QLD). If you go into a store European look at you and he say: Oh, he's going to come and steal my money because you're an Aboriginal person, see? Lot of things happen. Even in our own communities you can't trust one another, you know, because we Aboriginal people.
>
> Some people come - like builders come into the community and they work around the community and 'beware' written on their back. Beware of Aboriginal people. They'll steal anything off you. And all those things happen to our communities and to our people in the communities and they get into trouble, they get arrested, get sent into town and they get charged for just stealing a matchbox in a store, anything. Pickin' up the tools in a yard, they get charged six to three months in prison [RCIADIC Transcript in confidence, Kiwikurra, 1990].

In the Paul Farmer case, one of the questions which arose included the imprisonment of juveniles in prisons. This is still a problem but the Farmer case also raises the whole issue of the treatment of juveniles in Western Australia. It is clear that to imprison someone in this State, means to imprison an adult person. No one can imprison somebody under 16 years of age. However the Judge who

sits at the Childrens Court does have the same power with regard to sentencing as a District Court or Supreme Court Judge.

It is interesting to note that on 26 July 1967 when Paul Farmer was in Fremantle Prison at the age of 16 years, there was also in that Maximum Security Prison:

- one 15 year old undergoing a six month sentence for escape and unlawful use of a motor vehicle;

- one 17 year old Aboriginal serving a three month sentence for unlawful use of a motor vehicle;

- another 15 year old Aboriginal serving six months for break, enter and steal, theft, unlawful use of a motor vehicle and no motor driver's license;

- a 16 year old Aboriginal serving six months for similar offences as the immediate above-mentioned 15 year old;

- a 17 year old Aboriginal serving six months for robbery;

- and another 17 year old Aboriginal serving twenty-seven months for break and enter, carnal knowledge and unlawful damage; [File ACC 931:50 Battye Library, Details of Aboriginal Offenders].

In my Commission's view, when one considers that it is only by way of the Children's Court Act of 1989 that the age of legal responsibility of children has been raised from 7 to 10 years of age, it is not surprising that 15 year olds were serving sentences in Fremantle Gaol.

In the individual report on Paul Farmer (1989) Commissioner Muirhead was concerned about the overcrowding of 'detention centres'. This problem continues in Western Australia today. For instance, in Northam, we were informed of the appalling conditions encountered by juveniles detained in the East Perth Lockup when detention centres are overcrowded (RCIADIC Transcript, Northam, 1990:137).

It has become increasingly obvious in the process of investigation of these deaths, that one of the major features in almost all of the histories is the frequency of arrest and incarceration often for minor matters such as: drunk, street drinking, disorderly conduct, theft of two blocks of chocolate, putting a footprint in concrete (Sir Charles Gairdner Hospital Case), theft of a pork chop (Robert Anderson), theft of a sausage (Albert Dougal), refusal to leave licensed premises (Ginger Samson), trespassing while looking for food (Hugh Wodulan), theft of sheep, theft of a steer:

> ... I do not like seeing anybody in prison - it might be all right if you shot somebody, but drinking and things like that ...?... they should not put anybody in gaol [RCIADIC Transcript, Broome, 1990:511].

There is a recurrence of theft for fond in a number of case histories, namely Sir Charles Gairdner Hospital Case, Ricci Vicenti, Hugh Wodulan and Robert Anderson.

Incarceration almost inevitably immediately followed arrest until such time as a court appearance was organised - often not until an ordinary sitting day (see

RCIADIC Transcript, Donald Chatunalgi, Hails Creek, 1990:16). Incarceration also often followed court appearance either by way of direct sentence to imprisonment or detention or by way of default for non-payment of a fine. In a number of cases it is apparent that a defendant, having been ordered to pay a fine, was given no time to pay (see the cases of Stanley Brown and Jimmy Njanji). This would appear to be an abuse of sentencing principles. Commissioner O'Dea also covers this crucial matter in his report.

Not only is it obvious that incarceration was and arguably still is, an intrinsic part of everyday Aboriginal life for many people in this State, it is also apparent that incarceration as an adult invariably followed arrest and detention as a child. Scanning the Children's Court Records for the deceased, it is apparent that 24 of the total 32 who have died had Children's Court Records. Additionally, Albert Dougal, not among that number, had appeared once in the Children's Court on a charge of re-entering licensed premises at the age of 14, but the charge was dismissed as trivial (Section 137 Police Act 1892). The deceased who did not have juvenile court appearances to their names include Jimmy Njanji who was still out in the Desert; Ronald Ugle who worked on a station; Ginger Samson who worked on a station; Nita Blankett who remained at Roelands Mission until the age of 17 years; Misel Waigana who came from the Torres Strait Islands to take up employment on Railway Construction; Ben Morrison who had been educated at New Norcia and who was removed to Moore River from Northam under Warrant at the age of 18 years; and Roy Walker who had spent his childhood at Mt Margaret Mission.

While the matter of alcohol is examined throughout this report, and especially in Chapter 19, some discussion of alcohol is necessary here as it is a feature of the deaths of Aboriginal people in custody. Certainly a number of those who have died both inside and outside custodial settings, have had extensive police records for alcohol related offences. Notably, the Sir Charles Gairdner Hospital Case had 73 convictions: Faith Barnes 40; Stanley Brown 43; Ben Morrison 121; Jimmy Njanji 22; Ginger Samson 88; Roy Walker 39; and Hugh Wodulan 22. At the time of last detention prior to death Robert Anderson, Faith Barnes, Stanley Brown, Wayne Dooler, Albert Dougal, Ginger Samson, Jimmy Njanji, Roy Walker and Hugh Wodulan had been arrested for the offence of drunk. Of the others detained, alcohol had allegedly played some part in the commission of the offence. Faith Barnes and Misel Waigana were not found to have evidence of any alcohol or drugs in their bodies at the time tests were conducted, although they had both been arrested for drunk. Aboriginal people often advised me that they were frequently arrested by police when they were not drunk:

> policeman always ask an Aborigine, 'Are you drunk?' If I am not drunk or nothing, if I have got the smell of beer, they put me in gaol [RCIADIC Transcript, Roy Walker case, p.88].

Alcohol testing indicated that ten of the deceased had some degrees of alcohol in their system at the time of death. Namely, Stanley Brown (hanging), Eddie Cameron (hanging), Wayne Dooler (alcohol poisoning), Christine Jones (hanging), Wongi (hanging), Benjamin Morrison (hanging), John Pat (injuries), Ginger Samson (epilepsy), Hugh Wodulan (hanging), Bernard McGrath (hanging). The only other two deaths as a result of self-inflicted injuries where the deceased was not under the influence of alcohol were those of Paul Farmer and Graham Walley, both of whom were in prison and had been for some time. Wayne Dooler's death could probably have been prevented if the police had recognised the seriousness of his condition and taken him to hospital, but as Commissioner O'Dea notes in the

report on the death of Wayne Dooler:

> The rule (at the time) appeared to be that Aboriginals found intoxicated and incapable of taking care of themselves were arrested [RCIADIC report on death of Wayne Dooler, p. 12].

One person spoken to during my conferences said of alcohol:

> ... if I was able to do something like that in the lockup I think I would've done it 'cos I first got to the stage where I couldn't take anymore. And I still believe that some of these deaths in custody have really actually happened in their own hands, I still say that ... I know because of the way I felt and I don't think there were too many people sober at the time that they ... died in custody ... the influence of alcohol ... like it's very powerful [RCIADIC Transcript, Geraldton, 1990:282].

> when a person is drunk they would stand and they'd take on the whole world, if they had to they'd take the whole world on. Yet when they were sober you wouldn't get a word out of them, that's how much it changes a person [RCIADIC Transcript, Geraldton, 1990:282].

> I could take the world on when I was under the influence, I was always better than the next person [RCIADIC Transcript, Geraldton, 1990:275].

Alcohol is however, not just a problem for Aboriginal people. In Roebourne, during the John Pat hearing, Counsel Assisting the Commissioner commented in her opening address:

As was usual each night the hotel became the focus of the general community in Roebourne. Some of the people came as spectators to watch the activity in the Hotel, to watch the fights that were likely to occur and to watch the arrival of the police patrol and to watch any arrests [RCIADIC Transcript, 1990:16].

In Roebourne, the John Pat hearing was told:

> It was common practice to serve anybody while they had money to buy a drink and were able to ask for it [RCIADIC Transcript, Roebourne, 1990:9171.

In Kalgoorlie, a Justice of the Peace stated:

> ... it's fairly obvious that there is a problem in the white community with respect to alcohol abuse as well as there is in the Aboriginal community. In that respect it's not only confined to Aboriginals at all. I think that in a town such as this there is a heavy dependence on alcohol [RCIADIC Transcript, Kalgoorlie, 1990: 280].

The Leonora Hotel has a liquor license which opens at six o'clock in the morning:

> opening hours are tied to the mining company specifically to cater for the shift workers and so on, and it is also a very sensitive issue o anything that touches general alcohol area ... but there are many researches being done that Aboriginal alcohol problems are very visible, but comparatively are no greater ... that may be disputed [RCIADIC Transcript, Kalgoorlie, 1990:50].

There is no doubt that alcohol consumption, or alleged alcohol consumption, in the marginalised sector of the Aboriginal community is a factor in the arrest histories of the Aboriginal people whose deaths are being examined by the RCIADIC. As noted earlier, the complex matters associated with alcohol are further discussed in Chapter 19.

The Aboriginal Issues Unit, in its report to me stated:

> that major causes of drinking included boredom, lack of employment, rejection by white society, the need to escape problems and stress, lack of education, the practice of 'booking up', easy access to alcohol outlets, a lack of self respect, self confidence and esteem, encouragement by some bar staff and taxi driven (particularly of young drinkers), peer pressure, and the lack of recreational facilities and entertainment [AIU report, 1990:27].

And in hearings conducted by Commissioner O'Dea in Kalgoorlie, he was told:

> If you ask them why they drink they just answer, 'No-one will give us a job. We can't get a job. What's the use?' [RCIADIC Transcript, Kalgoorlie, 1990: 177].

Alcohol rehabilitation centres as they currently exist are not able to cope with the extent of demand or the needs of the clients. Stanley Brown could not be placed at Milliya Rumurra Alcohol Rehabilitation Centre in Broome. Hugh Wodulan was too difficult to deal with. Wongi had attended Milliya Rumurra in 1984, completing two out of three months of his time there before re-offending. Ginger Samson also attended Milliya Rumurra in 1985 in the tertiary stage of alcoholism. Centres in Kalgoorlie and surrounds cannot cope with the sheer physical needs of the client group, let alone attempt to address the essential underlying issues. Ben Morrison had attended Quo Vadis Alcohol Rehabilitation Centre and the Wandering Centre for alcohol problems. Both are now closed down. At the time my Commission first conferred in Kalgoorlie, another alcohol rehabilitation centre, Yamatji Ngura, was being closed down due to lack of funding. It has now recommenced operations.

Employment or unemployment is clearly a major issue in any examination of the deaths of those in custody. Employment can be directly linked into education. Both of these issues are discussed in Chapters 11 and 12 of this report. Three of the deceased, namely Stanley Brown, Jimmy Njanji and Ginger Samson had no 'formal' European education at all. All three spoke their own traditional language as their first language, and all three were never provided with any access to formal western education. Jimmy Njanji was never really employed and ended his days as an invalid pensioner. Stanley Brown had been a stockman but at the time of his death in Broome, he was not employed. He had not been employed on stock work by any private pastoral station since 1975. He had one short-term job with the Port Hedland Shire, but was mostly unemployed for the last twelve years of his life, except for some time spent working on the Aboriginal-owned station, Yandeyarra where he participated in the Community Development Employment Programme (CDEP). (See Chapter 11 for discussion of CDEP.)

Ginger Samson had been a stockman and had worked for Robe River, but was an invalid pensioner when he died in the Roebourne Police Lockup. Christine Jones had been unemployed and was not in receipt of any benefit at the time of her death. She had some secondary education. Wayne Dooler, from the same area - Carnarvon - had no work record at all.

At the time of their last custody, twenty-six people were unemployed. Not one of the deceased had completed their secondary education. Of the people who have died in custody, only five were employed at the time of their last arrest. Bobby Bates was employed at Warburton community on a Community Development Employment Programme as a Community Works Supervisor, Robert Anderson had been working at Wiluna, also a CDEP community, as had Eddie Cameron some time before his death. Ronald Ugle continued in his employment with the Carnarvon Shire Council where he had worked for a considerable time as a gardener. The Sir Charles Gairdner Hospital Case and Dixon Green were also employed at the time of their last arrest, the former as a stockman at Woodbridge Station and Dixon Green at Fox River Station.

The stated employment history for almost all of the deceased was that of 'labourer - farm worker'. Some had been unemployed for long periods of time, namely Robert Walker, Donald Harris and Wongi. The latter had undergone 'training' by attending a shearing school. He worked for a while at Mullewa.

Prior to his death, Hugh Wodulan had been recently employed at the Roebuck Plains Station near Broome. His stated employment was that of a stockman. Donald Chatunalgi had been working out at Flora Valley Station just before his death. Overall, the employment histories of the Aboriginal people who have died in custody paint a dim picture of few people in employment: protracted periods of unemployment; lack of skills useful in the employment market.

Health problems were also apparent. For instance, Faith Barnes, Misel Waigana, Ginger Samson, Kim Polak, and Jimmy Njanji were all in receipt of invalid pensions, and Nita Blankett was on sickness benefits. Robert Anderson and Donald Chatunalgi both had epilepsy and may well have been eligible for receipt of a sickness benefit or invalid pension, which was the reason Samson and Waigana were in receipt of their pensions. Deceased with undiagnosed heart conditions, such as the two Michael brothers - Charlie and Steven, Daryl Garlett, Dixon Green and Ronald Ugle - were also at risk in the event of undertaking employment. Periods served in custody did nothing to promote better employment prospects for any of the deceased. A Community Based Corrections officer who gave evidence to my Commission said of the situation:

> ... employment and certainly just letting the persons know that you have not given up on them because the first thing that -especially Aboriginal people in Prison, you fill out an unemployment benefit form with them and one of the things you quite often hear is the question, what is the occupation of the person.
>
> And the answer quite often you will get is, I am just a labourer. And within that there is an answer or a feeling of that and to me that is to say that I am just nobody [RCIADIC Transcript, Roebourne, 1990:363].

Not only did the deceased have limited employment prospects they were also, due to lack of funds, denied reasonable housing or shelter. In some cases, the housing problem was an immutable part of a person's early life. Graham Walley presents such a picture, his mother constantly struggling to accommodate her children. Christine Jones was effectively without permanent shelter. Roy Walker and Faith Barnes appeared to spend a lot of time around the fringes of Kalgoorlie. Jimmy Njanji was a 'ditch warrior' from South Hedland and Stanley Brown also engaged in a marginalised existence at Port Hedland. Ben Morrison was homeless in Perth, and Wongi had spent time at the Kalgoorlie Reserve.

Nanny Goat Hill in Kalgoorlie is described by one former police aide as a 'pretty violent place'. The place where Roy Walker was arrested, and other fringe camps at Kalgoorlie, accommodate upwards of 70-80 people who live in 'caves and holes'. My commission could not investigate the underlying issues that surround the obvious appalling conditions under which Aboriginal people exist. A consultant had been appointed to look into these matters. That such conditions have persisted for so long is nothing less than a disgrace. Interestingly, following my conferences in Kalgoorlie, I was informed that a local non-Aboriginal person had erected several shelters out of his funds from his own pocket in defiance of the 'red tape' that appears to have created the inertia.

However, of the 'hut' accommodation at Ninga Mia, it was said:

> There is no such thing as adequate out there. It shouldn't exist. That's what I'm saying. They should never have allowed those brown huts to be built [RCIADIC Transcript, Kalgoorlie before Commissioner O'Dea, pp. 176-177].

The living conditions at South Hedland for Jimmy Njanji were described as:

> The ditch is on the low lying area around the shopping centre. It is the drainage area for the whole of South Hedland. There are a series of ditches. The Aboriginal people live, sleep, eat in the ditch. They are known as 'ditchies' or 'ditch warriors' [statement by Maureen Kelly on 4 April 1989, cited in RCIADIC report on Jimmy Njanji].

Ben Morrison never saved the rent for a cheap flat, his 'home' being:

> an open-air camp somewhere under the Freeway Bridges, near St Brigid's Catholic Church, West Perth. I think that he camped near his cousin or some relative and fairly close to Central Station and the markets where free feeds of fruit and vegetables from the bins could be picked up [RCIADIC report on Ben Morrison, p. 10].

It is revealing to observe that Benjamin Morrison had started giving his address as 'no fixed address' in 1965.

Roebourne, where Ginger Samson and John Pat came from, provides housing to Aboriginal families in the 'village' where:

> ... you have got families living in - you have got 15 people living in one house down there, no wonder you are going W have your problems - juvenile problems, the drinking problems, your unemployment problems ... [RCIADIC Transcript, Roebourne, 1990:41].

Ginger Samson and his family were evicted from State Housing Commission housing on at least one occasion for rent arrears. In Carnarvon, I was told that people cannot cope with the cost of living and housing their families. Wayne Dooler's family, when resident in and around Carnarvon, lived in a series of 'transitional houses'. Some of these transitional houses, the legacy of the Department of Native Welfare to the State Housing Commission in the transfer of powers in 1972, are still used as housing for Aboriginal people. The high point of

this housing being types 5 and 64, are houses presently undergoing renovation in two country centres, namely Kalgoorlie and Esperance. They are tin lined and have external tin walls. No heating was provided until recently. This is the type of housing that some Aboriginal people are continuing to occupy in various parts of the State. The matter of housing is further discussed in Chapter 13.

The health histories of the deceased are a major part of any study of the deaths that have occurred, with people suffering from asthma (Nita Blankett); epilepsy (Robert Anderson, Donald Chatunalgi, Ginger Samson, Misel Waigana and possibly Kim Polak); diabetes (Faith Barnes, Jimmy Njanji and Polak). Darryl Garlett, Dixon Green, Charlie and Steven Michael and Ron Ugle all suffered undiagnosed heart conditions. These issues are discussed in the section on Health in Chapter 14, and it is not proposed to elaborate further on them here.

It is also important to note that, in keeping with the jurisdictions between myself and Commissioner O'Dea, issues relative to the custody and arrest history of the individuals who have died will be further canvassed in Commissioner O'Dea's regional report, and so will not be discussed further here.

Finally, some of the families of the deceased have not willingly wanted to have their family histories bruted around the country, and I hope I have not infringed further on people's privacy and desire to maintain the dignity of those who have died. All of those who died in custody had almost constant involvement with the criminal justice system in this State, some from an early age. It is necessary to inquire then whether those people could be considered 'criminals', or whether they were unjustly treated by the criminal justice system and an historical range of 'underlying issues' of which that system is a part?

From my Commission's perspective, I lean more heavily on the view that the system has not, and does not, always treat Aboriginal people in an equitable and just way. Scattered reference to the lives of those who died in custody reveals that. While, in some instances, there are matters where individuals need to be largely held responsible for the result of their actions, overall the legal system, and all it contains, works against Aboriginal people and their aspirations. In this regard, and as material below demonstrates, the system can be perceived as discriminatory in its dealings with Aboriginal people in this State. I now turn to a discussion of that system, and consider how it has impacted on the past and present lives of Aboriginal people.

CRIMINAL JUSTICE SYSTEM: ABORIGINES AND THE STATE

> Only when the social and economic status of Aborigines has been raised to a level comparable with that of the majority of the community, will it be possible to abolish all preferential legislation conferring on them a special legal status. Only then will it be possible to say that those who presently suffer inequality will have justice [Eggleston, 1973:321].

From my investigations, the realisation of the aim expressed in the above quote from Elizabeth Eggleston is some time away, even though there have been some positive changes since the early 1970s. What my inquiries highlight is that we are faced with a most serious problem of how to construct hope and confidence for Aboriginal people not only in the processes of the criminal justice system but in the system itself. This concern is identified with, and focussed upon, the need for a

more culturally sensitive and professional approach among police officers, prison officers, justices, and the many other public servants who exercise authority over the lives of Aboriginal people. Initially, a brief historical description and analysis of the legal system as it has impacted on Aboriginal people in Western Australia. Commissioner O'Dea, in his report, also discusses various matters concerning the oppressive nature of the legal system.

5.1 'PRESCRIBED, PROSCRIBED AND CIRCUMSCRIBED BY OUR LAW'

> ... Aborigines have had to live with a greater body of law than any other segment of Australian society. The law has, for example, prescribed for them in a vast catalogue of life: in modes of procreation; adoption; fostering; registration of births and deaths; cohabitation; marriage; ingress and egress even from Aboriginal Reserves; choice of domicile; the capacity to make contracts and testamentary dispositions; to acquire, hold and dispose of real and personal property; to undertake employment or to refrain from working; membership of trade unions; access to food and accommodation and wages or Awards as conditions of employment, amenability to slow workers clauses; access to medical treatment, social service benefits, public housing and public education; exclusion from citizenship and the National and State census, and the franchise; separate criminal punishments, criminal offences and sanctions; restrictions or denials in giving evidence, except when detrimental to spouses; and discriminatory patterns for sentencing for the same offences. In short, all of Aboriginal life is prescribed, proscribed and circumscribed by our law [McCorquodale, 1985:3].

The above quote is, I believe, particularly relevant to Aboriginal people in this State. McCorquodale goes on to argue that there was nothing accidental, or uncharacteristic, in this pattern of manipulation and management of Aborigines by legislation, and consequently the courts, and that the powerless Aboriginal of 1829 is still with us. Aboriginal people were controlled by administrators on an ad hoc, idiosyncratic, virtually unsupervised, unfettered basis as the result of the total lack of 'unequivocal statutory instructions'. To rest such power and discretion in administrators, was, and is, clearly totally unsatisfactory. Only Aboriginal people were, to this extent, subject to the arbitrary whim of administrators. The only other example of administrators wielding such power in this State was in relation to children. Pursuant to the December 1989 introduction of the Children's Court Act, the administrative discretion of Department for Community Services Officers has finally been reduced (RCIADIC Transcript, Juvenile Justice, Perth, 1990:87).

It is impossible to canvass the extent of the legislative constraints placed upon Aboriginal people in this State in any brief or concise fashion. However, it is essential to note that historically the decisions of Courts in this State reveal entrenched judicial bias; this is particularly obvious in more recent times in relation to Courts of Petty Sessions, presided over by Justices of the Peace. For instance, although Aboriginal people are accorded the 'protection' of Section 49 of the AAPA Act which states that:

> Section 49(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 six months or more, the court hearing the charge shall refuse to accept or admit a plea of guilt at

> trial or any admission of guilt or confession before trial in any case where the court is satisfied upon examination, of the accused person that he [sic] 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...

There has never been any real endeavour to address the problems confronted by Aboriginals in respect of legislation and court appearances. Although this State has an indigenous Aboriginal population which numerically rivals that of the Northern Territory there has never been any effort to ensure that they are accorded 'due process' by adopting the Anunga Rules of the Northern Territory. (See also Commissioner O'Dea's report on the death of an Aboriginal man at the Sir Charles Gairdner Hospital for a discussion on the Anunga Rules.)

In questions to the Crown Law Department I inquired whether the situation in respect of admissibly of confessions could be improved in Western Australia by the adoption of the Anunga Rules. The answer to that question was a simple 'no' (see Crown Law Department Answer 3.11 to RCIADIC Questions).

It is interesting to observe in relation to Aboriginal people and the courts, the lack of a developed jurisprudence in this State. While this is being undertaken by scholars, there is no real recognition by the judiciary of a need to provide accessible resource material. The records of the 'Native Courts' 1936-54 are not readily accessible, and the Supreme Court Registry and Library were wholly unfamiliar with those courts when requested to provide reports. Any number of Aboriginal Appeal cases are 'unreported' cases and it is only with the use of a work such as McCorquodale's Digest that it is possible to grasp the extent of the case law about street offences; Section 49 AAPA Act; enticement from employment; murder/manslaughter. This lack of a developed jurisprudential resource demonstrates a reprehensible lack of interest in the subject matter.

Federally Aboriginals have been economically marginalised by the Courts. The extent of judicial stereotyping is clearly demonstrated in the decisions of the Commonwealth Court of Conciliation and Arbitration where Award wages have, in the past, been calculated on the basis that two Aborigines counted as one white person (The North Australian Industrial Union v J.A. Ambrose and Others (1924) 20 CLAR 507, p.516).

In 1932, 1938 and 1944 Aborigines were excluded from the provisions of Awards. It was stated that:

> It would be inadvisable and even cruel to pay them for the work they can do at the wage standards found to be appropriate for civilised 'whites' [The Australian Workers Union v A.E. Abbey and Others (1944) 53 CLAR 212, @ 215].

Justice was only seen to be done when 'Full Blood' Aborigines were finally accorded wage parity and therefore wage justice in 1968, when the Award for Pastoral Workers was extended to cover them. Even so, the Commonwealth Conciliation and Arbitration Commission allowed employers 33 months to accommodate the 'disemployment' which would necessarily follow. Although convinced of the need for industrial justice, the Commission was not disabused of its view that numbers of Aborigines were:

> retarded by tribal and cultural reasons from appreciating in full the concept of work [Re: Cattle Station Industry (Northern Territory) Award 1951 (1966) 113 CLAR 651 @ 663].

In respect of discriminatory legislation and judicial offices, McCorquodale (1987:43) states:

> If legislation itself discriminated massively and specifically against Aboriginals, it would be surprising indeed were judicial offices to do otherwise.

A graphic example of what is unacceptable stereotyping can be found in the decision of the Chief Justice of the Western Australian Supreme Court, His Honour Mr Justice Wolff when in 1965, in the case of Jackie Jamieson v R., in reducing the sentence imposed by another Judge he stated:

> The sentence does not give weight to the appellant's make-up and the effect of liquor on a man who up to 1934 was a bush native and is of limited intelligence even when measured against normalacy for one of his race (unreported decision) [McCorquodale, 1985:302].

The problematic attitudes of some Justices of the Peace are also demonstrated through the recording of Appeal decisions in respect of Justices' decisions. It is unfortunate that for the purposes of examination of decisions made at hearings in Courts of Petty Sessions they are not recorded and that there is no uniform regulation in relation to the recording of these matters (see Crown Law Answers to RCIADIC Questions - 1.7(b). Tape recording facilities are available at Courts visited by Magistrates and transcript is arranged when justified).

In the Appeal cases some Justices have been demonstrated to have:

(a) denied Aboriginal people 'natural justice' (Jones v Holmwood, (1974) WAR 33);

(b) imposed cumulative rather than concurrent sentences where the latter was the proper sentencing option (Hart v Rankin (1979) WAR 144);

(c) imposed excessive sentences ie., four months gaol for a first offender for theft of two sheep valued at $35.00 (Hansen v Schaper Appeal No. 23 1979, unreported);

(d) failed to comply with Section 32 of the Justices Act by failing to certify no other Justice within sixteen kilometres (Anderson v Galton-Fenzi Appeal No. 51 of 1979, unreported).

Other examples of Appeals are cited throughout McCorquodale's (1987) Digest.

One example of an excessive sentence imposed by Justices of the Peace is apparent in the case of Abraham Kim Mathew v Laurier Wilford Slater (Appeal No. 35 of 1967 unreported). In that case, in the Pingelly Children's Court, a 17 year old was charged with the offence of disorderly conduct. The youth's accommodation was a car body. The Justices hearing the matter inquired whether it was possible for them to order a whipping. When answered in the negative they imposed the maximum sentence of 6 months imprisonment. Comment was made from the Bench that:

> You are no good to your mother and father, no good to yourself and no good to the community as a whole and if a greater punishment was possible we would have given it to you.

The sentence was quashed on appeal, but many such sentences am not. The following material continues the historical discussion, while also considering Aboriginal and community perceptions of the system.

5.1.1 Historical overview of Aboriginal and other perceptions

While Chapter 2 provides a general overview of some aspects of history in relation to Aboriginal people in this State, it is crucial to also look at matters specifically in order to recognise that, historically, Aboriginal people have been actively discriminated against, and excluded from the free exercise of their rights in relation to due processes of the law.

In evidence before the 1905 Roth Royal Commission, for instance, it was stated that Aboriginal people were frequently not represented by lawyers in capital cases; the interpreter used was frequently the police 'tracker' who often did not have functional English (and who was wholly dependent on the police for rations). That witness, the eminently respectable Branch Manager of the Adelaide Steamship Co., was satisfied that Aboriginal people 'never have a fair trial' (question and answer 1246, Roth Royal Commission 1905). Frequently the Resident Magistrate (who was the District Medical Officer) acted as Magistrate for committal proceedings and then Commissioner of the Supreme Court for the trial of the same matter. That same witness stated that Aborigines did not understand the charges; thought it a great joke; were convicted on evidence which would not convict a white. He went on to say that some Magistrates were plainly biased against Aborigines. These views were supported by the testimony of the Derby Resident Magistrate Dodwell Browne, who was at that time the District Medical Officer. Remarkable as it may seem, I was told a similar thing by a country Justice of the Peace in 1990, only this time it was a public flogging that was suggested in order to reduce juvenile offending.

Additionally, the Roth report indicates that the Resident Magistrate at Halls Creek was recorded as having sentenced a ten year old child to six months hard labour for cattle killing; a fifteen year old child to nine months, and eight other children between fourteen and sixteen years of age to two years hard labour. In his report, Roth queried whether that Magistrate should retain his position. Also at this time, the Roth Commission was told by the Resident Magistrate at Marble Bar that he thought that a flogging was less cruel than imprisonment.

As observed earlier in Chapter 2, the Moseley Royal Commission (1935) found the judicial system wanting in its dealings with Aboriginal people. Its remedy for the failure to deliver justice, was to be a new system of 'Native Courts' which were to deliver justice to Aboriginal people. In six cases noted in the Native Court Evidence Book at Broome Court House (1947-1952), four defendants were sentenced to death for the offence of wilful murder. In one of those cases there was a recommendation of mercy. The court was constituted, according to the Regulations, by the Resident Magistrate (who did not necessarily have legal qualifications), together with a nominee of the Commissioner of Native Affairs 'who was in some cases a Justice of the Peace' (ibid:284). In only three of the six cases

was there evidence taken from a 'head man' in accordance with the legislation. This requirement was not mandatory, but had been one of the principles clearly and unequivocally endorsed by Moseley in his report.

It is essential to note that, 'Out of eight defendants tried in this court, five were sentenced to death. Of the two cases in 1943, 'one resulted in a death sentence' (Eggleston, 1976:286). The death sentences in the records referred to by Eggleston were commuted by executive action, two defendants serving fifteen years imprisonment. It is clear from other records examined in relation to the operations of 'Native Courts' that:

- Police interpreters were used;

- witnesses were incarcerated to ensure their attendance (at least up until 1952);

- the police officer applied for and received a 'meals allowance' for prisoners and witnesses;

- postal officers, 'Native Hospital' officers, and in one reported case a publican, were appointed to sit on the Bench as 'nominees' of the Commissioner of Native Affairs;

- representation of the accused was often undertaken by the District Officer of the Department of Native Welfare, if representation occurred at all.

If these matters had been heard in the Supreme Court, a defendant would have a Judge versed in the questions of the law and the rules of evidence; a jury; legal representation and legal argument about issues such as accidental death; serf-defence; provocation; causation; inadmissible confessional evidence; witness statements and spousal evidence; and submissions of 'no prima facie' case, 'no case to answer' would be capable of being submitted and properly judicially considered. (See files ACC 290:49, ACC 346:49, ACC 821:51.) The only reporting requirement was that a report be sent to the Governor. Reports of these 'Court' hearings could not be located by my staff in the Supreme Court library, Supreme Court Registry, Court of Petty Sessions Archives, AAPA Archives, nor the State's Battye Library.

Aboriginal people have an unenviable history in their interaction with the court system in the State of Western Australia. In Kalgoorlie this Commission was told that

> where you have people of limited understanding of the white man's law like that, you have a situation where they just commit other offences and have further penalties to face. So, the best alternative really, is to keep them in custody and get them to the Court as quickly as possible [RCIADIC Transcript, Kalgoorlie, 1990:343].

Aboriginal people are still often held in custody to ensure they appear at court because of their 'limited understanding'. It is an advance that witnesses are not also detained for the convenience of the Court process.

Throughout consultations conducted during this Commission, Aboriginal people, their legal representatives and some interested community members have fundamentally stated that Aboriginal people get no justice anywhere. People suffer

from a sense of powerlessness and a perceived inability to do anything about the situation. The submission to me from the Western Australian AIU (1990:13-14) relates the concerns of Aboriginal people about the court system. People see the court system as 'corrupt, reflecting racist values and an agent of oppression'. The Issues Unit reports that Aboriginal people are 'scapegoated' and given higher penalties in courts, and that Aboriginal people continue to be intimidated by the courts. Commissioner O'Dea's report also confirms this view.

The following comment was put forward by an Aboriginal participant at a bush meeting, where police from Kimberley towns were invited to be present:

> Aborigines held to ransom by court systems, by JsP who are businessmen and are - hold money ... most of our JsP run businesses there, like shop, like service station, and if Aborigine clients are up before them they either get put down behind or dealt with in the harsh - it may be a hard fine, or something, this is why because all their money with their business and they get back at them in this way [RCIADIC Transcript, Mary River, 1990:14].

A Senior Divisional Officer for the Department for Community Services specialising in juvenile justice matters, told me in conference at Kalgoorlie that:

> (T)hem is certainly an apparent disparity in the way that courts deal with Aboriginal and non-Aboriginals. The situation I think starts right from the time of arrest when non-Aboriginal people really often have more access to being cautioned or to bail rather than Aboriginals, and that when they come to court, often those people have much more family infrastructure... for the courts to be able to do something with them ... [RCIADIC Transcript, Kalgoorlie, 1990:94-95].

Comment was made at a bush meeting by an Aboriginal participant that:

> Inappropriate sentencing and law systems and racism amongst JPs ... JPs are manipulated by court systems and under that again I have got police and community attitudes [RCIADIC Transcript, Mary River, 1990].

The Equal Opportunity Commission in its Report No. 8 Review of Police Practices (1990:36) suggested that the 'legal system takes little account of cultural values'.

Criticism has been voiced by Aboriginal people of every agency which implements, operates or administers the law, from inferior courts and court officers to the Internal Investigations Branch of the Police Department (this is further discussed in Section 5.12.11).

There is what appears to be an enormous ever widening gulf between the courts and Aboriginal people. Criticisms of the system are invariably oral histories, but examination of some files held at the Battye Library disclose documented incidents such as the 1968 case of a man who was sentenced by Justices of the Peace to 21 days for drunk, two months for creating a disturbance, four months for obscene language, four months for resisting arrest, three months for escape and four months for wilful damage (breaking a leg iron). These sentences were to be served cumulatively. The case was ordered re-heard as the penalties imposed were in excess of the statutory power to sentence (Ref. File No. ACC 931:50). It is this sort of sentencing practice experienced by Aboriginal people that colours their perceptions of the judicial system today.

Aboriginal comment was made at Esperance that:

> Everytime an Aboriginal person goes to court ... there is always a white fellow there pushing sentence down [RCIADIC Transcript, Esperance, 1990:34.4].

Aboriginal people complained of being excluded from the fair and equitable exercise of their rights in court when language barriers alone result in isolation within the system. In evidence to the Human Rights and Equal Opportunity Commission hearing at Perth on 29 November 1989, a non-Aboriginal witness gave evidence about difficulties encountered by Aboriginal stockmen from Fitzroy Crossing:

> In the court the manner in which they were cross examined by the defending counsel left them in a position where their evidence was essentially meaningless. The language that the lawyers were using and the body language and the tone of their voices was intimidating ... This case raised the general question of how courts are administered; how the whole institution of the law precludes Aboriginal evidence or values or whatever ... in situations like that there is room for an interpreter ... [p.86]

As recently as 1971 the case of Jimmy Njanji demonstrated at least one of the concerns about the problems Aboriginal people confront when appearing before courts, is that of the provision of an interpreter. Jimmy Njanji was represented by a legal practitioner, a report was sought from the Probation service and plea material was put by an experienced anthropologist, Professor R.M. Berndt. A plea of guilty was entered to a charge of unlawful wounding. His Honour Mr Justice Wickham of the Supreme Court of Western Australia, accepted the plea which had been:

> ... taken by means of an interpreter who himself apparently could only speak pidgin English and that of a low quality, and that interpreter interpreted to Sergeant Atkins who was ultimately able to assure (His Honour) that the accused did understand what a plea of guilty meant [refer Judge's Remarks on Sentencing, 29 June 1971].

The Probation Report, quoted extensively in the Judge's Reasons, cited Jimmy Njanji as being unable to 'speak or understand English'. This view was still, to some extent, the case at the time of his death in 1985. This matter is further referred to in Section 5.11 of my report in relation to aspects of Customary Law. Commissioner O'Dea's report also refers to the case of Jimmy Njanji.

Of the deceased men, Ginger Samson, who died from epilepsy and a closed head injury in the Roebourne Police Lockup on 30 March 1988, had a court history which demonstrates the contention that imprisonment has always been a viable sentencing option for Aboriginal people at the Court of Petty Sessions.

The following table demonstrates the frequency with which Ginger Samson was before the Courts, the composition of the Bench before which he appeared, the offence with which be was charged, and the sentence imposed.

Table 2: Ginger Samson. Sentences of Imprisonment 1982-1988

DATE	JUDICIAL	OFFENCE	SENTENCE
21/04/82	1 JP	Drunk	8 days
12/03/83	2 JsP	Re-enter LP	1 month
13/08/82	1 JP	Agg Ass'lt x 2	2 x 2mths cumulative
09/06/83	2 JsP	Drank	7 days
26/10/83	1 JP	Re-enter LP	1 month
31/06/84	2 JsP	Re-enter LP	1 month
03/07/84	1 JP	Re-enter LP	21 days
30/11/84	1 JP	Drunk	10 days
08/06/85	1 JP	Drunk	7 days
27/11/85	2 JsP	Agg Assault	2 months
19/07/86	1 JP	Re-enter LP	14 days
21/08/86	SM	Prohibited Person LP	14 days
08/09/86	1 JP	Prohibited Person	1 month
15/10/86	SM	Prohibited	14 days concurrent
		Person x 3 Resist Arrest	7 days
		Obscene Lang.	1 day
20/11/86	2 JsP	Re-enter LP	14 days
		Assault	14 days cumulative
03/09/87	SM	Escape Legal Custody	6 weeks
		Drunk	7 days
29/09/87	1 JP	Drank	7 days
		Habitual Drunk	2 months
14/11/87	1 JP	Drank	10 days
21/11/87	1 JP	Escape Legal Custody	2 months
06/01/88	1 JP	Re-enter LP	28 days
20/01/88	SM	Assault Police	3 months
		(LP = Licensed Premises)	

In 1987 Ginger Samson was sentenced by one Justice of the Peace to seven days for drunk and two months for habitual drunk. The charge of habitual drunk carried a maximum penalty of twelve months. However, the excessiveness of this sentence has to be seen in the light of the decisions of higher courts when in dealing with Appeals against sentence, the view has been taken that:

> it is inappropriate for an accused convicted of habitual drunkenness ... to be sentenced to imprisonment, where the offender is addicted to alcohol and the offence did not involve fighting or active annoyance to others [Brown v Nunn Supreme Court of Western Australia, Rowland J. (1984) WAR 186 (cited in McCorquodale, 1987, Case No. c34)].

Clearly all the Justices and the Magistrates sentencing Samson had either little understanding of sentencing principles, were excessively concerned about community standards, or were not concerned about the prospects of Appeals.

The following material provides information concerning Aboriginal arrest rates in this State. Commissioner O'Dea provides further detail in relation to arrests in Western Australia.

5.1.2 Contextualising arrest and detention rates

RCIADIC Criminology Research Paper 13, shows that there is a constantly high level of over-representation of Aboriginal persons involved in police custodial

settings in Western Australia as compared to the national average. Overall Western Australia has an over-representation of 43 times, which is the highest in Australia. Of significance here also is the fact that Western Australia has the highest number of deaths in custody at 32 people (29 males, 3 females).

The statistics that Concern custodies are extremely alarming. Interpretations as to what these figures and percentages mean have been variously provided to me. They range from perceptions that Aboriginal people in this State are just more criminally inclined, to the way junior police officers, without a lot of adult maturity, go about their task of targeting Aboriginal people, and asserting their new authority and zeal for law enforcement over their peers in the Aboriginal population. Other views have related to the broader issues of alcohol use, unemployment, lack of educational achievement and matters integral to the disadvantaged social and economic circumstances of Aboriginal people. There were yet other views that concern continuing Aboriginal resistance to non-Aboriginal social, cultural and legal imperatives, and that of not being able to understand that there is only one legal system. Police have to enforce the law so they are generally hated by younger Aboriginal people. In my view these explanations, while extremely broad, are not to be dismissed. They are not exclusive but nor are they exhaustive. They most certainly contribute to an understanding of the situation. Until there is a concerted effort to assist those who are working in this area, in a more positive direction aimed at reducing custodies by being more culturally sensitive and knowledgeable, this intolerable situation will continue. Aboriginal societies need to find within their own histories of survival, ways of extricating Aboriginal people out of this tragic situation, a situation which seems to have become more pronounced since the late 1960s.

While the reality in relation to the over-representation of Aboriginal imprisonment is well documented, what is less well known is present day Aboriginal experience of that system. The following attempts to partially redress that imbalance.

5.2 ABORIGINAL EXPERIENCE OF THE SYSTEM

My discussions with Aboriginal people in State Prisons, the majority being young men between 18-40 years old, have highlighted the need for contact with family, relations, friends, and those from Aboriginal organisations, especially the Aboriginal Legal Service. One of their requests was not to let them be forgotten. Time stands still for those who have been there for some time or who have constant custodial sentences. Isolation and alienation have a scarring impact that only those who go through the darkness of its pain fully experience.

The following account, recorded from a twenty-five year old Aboriginal male, powerfully recounts how he has 'survived' the prison experience. This man's story contains a number of insights into Aboriginal involvement in, and perceptions of, the prison system and legal representation, as well as material relevant to contemporary Aboriginal social life and forms of resistance:

> I was up on a rape charge when I was 14. I was put in at Governor's Pleasure. That's ten years out of eleven. Ten years of my life since I was 14 have been spent in prison. I was drinking at the time. Few blokes, walking around and drinking ... It was a packrape charge. I didn't really do anything. Just went along with the others. I was only 14 and they were all older than me ... Didn't understand the charges. Said 'guilty' straight away.

I've always pleaded guilty. That's what they get you to say. Not explained properly. Everytime that's happened. Governor's Pleasure is over now.

I got out when I was 16/17. I served 12 months at Longmore, then 2 years and 6 months at Riverbank. Mainly I was lonely in Longmore and Riverbank. I really missed my family. When you're in gaol, you've got no-one to turn to. Not like being outside when you can have a yam to someone. Social workers are of limited help. Very limited. You have to learn to survive on your own ... got to look after yourself ... learn to pick yourself up.

I have two friends who have committed suicide. One inside, one outside. The one inside, felt like killing himself. He was crying over a lost woman, all the time kept to himself. Nothing but tension and sorrow. I feel the same about women. Women are fooling around outside while you're on the inside. I can live with the things I do wrong, but not with what other people do wrong.

I was in Riverbank in 1982. I started doing my Junior Certificate, but pulled out halfway through Year 11. Never really liked school. We were in single cells. Riverbank had a big effect on people. You had to get up at 6am everyday, and do exercises. Riverbank helped me grow up, helped me to think. You grow up thinking that this is just like gaol. You think that's the way it's going. They treat you like a man. You grow up thinking like a man, and that you should be with all the men at Freo. Lots of young kids are going to get to Freo. It's going to be that way. They see no alternative. People see uncles in gaol, brothers in gaol. A lot of it has to do with lack of money. I used to go round stealing, but who gives a damn anyway. I can survive. I got thrown out of the Coolabah Tavern. I had taken some flowers in there for my girlfriend. They told me to get the flowers off the table. I said why. They threw me out. Said they didn't like blacks anyway. (Did you lay charges?). Didn't occur to me to lay charges. Most of the time I just wear things. (What about the ALS?) I could talk my way out of things better without the Legal Service ...

After Riverbank, I started working in Bayswater - an upholstery place. Then I was a welder in Ashfield. I didn't stay in one place too long. I feel happy doing that. Roaming around.

They were both good jobs. I stayed for about three months. I just didn't turn up. Fell asleep in the toilet one day after a hard night. I was sacked. Another time, I fell asleep on the train. Missed my station stop. That's how I lost the other job. Then I went back to my old ways. Started stealing. I was picked up coming back from Geraldton one time. Picked up for DUI and driving without a license. Spent 3 weeks in Karnet. That's a whole different world. Good place, open. There was a lot of people I knew them. That was in 1983. You tend to experience Karnet and think 'this is the way gaol is' - you tend to think it is OK. That's what it will be like next time.

I was out for only 3/4 weeks. It was my 18th birthday. I was put into Canning Vale this time. For breaking and entering. I was with my girlfriend, and she dobbed me in. We stole some money. I was still on Governor's Pleasure that time. Everytime I was picked up round then, Governor's Pleasure was taken into consideration. In August 1984, I was going up for parole. Got my uncle to get me a job. Girlfriend got a flat. I was knocked back for parole, and spent the next two years at Barton's Mill. A lot of the time, I deserve what's going. A lot of the time, I don't.

I was out of Barton's Mill for 4 weeks. Driving a car to Albany. I was picked up for not having a license. They gave me three months. That was extended to nine months because of Governor's Pleasure. I was actually asleep at the side of the road when the police picked me up. They stopped me and said, 'you've got a bit of a record'. I was then put into Albany Regional Prison for nine months. If I think there's no way out, I'll just wear it.

I was out of Albany in 1987. Three days later I was riding round with my uncles. They decided to take some clothes from a shop. I was sitting in the car. Statements went against me. When I did see them again, I punched them in the mouth. I don't like to bold grudges against anybody.

I got three years for Breaking and Entering. Canning Vale again in 1987. My uncles got a fine, the three of them. And I get three years from the Courts, and then I had to stay at Canning Vale. I was sent to Barton's Mill in 1988 and I escaped from there. Couldn't handle it anymore. Seventeen days later I was caught. They gave me an extra three months. I got parole in 1989.

I got out of there, and one day later, my mates were driving along the highway. They picked me up for a ride. It was a stolen car. We got picked up by the police. I was in again for three months. I gave a false name. That didn't work so I got another three months.

Because I've been inside for so long, I was just trying to catch up on what I missed out on. I missed out on my teenage life. That's my biggest downfall. I'd really like to help somebody. Young children. I want to talk to these people. I don't like to see young people not going straight. I'd like to do some counselling work for these kids. I've been trying to help my young nephew now. I'm hoping he'll listen to me.

You can't cramp a kid's style. That's not the way it is nowadays. Nobody cramped our style when we were young. A video should be made about Fremantle to show people what its like. They should show them things like getting 7 days solitary for swearing, or 7 days for sniffing glue.

The prison officers, some are OK. Some are arseholes. They don't give a shit, they're happy to lock you up. I'd always try to keep away from situations. I've had my share. I've done my ten years. I know I won't go back.

I've only once had representation by legal officer. I don't run to them. That time they suggested three months for unlawful use of a motor vehicle. The only other time was when I was 14.

This is a record for me now. Being out of prison for one month. My brother has helped me more than anyone else in the legal system. Sometimes I think that I can't go on. I've been buggered by the system. I don't mind some of the stuff, but not all of it. Sometimes I have nightmares about the police. I can't help a kid until I can sort myself out. If I go back into gaol, I will not come out again. I'll die in there.

It's sad out here. Everybody hates everyone else.

> I've been bashed by the police. A lot of Aboriginal people have been bashed by the police. I've been bashed at (several police stations). That's where I've been bashed. At ****, the police, three of them, submerged my head under water. They stood on my back and throat. They handcuffed me. They wanted to know who had broken into the pub. They picked me

> up. I wouldn't tell them. I knew who had done it. They were people I knew. They gave me three bottles as they were running away. At some places, the police just push you all the time. They just keep pushing you. It's just like they're saying, 'we've got you, ... we don't give a shit ... you've got what's coming to you ... Some things I'm responsible for, but some things I'm not ... [notes from RCIADIC research staff, May 1990].

The above account has been recorded in full because it considers many of the matters under discussion by my Commission. Initially, there is the view that expresses 'some things I'm responsible for, some things I'm not'. This view has often been put to me by Aboriginal people, and it is discussed further in later chapters and sections: that is, while people concede that they are not always responsible to others within their own and the wider society, there are some things outside their own control and desires. For instance, as noted above, the actions of the police could only be considered as clumsy and cruel and an act of thuggery belittling of other well-intentioned officers in the force. The things which happened to the informant as recorded above, are similar to some of those which happened to those who died in custody, where police action within a custodial setting was found to be unworthy, insensitive and cruel. The cases of Albert Dougal, Faith Barnes and Roy Walker in relation to the neglect caused by police insensitivity, as well as assumptions being made about Aboriginal people as 'drunk' (rather than ill), are clear examples of this. (Chapter 4 provides details.)

As noted by Atkinson (1990:26), 'all imprisoned people are deprived in certain ways as a result of their incarceration'. However, imprisonment for Aboriginal people carries with it a multitude of deprivations which include those of a social and cultural kind when they are removed out of settings where, for many, family provide significant ties, and cultural beliefs and practices are different than those which they encounter in the prison setting. Comments recorded from inmates at Fremantle on behalf of my Commission, reveal some of the frustrations people experience, as well as the major part health and conditions play in present day Aboriginal survival:

> Survival only matters when you have something to live for. For many there is nothing left. This is especially important in the case of 'Mr. G' because he has survived everything the system has to throw for fifteen years, since the age of fourteen. Now he is saying that he doesn't know whether he can take any more. The position with his parole is unclear ... He believes that his present chronic medical condition can only get worse and his only chance is to go on trial for his remaining three charges as soon as he can. He knows that if that is the case he will appear before the court on heavy medication, and has accepted this as his last chance ... (he) ... is saying he is a classic example of how deaths in custody happen. He will not kill himself. What he is saying is: I have survived this long but my medical condition is serious. If I lose all hope how can I face my wife pretending to be coping alright. He is saying this is how and why deaths happen and here is a chance for me to speak before I die. His fear is that he'll get sick and make a mistake. Then it will be too late [notes from RCIADIC research staff, May 1990].

What is clearly evidenced from the above account, is the complexity of underlying issues in relation to hopelessness and despair, and the crucial effect on poor health. This man's Concern should not be seen in isolation, as similar views were put to me by inmates at prisons located throughout this State, and they will be further discussed, especially in Section 5.14.3 on health care in custodial settings.

I now turn to the Aboriginal Legal Service (ALS) because, as noted earlier, one of the primary contacts for Aboriginal people is the Aboriginal Legal Service. The following addresses some of the matters which have been put before me in relation to the ALS.

5.3 ABORIGINAL LEGAL SERVICE

One of the institutions established to service the direct needs of Aboriginal people in relation to the criminal justice system, is the Aboriginal Legal Service. The Service, and a study conducted by my Commission in 1990, are considered below.

The Aboriginal Legal Service was established in this State in 1975. It is incorporated under the Associations Incorporation Act 1895 of Western Australia. There is an elected Aboriginal executive committee and, in July 1990, Mr Robert Riley was appointed Director (formerly, this was the position titled Executive Officer). According to Harkins (1985:35) the executive committee is responsible for the management and control of all business of the ALS, and for establishing the policies of the ALS. The daily management of the ALS rests on the shoulders of the Director, and the Principal Legal Officer is responsible for all legal matters. The principal office of the ALS is in Perth. Regional offices operate from Broome, Carnarvon, Derby, Geraldton, Kalgoorlie, Kununurra, Laverton, Narrogin, Albany and Port Hedland. ALS field officers also work out of Roebourne and Halls Creek, through local resource agencies and without any support staff. These circumstances do not create productive working conditions.

Throughout the month of April 1990, RCIADIC Broome research staff undertook a survey throughout five regional Aboriginal Legal Service Offices in Western Australia. The research was undertaken because the ALS is often regarded as the interface between Aboriginal people and the criminal justice system in this State. The research was also undertaken because evidence throughout regional meetings indicated that there was some concern about the apparent ineffectiveness of the ALS. We have also been informed by the findings of Harkins (1985) and Gallant (1989). For instance Gallant (1989:19-20) observed that Aboriginal communities had expressed a 'surprising degree of dissatisfaction with the performance of ALSs in meeting the needs of communities ... the dissatisfaction related principally to: absence of input by communities into, and absence of accountability to communities by ALSs; lack of access by individuals, communities and organisations to assistance from ALS solicitors; the poor quality of services provided in criminal and civil matters; the fact that apparently innocent clients were advised to plead guilty; and representation of individuals against community interest'.

From my inquiries I have, however, taken the view that despite the broadening of the representation to increase in certain country areas, representation recommended by Gallant for a State Council will not meet the concerns that were raised by Aboriginal people. They want participation and control by Aboriginal people at their regional and local levels. This is not to criticise the hard work, dedication, and sacrifice of those who have provided legal advice and representation to Aboriginal people, nor of those who have served as executive members on its committees. The fact is they are too far away from major centres where Aboriginal people are arrested, detained and appear in court.

Field officers and solicitors in these centres have their time and energy taken with the demands of the criminal justice systems. There is little availability for civil matters and legal education.

Field officers from the Aboriginal Legal Services are caught up in an expeditious role where they do their best on pleas of guilty for petty offences. Justice appears very cheap when there is not proper legal representation for a defendant. In saying this I am not condemning the principle of Aboriginal controlled Legal Aid Services. In fact, I would support the actualising of this principle to regional areas of Western Australia. Regionalisation is, I believe, crucial in this State with its vast land mass and diversity of regional circumstances which do not make for easy access to administration in Perth.

Where Aboriginal people are enclaved through their own incorporated autonomy, they should receive support by appropriate financial, legal and administrative resources to deal with all aspects of the criminal justice system, as it impacts upon their local or regional societies. Hopefully, it will provide the support and advice to lawyers who work in this area. Legal education and other matters that relate to civil law could also be addressed.

5.3.1 Research Paper 4

Appendix 4 provides a copy of the survey form which was made available to ALS offices in Derby, Broome, Carnarvon, Kalgoorlie and Perth. ALS staff, solicitors and field officers, were provided with the form and an explanation sheet toward the end of March 1990, and the forms were collected early in May 1990. The total number of records submitted referred to 446 people. Some of the findings which emerged from the study reinforced some of those made by Harkins in 1985, and again by Gallant in 1989.

5.3.2 Limitations of the study

Initially, it is essential to observe the limitations of the study. These include: the fact that not all ALS offices were surveyed; the study was, initially, for one month only (interestingly, a later study in July produced similar findings); the forms were a new device and prior to this study, officers had not been obliged to complete information on their clients in an organised manner. This resulted in a number of forms not being completed, or fully recorded.

5.3.3 Significant findings

Among the most critical points to emerge from the findings were that: there was a total lack of acquittals; there was a low rate of 'dismissed as trivial'; there was a low rate of Community Service Orders (and those which were given were provided to juveniles); and a low rate of Good Behaviour Bonds. In sum, given that all the people in the survey, a total of 446, were represented by ALS solicitors and field officers, these findings are particularly disturbing.

The survey also confirmed that males, more so than females, were imprisoned. The following table provides the relevant percentages:

Table 3: Imprisonment according to gender

PLACE	MALE	FEMALE	CHILDREN/ MALE	CHILDREN/ FEMALE
Broome	65.5%	18%	11%	4.9%
Perth	38.9%	15.6%	31%	14.4%
Carnarvon	51.9%	11.1%	25.9%	11.1%
Derby	70%	30%	.....	
Kalgoorlie	60.2%	24.3%	8.7%	6.8%

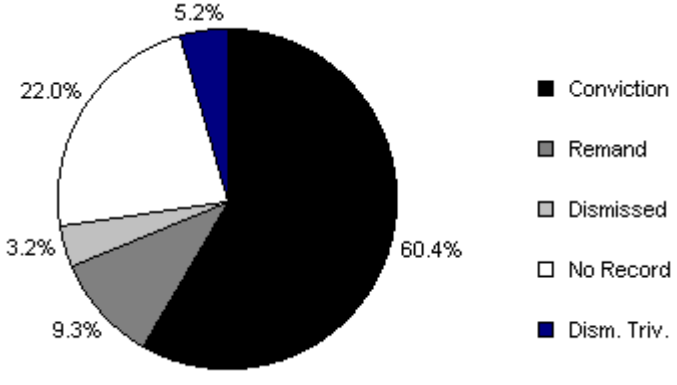
* Figures may not add to 100% due to rounding.

Most of these people (62%) stated that they were located in town settings (as opposed to a community or outstation).

5.3.4 Outcomes and penalties

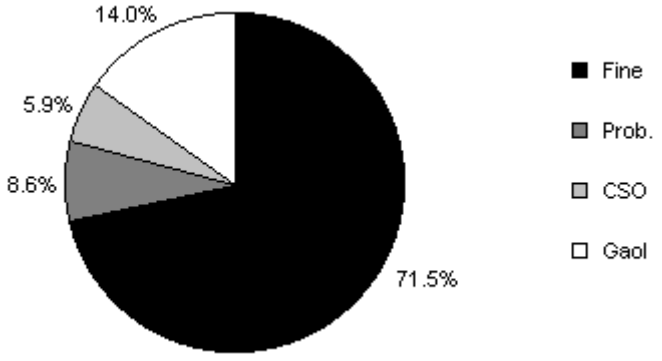
One of the most critical factors to emerge from this information is the total lack of acquittals. The following graph illustrates:

Graph 2: Outcomes



While Appendix 4 contains substantial detail in relation to these matters, the amount accumulated in relation to penalties also bears examination. The following graph indicates the large amount incurred through fines. This is especially interesting given the fact that, as noted elsewhere in this report, Aboriginal people are the most economically marginalised in this State.

Graph 3: Penalties



5.3.5 'One month's takings'

Perhaps the most significant finding to emerge from the research put before my Commission is that mentioned above: the total amount of fines imposed on Aboriginal people in the five locations throughout the April survey period amounted to $63,243. Calculated on an annual basis, this would amount to around $758,915. It is reasonable to extrapolate from this information and estimate that the likely income in this State, received from fines imposed on Aboriginal people, is in the vicinity of three million dollars per year. Significantly, this is one million dollars more than the annual budget currently provided to the Aboriginal Legal Service by the Federal Government through the Aboriginal and Torres Strait Islander Commission. It is also reasonable to assume that Aboriginal people are not receiving the necessary support they require through the Service as it now operates. It is crucial, in my view, to look toward community education, adequate resourcing, experienced and regionally accountable legal and field officers, as well as administration, in order to ensure that the ALS can carry out its designated task in a less cumbersome and frustrating way.

Throughout the next sections, I consider Justices of the Peace and conclude that there is a great deal to be done to redress the current difficulties Aboriginal people are faced with in coming before Justices and the system of which they are a part.

5.4 JUSTICES OF THE PEACE

The Royal Association of Justices of the Peace was invited to provide a submission to this Commission but declined to do so. At almost every conference, Justices told the Commission they were not 'unfairly severe on Aboriginal people' (RCIADIC Transcript, Carnarvon, 1990:133.3). They resented the 'implication ... there is something wrong with country justices because there's so many Aboriginals in gaol ...' (RCIADIC Transcript, Geraldton, 1990:344). Justices were emphatic that the law does not allow discrimination. The penalties were prescribed and most JsP considered that they sentenced according to the penalties set down in the Acts.

One Justice commented that upon arriving in Australia 35 years ago, it was apparent that Aboriginal people were very 'primitive' but there had been a big change (RCIADIC Transcript, Carnarvon, 1990:128).

One Justice who had been sitting for some years on the Bench presumably sentencing Aboriginal people under non-Aboriginal law commented that:

The white man's rule will never rule the Aborigines, of that I can assure you. And so they have - the elders of the coloured people have to get control again of their own people [RCIADIC Transcript, Geraldton, 1990:354].

Another saw his proximity to the Aboriginal residential area as useful for the police in that:

> 'When the police car goes out there and they have to stop at my place to get a signature on a warrant ... there's generally a black aide with them ... [RCIADIC Transcript, Geraldton, 1990:359].

Such comments demonstrate this Justice's lack of understanding of his role and of the fights of Aboriginal or other individuals.

Volume 33 No. 9, October 1989 'The JP Journal Western Australia' carried commentary on search warrants at page 107 citing the case of TVW Ltd v Robinson and Cant (1964) WAR 33, @ 37, Negus J.:

> The issue of a Search Warrant is a very serious matter indeed because it authorises the invasion of privacy of the subject in his home or in his business premises. It necessarily involves an interference with the rights of an individual and affects his liberty.

Given the above, I am left to wonder whether some Justices read their own Journal.

The entry onto premises or communities occupied by Aboriginal people, has also been a matter complained of to me on occasions. I have not been able to follow up on individual complaints, nor have I seen it as my task to do so. However, I am left with the distinct impression that it is a matter which requires urgent attention. Whatever the reasons or justifications are for the intrusion into Aboriginal families, greater sensitivity and care needs to be taken. At times this may not be possible, but such occasions should be considered extremely seriously by Justices and senior police officers.

5.4.1 Justices reliance on Clerks of Courts

The Clerk of Courts at Roebourne took the view that it was his responsibility to ensure that his Justices were up to date with Acts. Justices rely upon the Clerks of Courts because they purportedly have more legal knowledge and they are more familiar with the operations of courts. Clerks of Court try not to sit on the Bench.

There are 89 courts in the State of Western Australia which are administered by a police officer in the capacity of Clerk of Petty Sessions. Of these courts, only 56 are presided over by a Magistrate on circuit either monthly or bi-monthly (see Crown Law Department reference to Questions - Schedule B and Schedule C).

In these circumstances it would seem that in a number of country Courts the Justice of the Peace does not have an independent Clerk of Courts on whom

he/she can rely for this sort of information and assistance. The Justice of the Peace is either self reliant or relies upon the Police Officer officiating as Clerk of Courts and reliance is also placed on the advice of the 'Clerk of Courts' about penalty alternatives. It is iniquitous for a JP to rely upon a Police Officer acting as a Clerk of Court. This reliance upon the police by Justices of the Peace has been criticised over many years, notably by Eggleston (1976:137-138) and Parker (1972:87). One such Court is that convened at Halls Creek. The Clerk of Courts is a police Officer. The Magistrate visits monthly. Any other time, the court is convened before a Justice of the Peace.

In responses to RCIADIC questions (2.1.), the Crown Law Department stated there were no actual procedures in place to ensure that Justices were independent when their Courts were administered by police but that seminars for Justices held annually stress the need for independence.

The Crown Law Department in its responses to questions put by the Royal Commission (response dated 16 July 1990) advised that there were no plans to appoint Clerks of Court at courts where police officiated. When it was suggested that the Crown Law Department could use other Government officials to undertake this role, the Departmental Officer agreed this was possibly a solution to the situation (RCIADIC Transcript, Crown Law, 1990:367-368). This had apparently been the situation in the past but had been phased out.

There are some sixteen police Stations *throughout the* State of Western Australia which are 'one man stations' (RCIADIC Transcript, Commissioner Bull, 1990:666). In those areas it would possibly mean that in the event of a court being convened, the police officer would be informant, prosecutor and Clerk of Courts. This is clearly unjust, even in the interests of economy, and, in fact, the argument of 'economy' in provision of justice is not acceptable to my Commission. Provision of justice is not a 'resource question'. This is the sort of false economy that Aboriginal people have been exposed to in most of their interactions with the legal system. Additionally, in my Commission's view, the argument that these defects in the provision of services need to be tolerated so that the Crown Law Department can provide a Court which can conveniently and 'expeditiously' deal with the legal process is also not acceptable now that the Ball Act has been introduced (RCIADIC Transcript, Crown Law Department representative, Perth, 1990:366).

5.4.2 Justices training and perceptions

The other way in which a Justice could inform him/herself about developments in legislation or case law, is to attend the seminars which are periodically conducted. My Commission has been told that these seminars are established to educate and inform Justices adequately for the performance of their duties. The Crown Law Department holds seminars on an annual basis to ensure they keep up to date with the legislation and their role generally (Answer 2.3. Crown Law Responses to RCIADIC Questions). This seminar is the only 'training' that Justices of the Peace receive. Interestingly, this training process is regarded as adequate to ensure that JsP understand the notion of separation of the judiciary from the police (see Answer 2.1. Crown Law Responses to RCIADIC Questions).

Attendance at these seminars is by invitation and voluntary. The Justices at Geraldton advised the Commission that only 'half the Justices actually attend the seminars regularly (RCIADIC Transcript, Geraldton, 1990:357). One Magistrate

advised the Commission that the newer Justices of the Peace seemed to have a better outlook and that there had in the past been:

> ... a tendency to accept that the police ran the show and they were just there as a - almost as a police functionary [RCIADIC Transcript in confidence, 1990].

The newer appointments have to successfully complete a training course the establishment of which was approved by Cabinet on 3 October 1989. The training course is run by TAFE and can be completed 'by correspondence or by ten weeks of lectures (of 2 hours per week) presented by Magistrates, within 18 months of their appointment' (Answer 2.4. Crown Law Responses to RCIADIC Questions). In my view, this training is far from adequate.

Advice has, however, been received from the office of Technical and Further Education about the Justice of the Peace course that:

> This course is administered by TAFE for the Crown Law Department ... the course is provided in the external mode. Enrolments are restricted to Justices of the Peace and applications to enrol must be submitted through the Crown Law Department.

Up until the end of 1989, the course was also provided on campus as a service to industry. Such a course will now attract a fee for service and the Department of Crown Law has not reached agreement with TAFE over how this can happen, with the result that no courses have run during 1990 (see correspondence to the RCIADIC from TAFE, Perth, dated 7 August 1990).

It is of interest also to note that the Crown Law Department has provided my Commission with papers relevant to the Training *Course* for JsP which was conducted at the Central Law Courts in May 1990. The Course was conducted after business hours over ten days between May and July 1990. It dealt with Oaths, Affidavits, Search Warrants, Bail, Courts of Petty Sessions, Pleas of Guilty (including the effect of Section 49 of the AAPA Act), Pleas of Not Guilty, Sentencing, Children's Court, Restraint of Debtors, Restraining Orders, Legislation (Road Traffic Act, Probation and Parole and the Police Act), Visiting Justices, Evidence ('the basic concepts').

However, the Crown Law Department advises that no special training is provided to Justices of the Peace about Aboriginal laws or cultural matters (Answer 2.15 of Responses of Crown Law Department to RCIADIC Questions). This issue is not being addressed in the new training scheme for Justices. There has been, and continues to be, a general acceptance of the assertion by Justices that they 'know' Aboriginal people well; that they were involved in the welfare; that Aboriginal people worked for them on their stations and they are therefore well-informed about Aboriginal issues. This view is countered effectively by the comment of an Aboriginal man from Esperance who stated:

> ... a white Magistrate thinks he knows every little people, you know. That is just like trying to tell an atheist about Christians ... [RCIADIC Transcript, Esperance, 1990:321.

The problem in simply accepting the assertion from Justices that they 'know' about Aboriginal people is highlighted when you consider that in consultations around the State, Justices still referred to Aboriginal people as 'natives', 'coloureds', and 'boys'

and 'girls' when they were adult men and women. These son of paternalistic attitudes and derogatory comments are indicative of deep seated ignorance and a lack of understanding about contemporary Aboriginal concerns. In one large country town, a Justice of the Peace advised my Commission:

> There is no real racial problem. It's a matter of the bludger versus that one who is the producer [RCIADIC Transcript, Kalgoorlie, 1990:287].

This view was then contradicted by another Justice, but only after members of the Press had left the Conference. Plainly, Justices of the Peace often reflect the prevailing attitudes of their communities. These attitudes are frequently extremely disparaging of Aboriginal people. Time and again, as discussed throughout this report, my Commission has been told that there is deep seated and entrenched racism inherent in the social fibre of the State of Western Australia, and this attitude is to some extent reflected in the paternalistic comments made by Justices in conferences. One statement, by a Justice in a large country town, I quote in full because it so clearly demonstrates some of the points I hope to convey about non-Aboriginal perceptions of Aboriginal people:

> I suppose you have to understand ... the makeup of 40 thousand years of culture while traditionally the climate of Australia and the way of life in that 40 thousand years was such that it bred a non-working person, a person that is a, I hesitate to say lazy person, but that's what I'm inferring. They don't particularly want to be busy for 12 hours a day. There are many people of the world who are busy people ... The coloured people are not busy people... If they didn't have any money given to them then they would have to put more accent on going and earning it [RCIADIC Transcript, Geraldton, 1990:362].

Much of the time spent in conference with Justices was taken up with their comments about there being too much public service involvement from people who had recently moved to the area. It was also considered that there was too much 'free money' and too much 'easy money' and there was consequently 'no will to work' (RCIADIC Transcript, Carnarvon, 1990: 127). The view was that for Aboriginal people 'privileges' had become 'rights'; people resented the fact that Aboriginal children were 'paid' to go to school (ibid: 141). This attitude was very widespread amongst Justices:

> ... the greatest number of black people would be of that nature. They don't want to sort of continue to work [RCIADIC Transcript, Geraldton, 1990:348].

Additionally, there was a generally held view that welfare money was spent on alcohol and taxis, and that families went without. Comment was also passed that 'they' got all this money and had no need to go hungry or do without. Material contained in Chapters 6, 7, 10, 11, 17 and 18 of my report considers, in some detail, these sorts of views as well as addressing aspects of Aboriginal realities.

Justices of the Peace variously commented on the problems confronting Aboriginal people in court appearances. There was acknowledgement of the fact that there was a need for employment, leadership, rehabilitation services. In addition, some comment was made that if juveniles were removed from the community then there would be no offending problem. This comment flies in the face of much police comment which was to the effect that removing juveniles from the area was counterproductive.

Of great concern to my Commission, ill-informed perceptions about Aboriginal people were often expressed. For instance, the breakdown of cultural ties was raised, and simplistic comment made, that the elders were now either dead or had no authority. The older Aboriginal people were said to have 'respect' for the law. Drinking rights, the Award wage and the consequent movement away from the stations and into the towns were also constantly raised, and Aboriginal people were blamed for the repercussions of these developments. The opinion was advanced that previously, children had been 'well mannered' when brought up on the mission, and this was no longer the case.

One Justice was of the view that the problem of over-representation in custody was due to unemployment which in turn was due to the fact that:

... in many cases they are affected by alcohol, their personal hygiene is not to the point where they're acceptable in the modern day standards of the workforce, and this is making them difficult to employ [RCIADIC Transcript, Geraldton, 1990:346].

Alcohol was seen as the major over-riding problem by almost all Justices. A number of Justices did not mention the socio-economic, political and cultural marginalisation which promote dependency on alcohol use. The disproportionate number of Aboriginal people in prison was the direct result of alcohol. Aborigines and alcohol '... do not mix and never have done'. It was suggested that the problem of alcohol could be addressed by depriving Aboriginal people of the 'privilege' of being able to drink.

Aboriginal people were seen as the predominant group incapable of dealing with alcohol. Some Justices queried whether it was true that Aboriginal people could not cope medically with alcohol. People were referred to as 'roosting' in the park making constant work for the police in maintaining order. These sort of opinions were frequently expressed by Justices of the Peace in conference. Such attitudes indicate an almost negligent lack of comprehension of the complex difficulties confronting Aboriginal people. Justices need more than a training course in the legal elements of their occupation. If they are to remain in the powerful position they have occupied in the past, they also need extensive sociological training. What is apparent from our conferences, is that Justices would almost certainly resist such training as they are almost universally of the view that they know more than the 'Johnny-come-lately social worker types'.

5.4.3 Justices sitting alone

One Clerk of Courts who spoke to my Commission, advised that he sometimes had difficulty convening a court; that his pool of Justices was not sufficiently large and that there were consequently definite problems. Justices had to travel distances to perform their duties. On occasion one Justice would sit alone because of these problems (RCIADIC Transcript, Roebourne, 1990:203). This comment was also mirrored in Halls Creek (RCIADIC O'Dea Commission, Chatunalgi Transcript, p.69). This is arguably even more of a problem when a Police Officer acts as Clerk of Courts and it is his function to select the Justices for the Bench. Commissioner O'Dea also refers to this matter, especially in relation to Roebourne.

5.4.4 Court procedure

Justices are bound to have cognisance of Section 49 of the AAPA Act which, as noted above, stipulates:

> Section 49(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 six months or more the court hearing the charge shall refuse to accept or admit a plea of guilt at trial or any 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.

While this Section of the Act is considered elsewhere in my report, it is necessary here to discuss some cases in relation to Section 49. In the case of Bolton v Neilson (Supreme Court of Western Australia, Dwyer C.J. (1951) 53 WALR 48 cited in McCorquedale, 1987, Case No. c27), it was decided that a Protector could only in 'exceptional cases' approve a plea of guilty. He had to be satisfied of the actual guilt of the Aboriginal defendant, and also that the evidence tendered was admissible and credible. In the case of Bolton v Neilson, the Justices imposed an excessive sentence on a first offender and failed to consider the co-offenders' dissimilar court record in sentencing. Such a decision demonstrated a complete lack of understanding, by Justices, of sentencing principles in respect of Aboriginal people in 195 1. It is essential to also note that these principles were guided by Section 60 of the Native Administration Act 1936. This Section was the predecessor of Section 49.

His Honour Mr Justice Dwyer, in the case considered above, on appeal stated:

> I hope it is for Judges of the Supreme Court in this State to see that these disinherited and dishonoured people receive the benefit of the provisions made by the legislature for their protection in Courts of Justice, and where there is any doubt as to the interpretation of a Section enacted for their protection it is my opinion that a liberal interpretation should be given to those provisions [@ p.50].

The Crown Law Department advised this Commission that it discharges its obligations to ensure that Justices understand the importance of compliance with Section 49 in that:

> All judicial officers are aware of the provisions of Section 49 of the Aboriginal Affairs Planning Authority Act [Answer to Question 2.12, Responses by Crown Law to RCIADIC Questions].

At my Commission's conferences, a Crown Law Department representative assured me that:

> Section 49 is mandatory and therefore, all Judicial officers are aware ... and the issue is raised at JP seminars and the like [RCIADIC Transcript, 1990:379]

And Justices are provided with 'strong guidance' by the:

> (A)ssurances of legal representatives from the Aboriginal Legal Service and the Legal Aid Commission who are known to the court and have an understanding of Section 49 ... However, if there is any uncertainty, further satisfaction is sought [Answer 2.13, Crown Law Department to RCIADIC Questions].

The ALS in its submission to my Commission made the point that there is:

> growing concern to all ALS staff and particularly the Pilbara staff ... that most Aboriginal people who appear before courts for sentence do not understand the judicial process or apprehend what is going on in court [1990:47].

The reasons for this were seen to be the delays involved in the legal process; the communication barrier where people do not speak English; the conflicting concepts and meanings in the use of language. The submission makes the further point:

> It is now becoming clear that Aboriginals appearing in these courts have merely learned to say 'yes' when they are asked their name and 'guilty' when they are asked how they plead [ibid:48].

From the comments made during conferences it was also clear that a defendant who has often been in court is assumed to understand the process simply because of his/her prior record. Jimmy Njanji did not understand or speak English at the time of his first court appearance in 1971 or at the time of his death in 1985. It is doubtful whether he ever fully understood court proceedings in which he was hardly an active participant. What is of great concern to me, is that the Justices of the Peace have indicated a willingness to rely upon the assertion of the ALS Field Officer and/or solicitor that a person comprehends. However, the ALS submit:

> there is a reluctance to take up the time of the court to adjourn to explain properly to clients [1990:48].

In sum, judicial officers in relying on legal aid staff may well be making a mistake. The point should also be made that the ALS solicitors do not necessarily appear in courts convened by Justices of the Peace in remote areas where the need for explanation would arguably be greater. The solicitors do appear before Magistrates who have told this Commission that they also rely upon the assurances of solicitors about a client's level of comprehension.

The ALS Solicitor addressing the Geraldton Justices Seminar stated that it:

> would seem from my experience that the point of view of many Judicial Officers (is) that this Section is regarded as being applicable only to Tribal Aboriginal persons [Geraldton Seminar Papers, p.100].

One ALS Field Officer who regularly appears in court for Aboriginal people from remote areas, seemed to be somewhat confused by the provisions of Section 49. He thought it only applied when people were pleading 'not guilty'. He commented that solicitors rarely used the Section (RCIADIC Transcript in confidence, Geraldton, 1990:432).

My Commission has been told by Justices that they do refer matters to the

Magistrate where they are concerned:

> (I)f we really do not think they understand and they are very confused, we will remand them to the Magistrate and ask them to get legal aid - if it is the next week or something like that [RCIADIC Transcript, Roebourne, 1990:218].

A person may spend time in remand awaiting a hearing, which is inappropriate. Justices also observed to the Commission that people who presented in Court had:

> that frightened look ... you know they do not understand when you read out the charge and so you ask them ... [RCIADIC Transcript, Roebourne, 1990:218].

In another large country town it was observed that 'you can't really tell what they are saying as they drop their voices'. However, Justices 'bend over backwards to ensure that the defendant understands'. It was further stated:

> they always agree to go on with it, reluctantly or not on their behalf (I) don't know [RCIADIC Transcript, Geraldton, 1990:352].

It was the generally held view that there was no need for interpreters for Aboriginal people in courts but there was a need for a 'communicator' (RCIADIC Transcript, Roebourne, 1990:234).

My Commission would expect the application of Section 49 of the AAPA Act to be a source of considerable concern for Magistrates and Justices in the Children's Court, when cognisant of the views put forward at the Juvenile Justice Conference convened by my Commission:

> I've had a number of kids sent to me from fairly remote places by Magistrates for sentencing sometimes ... and I just find it very difficult to know what level of comprehension of what I'm saying there is or even how much English the child speaks ... but I ... have been assured by the ALS that where an interpreter has been needed they have been able to get one and sometimes that the boy doesn't need an interpreter but is just too shy to reply to me ... [RCIADIC Transcript, Juvenile Justice, 1990:97].

Alarmingly it is in precisely this situation that the problems confronting Aboriginal people in the court system are at their worst. Interestingly, Justices told the Commission that they had taken real notice of the Section, as the following quote reveals:

> ... particularly in the last 18 months. So we sort of bend over backwards to make sure that they know what they're all about [RCIADIC Transcript, Geraldton, 1990:352].

It is clear that Aboriginal people are alienated from and isolated by the court process and their lack of 'understanding' has been the subject of comment and resulted in criticism of the legal system as long ago as 1973 in the Parker Report (1972:1989). It seems clear that Section 49 of the AAPA provides no safety net.

5.4.5 Sentencing by Justices

From the few cases which have been the subject of judicial comment by a higher court, it would appear there is a problem in that Justices of the Peace do not understand their sentencing function. Sentencing is a very complex issue. It is not just a matter of applying penalties set out in the Acts. For instance, Justices in three country centres said that they sentence in accordance with the Acts and they also rely heavily upon the Clerks of Court:

> We've got the books whether it's the Police Act, the Traffic Act or whatever and we go by the penalties set down by the State [RCIADIC Transcript, Carnarvon, 1990:133.4].

They see themselves as only rarely incarcerating Aboriginal people (RCIADIC Transcript, Carnarvon, 1990:111) and as dismissing under Section 137 of the Police Act, half the cases which came before them. They did not acknowledge that people failing to pay fines who were therefore incarcerated were a sentencing problem for them.

Adverse comment was recorded by Justices who were unwilling to utilise sentencing options although it was accepted that station placements were better than lockups (ibid: 117). There was little respect for Community Service Orders, with one Justice commenting:

> I don't think I've ever given anybody a community service order - I don't think I ever would - because I see that it's not you know, the idea of a community service is probably a good thing but the operation of it is not so good [RCIADIC Transcript, Carnarvon, 1990:117-118].

Comments such as these were also reflected elsewhere. Arguably, Justices have never understood their complex sentencing obligations, and their personal perceptions and opinions are reflected in their sentences. One Justice erroneously believed that JsP no longer had the power to gaol people (RCIADIC Transcript, Carnarvon, 1990:132). It was that Justice's belief that 'the only custodial sentence that we would put on a person was for their own safety or the public safety' (RCIADIC Transcript, Carnarvon, 1990:132). Some Justices quite openly and honestly stated that they sentenced predominantly Aboriginal people to 7-21 days for drunk offences to 'dry them out'. This was done in the hope they might 'return to the straight and narrow' (RCIADIC Transcript, Carnarvon, 1990:119).

Justices also spoke of 'frustration' and anger at their role in presiding over court for constant offenders and it was stated that a stint in the Regional Prison for drunkenness was a viable sentencing option:

> ...because at least you know you are going to get him off the grog for a few days which might help him medically [RCIADIC Transcript, Roebourne, 1990:207].

The irony of that argument is that some of the deaths in custody are the people who were in the lockup either sentenced or unsentenced for drunk. While it is acknowledged that Justices have not had rehabilitation or shelter options available to them as sentencing alternatives, and they have seen themselves as being in a difficult situation in this area, the sentencing guidelines from the superior courts are quite clear;

> Whether imprisonment works in practice or not it is contrary to modern principles of sentencing to sentence an offender to prison to give him or her the opportunity of rehabilitation. There is no deterrent aspect either to the individual or others and retribution as a motive is not really relevant [Brown v Nunn Rowland J. (1984) WAR 1861.

Aboriginal people have told the Commission that the sentencing 'tariff is higher in the country where Justices sit in courts. This is a very difficult point to substantiate. However, in a recent decision on Appeal, His Honour Mr Justice Brinsden stated that:

> I do not find it possible to say that on the material before me their Worships (sentencing) discretion was wrongly exercised. I appreciate that it may be that in other jurisdictions offenders who have amassed considerable records of this type of offence may have been sentenced to a lesser term of imprisonment ... [Appeals of Ryan v Mettam No. 1343 and 1344 of 1987 and Daglish v Mettam No. 1345 and 1346 of 1987].

In those two cases the sentences imposed by the Justices were reduced.

I have also been told that Justices not infrequently exceed their sentencing powers in country areas. These sentences would invariably not be appealed against by unrepresented Aboriginal defendants. It has been asserted that in one country town Aboriginal people were never given time to pay fines as the Justice did not know that he could allow time to pay. Allegations have also been made that charges are frequently not read out to people. The solicitor presenting the ALS paper to the Geraldton Justice Seminar stated that 'a special onus' exists in explaining the nature of the offence to Aboriginal defendants (RCIADIC Transcript, Geraldton, 1990: 101).

5.4.6 Justices on Decriminalisation of Drunkenness

While Decriminalisation of Drunkenness is discussed in detail later in this report, in Chapter 19, it is necessary here to record some of the views put to me by Justices of the Peace. The process of the reform of the law of drunkenness was not understood by at least one Justice of the Peace in a rural area who as recently as 9 April 1990, was of the view that it was:

> just waiting for one of our politicians to come forward with the necessary legislation ... [RCIADIC Transcript, Carnarvon, 1990:119].

At the time of that comment, the legislation had proceeded through both Houses of Parliament and it was gazetted on 27 April 1990.

It was the view of one Justice that decriminalisation was not a good thing and that the police had been doing the right thing by people by removing them from their freedom until they were in a 'better frame of mind and more capable of looking after themselves' (RCIADIC Transcript, Kalgoorlie, 1990:285). Justices were frustrated at the lack of rehabilitation centres, half-way houses. They were constant in their criticism that there was nowhere to 'send' people who were 'offending against themselves' (RCIADIC Transcript, Geraldton, 1990:122).

5.4.7 Justices of the Peace and the Bail Act

In spite of seminars which have been conducted on the Bail Act provisions, it was clear that a number of Justices were not familiar with their obligations and did not understand the provisions of the Act. At one conference the Commission was told that the Bail Act was 'very very simple' (RCIADIC Transcript, Albany, 1990:156). This contention was flatly contradicted by another Justice at the same conference. It was a 'bit more complicated' now, or even 'quite complicated'. 'The other one before they changed the Ball Act, it was much simpler' (RCIADIC Transcript, Albany, 1990:153). Bail procedures were regarded as extremely time consuming:

> where before you went straight in there and in just a matter of 15 minutes, you've had it all finished [RCIADIC Transcript, Albany, 1990: 153].

This Commission has however, been told by police from Broome that the new procedure of completing a Bail application takes 10-15 minutes. One Justice observed that he was picked up in the police car and taken to the Police Station from the hours of one o'clock to four o'clock in the morning for the purposes of Ball Applications (RCIADIC Transcript, Albany, 1990: 153).

In Kalgoorlie a Justice complained that it took ages to fill the forms in, that sureties can be a problem and are not always reliable and that the new Bail Act has imposed the greatest workload on Justices. The same Justice stated that Aborigines were very 'humble and very respectful'. Justices also asserted that they did not just accept the police view of acceptable amounts for bail (RCIADIC Transcript, Roebourne, 1990:227) and on one occasion a Justice submitted that she did not like to accept sureties from the 'aunties' as they didn't understand the commitment they were making.

As has previously been observed, the Royal Association of Justices declined to provide a submission to this Commission. However, some of its views, or those of its members, on the Bail Act can be gleaned from the 'Report on a Review of the Bail Act, 1982' (which was completed in May 1990).

Complaint was made by the Royal Association of Justices that police were interpreting the instruction in Section 3(1) of the legislation that a person be brought before a Justice 'as soon as practicable' as being 'forthwith'. The Association's comment on that state of affairs was:

> The Association believes its members should not be expected to be on call 24 hours per day and that no injustice would be done if those in custody after midnight were held until 7:00am that morning [p.4 Report].

This is clearly flying in the face of the stated aim of the legislation to facilitate the admission of a party to Bail and is an interesting observation on the Association's view of the fundamental tenet of British justice that a person is 'innocent until proven guilty'. The Committee reviewing the Bail Act did not think there was any need for clarification of the Section.

A further comment of interest in relation to the release of a party on Bail, was the Law Society's reference to the fact that the judicial discretion in respect of bail was sometimes exercised in such a way as to demonstrate that some courts see Bail conditions as a punishment in themselves (p.2 Report). The exercise of such judicial discretion was deemed to be outside the Terms of Reference of the Bail

Act Review. If Justices or other judicial officers are in fact imposing Bail conditions as 'punishment' then they are not discharging their duties properly.

The Royal Association of Justices further submitted to the Review that 'authorised officers' other than Justices only be able to consider Bail where a Justice is not available (p.7 Report). It was submitted that police involvement in the granting of Bail where allegations were made of brutality, etc., allowed for allegations of a conflict of interest. No change in the provisions of the Bail Act was recommended. The Bail Act is discussed in more depth in Section 5.9 of my report.

5.4.8 Aboriginal Justices

From advice provided to me, few, if any, Justices of the Peace had any contact with Aboriginal people after they leave the Bench. The view generally held was that it would be a good thing if Aboriginal people did become Justices of the Peace, that there must be Aboriginal people who were 'worthy' of the office (RCIADIC Transcript, Carnarvon, 1990:113). No Aboriginal Justices sit in the towns of Roebourne, Halls Creek, Fitzroy Crossing, but there is an Aboriginal Justice at Wiluna who deals solely with juvenile justice matters. There are also Aboriginal Justices in the Kimberley mainly involved in Courts convened to deal with transgressions against community By-laws.

In Esperance there was positive comment from the Aboriginal community about the need for Aboriginal Justices of the Peace. Conversely, in another area, an Aboriginal Justice was observed to be partisan, and to give harsh sentences.

One Aboriginal Justice of the Peace commented that she saw a lot of different people in Court. Aboriginal people were embarrassed to find her in Court because she: '... was Aboriginal too and there was an element of 'shame' in coming before (her)' (RCIADIC, Logan submission, 1990:4).

Additionally, this JP believed she was a useful resource and 'valve' and that she advised people they had options and that they did not have to plead guilty. She regarded it as important to 'mix' with people who would otherwise have no confidence in her (ibid:5).

5.4.9 Justices of the Peace and law reform

This section on Justices of the Peace has been a lengthy one. The issue of the power of Justices to sentence people to terms of imprisonment has been a running sore in this State for at least 20 years. Justices continue to sit and to sit alone in areas where the predominant group before them are Aboriginal people.

Of those who had died in custody many would have been sentenced to a term of imprisonment by a Justice of the Peace at some stage. The issue of Law Reform is canvassed here because of the need to revive the debate about the powers of Justices and the concomitant need to resolve the issue appropriately.

In November 1986 the Western Australian Law Reform Commission submitted a Report on Courts of Petty Sessions. This report dealt with a number of matters, the most important section of which, for the purposes of this section of my Commission, was that on the Justices of the Peace. In the report it was noted that

JsP in the metropolitan area deal with minor traffic offences and parking offences. In the metropolitan area Justices have ready access to Magistrates and Clerks of Courts for advice, but their powers are severely restricted. In rural areas, JsP deal with pleas of guilty and 'usually' adjourn 'not guilty' matters. Justices of the Peace in country areas are dealing regularly with the complex issue of sentencing defendants who are often unrepresented. They sit and determine sentence in guilty pleas in Albany, Broome, Bunbury, Carnarvon, Geraldton, Kalgoorlie, Northam and Port Hedland. For Aboriginal people this situation is compounded in that they frequently do not speak up for themselves in court. In routine Police Act matters, Justices perceive themselves as having only two sentencing options. These are a fine or imprisonment:

> ... we sentence them in accordance with the Acts ... and then they are given the option of a fine or imprisonment [RCIADIC Transcript, Carnarvon, 1990:344].

The sentencing options available under the Police Act are too limited. A Magistrate in discussion indicated that:

> ... in Police Act offences, you're confined to fining or imprisonment or dismissal under 137 and probation of course, and apart from that there is no provision for a bond which might be helpful in relation to Police Act offences ... [ibid].

The Law Reform Commission determined that the spread of Justices was disproportionate, that there were too many Justices overall, but that there were too few in country areas. It also determined that the primary function of a Justice should be to perform judicial duties. At the same time it was observed that:

> Difficulties have sometimes been encountered in obtaining support from justices for training courses - in 1986 one course was cancelled due to lack of support [p. 19 Report].

The Government has not implemented the recommendation by the Law Reform Commission that there be established a 'Justices of the Peace Council' which Council was to recommend appointments of JsP; 'develop a course of training and instructions for Justices and ensure that they are kept informed of developments in the law relevant to their duties and in particular, the sentencing principles laid down by appellate courts; develop a criteria for appointment of Justices; ensure competency of Justices; investigate complaints; and recommend removal of incompetents' (pp.19-20 Report). Justices are still nominated through the local Member of Parliament or Stipendiary Magistrates and reported on by police who interview referees and conduct a criminal record search (see Crown Law Department Response 2.2 to RCIADIC Question).

The Law Reform Commission recommendation that Justices undertake a training course within twelve months of appointment has been accepted in part by the Crown Law Department, and a Justice has eighteen months in which to complete the course (see Answer 2.4 to RCIADIC Question). This course is discussed earlier in this chapter.

The practice of ex-officio appointments of Justices of the Peace, namely of Mayors of towns or cities, Presidents of Shires was recommended to cease by the Law Reform Commission. This has not occurred and some of the Justices who attended the conferences were shire Presidents or Mayors of Towns/cities. The

continuation of this practice, particularly where Aboriginal people perceive themselves to be suffering institutionalised discrimination as the Equal Opportunity Board argued was the case in Roebourne (see Report) and as Aboriginal people argued was the case in relation to Porteous Street, Gnowangerup - can only have a tendency to bring the office of Justice of the Peace into opprobrium. The practice of ex-officio appointments should certainly cease. The Law Reform Commission report was also of the view that Justices 'rarely' conducted trials and did so only in 'minor cases' in:

> ... remote areas to avoid the inconvenience to the defendant if a matter had to be adjourned until it could be dealt with by a Stipendiary Magistrate [p.25].

It is arguably in these 'remote' areas where a court will deal with a preponderance of Aboriginal people. It is in Courts in these areas that Aboriginal people complain about injustice. Also in 1986 the Australian Law Reform Commission in its reference on Customary Law observed after much research and consideration:

> As soon as possible Justices of the Peace should be withdrawn from criminal cases, at least in areas with a high Aboriginal population and be replaced by qualified Magistrates [para 534, Volume 1, Customary Law Reference].

The ALRC suggested limiting Justices to the hearing of minor regulatory offences, traffic offences and procedural matters. Further it is acknowledged by the Western Australian Law Reform Commission that there are 'limits' to the matters which can be confidently dealt with by Justices. They lack knowledge of both the rules of evidence and the appropriate procedures. Justices also lack legal qualifications:

> Nevertheless, 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 [p.26 Report].

To use Justices of the Peace the Western Australian Law Reform Commission argues, results in the provision of justice expeditiously, avoiding long remands in custody for defendants. This last proposition is an acceptance of a situation about which Aboriginal people have been critical to this Commission, that is the refusal to grant ball or the imposition of unrealistic and onerous Bail conditions which results in Aboriginal people remaining in custody until their court hearing.

The Law Reform Commission did not, in 1986, recommend any change to the jurisdiction of Justices. My own Commission, however, regards the continuation of Justices' of the Peace jurisdiction in any court proceedings as extremely problematic. The power of Justices of the Peace to sentence people to terms of imprisonment has been the subject of a number of well-researched, reports and research articles.

Eggleston (1976:180) documents some instances of excessive sentencing by Justices of the Peace and concludes in relation to one incident that:

> prejudice on the part of the court seems to have been responsible for the excessive sentence ...

A suggested resolution of this problem was that there be a system of review of

Justices by Magistrates. This was suggested in 1976. The problem was raised again with my Commission in a country town in 1990 when a Magistrate advised that he had, quite by chance, discovered that a Justice had imposed a sentence which exceeded the maximum permitted by the legislation. The situation had been remedied but the Magistrate did not have any power to 'review' the decisions of Justices per se.

Eggleston (1976: 143) suggested that to overcome the problems of Justices of the Peace hearing cases:

greater control should be exercised over cases heard by justices. Legislation should restrict their powers as much as possible ... cases heard by justices should be subject to automatic review, either by the local magistrate or by a specially appointed officer of the Crown Law . The supervisory officer should consider the validity of the exercise of jurisdiction; whether convictions appear justified by the evidence recorded; whether sentences are invalid or appear unduly harsh.

Made in 1976 these suggestions remain valid today and are endorsed by this Royal Commission. Even before the suggestions made by Eggleston a report had been commissioned by the Department of Native Welfare (Western Australia) and completed by Dorothy Parker. This report was presented to the Department in 1972 but not made public until 1985. Parker believes that her report was not made public because amongst other things she was 'critical' of the judiciary, especially Justices of the Peace.

One of the recommendations made by Parker (1972) was that:

> the duties of a Justice of the Peace should be restricted to routine administrative areas. All criminal cases in lower courts should be heard by a Magistrate trained in law [Recommendation 13].

This recommendation was based upon Parker's observations of the way in which Justices of the Peace discharged their judicial duties.

The Martin and Newby study entitled 'Aborigines in Summary Courts in Western Australia' (1981:300) concluded that:

> Aborigines were far more likely to appear before Justices of the Peace than were white defendants.

Of their study sample, comprising all Aboriginal people, 32% appeared before one Justice of the Peace. This figure was almost wholly comprised of people appearing at Halls Creek. This study further concluded that:

> Justices of the Peace were more likely to use imprisonment as a penalty than Magistrates and less likely to utilise other non-pecuniary community based penalties ... [1981:303-304].

Martin and Newby (1984:305) commented that the 'criminal justice process is characterised by lack of uniformity and inconsistency which tends overall to produce a more detrimental impact on Aboriginal ... defendants ... they were; more likely to be charged; more likely to be charged with a nuisance offence against 'good order'; more likely to have their cases heard by Justices of the Peace. Justices Courts were associated with; less likelihood of legal representation; more

sentences of imprisonment. In addition, Aborigines are more likely to default on fine payments...'

It was concluded in the report of the Dixon Inquiry into the Rate of Imprisonment in Western Australia (1981:117), that Justices of the Peace used 'short terms of imprisonment more than was necessary' (p.26 LRC Report). The Dixon Report obtained comments such as the following from a Justice of the Peace:

> Then there is the situation with the Aboriginal women, sometimes I sentence them to imprisonment to help them in a number of cases ... to protect their welfare I put them inside for seven days. They get cleaned up and fed then.

The Committee of the Dixon Report on Imprisonment accepted:

> 'the submission there are some areas in the State where Justices have used short terms of imprisonment more than is necessary ... but there is no evidence to show any malice or racial discrimination ... Ironically, in most areas where the problem has arisen, the use of short terms of imprisonment has been imposed in an effort to assist the offender by obtaining treatment for him rather than from any desire to punish [1981:118-119].

One Justice sitting alone was found to impose penalties inconsistent with those of two Justices or a Magistrate. This is demonstrated in the criminal case histories of some of the people who have died in custody.

The recommendations of the Dixon Report included (1981:119):

- power to imprison for drunk to be removed;
- Justices not to sit alone unless the party so elected;
- Justices to continue to receive formal instruction.

Comment was made by a representative from the Crown Law Department, that:

> ... perhaps the time was not given to that Inquiry to ensure that the issues raised were acted upon [RCIADIC Transcript, Perth, 1990:383].

The Law Reform Commission conducted its own survey of sentencing practices in 1984. Out of all convictions reviewed, one Justice of the Peace sentenced 18.46% to imprisonment; two Justices sentenced 10.01% to imprisonment and the Stipendiary Magistrate sentenced 4.69% of people to imprisonment.

In all matters of offensive behaviour (p.27), including drunkenness and disorderly conduct, sentences of imprisonment were imposed in the following way: one Justice sentenced 20.00%; two Justices sentenced 14.79% and one Stipendiary Magistrate sentenced 6.2%. The figure for one Justice of the Peace reflects Halls Creek's imprisonment rates which, if excluded, reduce the percentage to 14.69%. (Almost 100% of the Halls Creek sentences would be imposed on Aboriginal people, a total of 39 offences.) In matters of other good order offences such as vagrancy, prostitution and gaming offences, one Justice sentenced 18.18%; two Justices sentenced 11.83% and one Stipendiary Magistrate sentenced 3.92%. In conference a Crown Law Department representative indicated that Justices of the

Peace sit alone:

> ... from time to time and possibly more often than (they) really should. It is sometimes difficult to obtain people that are ... in the remote areas prepared and suitable for appointment as Justice of the Peace to actually volunteer to do it [RCIADIC Transcript, Perth, 1990:70].

The WALRC survey further concluded that there was a tendency for Justices to impose more severe sentences than Magistrates. The figures are to be found on Page 28 of the Law Reform Commission Report and are as follows:

Length of imprisonment:

Court Composition	**7 Days**	**7-1mth**	**1-2mths**	**2-3mths**
1 JP	37.14%	61.43%		1.43%
2 JsP	57.14%	40.48%		2.38%
SM	78.26%	17.39%		4.35%

The conclusion reached by the Law Reform Commission after obtaining these figures was that it did not 'warrant a total prohibition' on Justices imposing sentences of imprisonment. There would be practical difficulties. A statutory limitation on the sentence which could be imposed was desirable because of the number of Supreme Court Appeals which were being litigated due to excessive sentences (1986:28). Financial penalties capable of being imposed by Justices were also recommended to be subject to statutory limitation because of the component of time served in default.

When the Justices wished to exceed their statutory limitation they would have to remit the matter to the Magistrate for sentencing. These were recommendations made to the Attorney-General and it was these matters which subsequently met with such opposition in Parliament. The issuing by Justices of Warrants was also raised and the criticism made that Justices did not appreciate the seriousness of a decision to issue a Warrant. The Law Reform Commission was not disposed to limit the powers of Justices in this area.

The Western Australian Law Reform Commission also raised the issue of jurisdiction of one Justice of the Peace sitting alone imposing penalties in simple offences, and indictable offences where no other Justice was within 16 kilometres; and where all parties consented to his/her jurisdiction. This situation had developed in remote areas where there might be problems in constituting a Court. It was clear from the Dixon Report and the Western Australian Law Reform Commission's own study that there was a tendency for there to be disparity in the sentencing practices of a Justice sitting alone (1986:42).

The Law Reform Commission thought one Justice should be able to sit alone in 'narrowly circumscribed' circumstances (ibid). The Law Reform Commission therefore recommended that one Justice sit alone only when another could not be found within 50 kilometres and all parties before the Court agreed (ibid:43). This recommendation has not been implemented (see Crown Law Responses 2.5 to RCIADIC Questions). It was recommended that a Justice should explain the situation to the defendant, and a Justice should have to certify the non-availability of another Justice. Whoever conducted the search for the second Justice would have to sign the certificate for that search. In 1986 the Western Australian Law Reform Commission suggested that where one Justice sat alone this be 'closely monitored'. The Crown Law Department's response to questions put by my

Commission on that issue was to indicate that there were 'periodic audits' of Courts of Petty Sessions and that:

> Where significant numbers of complaints are found to have been dealt with by one Justice, the Departmental Clerks report of [sic] such occurrences to the Director, Court Services [Answer 2.6, Crown Law Responses].

This is not an adequate response when there is a need to oversight a situation, especially where the Departmental Clerk of Courts may, in rural and remote areas, also be a local police officer.

At the time of the Law Reform Commission Report (1986:44), it was 'common' for a Justice to sit alone at 'Eucla, Fitzroy Crossing, Halls Creek, Nullagine, Roebourne and Wiluna'. Justices still commonly sit alone at those places where in all but Eucla the preponderance of defendants would be Aboriginal people and where, in all but Roebourne, the Clerk of Courts in these Courthouses is a Police Officer (Crown Law Responses, Schedule B). The situation in respect of Courts of Petty Sessions in Wiluna is documented in the report on the death of Robert Anderson; Roebourne is the subject of comment in the report on the death at the Sir Charles Gairdner Hospital. This is not to suggest that Justices do not sit at other centres such as Carnarvon, Geraldton, Broome and Kalgoorlie it is just more likely in those centres that they will not sit alone. It is of great Concern that in a Pilbara town such as Roebourne, surrounded by other major towns -Wickham and Karratha - one Justice still sits alone and that this is an accepted means of administering justice.

In respect of more serious matters such as indictable offences, Justices are able to sit alone in the usually sanctioned circumstances (no other JP within 16 km) and the Law Reform Commission recommended that this practice cease. My Commission is not convinced that this practice has ceased and endorses, in principle, the recommendations of the Law Reform Commission.

5.4.10 The Aboriginal Legal Service and Justices of the Peace

The ALS submission (1990:78) to the RCIADIC on the issues underlying deaths in custody remarks:

> The practice of Aboriginals being sentenced by Justices of the Peace in small towns has in the opinion of the ALS created a grave injustice.

The submission goes on to state that JsP are ignorant of the law, ignorant of Aboriginal custom, ignorant of sentencing principles. The ALS then cite a 1988 example of a JP sentencing an unrepresented juvenile in an adult jurisdiction -both jurisdiction and penalty being 'beyond the JsP jurisdiction'. The juvenile, sentenced on a traffic matter thought he had been convicted of assault. The ALS calls for the abolition of JsP jurisdiction to sentence offenders to any term of imprisonment.

The submission of the ALS to the Discussion Paper produced in relation to the Law Reform Commission Review of Courts of Petty Sessions, made the following comments:

1. Justices still conducted trials of matters in some country towns when a 'not guilty' plea was entered by the defendant. This should be

disallowed.

2. Justices should not be capable of imposing a sentence of imprisonment as their errors can only be corrected on Appeal to the Supreme Court.

3. Justices should refer the matter to a Magistrate and reman defendants on Bail as a right when they believe that a sentence of imprisonment is appropriate.

4. Justices powers to issue warrants for non-payment of fines should be limited.

5. Justices sitting alone should have no power to determine any complaints. Their only jurisdiction should be in the area of Bail.

6. Justices should have no power to imprison.

5.4.11 An attempt to limit the jurisdiction of Justices

In an effort to implement the Law Reform Commission recommendation to reduce the numbers of those imprisoned and the power of Justices to imprison people, legislation was introduced into Parliament in 1988. The Bill limited the period of imprisonment that Justices could impose to one month. It is of interest to note that Commissioner Muirhead, in his Interim Report for the RCIADIC, also recommended that JsP should not have the power to imprison.

The Opposition took the view that Justices were:

> ... picked ... for ... integrity ...
> ... pillar(s) of society ...
> ... people of real character and repute ... and that they
> ... play an enormous part in the building up of communities ... [WAPD, 1988:15411.

At least one parliamentarian was of the view that Justices of the Peace had not 'ever over-used their sentencing powers' (ibid: 1541). This is plainly not correct. It was pointed out that:

> ... there is not a need to put an arbitrary limit of one month on sentencing, because the Government is now introducing other ways of dealing with offenders [ibid].

If one of the 'other ways' was the decriminalisation of drunkenness, it is useful to have regard to the Law Reform Commission survey of 1986 which demonstrated that Justices of the Peace sitting alone, or together, still sentenced people to longer terms than Magistrates for minor offences other than drunk.

The National Party was concerned that the powers of Justices were being so undermined that they were becoming 'virtual ciphers' (p1543). Aboriginal people have observed to this Commission that they have long thought Justices were 'virtual ciphers' for the police:

> ... he Magistrates - you know they'll always say in court: well, I've gotta believe the policeman because, you know, they've gotta say the same thing [RCIADIC Transcript in confidence, Carnarvon, 1990:4471.

One Honourable Member went on to state that Justices did not 'willingly and knowingly' impose excessive sentences. That, of course, is not the issue. In response to criticism of the Bill, the Attorney-General stated that sentencing was a difficult area, not only for Justices, although Justices' problems were compounded by:

> ... the absence of professional training [and] the relatively limited experience which Justices have upon the Bench [WAPD, p. 15451.

These factors have resulted in Concern over a number of years and the 'demonstrated clear pattern of greater penalties by Justices than by Magistrates' (ibid) was a matter of continuing Concern. The Attorney-General, while asserting that there was a 'desirability for full-time, professional, judicial officers, where people's liberty is at stake', acknowledged that this had to be weighed against the practicalities.

In the Parliamentary debates it was averred that the Appeal process was not regarded as an acceptable 'fail-safe' mechanism for people who regarded themselves ill-used by Justices of the Peace. Factors mitigating against Appeal include: the cost, the delay and the removal of the heating to Perth, all of which were sufficient to discourage people from the recourse to that remedy.

The opinions expressed in opposition to this amendment to the Justices Act are encapsulated in the history of the case of Green v Josey (Supreme Court of Western Australia, Wickham J. (1970) WAR 70) where because a defendant was a nuisance to the town and frequently convicted he was sentenced by the Justices to the maximum of six months for 'being idle and disorderly' (i.e. habitual drunk). On Appeal, Green was successful and His Honour Mr Justice Wickham

> I have every sympathy for the police, the Justices and the people of Meekatharra in the apparently insoluble predicament in which they are placed by behaviour such as this, but in the administration of the law and in the sentencing of offenders, principle cannot he allowed to give way to expediency [p.72].

In the light of the Parliamentary debate and the successful opposition to the amendments to the powers of Justices, Aboriginal people have little to look forward to in towns where the Courts continue to he presided over by Justices with the full knowledge and acceptance of their limitations by the Government of the day. In my Commission's view, where there is perceived procedural injustice and, consequently, no guarantee of equal and basic constitutional rights to Aboriginal people, serious consideration must he given to alternative measures to redress such an injustice.

The next matter to be considered in this chapter, is that of Magistrates.

5.5 MAGISTRATES

There are presently seven Magistrates sitting in Western Australia who do not

have legal qualifications. However the Stipendiary Magistrates Act was amended in 1986 to preclude the future appointment as a Magistrate of persons not qualified as a barrister and solicitor. The Children's Court of Western Australia Act 1989 contains a similar provision. In conferences around the State, Magistrates made themselves available to this Commission and provided evidence on an 'in confidence' basis.

5.5.1 Training of Magistrates

A matter at Balgo concerning a transgression against a 'sacred site' resulted in a person coming before the Magistrate who asked the Community Based Corrections Officer why he should not imprison the man:

> ... it was the first Magistrate I have had ask me that and I say why should this man be punished twice for the same offence by ... people. He went back out there, he got punished and it is all over [RCIADIC Transcript, Broome, 1990: 104].

Magistrates, like Justices of the Peace, do not receive any training in the multiplicity of Aboriginal cultural imperatives. Some Magistrates have made real personal efforts to overcome this difficulty and they are to be commended for their efforts. The AIU Report recommends an Aboriginal person sit with Magistrates in Court, which might in some small way address this problem. Some Magistrates have done this in their circuit courts particularly in respect of Aboriginal Communities Act (1979) matters.

Magistrates indicated that they received no formalised training about Aboriginal matters. One Magistrate advised that:

> ... a person who comes out of Perth who's lived in Perth all his life, he just wouldn't have a concept of Aboriginal people ... that's a problem... [RCIADIC Transcript in confidence, 1990].

In another conference a Magistrate indicated that:

> If they're son of not appearing to pay attention to what you're saying, I might say: Well, look at me when I'm talking to you, or something like that to try and get home to them what you're saying because I always try and explain to them why I do things [RCIADIC Transcript in confidence, 1990].

I suggest that it is anathema to some Aboriginal people to look at the Magistrate as was required in this case even when such requirement is well intentioned.

Aboriginal people in the central desert area from Warburton through to Kiwikurra, when speaking to research staff of my Commission, constantly expressed anxiety that the Magistrate should, but did not listen to the people; should, but didn't have proper interpreters; should give offenders a chance; should not send old men to gaol as it is a 'shame' and 'hurts' their pride; should allow people time to pay off fines and allow them to work off fines in the community. Comment was passed that Magistrates come from the city and do not know a person's background. People did not have time to talk to the Magistrate in Court. 'It might not be justice but it's quick'. The questions are complex, some people wanted a hard Magistrate to deal with breaches of the Aboriginal Communities Act and some did not. It is

abundantly clear that there is a real need for Magistrates to be able to spend more time in discussions with Aboriginal people about the legal process and potential sanctions. There is no time for the necessary dialogue at the moment as Courts of Petty Sessions are stretched to the limit.

It was suggested in the Muirhead Interim Report (1988:21) that the practice in South Australia and the Northern Territory whereby Magistrates 'confer in the course of their work with Aboriginal leaders' had much to commend it. My Commission suggests that Magistrates who do not already adopt this practice should endeavour to do so. It appears to me that there is much to be gained by conferring with community leaders from discrete communities (incorporated or not under the Aboriginal Communities Act) about family conflicts that may require some form of resolution. Such consideration may prevent some matters from coming before non-Aboriginal courts. The procedures and protocols that community members see as appropriate to consider matters within particular jurisdictions, could usefully be investigated. It may even be possible for community mechanisms to be given some status in making recommendations to the court on serious matters, especially in relation to sentencing.

5.5.2 Aboriginal people and Magistrates

For a lot of Aboriginal people, English is at best their second language and it is clear in discussions that many Aboriginal people do not understand the Court procedures. In a large country town where the Magistrate frequently went on circuit to outlying towns, the comment was made that the defendants do understand the charge but not the result, and that the Magistrate would use the ALS for assistance, but not an interpreter.

Throughout the State, various comments were made such as the fact that some people who come before the court are clearly 'bewildered' by the experiences. They are also frequently more 'respectful' of the court than their white counterparts. Because some have lengthy police records it is obvious the significance of their 'offending' is lost on them and there is a sense of 'resignation' about the court procedure. Aboriginal defendants frequently say nothing when asked if there is anything they wish to say. One Magistrate advised that Courts of Petty Sessions are already overworked and that to explain everything to each defendant would result in the court becoming completely 'bogged down'.

When seeking to ensure a defendant understood the proceedings, one Magistrate indicated that he would stand the matter down until an 'interpreter' could be found:

> ... not a fully fledged from the interpreter service, more someone from his own group who understands the language and who is readily accessible to come to court and explain with the lawyer the present nature of the charge and the facts if need be [RCIADIC Transcript in confidence, Perth, 1990].

Such a comment is unclear as the Commission has been advised, by the Crown Law Department, that 'Generally the courts rely upon Commonwealth Government Telephone Interpreter Service personnel' (Answer 1.16 of Crown Law Department Response to RCIADIC Question).

Well intentioned as is the Magistrate's attitude to the use and obtaining of an interpreter, it leaves a lot to be desired when it is apparent that the interpreter may

or may not be sworn, may or may not be familiar with court process or fluent in the appropriate language(s). The South Australian legislation enshrining the principles of access to an interpreter in court is commendable. I understand it is presently the subject of review. My Commission strongly suggests that the Western Australian Crown Law Department enter into discussions with its South Australian counterpart with a view to adopting similar legislation and avoiding any pitfalls. It is of concern to me to have someone interpret the charge, and its gravity, as well as the whole proceedings.

When the Crown Law Department was asked to advise whether it was aware of the South Australian Evidence Act 1929 - 74 Amendment No. 107 of 1986, which provides for the use of an interpreter for witnesses and the provision of the Summary Offences Act 1953 (South Australia) Amendment No. 105 of 1986 which provides for the use of an interpreter during questioning by an investigating officer, the answer was 'no'. When asked for comment if any steps had been taken to adopt similar provisions in this State there was no response at all (Answer 1.20(b)).

There is clearly a complete failure to address the issue of Court interpreters for Aboriginal people in the State of Western Australia. This necessarily results in their partial or total exclusion or marginalisation from the-exercise of their rights to due process of the law. I examine this matter further in Section 5.10.

A further point of interest in this regard, is that Telecom Interpreter Services do not cater for Aboriginal language speakers in Western Australia.

5.5.3 Sentencing by Magistrates

Some magistrates expressed the opinion that people should not have been charged for being 'just drunk'. Invariably this Commission was told that Magistrates dismissed charges of drunk. Some Justices had been directed by their Magistrates to dismiss charges of drunk in the lead up to the gazetting of the Decriminalisation of Drunkenness legislation (see Chapter 19 for further discussion of this legislation).

Of decriminalisation, Magistrates generally held the view that it was a positive step and that the problem of provision of rehabilitation centres had to be addressed speedily. One Magistrate indicated that he had been careful to monitor the use of alternative charges after the legislation had been proclaimed. Programmes such as the 'Station' initiative were lauded by the Magistrates and it was suggested that people who undertook the Station programme did not come back before the Court. This Commission has heard Aboriginal criticism of the way in which offenders subject to these orders were:

(a) not transported to the Station

(b) not supervised at the Station

(c) a means of cheap labour.

One Magistrate indicated that he had struck cases where defendants did not wish to avail themselves of alternatives to custody and that this was a problem. Some were prepared to go to gaol rather than pay a fine.

5.5.4 Magistrates acknowledgement of social problems

Magistrates accepted that offending problems reflected social problems: 'whether it is breaking and entering ... or assaults or disorderly conduct or whatever' (RCIADIC Transcript in confidence, Perth, 1990).

The socio-economic plight of Aboriginal people was seen as promoting homelessness and visibility and therefore 'notice' by the police. One Magistrate thought it completely unrealistic to suggest that enough jobs could be created or were available for the number of Aboriginal people who were unemployed.

The alcohol-imprisonment-alcohol cycle was the subject of comments, but Aboriginal people were regarded by Magistrates as having 'offended' before coming to the notice of the police. There was no suggestion by Magistrates that they believed the police were discriminatory in their arrest practices. Contrast this with what Aboriginal people told this Commission, which was that they did not 'offend' or if they did they were arrested when others committing like 'offences' were not.

5.5.5 Juvenile Justice and Magistrates

Juvenile justice was an issue upon which Magistrates were more likely to comment than Justices of the Peace. Alcohol was seen as the prime-mover in most juvenile offending. Children as young as 13-14 years were seen as alcohol users. The lack of discipline of children was generally regarded by Magistrates as a problem for juveniles resulting in 'offending' behaviour.

5.5.6 Magistrates attitudes

Magistrates, unlike many JsP, did not use any of the more offensive terms of 'coloureds', 'natives', etc., and were not generally negative in their comments about other agencies, 'do gooders' or Aborigines being racially incapable of work. In this they did not reflect some of the more racist attitudes of Justices of the Peace. They were, in the judgement of this Royal Commission, more professional in their attitude to the people who presented before them charged with offences.

Of the Aboriginal Legal Service, they stated the Services were 'overworked' and that field officers did not always know the legal issues, and were sometimes thrown in at the deep end. There were good hard working field officers and solicitors in some towns, and there were said to be good relations between the ALS and the police in some areas.

5.5.7 Magistrates and Bail

Magistrates were clearly better informed about the application of the Bail Act than were the Justices of the Peace. Police were said to be 'over-anxious' to release people on Bail since deaths in custody had become an issue and they consequently called the Magistrate in at odd hours. They also stated that there did

not appear to be any breaches of Ball provisions for the purpose of rotting the meals allowance system (see Section 5.16 of my report), and that juveniles who were mobile between homes were considered to be a Bail problem. One Magistrate commented that the Bail Act lacked teeth for the purposes of enforcement. This was a minority view. The Bail Act was seen by other Magistrates as a positive step allowing for (a) Bail to be extended without the presence of the surety (b) a reasonable excuse for failing to show up at Court.

5.6 SUPERIOR COURTS

My Commission has been advised of one major problem in relation to appearances of Aboriginal people before superior courts. That is, circuits are so infrequent that Aboriginal defendants charged with indictable offences who have either been refused Ball or have had Bail conditions set in terms with which they are incapable of complying, can often wait for a considerable time on remand pending their hearing. Sometimes circuits are cancelled due to 'lack of demand'. While defendants are on remand they are classified as maximum security prisoners. The following provides an insight:

> Court sittings are arbitrarily changed from say, Karratha to Port Hedland. People don't have the transport [RCIADIC Transcript in confidence, 1990:361].

Given the above, my Commission believes that serious consideration should be given to ceasing the practise of classifying remand prisoners as 'maximum security' risk. Prisoners on remand have not been found guilty of any offence, and have not been 'sentenced' to any term of imprisonment. To classify them as 'maximum security' is totally unjust. While defendants wait on remand at prisons such as Broome and Wyndham, the conditions under which they are kept are unacceptable (RCIADIC Transcript, Broome 1990). Commissioner O'Dea is of a similar view concerning conditions in these areas.

Comment has also been recorded in conferences that:

> ... with the higher courts, particularly the Supreme Court, they more than the Magistrates Court perhaps, take into account any retribution the individual offenders would suffer when they return to communities. That is probably when they are dealing with the more serious offences [RCIADIC Transcript in confidence, 1990:1061.

However, in another region, the situation is quite different:

> One of the problems we do find quite constantly is that with sentencing authorities, judges coming up from the District Court, Supreme Court, that we have - I suppose you have a reasonable turn-over of judges and you can never be clear whether one judge is going to accept a tribal punishment as adequate or sufficient punishment or he will just ignore it or she will ignore it totally. I have found there is quite a differential amongst the judges and there does not seem any clear cut role that they take. You will detail what punishment has already occurred for someone who is involved in an assault and they will take that and say - okay, well I will impose no further punishment, or they will say: I will gaol them for five years. There does not seem a rational approach to that (and it is) ... a bit

> of a 'lucky dip' as to which Judge sits in Court [RCIADIC Transcript in confidence, 1990:360].

This may be a problem of judicial discretions and a lack of a developed jurisprudence in relation to Aboriginal defendants before the superior courts, but it may also be attributable to the differences in cases which come before the Courts.

5.6.1 Superior Courts and the Aboriginal Legal Service

The ALS raised the issue of the lack of suitable remand facilities for prisoners in the Kimberley area. In the Pilbara and Albany areas the ALS expressed Concern that the Crown Law Department and the Judiciary had unrealistic expectations of the role, function and resources of the ALS (ALS Submission, 1990:32-34).

Counsel in superior courts were said to show no insight into problems confronting Aboriginal witnesses, into culturally acceptable forms of address of dead people and other customary matters (ibid:46).

My Commission suggests that to address the need for legal education on Aboriginal issues there be included in training courses at universities in Western Australia, a component on Aboriginal people and the Law and that this course be made compulsory. It is also suggested that the Law Society invite speakers to address gatherings of Lawyers on Aboriginals and the law. This Royal Commission recommends that there be established a Committee of Crown Law representatives including Crown Counsel in criminal matters, and ALS representatives to discuss the problems which have arisen in relation to Circuits of Superior Courts.

5.7 JUVENILES AND THE CRIMINAL JUSTICE SYSTEM

While the matter of juveniles will be dealt with in later sections (see especially Chapters 6 and 10) of my report, the following examines some concerns regarding juveniles and criminal justice. Commissioner O'Dea's regional report also addresses the issue of juvenile justice, especially that of interviewing juveniles.

Juvenile Justice issues have been the subject of considerable debate in the W .A. community in recent times, and the matter is discussed in several later sections of this report. Police Commissioner Brian Bull, however, in conference with this Royal Commission was most 'concerned' about the adverse reporting of juvenile matters. He went on to say:

> I don't agree that the youth in our community are any more lawless than they ever have been before. In fact, I think the contrary. I believe that it is largely a more minority group within our youth. I believe that our youth at the present time are more responsible than they have ever been before. They're more concerned about their education, their future, and certainly we have found this by our work with youth ... not only in schools, but ... in other areas such as police and citizens Youth Clubs ... which cater for thousands and thousands of juveniles statewide ... so I don't agree that there is a particular crime wave in regard to juveniles [RCIADIC Transcript, Commissioner Bull, Perth, 1990:604].

This assertion is also made in other regional areas where police officers have

suggested that the 'offending' is by a small core group of juveniles. For instance, in Geraldton there has allegedly been a considerable increase in crime in the last twelve months leading up to April 1990 (RCIADIC Transcript, Geraldton, 1990:239) of which a 'considerable amount' was juvenile crime. In Northam, the police reported that the 'biggest majority' of the recent crime had been allegedly committed by juveniles (RCIADIC Transcript, Northam, 1990:8).

What is interesting about those two towns is the community effort being made to address the 'juvenile crime problems', and the resourcing problem they are confronting. In Geraldton we were told there was an urgent need for more Aboriginal street-worker staff and that the Street Worker programme lacked Government funding or commitment (RCIADIC Transcript, Geraldton, 1990:486).

One Aboriginal participant at a conference in Geraldton stated:

> Why can't we not have more Aboriginal resource workers within this town. I mean, I could probably go to Welfare, but we find with so many other things they just don't think they have to answer that question ... [ibid:496].

In Northam, we were told that although there are Government premises vacant in the township, which would be suitable for the Youth Outreach programmes, these have not been made available. A vast amount of money is being expended on rent for disused commercial premises ($6,000) when there arc 'empty Government buildings around (the) town' (RCIADIC Transcript, Northam, 1990:217).

Government departments advised my Commission of their commitment to juvenile issues, but in practice the avowed policies are not filtering through to ground level. The Department for Community Services and its Legislative Review Committee are concerned at the rate of involvement of Aboriginal children in the criminal justice system and believe that the rate of custody 'is inordinately high' (Correspondence from Department of Community Services to RCIADIC, dated 27 July 1990).

As was said in Geraldton by one Aboriginal participant 'if you've got the expertise and Aboriginal ... they're not getting to the grass roots people. They're getting to the middle class, where they can manage their own affairs' (RCIADIC Transcript in confidence, Geraldton, 1990).

The lack of facilities, resources, and perceived lack of commitment of Government agencies results in hostility and despair amongst juveniles on the street:

> and we get the same old cat cry, saying, 'Ah, but the parents don't care.' They really do care [ibid].

People do care about the youth and are doing what they can with limited resources. The assertion that parents do not care about juvenile offending came up time and again in conference (RCIADIC Transcript, Carnarvon, 1990:120). That assertion was often followed by the statement that the juveniles themselves do not care, they go to court, show no emotion, but as one person put it:

> I think they prefer not to go, to be sent away, or put away, but they've just got this don't care attitude [RCIADIC Transcript, Geraldton, 1990:489].

The Equal Opportunity Commission (EOC), in its Review of the Department for

Community Services, makes a number of observations about juvenile justice issues, commencing with comment about police preference for arrest rather than the use of summons for Aboriginal children. The Equal Opportunity Commission also advised this Royal Commission that the Department for Community Services has always 'officially denied' the repeated assertion of Aboriginal people that they are not notified about the arrest or questioning of children. Further the EOC observed that the issue should be the subject of a 'Departmental investigation and follow-up action' (EOC Submission to the RCIADIC, 1990:35). The EOC also notes in their report that the belief that such neglect of duty does not occur in respect of non-Aboriginal juveniles might suggest discrimination against Aboriginals pursuant to Section 36(1) of the Equal Opportunity Act.

In the Review the Equal Opportunity Commission further suggests that it would seem that penalties imposed at the Children's Court are discriminatory against Aboriginal children. Contrast this with the Police Union view deposed to in conference with this Royal Commission, which was that Aboriginal children had a most favoured status in the Children's Court.

Bail conditions such as the requirement of a surety imposed at courts and by police allegedly result in Aboriginals not being let to Ball. Donald Harris had remained in custody as a result of being unable to obtain a surety for Bail. Additionally, access to 'lower order' sentencing options was limited for Aboriginal juveniles, as:

> (I)t was claimed that in country areas, JsP were often prejudiced against young Aboriginal offenders and that, as they reflected the views and attitudes of their local communities, they tended to impose custodial sentences rather than seek non-custodial options aimed at keeping juveniles out of institutions [Equal Opportunity Commission submission to RCIADIC, 1990:36].

It was asserted in the Equal Opportunity Commission Review, that because the DCS failed to consult with families of juveniles, court decisions were often inappropriate. Court decisions in the country were observed to be disparate. Comment was made to the Equal Opportunity Commission Review that JsP were 'ill equipped' to dispense justice to Aboriginal people. They had inadequate training or lacked awareness of Aboriginal issues (ibid:39). The matter of JsP is discussed earlier.

5.7.1 History of Children's Court

Taking the Children's Court in its historical context the following statements were made during the RCIADIC's Juvenile Justice conference in Perth. It seems that until December 1989, the Children's Court was run by the Department for Community Services or its precursors. 'the Department of Community Services essentially was everything to everybody, I suppose' (RCIADIC Transcript in confidence, 1990:186). In my view, that Department certainly was the singular most active repressive Government agency of Aboriginal people, after the abolition of the Department of Native Welfare. The Court could only order a child be placed under the care of the Department; an order such as that 'is no longer available. It was thought to rest too much administrative discretion in Departmental officers' (RCIADIC Transcript, Juvenile Justice, 1990:87).

Orders were regarded as just recommendations so the system whereby 'the Department could release children from imprisonment contrary to the orders of the court, has been altered;' (ibid:88). The Department for Community Services appointed the Magistrates, supplied criminal history records, welfare reports, and ran the detention centres.

5.7.2 Justices of the Peace and the Children's Court

Detailing the operations of the Children's Court were beyond my scope to fully inquire into, but as Aboriginal juveniles appear in the Court on a regular basis, some consideration is necessary. My Commission's view is that under the present sentencing structure, Magistrates and the Judge have certain powers. Other members do not have power to make any detention or custody orders. They can, it appears, remand and grant or refuse bail. If there was less pragmatism and more qualification, supported by resources, it appears these members may not even have those powers. It is hard to know whether the powers are misused or not, but on some consideration, there certainly may be temptation to do so.

When Aboriginal juveniles spoke with me about these matters, they commented that, in their view, Justices of the Peace, who were mainly non-Aboriginal people, were generally on the side of the police.

5.7.3 Those who died in custody and juvenile justice

The issue of juvenile justice has been a major thread throughout the cases of deaths in custody. Twenty-four of the thirty-two deceased had appeared in the Children's Courts and were convicted of various offences and nine were detained in institutions as a result of orders. The degree of institutionalisation as a result of these experiences varied but in some cases such as Paul Farmer, Graham Walley and Hugh Wodulan, it was a cause of major concern. (See also Wongi, Steven Michael, Kim Polak, Robert Walker.)

A number of the deceased came into contact with the criminal justice system at early ages: Charlie Michael (12 years old), for dishonesty; Robert Walker (12 years old) for theft of three bottles of milk and motor vehicle offences; Christine Jones (14 years old) for disorderly conduct; Wayne Dooler (13 years old) for unlawfully on curtilage; Paul Farmer (10 years old) for breaking, entering and stealing; Sir Charles Gairdner Hospital Case (16 years old) for stealing two blocks of chocolate for which he was sentenced to 1 month gaol; Hugh Wodulan (15 years old) for breaking, entering and stealing; Bernie McGrath (10 years old) for break and enter; Kim Polak (12 years old) for unlawful use of a motor vehicle. This list is not inclusive of all the case histories.

It is acknowledged by many commentators on the issue of juvenile justice that a large number of children:

> have other problems and they are what lead them into Court. I cannot help but think that their perceptions of the inadequacies of the court system, the lack of independent treatment that they get from the system, impacts on their whole attitude to society in general [RCIADIC Transcript, Juvenile Justice, 1990:30].

Certainly it is evident that many of the deceased who had early brushes with the criminal justice system went on to develop extensive arrest histories. (See in particular reports on Steven Michael, Robert Walker, Graham Walley.)

The initial interaction with the criminal justice system is then compounded by 'displacement' as was the case in the three cases referred to above which is a reason for offending.

> some Aboriginal people simply don't belong anywhere for various reasons [RCIADIC Transcript, Kalgoorlie, 1990:72].

5.7.4 Arrest compared with summons

At the Juvenile Justice Conference it was commented to both myself and Commissioner O'Dea:

> It's a fact that we use arrest much more than they do in some places and that brings kids into remand ... kids are ferried up and down and round about.
>
> I think we overuse arrest and remand in the metro area compared to other places by a fairly wide margin [RCIADIC Transcript, Juvenile Justice Conference, 1990: 109].

It was also stated that:

> In some jurisdictions there are all sorts of limits that we don't have for instance, arresting children. You can't arrest people under 14. There are limits on what age you can lock people up. There are a lot of legislative provisions in various jurisdictions that do not exist in this jurisdiction [ibid: 132].

One of the ALS solicitors at the Juvenile Justice conference was of the opinion that:

> I think it is the police policy to pick up and question children who they see walking around, which leads to creation of offences [ibid:65].

5.7.5 Detention of juveniles

The cells at the Children's Court are 'unsavoury'. The East Perth Lockup is reportedly still used for children or youths who are arrested on the weekend. This occurs if they are not or cannot be bailed and if Longmore is overcrowded (RCIADIC Transcript, Juvenile Justice, 1990: 125). It has alarmed me to learn that youths 'often' spend the night in custody when arrested, and there is no provision for weekend court.

5.7.6 Bail Act and juveniles

The point was made that the Bail Act is more effective now than it would have been in the past. However, remands of children for minor matters result in them

remaining in custody in the country when:

> if they were remanded for those offences in the metropolitan area they would not be in custody. We are talking about unlawful use of motor vehicle charges, break and enters in commercial premises, so there is no physical injury or physical danger to individuals... [RCIADIC Transcript, Juvenile Justice, 1990:15].

Bail conditions are seen as being 'excessive'. One solicitor referred to the obtaining of Bail as having:

> ... to plead with the Magistrate and throw in a few extras like reporting conditions, curfews - like Dianna and the golden apples [ibid:351.

5.7.7 Police role at Children's Court

From my inquiries, there appeared to be a practice in the Children's Court where the police would go behind the counter, in public view, for administrative purposes. The reason for this, I understand, is that the staff are overworked. I also understand that, under the present system, police are not allowed behind the courts while members of the public are in the building. It is difficult to discern how peoples perception of justice is not contaminated by such an action. This becomes even more problematic and serious when the police officer is court orderly, and police run the detention centre. It is not difficult to see that Aboriginal youth would despair of justice being done, and of their believing the police have more power than the court.

5.7.8 Access to material on police files

Legal representatives of children made the point that they were denied police 'facts' on cases in the Children's Court:

> if a prosecutor doesn't feel like being helpful with the particulars they can make it difficult [RCIADIC Transcript, Juvenile Justice, 1990:93, 17, 20, 22].

Judge Jackson has not issued any direction about this practice but relies upon police co-operation. There is a belief amongst solicitors that he has issued a practice direction, but this appears not to be the case. The problem was seen as solved by getting the police to read the 'facts' out. With the greatest respect there should be independent prosecutors in the Children's Court, and there should be Rules of Court to cover the situation. Rules can be made in the Children's Court pursuant to Section 38 of the Children's Court of Western Australia Act (No. 2) 1988. This Royal Commission suggests that urgent consideration be given to the establishment of Rules of Court to cover such matters as the provision of police 'facts'.

5.7.9 Solicitors

Some children continue to be unrepresented in the Children's Courts (RCIADIC Transcript, Juvenile Justice, 1990:17). It was suggested by various solicitors who

attended our conference that an unprofessional ethos pervades the doling out of justice (see also RCIADIC Transcript, Juvenile Justice, 1990:13; and also ALS and Youth Legal Service comment). Further, the comment was made that:

> The system has changed. The Judge is trying to make it act like a proper court but the attitude is still the same ...
>
> For a start we need more lawyers if people are going to be represented and not treated like the old welfare system where if anyone says anything you are locked up for your needs, not your deeds... [RCIADIC Transcript, Juvenile Justice, 1990:21].

The Legal Aid Commission of WA's Duty Solicitor advised that instructions from children are:

> taken ... standing up against the wall in custody surrounded by about three police ... [RCIADIC Transcript, Juvenile Justice, 1990:63].

There are apparently proposals for a new Children's Court building in Perth, and my Commission supports the establishment of a new Children's Court building, and urges the State Government to attend to this issue.

5.7.10 Police Union comment on the Children's Court

Comment has also been made that the Children's Court is an 'absolute joke in relation to the way in which its treatment of juvenile people and the problems that there are there' (RCIADIC Transcript, Police Union, 1990:782). It was further stated that the 'Chairman' of the Children's Court:

> in the view of this Union favours Aboriginal kids and in fact the prejudice is now firmly placed in the minds in the rest of the community against the Aboriginals who are receiving favourable justice or lack of justice... [RCIADIC Transcript, Police Union, 1990:785].

It is unfortunate that the Police Union representatives were not more helpful in addressing the real problems faced by this Court, and the juveniles who come before it and who find themselves overpowered by police officers at its sittings.

My Commission takes the view that the cautioning system should be imposed immediately; the requirement of restitution be removed as a prerequisite for a 'Panel' hearing; no child be interviewed by police without an independent adult being present; no child appear in Court unrepresented; the Judge of the Children's Court immediately establish a 'Rule of Court' that police facts be provided to solicitors at Courts; no JsP preside over children's court matters or sit on Bail hearings for a child.

The whole range of juvenile justice issues will be addressed in other sections of this report (e.g. see Aboriginal youth in 6.11). The report of Commissioner O'Dea also addresses this issue.

5.8 SENTENCING

In this section, I will only canvass sentencing issues that have been raised repeatedly or which immediately impact on Aboriginal people and/or communities. It is the task of Commissioner O'Dea to focus in a more detailed way on sentencing matters.

5.8.1 Muirhead's recommendations on sentencing

Western Australia, has, since receipt of the recommendations of the Interim Report of this Royal Commission, legislated to enforce the principle that imprisonment should be the sanction of last resort in sentencing (see Criminal Law Amendment Act 1988 which came into force in 1989). This enactment emanated from Government concerns to reduce the rate of imprisonment. Reasons for wanting to reduce the imprisonment rate included the determination to reduce the numbers of deaths in custody. A not inconsiderable consideration would also have been the cost of maintaining people in prison and juvenile detention centres. Interestingly, government sources revealed that in 1987 it cost $1,200.00 per week to maintain a juvenile in remand, and in 1990 it costs $113.00 per day to maintain an adult in custody.

A number of initiatives to divert adults/juveniles from the custody option have been established in this State, in an effort to give support to this principle. However, it concerns me that community attitudes are not in line with those of the legislature and, in a number of rural centres, my Commission has been told that sentencing options are regarded as being too lenient and that Aboriginal people are, in particular, the beneficiaries of this policy. This attitude pervades metropolitan as well as rural areas but has been most often asserted in rural areas. The Police Union in conference with this Royal Commission was overt in its criticism of sentencing practises, stating that Aboriginal juveniles are treated most leniently by the Children's Court (RCIADIC Transcript, Perth, 1990:785).

One solicitor told my Commission about sentencing in remote areas:

> ... even if all the programmes were put into place ... the Magistrate who was up there would take a different view of things. There would still be as many going into custody [RCIADIC Transcript, Juvenile Justice, 1990: 15].

So the exercise of judicial discretion remains a problem. We were told in a rural area by a non-Aboriginal participant to a conference that:

> ... one of the things that could be done is that a number of the penalties that are available to court, for some - quite a number specified that there is a $500 fine or gaol - or three months gaol, or $200 fine or 6 months gaol. And a lot of those offences do not - should not warrant a gaol term at all, and what they could be looking at is, say, a $200 fine or a 30 hour community service; or a $100 fine or a 20 hour community service order.
>
> And I think we have got to look at what the penalties are that are available to Magistrates because I think just straight out discouragement of Magistrates from using the gaol option does not always work. I think you have got to take away some of those options from them, particularly the ones like disorderly conduct [RCIADIC Transcript, Roebourne, 1990:364].

Retrospectively, the above comment reflects debate in the Legislative Council of

Western Australia on 23 November 1938 when the Chief Secretary (Hon. W.H. Kilson) argued to convince the members of the necessity of inspecting and licensing missionaries. The diversionary programmes set up by the Department for Community Services have been described to me as being better scoped for non-Aboriginal juveniles, than for Aboriginal juveniles. In my view, it is not just a matter of competition, but of the broader community coming up with better alternatives and options for magistrates to consider. There needs to be more community effort on matters such as these, otherwise community members lapse into the easy option of 'lock them up and forget'. This approach, in my Commission's view, only contributes to juvenile offending. It is not so much that sentencing options in the legislation are too limited, it is the lack of sentencing options on the ground which falls to provide choices.

Mr Michael Lees the Director of the Legal Aid Commission of Western Australia in their submission to the RCIADIC made the following comments on imprisonment as a sentence of last resort:

> Community Service Orders are not realistically available in Aboriginal communities and are very rarely used by the Courts. Work and Development Order in lieu of fines are also unavailable in many regional centres and this, to my knowledge, gives rise to a large amount of Aboriginals imprisoned in default of fines.
>
> There are difficulties of course in using non-custodial sentences on people with little knowledge or understanding of the effect of those orders. It can sometimes be a disservice for a Court to place a tribal Aboriginal (for instance) on a period of probation, and order him to perform community service, insofar as it is unrealistic to expect him to complete that non-custodial term either without re-offending or without breaching any other term of the probation or community service order. That can, as noted, give rise to an increase in the incidence of offenders being placed in custody having breached the non-custodial terms ...
>
> Probation and Parole services are scarce in outlying areas and again special needs should be looked at [LACWA Submission, dated 7 February 1990].

There is a need for alternatives to imprisonment to be sensitive to cultural imperatives, sensitive to regional issues, but fundamentally there is a need for such alternatives to be available. The comment can thus be made that although the principle of imprisonment as a last resort has been given legislative sanction, the reality falls short of expectations.

The second recommendation of the Muirhead Interim Report, that amongst other things, a defendant's means to pay be considered when 'assessing the appropriate monetary penalty', is said by the Government in a paper providing 'Commentary on Implementation of the recommendations contained in the Interim Report of the RCIADIC by Western Australian Government agencies', to have been implemented by the Community Correction Centres Act 1988, which:

> provides an automatic alternative to imprisonment for non-payment of fines [p. 1 Commentary].

Strictly speaking however, the alternative scheme is not 'automatic' because it has been described by a Crown Law Officer, to my Commission, in the following way:

> the penalty that has been imposed is a fine. In most cases, the default in payment of the fine is imprisonment. In some cases, that can be ordered execution against goods. The alternative to imprisonment is a work and development order. The legislation is quite clear in that the work and development order is not an alternative to the payment of a fine unlike it is in the Northern Territory and certainly unlike in other countries where they have a fine option programme.
>
> Ours is not a fine option programme: it is an option in lieu of imprisonment. I think we have got to be quite clear on that distinction. I would not want to comment on the desirability of one against the other, but that is the very reason why we do not contain it as an option to the payment of fines [RCIADIC Transcript, Crown Law, 1990:385].

The Western Australian scheme is therefore not an automatic fine conversion scheme. Legislation in Western Australia does not enshrine the principles of fines reflecting means to pay, as is the case in the Victorian Penalties and Sentences Act, Section 65, which reads:

> S65(1): If a court determines to impose a monetary penalty on an offender in respect of an offence, the court, in determining the amount of the monetary penalty, must take into consideration among other things the financial circumstances of the offender ...

We were advised in conference (RCIADI) Transcript, by a representative from the Crown Law Department, 1990:383) that:

> The principle of the means to pay is something that the courts ought to take into account ... it is a principle, but how it can be assessed as actually occurring is really a matter for observation I suppose ... It is not monitored ... [ibid:384].

In Western Australia, 'means to pay' is a matter which 'ought' to be taken into account. In the Victorian legislation the requirement is that means to pay 'must' be considered. One other feature of the Western Australian scheme of Work and Development Orders imposed in default of payment, is that the minimum term is 14 hours. That minimum applies whether a person is fined $20.00 or $175.00, and:

> ... some people choose a day's default in prison for the non-payment of a $20 fine than to do 14 hours over two days in a weekend and during the week [ibid:386].

Aboriginal people will frequently be fined for minor matters. The sums of money, although always difficult to raise, will be at the lower end of the scale and therefore amongst the number which it is not necessarily attractive to convert to Work and Development Orders. It is only upon the final notice in respect of non-payment of a fine that a person receives advice about alternatives which include extensions of time to pay, instalment arrangements, work and development orders.

The policy of the Crown Law Department is:

> if a fine is imposed, then we do all that we can to ensure that that penalty is paid rather than the option ... [ibid:384].

It is the view of my Commission that in respect of the scheme presently operating, more should be done to advise people of alternatives to imprisonment for fine default. Aboriginal people frequently 'cut out' warrants for non-payment of fines. Of those people who have died in custody and are the subject of this inquiry, fifteen are known to have served time in custody for default of payment of fines, Ginger Samson serving 47 such periods in default, Stanley Brown serving 20, Misel Waigana 9, Roy Walker 8, Faith Barnes 6 and Nita Blankett 6. Four of those who died in custody, namely Bobby Bates, Christine Jones, Kim Polak and Donald Chatunalgi were serving periods of default at the time of their death. Only one of these people died of hanging, namely Christine Jones. The 'cutting out' of fines is a perennial problem, noted by all who are involved with Aboriginal people and the criminal justice system.

> The Western Australian Prison Officers Union of Workers, recognises that the large number of Aboriginals in prisons serving out fine defaults is a serious problem [p. 10, Prison Officers Submission and RCIADIC Transcript, Perth, 1990:909].

The Western Australian system of fine default alternatives was commented upon by Commissioner O'Dea in his Report on the death of Misel Waigana and was also the subject of comment in evidence in the Wodulan case. He comments upon the issue in the context of the Decriminalisation of Drunkenness. It has frequently been the subject of comment to this Royal Commission that people are not able to convert fines at a police station after arrest or warrant. Commissioner O'Dea similarly comments. This situation is to be addressed shortly in the Western Australian Parliament and an amendment is to be made to the Acts Amendment (Community Corrections Centres) Act 1988. That is commendable. However, that is not the only difficulty with the scheme in operation in Western Australia and Commissioner O'Dea observes, as this Commission has done, that:

> the scheme is best adapted to people who have 'substantial default periods to serve' (p.45) (ie not offenders with small fines for offences like a street drinker).
>
> the scheme does not therefore provide incentives to offenders as the commitment required under a Work and Development Order exceeds the amount of time which can be served in default in a police lockup.

Commissioner O'Dea promotes the alternative scheme adopted in the Northern Territory:

> which 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: 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 those offenders who would otherwise have been arrested to serve default in a lockup rather than a prison [p.46].

My Commission recommends that urgent consideration be given to the enactment of a Penalties and Sentences Act and that a provision as to 'means to pay' be

incorporated into such an Act. Further, that the number of hours to be worked subject to work and development orders be reduced and/or that there be adopted a scale of hours per amount of fine.

I suggest that the present Western Australian scheme in respect of fine defaulters, be abolished, and replaced with a scheme modelled on that of the Northern Territory. Further I suggest that in the interim, all documents sent to offenders after fines have been imposed, clearly state the alternatives to imprisonment for non-payment of fines and that a positive onus be placed upon Magistrates, Justices and Clerks of Court to explain the situation to offenders. There should also be serious thought given to an amnesty period for all fine defaulters who currently have outstanding warrants. (See also Section 5.14.4 regarding a proposed amnesty in relation to offences against the Motor Traffic Act.)

5.8.2 Community Based Corrections

The Community Based Corrections programme was established to administer probations, work and development orders, early release and community service work and parolees, and also to provide advice on sentencing at courts. Officers of the Community Based Corrections advised this Royal Commission that communication and understanding is a perennial problem. People from the Western Desert area who speak English as their second language often have problems:

> We still get people coming in to us asking can we cash their Social Security cheque ... what has happened to their 15 year old child who appeared in Court ... [RCIADIC Transcript, Roebourne, 1990:370].

People working for Community Based Corrections in remote areas work in isolation and are difficult to attract to the work. Some of the non-profit communities utilised for supervision of people on Community Based Corrections programmes are reluctant to assume the responsibility of enforcing orders and it is preferred that Community Based Corrections Officers provide directions when supervision is not working. This is the result of fear of upsetting people and reflects some cultural obligations. There are also problems that some communities are not really equipped to assume the responsibilities inherent in the discharge of duties of supervision. One Community Based Corrections Officer told the RCIADIC that:

> Without criticising those people, depending on what surname you have in some community, really is a determining factor on how much you can get away with [RCIADIC Transcript, Broome, 1990:91].

The hardest place to know whether there had been compliance with Orders was on communities, because of remoteness, and a failure to record hours (RCIADIC Transcript, Roebourne, 1990:358). This was a particular problem when a community was working on a CDEP programme and Community Service Orders had to be undertaken after ordinary hours of work (ibid:97).

> There has been talk in some communities of only paying a person say, for the morning under a CDEP and for the afternoon have them work with the - on the same project, the CDEP project for instance. But have the afternoon hours credited to the community service order and the CDEP money withheld [ibid:98].

Community Based Corrections involvement with elders and family members is being explored in the Pilbara as well as in the Kimberley (RCIADIC Transcript, Roebourne, 1990:363). And in Broome, Milliya Rumurra is used extensively for alcohol counselling for parolees.

> ... the majority of people would take advantage of (Milliya Rumurra) for legitimate reasons, the problem being though once they are released from Milliya Rumurra, there is really very little in terms of follow-up work that is done with these people. We are certainly not qualified or equipped to provide counselling in terms of alcohol abuse as the professionals are [see RCIADIC Transcript, Broome, 1990:100; RCIADIC Transcript, Roebourne, 1990:369].

Community Based Corrections staff at Roebourne felt there were difficulties in using Milliya Rumurra because people felt 'culturally isolated' and the success rate was quite low (RCIADIC Transcript, Roebourne, 1990:367 Roebourne). In fact, the officer at Roebourne advised my Commission that Milliya Rumurra would not take people from the Pilbara for that very reason (ibid:368).

Justices of the Peace in March 1990 were still sentencing people to imprisonment for the offences of drunkenness and/or disorderly conduct and comment was made in conference that:

> JsP very often have our offenders presented to them in court where it is not made clear that they are under our supervision. For instance, in Fitzroy Crossing, if we have a probationer who is resident there and is picked up for drunkenness which is still being presented to the courts in the Kimberleys, JsP will and have done - sentenced people to terms of imprisonment for drunkenness and disorderly behaviour, and then we find out at a later date that a particular offender on our books have been sentenced to prison for disorderly or drunkenness or whatever, or a more serious offence, but not - generally the JsP, they are the types of offences they deal with [RCIADIC Transcript, Broome, 1990:96].

The Community Based Corrections Officer in Northam made a number of observations which mirrored those of other officers throughout the State, namely, the area covered was very large, the population to be covered was very spread out, and staffing was low and consisted of full-time and part-time officers. He observed that the following statistics applied as at the last day in March 1990:

	Aboriginal	**Non-Aboriginal**
Community Service Orders	1.28%	6.4%
Probation & CSO's	5.12%	26.88%
Probation	2.56%	21.76%
Parole	Nil	12.8%
Pre-parole.	1.28%	1.28%
Work Release	1.28%	1.28%
Fine Default/W	5.12%	3.84%

Aboriginal people comprised 22% of the total number of people being supervised by Community Based Corrections.

Of the total number of fine default Work and Development Orders made, 48% had

been made in respect of Aboriginal people from 10 January 1990 to 24 May 1990 (RCIADIC Transcript, Northam, 1990:26). Work and Development Orders are capable of issuing from the Court prior to the issue of a warrant for non-payment of fine, or from the prison after the issue of a warrant. The statistics show that fewer Aboriginal people are employing the Community Based Corrections options at the 'front end' - ie at the Court. They are arrested by the police and then avail themselves of programmes at the door of the prison.

	Aboriginal	**.Non-Aboriginal**
Court WDO	12.9%	32.3%
Prison WDO	35.5%	19.4%

So that, with Aboriginal people on Work and Development Orders:

> They are having been re-arrested, gone to the prison. They are being released on the day that they arrive in prison [RCIADIC Transcript, Northern, 1990:27].

This arrangement would arguably be very cost inefficient. In Northam, the breach of Work and Development Orders is only 6.6% and only half of those breaches are by Aboriginal offenders (ibid).

There seems to be general recognition in Community Based Corrections that there is a need to take into account cultural concepts and obligations, and time is spent encouraging Aboriginal offenders to use the services provided. There is a degree of flexibility in the approach adopted. Aboriginal sessional supervisors are being sought all over the State, an initiative endorsed by my Commission.

The Community Based Corrections office in Kalgoorlie, covers from Esperance to Coolgardie to Leinster, the Central Reserves to Eucla. In that area the statistics, for the past twelve months, as to alternatives to custody are as follows:

	Aboriginal
Parolees	24%
Probation	25%
Probation & CSO	65%
CSO	65%
WDO	55%

(RCIADIC Transcript, Kalgoorlie, 1990)

Isolated areas present particular problems in the Eastern Goldfields as in the Kimberley. The Central Desert is one such area:

> ... it's fair to say that negotiations are taking place to involve the communities in that area into assisting with the supervision of orders out there. It's a relatively slow process ... things can only get better ... [RCIADIC Transcript, Kalgoorlie, 1990:67].

Of the 237 pre-sentence Reports provided to Courts in the Eastern Goldfields in the 12 months preceding the Royal Commission conference, 40% were for Aboriginal people (ibid).

Aboriginal people in theory have as much chance as non-Aboriginals of being placed on community based orders but are said to have some difficulty in

complying with some. Problems encountered include the itinerant nature of some people's existence which may preclude them from consideration for community based dispositions.

As was the case in Northam, not a lot of people in the Kalgoorlie district take up the court option of the fine-default scheme. Most wait until apprehension and receival at the prison:

> whether that is lack of publicity or whatever ... (was not clear) [RCIADIC Transcript, Kalgoorlie, 1990:68].

The cost of returning people to their homes after release on a Work and Development Order is being borne by the Department of Corrective Services.

Some Honorary Probation Officers and Honorary Community Corrections Officers have been appointed in the Kalgoorlie region where most of the Aboriginal community organisations are now gazetted for use as community service projects (RCIADIC Transcript, Kalgoorlie, 1990:70).

5.9 BAIL ACT (1982)

In the following material, the Bail Act (1982), is examined in great detail. This Act, which is a critical piece of legislation in relation to Aboriginal people and aspects of the legal system, is also examined by Commissioner O'Dea.

The Bail Act (1982) has been in operation since February 1989. The recent 'Report on a Review of the Bail Act (1 982)' which was completed in May 1990 had been commissioned to inquire into 'reported procedural difficulties under the Bail Act' (1990: 1).

Some submissions to the review, and in particular the submission of the Law Society of Western Australia, referred the Review Committee to:

> the way in which judicial discretion was exercised including the comment that in some courts, bail conditions can be seen as punishment in themselves (i.e. excessive reporting) [p.2].

The issue of the granting of Bail is a two-fold process for Aboriginal people arrested. In the first instance an authorised officer, either a police officer or Justice of the Peace (including a Magistrate) makes a Bail determination. In the second instance, a determination is made in Court by the Magistrate.

It became clear to me in conferences and discussions that the procedural difficulties in the Bail Act continue to affect Aboriginal people, as does the exercise of discretion about the nature and extent of conditions imposed precedent to Bail being granted. The Criminology Research Unit of the RCIADIC has conducted an analysis of Bail statistics at the Kalgoorlie Police Lockup in 1987 and again in 1990, and concluded from that study that although arrests of Aboriginal people have fallen substantially:

> During both study periods, higher proportions of Aboriginal people than non-Aboriginal people were held in custody, rather than being released quickly on Bail. The discrepancy between the two groups was much lower

in 1990 than in 1987 [RCIADIC, Kalgoorlie Bail Study, 1990:27].

The purpose of the Bail Act (1982) is to make 'better provision' for Bail and Section (5) of the Bail Act stipulates that a person is 'entitled' to have Bail considered, so that although there is clearly an intention to facilitate the granting of Bail, the Western Australian legislation stops short of stating that a person 'shall be granted Bail' except where it is 'not desirable in the public interest', as is the case in the Victorian Bail Act (1977). In Victoria, an accused person is reported as being 'entitled' to Bail whereas in Western Australia an accused person is entitled to have Bail 'considered'. The drafting differences are more than a matter of semantics.

5.9.1 Aboriginal views of Bail

This Royal Commission has been told by one young Aboriginal man that after being assaulted by the police he did not have his 'entitlement to consideration' of Ball explained to him (RCIADIC Transcript in Confidence, 1990). Considering that police are 'authorised officers' under the Bail Act, in whom a duty to consider Bail reposes, such failure to provide advice about Bail, causes my Commission great concern. This was in fact an issue raised by the Royal Association of Justices in its submission to the Review Committee of the Bail Act. The Association commented that police should only have the power to act as 'authorised officers' in consideration of Ball if no Justice of the Peace was available. The Association raised this issue in relation to cases where allegations were made of police brutality where a clear conflict of interest existed. The Review Committee did not recommend any change to the legislation as a result of this submission.

Another complaint voiced by Aboriginal people was that Bail was delayed:

> after (being) ... detained for much longer than is necessary ... people are subjected to ... the pressures of having to stay there until the Officer in Charge has gone to have his tea ... whereas he could just sign the thing and let him go there and then ... and in most cases they're locked out in the exercise yard where it's freezing cold [RCIADIC Transcript, Gnowangerup, 1990:53].

Commissioner Bull said that:

> there are a number of procedural matters ... which ... are resulting in people being kept in longer than they would've under the old system ... [RCIADIC Transcript, Commissioner Bull, 1990:608].

At my Commission's conferences, the comment was made that the granting of Bail in Court depends very largely on the personality of the Magistrate on the Bench. Aboriginal people are finding it increasingly difficult to get Bail when they have missed court, as they then have a prior conviction for 'fail(ing) to appear'. Non-Aboriginal comment included the following observation:

> people are arrested for a trivial offence - something minor like disorderly conduct which would attract a fine of say, $50. They are bailed to appear in 10 days and because of problems they have - perhaps with comprehension or travel, et cetera - they do not show up for that and they are subsequently arrested and they are fined $50 for disorderly conduct

> and $200 for non-appearance at a previous sitting [RCIADIC Transcript, Roebourne, 1990:361].

When sureties are requested, people stated that they are unable to find the money to Ball people out. At one conference we were advised by an Aboriginal woman:

> when some of the young fellows are put inside, we go and hock some TV or washing machine ... just to get that person out, because we know that person, they get all worked up and they really get frightened of even being in there [RCIADIC Transcript, Esperance, 1990:40].

At another conference in Perth we were told that a woman spent two to three months in custody on remand waiting for a surety. The following comment demonstrates my meaning here:

> In there on remand on little charges, held there for one month, two months, and the Superintendents say there; oh, they can't get surety, they always say that. I know we haven't got 'ouses to put up and all that, we haven't got 'ouses but some of them charges are very minor, very low charges ... [RCIADIC Transcript in confidence, Perth, May 1990]

In relation to Ball, Aboriginal people observed themselves to suffer obstruction by police; delays; the idiosyncrasies of the Magistrates; the problem of prior convictions; and the incapacity to raise sureties.

5.9.2 Juveniles and Bail: Solicitors opinions

Community concerns about the granting of Bail and conditions imposed, were reflected in the comments of the legal representatives of juvenile offenders at the RCIADIC's Juvenile Justice Conference in Perth. There was a widely held belief that remands of juveniles without Bail were more likely in the country than the metropolitan area. One solicitor commented that:

> We are talking about unlawful use of motor vehicle charges, break and enters in commercial premises so there is no physical injury or physical danger to individuals, and where the child does not have a long record ... and the police or the magistrate on his or her own initiative can say that this person is a significant risk to the community - it is obvious that these kind of people would not be remanded in custody if they lived in metropolitan or larger communities [RCIADIC Transcript, Juvenile Justice, 1990:15].

A major problem for juveniles from country areas is the lack of Bail Hostels. This means that a lot of children suffer transport problems, they fail to appear, and then have a breach of Bail conviction which results in denial of Bail in the future. Transportation to court for hearings was a real problem:

> A lot of the non-appearances are related to sheer inability to turn up at the court, not a need to escape the consequences of their actions [RCIADIC Transcript, Juvenile Justice, 1990:35].

Conditions of Bail are often incapable of observance when the juvenile has to rely on public transport. Curfews have become the order of the day when requesting

Bail for juveniles:

> After a while it becomes normal that a curfew is imposed as a condition of Bail. You just sort of chuck it in if bail is dodgy [ibid:35].

The same solicitor went on to say:

> You get a myth and folk lore building up amongst the judges about what the minimum is [ibid].

That represents one view about the development of 'judicial discretions' in relation to Bail. The duty solicitor from the Legal Aid Commission also observed that juveniles just have so many breaches of bail on their records that Magistrates start asking for adult sureties. This is:

> realistically ... not Bail at all because most of our kids are homeless or completely detached from their families [ibid:37].

The problem that 'there is no money in the house', was also recorded on a number of occasions. When courts request adult sureties, children are often not

> there is no adult there to go surety for them. (Aboriginal children) are remanded in custody and then there is the communication problem [ibid 38].

5.9.3 Judicial opinion on juveniles and Bail

It was acknowledged during this Commission's conference on Juvenile Justice, that there had been a tremendous number of remands in the Children's Court, but that this had now reduced somewhat. It was put to me that:

> there is a lot in the complaint that your Aboriginal group made -that the police will pick up children, take them to the police station, interview them for some time, often in the absence of a family member, and then release them into the streets without a family member being present. If that is done late at night or in an area remote from the child's home then it is asking for further offending [RCIADIC Transcript, Juvenile Justice, 1990: 122].

It was suggested by a Children's Court Magistrate that parents continue, to a lesser extent, to be pressured into going surety for children who will breach Bail (ibid:122), and that grandmothers are still often the responsible family member for Bailing juveniles (ibid:123). However, the parents are not always in evidence, and grandmothers would invariably be in receipt of some sort of pension and sureties are very difficult to raise. (See also Section 6.10 of my report regarding 'parenting and the granny syndrome'.)

The solicitors concern about transportation was reiterated by judicial officers. For a whole range of reasons, children attend Court late (e.g. public transport problems, no bus fare, no lift, a promise of a lift is broken, children cannot always read their own Bail documents). They are then arrested on Bench Warrants and then often spend the night or the weekend in custody. It was expressed at the Juvenile Justice Conference that the Bail Act was being more effective in the release of children than was the case in the past (ibid:126).

5.9.4 Bail and Justices of the Peace

The Justices of the Peace variously stated that they were very rarely called in to attend to Bail matters (RCIADIC Transcript, Geraldton, 1990:361) as the Sergeant now has the power;, or alternatively that the new Bail Act has imposed the greatest single additional workload on Justices of the Peace (RCIADIC Transcript, Kalgoorlie, 1990:269).

At one conference we were told that:

> The papers that relate to the Bail Act and the granting of Bail and the surety and so on ... really they must have been designed by somebody that has never had to fill them in because they are nonsense, and even educated people that have tried to work their way through them several times ... have some difficulty getting it right ... I think that there is no doubt ... that the poor, uneducated Aboriginal that is often asked to comply or respond to questions relative to the Bail Act, quite frankly wouldn't have a clue, other than just being co-operative, basically, of what they're being asked to undertake ... I don't think it's thoroughly understood or explained to them and it just gets them into further trouble [RCIADIC Transcript, Kalgoorlie, 1990:270].

On the question of the understanding of Aboriginal people of their Bail undertaking, one JP said:

> They say that they do and, of course, you know well and truly that they don't. If you ask them to explain it to you then they can't. You ask them if they can read and they say they can and so you present them with some of these papers and ask them to read the first couple of lines ... and you find that they can't do so [ibid:272].

Justices stated plainly that sureties were not always reliable but they still granted Bail on surety conditions. My Commission was informed:

> ... the surety was required at $1500 and I asked the surety ... did she have some money ... (she) owned nothing except an old Chrysler car which had been standing in the back yard for about a year and it didn't go, explained that the starter motor of the thing was defunct but the boys up there were working on it [ibid].

The Bail Act has been a feature of comment in the Justices Journal and my Commission has been told that it has been a feature of Justices seminars on a regular, sometimes annual basis. Justices are therefore supposedly trained and educated about the Bail Act. The Justices of the Peace Training material provided to this Royal Commission by the Crown Law Department (the Department of Commerce, Book 1, Section 3) provides Justices with a six page resume of provisions relating to Bail and its grant.

Justices have difficulty with the procedure and form of Bail matters; this arguably results in defendants having even more difficulty. The end result is that defendants do not understand their Bail conditions and frequently cannot, and do not, comply with them. As noted earlier, if Justices are to continue to hear and determine Bail

matters, a great deal more training is urgently required. This is not only a problem with Justices of the Peace. The Bail Act specifically stipulates police have a responsibility to explain Bail and Bail forms to people (Section 8(1)(c)).

5.9.5. Magistrates and Bail

Magistrates were generally of the view that the Bail Act had been a positive innovation which presented them with few problems in operation. One Magistrate suggested that the Bail Act made the situation better for Aboriginal people, in particular, for two reasons:

(1) Courts are now able to extend Bail without the defendant or the surety being present, by simply giving the person a notice.

(2) There is now no longer an 'absolute forfeiture' of the surety upon breach.

In general, the view was also held that the police were anxious to ensure the release on Bail of Aboriginal people. Some police will make arrangements with the Clerk of Courts to ensure the early release of the defendant by requiring the attendance of the Magistrate at 'odd hours' (RCIADIC Transcript, Geraldton, 1990:330).

5.9.6 Police comment

The police at Roebourne indicated that there were no problems with the operations of the Bail Act apart from the fact that there were:

> a lot of breaches of Bail ... and just for the minor offences, for people not turning up ... [RCIADIC Transcript, Roebourne, 1990:186].

The Sergeant at Roebourne Police Station advised that Bail was a topic on which they had a special seminar (RCIADIC Transcript, Roebourne, 1990:186). One consideration which arose in relation to the granting of Bail was that it might take up to one and a half hours to complete Bail papers, allowing for interruptions to attend other duties (RCIADIC Transcript, Geraldton, 1990:245).

A number of police in conference raised the issue of juveniles and Bail. There is no inherent duty on the police to notify a child's parents of the intention to Bail, but police say they still do so. It used to be the case that the police would have to release a juvenile into the care of a parent, but the new legislation imposes no such duty. A number of police indicated that they generally tried to Bail people, however:

> If they're disorderly through drunkenness they are detained until they've quietened down or they've considered that they're not going to re-offend, then they are released usually after a period of about an hour, possibly two hours. But we try not to detain them [RCIADIC Transcript, Kalgoorlie, 1990:321].

One observation made was that:

> ... the non-appearance of defendants has increased, making the issue of warrants I'd say, possibly more than doubled, in relation to Bench Warrants, which has put an extra load on police and investigations in attempting to find the defendants ... once they are arrested, they are taken into custody and kept in custody [RCIADIC Transcript, Kalgoorlie, 1990:342-3].

The police assured my Commission that Bail conditions are explained carefully, but in areas such as Laverton the people had:

> limited understanding of the white man's law like that, you have a situation where they just commit other offences and have further penalties to face. So, the best alternative really, is to keep them in custody and get them to the Court as quickly as possible ... [RCIADIC Transcript, Kalgoorlie, 1990:3431.

The above comment indicates that there is an urgent need for interpreters in respect of Bail, and that Aboriginal people are still being denied Bail because of the problems of language and understanding. This is an alarming situation in 1990 and one which can only contribute to over-representation of Aboriginal people in the prison system. Material contained in Section 5.10. considers the matter of interpreters in detail.

5.9.7 Commissioner of Police

In answer to questions put to him by the RCIADIC, Commissioner Bull advised that no new Routine Orders would be provided to police about the operations of the Bail Act until such time as it has been reviewed and amended (4.1(a)). The Act has been in effect since February 1989 and police Officers adhere to the requirements of the Act, although there have been some Gazetted Instructions to police about areas of Concern.

The Commissioner generally assured my Commission that police officers adhered to the requirements of the Bail Act. In conference, Commissioner Bull agreed that police powers have been slightly eroded since the implementation of the Bail Act because a Justice of the Peace can now 'order the Bail' (RCIADIC Transcript, Commissioner Bull, 1990:604). However, the Commissioner did not agree with the proposition that the 'huge increase in the proportion of people being admitted to bail within a very short space of time' was due to the introduction of the Bail Act. Commissioner Bull advised that it was his belief that the increase in numbers of people being let to Bail was due in the main to an earlier instruction from himself:

> including a direction to (his) officers that they were not to take any monetary bail for drunkenness offences [RCIADIC Transcript, Commissioner Bull, 1990:605].

Commissioner Bull did, however, agree with the assertion of Counsel Assisting that prior to his instruction on the subject of Bail, members of the Police Force should have been more flexible in allowing people to Bail (ibid:607).

Commissioner Bull was of the view that the capacity to monitor the requirement of sureties reposed in the Courts and in the hierarchy of the Police Force in that:

'the court does look at the bail that the police have set and if there was a significant and consistent difference between that which the court subsequently set, I'd expect the Officer in Charge, in rum the regional officer to monitor such a situation. And it certainly is one of the matters that is looked at by my commander of *inspectorate* and his staff who do audits of police stations' [ibid:608].

From the above comment, it can be seen that there is a need for proper, independent records to be kept.

5.9.8 The report on the review of the Bail Act (1982)

The Bail Act, assented to on 18 November 1982 was not proclaimed until 6 February 1989 after three Amendment Acts were first passed. A review of the Bail Act has now been undertaken. Some of the recommendations of the Review Committee will not be the subject of comment here. The review itself did not address all Sections of the Act as not all Sections were regarded as problematical. Some of the Sections addressed do not, in themselves, raise issues of immediate concern to Aboriginal people, and are therefore not the subject of comment here. However, in my view, the following have some merit and should be given serious consideration:

(1) Bail being posted 'as soon as practicable' - Section 3 - no recommendation made by the Bail Act review as to changes.

(2) Bail being dispensed with by the courts - Section 4 - recommendation was made by the Bail Act review that the section be amended to re-institute the power of a court to exercise discretion to dispense with Bail (as used to be the case under Section 86 of the Justices Act.

(3) Bail being considered in serious matters only in the presence of the defendant - Section 7(2) - resulted in defendants having to be taken long distances unnecessarily. Recommendation was made by the review that a defendant not automatically have to appear for Bail hearings.

(4) Section 8 of the Act deals with the defendant being shown prescribed forms - a query was raised as to whether the police did this in all cases - no recommendation was made by the Bail Act review. However, I suggest that the use of interpreters for Aboriginal people who are not well versed in English, is essential.

(5) Section 11 - rights following grant of Bail requires JP to attend by the review. Remand Centres for Bail purposes - recommendation was made that persons described in Section 29 be able to authorise release.

(6) Section 14 of the review recommended that a District Court be able to review Bail if hearing the substantive charge.

(7) Section 15 - recommendation that Bail for offences punishable with strict security life imprisonment only be granted Bail in

exceptional circumstances and a Judge on the Children's Court determine juveniles Bail.

(8) Section 17 which provides for conditions - has resulted in sureties being used more frequently than in the past - no change was recommended by the Review Committee. However, I am concerned at the increased use of sureties in Bail conditions as this adversely impacts on Aboriginal people and believe that authorised officers be further instructed on the principles of Bail and that, in particular, authorised officers be reminded that Bail conditions are not under any circumstances to be employed as a punishment inthemselves. Police Routine Orders reflect this philosophy.

(9) Dispensing with Bail for minor matters upon the deposit of cash - Section 18. This Section has not worked as well as was anticipated, as people often have no funds. Too many people are arrested when they should be summonsed. Recommendation was made by the Review committee that police use their discretion about the requirement of a deposit of cash (Section 18(2)(b)) and the limit of the prescribed offences be raised to $1,000.00, so that more offences may come under this Section. Although this Royal Commission has grave reservations about any further extension of the use of police discretion because such discretion is so frequently not used in favour of Aboriginal people, it is recommended by my Commission that a discretion be allowed in respect of deposits of cash. I am concerned that police acting as authorised officers, should be instructed that this discretion must always be exercised to the benefit of the defendant, if there is any doubt about Bail and, in the event conditions of Bail are thought to be warranted other, non-monetary conditions must be employed.

(10) Section 19(2) regarding the disposal of the Bail Deposit was recommended amended by the Bail Act review to allow for the matter to be heard in the defendant's absence but allowing the court the discretion to decline to deal with the case and issue a warrant in some circumstances.

(11) Transmission of relevant papers - Section 27 was recommended amended by the review to direct the Clerk of Court to forward papers to the relevant court.

(12) Section 28(2)(b)(i) which allows a defendant the capacity to telephone and advise the court that he/she cannot attend is apparently being abused. Recommendation was made by the review that it be repealed, and Section 28(2)(a) be amended to confirm the obligation to remain at Court until discharged. In my Commission's view, there is some concern in the repeal of Section 28(2)Co)(i). It seems that where defendants have falsely availed themselves of the right to telephone the Court and advise of an incapacity to attend, there are adequate sanctions available to the Courts and police to address the problem (see Section 51 - a defendant who fails to appear 'without reasonable cause' commits an offence).

(13) Section 30 requiring the reading of Bail forms to a defendant makes no provision for defendants for whom English is a second language, nor for translation into Aboriginal languages. The relevant form is translated by the Ethnic Affairs authorities. No recommendation was made for change by the review. However, in my view, there are a number of instances where Aboriginal people require Bail to be interpreted for them. It is clearly a problem on the strength of evidence put before me.

(14) Bail during trial, dealt with by Section 31 of the Act, is recommended amended by the Bail Act review allowing for Ball to be applied for/extended during trial. Notices as to the continuation of Bail are recommended amended (Section 32).

(15) The approval of sureties (Section 36) was recommended amended by the Bail Act Review Committee to remove the obligation that notice be given to the prosecutor in all cases where a surety is required; such approval should only be sought if so ordered by a judicial officer.

(16) Matters to be considered when approving sureties (Section 39) were not recommended amended by the Bail Act Review Committee.

(17) Section 44 referring to surety undertaking extending to adjourned hearings was the subject of a recommendation by the review committee, in that, Form 8 which is utilised under this Section, was recommended amended to ensure that sureties are aware of the need to elect to extend their undertaking. Section 45 as to 'Notices' to the surety was also recommended amended to facilitate notice.

(18) Section 51 details the penalties of a failure to appear - being $3,000.00 or three years *(cf.* Victoria - 12 months). This Section was recommended amended by the Bail Act Review committee to allow for the issue of a Certificate proving non-attendance and that Police Officers initiate prosecutions. I am of the belief that the sanction of a maximum penalty of $3,000.00 or three years imprisonment is too high given the penalties in other jurisdictions. Commissioner O'Dea also discusses this matter, as well as the 'double jeopardy' aspect involved in such circumstances, in his report

(19) Schedule C Clause 7 was recommended amended by the review committee to allow a 30 day adjournment rather than a 7 day adjournment which is inconvenient for some country courts (p.61).

5.9.9 The report on the review of the Bail Act (1982) and juveniles

In a footnote to the Review, it was noted that children over 13 are released without a surety but that police try to contact parents in every instance. When parents evince no interest police consider release without surety.

My Commission was told by Commissioner Bull that every effort was made to

locate the parents of children detained:

> Often there is great difficulty in obtaining parents or responsible people. Often parents will reject, they'll refuse to have anything to do with the juvenile in spite of our pleading that they should accept their responsibilities (RCIADIC Transcript, Commissioner Bull, 1990:617).

One ALS solicitor who gave evidence at a conference stated that the police make 'weak' efforts to locate the parents (RCIADIC Transcript, Juvenile Justice, 1990:171). Children are marginally better off than adults in that they have a 'fight to Bail' unless the authorised officer considers he/she may fail to appear, offend, endanger others, or interfere with witnesses (Para 2 of part C of the Schedule to the Act (p.64) Review). The Review Panel considered that with:

> the proposed streamlining of surety provisions, 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 [ibid].

The view expressed above is of limited value when applied to children appearing in Court. These children are almost always from families dependent upon a benefit or pension, and frequently have absolutely no assets. Surety conditions simply scare people away from the Court. The position is even worse for Aboriginal children who are, it is suggested, arrested at a vastly disproportionate rate; arrested when they could be summonsed; and who are frequently held overnight or over weekends in remand facilities after being arrested on Bench Warrants. Commissioner Bull (RCIADIC Transcript, 1990:645-655) indicated to the RCIADIC that juveniles may 'temporarily be held in a police lockup', however the East Perth Lockup is a gazetted Remand Centre for juveniles. Nothing in the Bail Act Review can or does address these issues and the problem of Ball for Aboriginal juveniles continues.

A number of times in the preceding material, the issue of cultural sensitivity and respect has entered the discussion. I have also referred to the need for interpreters. In the following section, I address these crucial matters. Commissioner O'Dea also considers interpreters and cultural awareness in his report.

5.10 INTERPRETERS AND CULTURAL AWARENESS

> A failure to provide language services in situations where their absence might prevent a citizen or resident from gaining access to a community service may well constitute discrimination under S.36 of the Act [Equal Opportunity Review of the Police, 1989:67].

Given that many Aboriginal people in this State speak varieties of their own traditional language and/or what might be thought of as Aboriginal English, it is not unreasonable to assume that most Aboriginal people are disadvantaged in police and lawyer interviews, and in courtroom hearings. Such a disadvantage can continue into the prison setting where, again, Aboriginal inmates are often unable to effectively communicate. RCIADIC research indicates that there are a multitude of misunderstandings which can, and do, occur at the interface of Aboriginal people and the criminal justice system.

As shown earlier and according to Eades (RCIADIC submission, 1990:4-5) the 'difference in the use of English has specific and serious implications for the police and courtroom interviewing of Aboriginal people where precision is vital to the functioning of the law ... such differences in answers to the question seeking specific information should not be seen as indicative of an unreliable witness. Rather, these disparities indicate significant dialectal difference, which could easily lead to misinterpretation, and which must be recognised by the legal system'. Eades goes on to argue that 'it is imperative that speakers of Aboriginal English have access to interpreters in the legal system ... (and) ... unless legal professionals are educated about the nature of Aboriginal English as a continuum of rule-governed and systematic varieties, the need for interpreters will frequently be unrecognised'.

In response to the National Agenda for a Multicultural Australia Inquiry by the Federal Attorney-General's Department and the Law Council of Australia, it was observed tint (i) The Commonwealth should enact legislation similar to that of South Australia (Summary Offences Act 1953 and the Evidence Amendment Act 1986) which formalises the existing sound practice of providing interpreters in Courts, and (ii) the Commonwealth should employ level 3 (or higher) interpreters. Significantly, in regard to Aboriginal people in Western Australia, the Evidence Amendment Act 1986 (Section 14) stipulates that where (i) the native language of a witness who is to give oral evidence in any proceedings is not English, and (ii) the witness is not reasonably fluent in English, the witness is entitled to give that evidence through an interpreter. In addition, an affidavit or other written deposition in a language other than English shall be received in evidence in the same circumstances as an affidavit or other written deposition in English, if it has annexed to it (i) a translation of its contents into English, and (ii) an affidavit by the translator to the effect that the translation accurately reproduces in English the contents of the original. The application of similar legislation in this State would, I am sure, be constructive.

5.11 CUSTOMARY LAW

In 1976, Eggleston (1976:301) submitted that the principle of recognition of customary law be adopted to ameliorate the injustice to Aboriginal people by its exclusion from consideration in the legal process. It was her view that the police and courts already informally acknowledged and applied elements of customary law in matters of:

(a) selection of charges;

(b) sentencing.

My Commission has been told that the informal application of customary law is occasionally a feature of the exposure of Aboriginal people to the criminal law in this State. With the greatest respect such application is ad hoc; idiosyncratic to the individual police or judicial Officer; confusing to Aboriginal and non-Aboriginal people when seen in the light of variable sentences; potentially open to abuse and over-statement and over-simplification. In some instances where Aboriginal people have been given the 'benefit of the doubt' either by police or judicial officers, it has been suggested this has been to their advantage. Supreme Court cases such as R. v Larny Colley (14 April 1978, unreported, Western Australian Supreme Court), R. v Felton (1980, unreported), R. v Ferguson (1970, unreported) and R. v

Fazeldean (1973, unreported) indicate that where there is a likelihood of 'pay back' a variable sentence will be considered.

Eggleston of the case of Chimney Evans (1976:291) observes:

> This case illustrates ways in which unofficial recognition may he given to tribal law even though strict legal theory would not permit recognition. First, the charge to which the defendants pleaded guilty was 'conspiracy to murder' and not 'murder' with which the police had originally charged them (the defendants).
>
> This may be thought to be an example of a reduction in charge by the prosecution because of the influence of tribal law. The judge certainly thought so. However, the magistrate told me that he committed them for trial on lesser charges because he did not consider there was sufficient evidence of murder.

In such a situation there develops a 'folk history' that Aboriginal people have been given a 'fair go' due to the exercise of discretion - police and judicial. This folk history is allowed to develop and in fact is actively sponsored by the failure to enshrine customary law in legislation. Such a failure has reduced Aboriginal people to reliance upon the patronage of police and judicial officers. The position of Aboriginal people in respect of the legal system remains precarious. Aboriginal people have for too long been dependent on the use of 'discretions'. In my Commission's view, they should not have to approach police and courts as supplicants for recognition of their Customary Law.

What can be said of the development of that 'folk history' is that it is also capable of clouding the real issues in a case. The defendants in the Chimney Evans case were presented on charges which the Magistrate thought to be capable of proof. They were not given any police or judicial 'dispensation'. It may be argued that in respect of informal recognition of customary law, Aboriginal people are accorded a degree of 'largesse' by police and courts, simply because those two agencies are aware of problems in the detection process; problems in the arrest process; problems in the interview process; problems in the 'confession' process; problems in the judicial procedural process; problems in the court hearing process and problems in the evidentiary process for some Aboriginal defendants. One might cynically state that 'largesse' may be so extended to reduce the prospects of appeal, and dispense 'justice' expeditiously. Aboriginal people are certainly not convinced that they receive justice anywhere, expeditiously or not.

Elements of Customary Law arose for consideration of the RCIADIC in a few of the cases of the deceased. In this regard, I will only discuss one such case, that of Jimmy Njanji. The facts of the matter relevant to this discussion are that Jimmy Njanji was arrested on 20 February 1971 and charged with manslaughter of a man who had taken his wife. The man had sought medical attention after being speared in the thigh. He had, however, died some two weeks after the injury was sustained. On 27 April 1971, Jimmy Njanji pleaded guilty to a lesser charge of unlawful wounding. He had been in prison at Geraldton since February. The sentence imposed was 18 months imprisonment with a minimum term of one month before becoming eligible for parole (Page 6, Report on the Death of Jimmy Njanji, Commissioner O'Dea). The RCIADIC does not hold the Parole and Prison records relevant to this term of imprisonment, so we cannot be sure of actually how long Jimmy Njanji spent in custody, or how effective was his parole supervision, or whether he was breached on parole. It is significant to observe that Jimmy Njanji's

command of English throughout this process was very poor and remained 'poor' right up until his death in 1985. The reduction of the charge from manslaughter to unlawful wounding may have been a reflection of at least one or two factors:

(a) whether the question of 'causation' of the death of the other man could be established sufficiently to sustain the more serious offence;

(b) acknowledgement of customary law issues in the commission of the offence.

The expert opinion of the late Professor Berndt, formerly Emeritus Professor of Anthropology, University of Western Australia, was sought in this case as to the application of customary law in the commission of the offence. His opinion in the matter is cited in full:

> Comments on the Case of Njanji (also spelt Ngani), accused of spearing Muddie Patch (also referred to as Muddi), deceased.
>
> One must understand that these comments are on the basis of the evidence supplied to me (i.e., the Report and the Dispositions taken), and not of first hand inquiries.

A. From the information before us Ngani appears to have been married, according to traditional custom, to Mallala: the marriage was ratified by the birth of a chid. Mallala subsequently left Ngani and went to live with Muddi. Apparently at that time blows were exchanged, but these would have been insufficient to settle the breach between them. Mallala continued to live with Muddi.

Presumably, under pressure from his kin it was agreed to settle the difference by means of what is traditionally regarded as a conventional peace-making duel. With variations, this was commonly carried out over a wide area of traditional Aboriginal Australia. Arrangements were made between those concerned -between, one would expect, the relatives of both parties. Traditionally, in such circumstances, the immediate relatives of the woman would be likely to align themselves with the aggrieved husband's kin.

The duel as described is a conventional one: each party throws a spear to miss, while the interloper 'allows' the aggrieved husband to approach him and thrust a spear in his thigh. In the dispositions, it is specifically stated that 'people were sitting and watching' (p.2). This implies public recognition of the actions of Ngani and Muddi as being conventionalised: that is, it supports the view that the two men were acting according to traditional custom and their behaviours was socially sanctioned. The remarks of Muddi's brother (actual or classificatory) support this too (p.3).

In the case of an eloping wife, spearing in the thigh is, as I say, traditional. In many cases it is the runaway wife who is speared in this way, but just as often it is the interloper.

In short, Ngani's behaviour appears to have been consistently traditional - and the expected outcome would not be death but simply wounding, as punishment: the drawing of blood to resolve the affair.

1. Ngani's actions were justified according to traditional and tribal law.

2. Both his own and his wife's kin would expect him to take this action; and, moreover, this procedure on his part would be expected by the interloper and his kin.

3. The method of duelling, with variations, is widespread in Aboriginal Australia: it is a widely accepted traditional means of resolving differences of this nature.

4. The type of wound confirms the traditional nature of the action; and the social context of the duel itself suggests that there was general agreement on, and about, what was taking place.

5. The expectation in such circumstances would be that a thigh wound would be inflicted, and this is indeed what took place. If the matter had concerned a more serious offence, body spearing would have been involved.

6. In these circumstances, Ngani would not expect his spear thrust to lead to death: he was an instrument in the punishment of an offender, for an offence which was not viewed as being simply of a personal kind (i.e., the loss of a wife) but as an offence also against his own and his wife's kin.

7. Ngani and his kin would not regard themselves as having committed an indictable offence. On the contrary, they would have seen themselves as having resolved, or attempted to resolve, a difficult and upsetting situation.

8. Ngani would not be regarded as culpable in these circumstances - not in traditional Aboriginal customary law.

B. Subsequently, Muddi was taken to the Wiluna Nursing Post and given medical aid. The spearing took place on February 5th 1971. It is not clear whether Muddi received any medical attention immediately following the wounding. On p.2 it is said that 'other people came and took him to his camp', on p.3, that 'Muddi fell down and the boys took him away'. There is no reference to Ngani as being involved in his removal, and conventionally he would not have been.

It was not until February 17th 1971 that Muddi was observed lying in the camp with blood on his leg, surrounded by Aborigines. He was taken to the Wiluna Nursing Post and medically treated: the Sister in Charge mentions 'an old woman' (presumably the one obtained on February 5th). Muddi was returned to the camp. On the evening of the 18th February he was dead. The medical doctor conducted a post-mortem examination and concluded that death had resulted from a haemorrhage due to an infected wound. One must also note paragraph 6 of the 'Report', which concerns Muddi having been brought to the Wiluna Mission after convulsions and left unattended without shade until the Mission Superintendent was advised.

As far as these subsequent events are concerned, it would not seem that Ngani played any part at all, although from the statement by the Police Constable it would appear that he was located nearby (at the Native Reserve), p.7. At the same time, as I say, there is no further reference (i.e. after the actual duel) to Ngani as having been involved.

It is clear that in the space of 12 days which elapsed between the wounding and Muddi's being taken to the Nursing Post, the wound had become infected: there is no reference to its having been treated prior to February 17th.

Traditionally, it would not be expected that the wound would become infected: it appears not to have been treated, according to custom. At the same time, if the wound was of a serious nature it is surprising that one of his kin did not draw the Mission Superintendent's attention to it so that he could have received earlier treatment. The Nursing Sister does not seem to have regarded the wound seriously, although she asked that Muddi be brought back two days after this treatment. Generally, from her evidence, blame for Muddi's death must rest on neglect, fear of medical attention, and a wrong estimate of the seriousness of the wound on the part of the Europeans concerned.

1. Blame for Muddi's death does not seem to rest primarily on Ngani. Events subsequent to the duelling were outside his control.

2. A clean spear wound, or a wound treated with reasonable care in traditional terms, would not necessarily become infected. Possibly conditions in a contact camp where health safeguards are at a minimum would have made him vulnerable to infection.

C. Briefly, then,

(i) Although Ngani obviously inflicted the spear wound on Muddi, it was done within the context of social agreement. The fact that Ngani's wife had left him for Muddi would, traditionally, involve the expectation of some punitive action on the part of Ngani, supported by relevant kin. The act of duelling was carried out within a frame of consensus. It was not a sneak attack. Under these circumstances, although Ngani performed the physical act of spearing, he did so as a form of agreed-upon punishment and in an endeavour to resolve a contentious situation.

(ii) Subsequent events leading to Muddi's death cannot be said to involve Ngani. From the evidence available both in general terms and in relation to this particular case, we can almost certainly assume that there was no initial intention of causing death, and no initial expectation that death would take place. Evidence suggests neglect of the wound with infection causing death. The time lapse is significant here. It was not a case of spearing (in a vital spot) followed by instant or almost-instant death. And it was not up to Ngani to attend to the victim or to notify, the authorities: that would have been the business of Muddi's own kin.

(iii) The evidence is such as to suggest that provocation existed; that Ngani was acting in accordance with traditional customary law; that the duel was of peace- making intent, designed to resolve a difficult situation; that he acted in a traditional prescribed fashion; and that the intention was not to kill.

(iv) Under these circumstances, I would strongly recommend leniency.

D. Implications arising from legal action.

(1) If Ngani is released, freely or on probation, four alternative courses of action may arise in respect of his person.

(a) It could be admitted by the Aborigines concerned that the Ngani-Muddi affair remains resolved, without further action being taken by the relatives of the deceased.

(b) Ngani could be involved in a further peace- making duel to resolve the death of Muddi: in which case, leg-spearing would be in order.

(c) In spite of the original duel, Ngani might be regarded as being the indirect agent of Muddi's death: in which case, body spearing could be involved.

(d) Sorcery accusations can follow death from any cause, including illness. Muddi's relatives could therefore if they felt, as noted in (c), proceed against Ngani by means ofsorcery. There are several varieties of this which I won't go into, one of which is sometimes called 'feather-foot' sorcery, referring to the feathered pads supposedly worn by sorcerers. Believed-in sorcery can, of course, be sufficient to cause death, if (e.g.) the victim is emotionally disturbed to the extent of not eating, etc. I am, of course, in no position to predict what could happen - not without further anthropologically collected evidence from a wide variety of persons: kin of all those concerned. Nevertheless, I should think that (a) or (b) would be most likely, since the Aborigines involved have been subjected to varying degrees of European influence. If Ngani is placed on probation it should be ensured that he be returned to his own country or as near to it as possible (i.e., to Jigalong) and that his own close kin are resident there.

(2) If, as I understand Ngani's situation to be, he is primarily a semi-nomadic, traditionally - orientated Aboriginal who has little or no English, it would therefore be most unwise to place him in prison for any length of time. The effect of this could be psychologically most damaging. It would almost certainly damage his health, and render him a useless person. It would not be over-emphasising my point if I were to claim that detaining him in prison for a period over, say 6 months, would be extremely cruel. One has to remember that in this case, on the evidence before me, Ngani would be regarded as an innocent person, at least by the majority of his social equals. And that statement is not affected by lb,c and d above.

(Ronald M. Berndt, M.A., Ph.D., etc. Professor of Anthropology, 21 st April 1971).

Some few years prior to the Njanji case it is interesting to note that a similar story had unfolded in similar circumstances. Eggleston cites this instance (1976:299):

> In 1967 there was an outcry in the press in Western Australia over the gaoling of an Aboriginal, Yadabuka, for killing a woman. He (like Jimmy Njanji) was a desert Aboriginal who was said to have had no contact with

> white people until he started living at Jigalong Mission (like Jimmy Njanji) in August 1966. The killing and his arrest took place in December 1966. It was assumed in many letters to newspapers protesting about his imprisonment, that what he had done was justified by tribal law. Although there is no evidence to suggest that this was the case, (unlike the case of Jimmy Njanji), there could still be considerations to be urged in his. favour as a traditionally oriented Aboriginal. He was probably completely ignorant of white law and he had never enjoyed the privileges of white society and owed it no allegiance. There was also the possibility that he would have to suffer tribal punishment after he was released from gaol.

The recognition of Customary Law has, in recent times, been examined by the Australian Law Reform Commission - some ten years after Elizabeth Eggleston urged its recognition. Eggleston's (1976:301) conclusion that Customary Law should be recognised was:

> based mainly on the injustice which is otherwise caused to Aboriginal defendants... Because of the doubt and uncertainty at present existing it seems most desirable that this policy should be expressed in legislation.

The Australian Law Reform Commission was of the view in its reference on customary law that the Commonwealth was responsible for the legislative recognition of Customary Law:

> in cases where State or Territory laws do not establish adequate or appropriate rules responding to the special needs of Aboriginal people [para 183, Summary Report]

Alternatively, I do not believe that the State of Western Australia has any such adequate rules in respect of the criminal law process, and observe that both the Aboriginal Communities Act 1972 and Section 49 of the Aboriginal Affairs Planning Act 1972, fall well short of providing same. Both enactments and the present application of same fall well short of satisfying Aboriginal people's expectations and demands for 'justice'.

The Australian Law Reform Commission submitted that:

> ... the recognition of Aboriginal customary laws as recommended in this Report should be carried through by means of a Federal Act applicable in all States and Territories and relying on the full range of the Commonwealth constitutional powers ... [para 183: Summary Report].

State and Territory laws capable of concurrent operation were not to be debarred by this Federal enactment. The Australian Law Reform Commission proposed draft legislation which has not been sanctioned even now, some four years later. The draft legislation thoroughly and conscientiously addresses the concerns of Aboriginal people in the struggle to have customary law recognised. For the first time in this country, it attempts to legitimise the present imprecise and uncertain operation and patronising adoption of Customary Law in policing and court processes. The Bill has never got past the Australian Law Reform Commission 'Draft' stage.

It is crucial to my discussion to be aware that continuation of the present position is yet another example of the perpetuation of an ill adapted legal process which has marginalised Aboriginal people in their own country. The Bill does not seek to

exclude the ordinary Australian law, but does attempt to reduce conflict of laws by providing for.'

> the exercise of sentencing discretions and the creation of a partial customary law defence [p.285, Vol. II, Customary Law Reference].

The Bill also provides protections for Aboriginals where:

> failure to recognise their traditions and customs has produced injustice [ibid], and it:,
>
> allows for the recognition of customary laws ... without incorporating Aboriginal customary law as part of Australian law [ibid].

I commend this Draft Bill to the Federal Government for urgent consideration and action. Of particular interest are Clauses 19, 20, 21, 22, 24, 29 and 34.

The Bill was promoted as constituting a 'special measure' pursuant to Section 8(1) of the Racial Discrimination Act 1975 (Cwlth) (Clause 4 of the Bill). 'Aborigine' is not defined in terms of 'quantum of blood' or otherwise and this is commendable.

Clause 19 of the Draft Bill allows the jury to take into account, in assessing the reasonableness of acts or omissions, customary laws of the particular community so far as they are relevant.

When determining Bail applications, account may be taken of customary laws (Clause 20).

Clause 21 is described in the Notes on the Bill (p.290, Vol. II) as providing for a court's refusal to accept a plea:

> In order to deal with those exceptional cases where an Aboriginal defendant is not fluent in the English language and appears not to understand, even in a basic way, the nature of the criminal proceedings or the effect of a guilty plea, this clause gives the court power to refuse to accept a plea of guilt. In those circumstances, a 'not guilty' plea would he entered, and the prosecution would he required to prove its case.

The area of sentencing is covered in Clause 24 where allowance is made for the Court to take account of the customary law of the defendant and/or the victim. This sentencing discretion extends even into jurisdictions where there is no sentencing option (i.e. in some jurisdictions regarding murder matters). Further allowance is made for members of the Aboriginal community to make submission on sentences imposed, and group evidence is permissible in the giving of evidence about customary law matters.

Clause 29 is of great importance, directing as it does, procedures for the interrogation of Aboriginal people. The comments of the Australian Law Reform Commission on this issue are particularly apposite here in Western Australia:

> The clause lays down some procedures to be followed in the interrogation of Aboriginal suspects by the police. The procedures are intended to assist the police in conducting investigations into suspected offences. Compliance with the procedures will go a considerable way to ensuring the

> voluntariness of a confession obtained, and thus its admissibility in subsequent proceedings. The procedures are also intended to provide secure guarantees for Aboriginal suspects under interrogation so that they will, as far as possible, be in a position to choose freely whether to speak or be silent. In cases involving traditional Aborigines, cultural factors, and especially deference to the wishes or perceived wishes of persons m authority, are frequently a reason why that choice does not really exist in practice (p.292, Vol. II).

The Clause provides for notification of a prescribed legal aid body. This innovation is presently opposed by the Police Union in the State of Western Australia (see Police Union Submission, 1990).

Also provided for is the mandatory 'cautioning' of an Aboriginal about to be interviewed or interrogated, the caution to be delivered 'in a language in which the suspect is fluent'. A 'prisoners friend' must be present when an Aboriginal is being interrogated or when other investigative action is being taken. That Clause effectively codifies the 'Anunga' principles and also extends those principles to other than 'traditional' Aboriginal people, if there is any doubt about that being the case.

Clause 34 allows for an Aboriginal defendant to give unsworn evidence in certain circumstances and this Royal Commission endorses that Clause of the Bill. The Draft Bill codifies matters which have been the subject of police and judicial vagaries and idiosyncrasies since colonisation. The Bill also universalises the position of Aboriginal customary law vis-a-vis the general Australian law and that meets with the approval of this Royal Commission.

A feature of the enactment of this Bill which would particularly benefit Western Australian Aboriginal people is that it would arguably more effectively expose them to the developed jurisprudence of States such as South Australian and Territories such as the Northern Territory.

In the next section, I consider the crucial role of police in relation to Aboriginal people, the criminal justice system and, especially, those people who died in custody, who are at the centre of the RCIADICs investigations.

5.12 CUSTODIANS OF LAW AND ORDER?

> I remember when my mother and stepfather took me out of the camp and we ran away from the station. My stepfather decided to run away because something was wrong with the boss, a bad mood or something. We lived out in the bush for something like a year, we used to go hide out in those big hills ... The old woman would go digging in the creek bed every day for some yams or whatever she could find, and my stepfather went out hunting for bush tucker. In the end, they got the police in Fitzroy Crossing ... and the managers used to get them to look for anyone who had run away from the station ... Right, the police came out and grabbed my old man... chained him up, and walked him back to the station. Back in those days they used neck chains, they slung the chain around the prisoners neck. They chained him, took him back to the station, tied him up, and gave him a good flogging. They used to use a pick handle, axe handle, or whatever they could pick up. They really belted that old man! [Jock

Shandley in Marshall, 1988:71-72].

In Chapter 2 it was observed that Aboriginal and police relations commenced on an inequitable .and racist foundation. That is, as early as 1830 non-Aboriginal 'protectors' (usually men from the police ranks) were appointed, ostensibly to 'protect' Aboriginal people, while at the same time acting as 'prosecutors'. Some further material concerning the background of what has become a crucial area of investigation for the RCIADIC is necessary in order to place the present circumstances of many Aboriginal people and non-Aboriginal members of the police force, into an informed context. Indeed, as Parker (1972:56) cogently notes, 'the historical background of the relationship between police and Aborigines in Western Australia, militates against the existence of trust and respect between the two groups'.

5.12.1 'Placating The Settlers ...'

Policing in Western Australia was primarily shaped by frontier conditions. There was also a tendency to generate 'specialised police' in order to deal with what were perceived as particular problems. Sturma (1987: 19) writes that, for instance, 'water police were formed to patrol harbours ... gold police to regulate the goldfields'.

Making a comparison with members of the Australian police force and other mid-nineteenth century police constabularies in the United Kingdom, reveals a striking difference. Connell and Irving (1980:32) refer to this difference as being the 'degree of repression and force that could be applied against convicts and blacks'. In sum, the catalyst for police practice in Australia in general, and in Western Australia in particular, came from the professed need to 'civilise' the frontier. That was done through the use of authority and coercion, rather than through the skilful management of relationships between Aboriginal and non-Aboriginal people: the former being caught in the process of colonisation and dispossession, the latter as part of the instrument of that colonisation and dispossession. In terms of natural justice, it could be persuasively argued that Aboriginal/police relations have been founded on the police enforcing their power and authority, more stridently than they enforced the law.

In keeping with the consolidation of colonisation, and the European quest to expand economic interests, the concentration of police in Western Australia was initially located in the far north of the State in areas where the potential for pastoral development was greatest. Gill (1977:4) writes that, 'Between 1880 and 1905, the Western Australian police force increased in size and complexity. This growth did not, however, take place at a uniform rate ... Before 1891 much of the increase in numbers was absorbed by the increasing demands for protection made by white settlers in the Kimberley district. In 1889, some four new police stations were opened in the Kimberley, and the number of police stationed there (including native [sic] assistants) was increased by seventeen'. Gill (ibid) citing the then Commissioner of police, goes on to observe that in 1890, 'a large proportion of the force maintained in the northern districts could be dispensed with but for the necessity of keeping an effective check on the natives [sic]'. In this regard it is important to consider that, until very recent times, these sort of views have been propounded. For instance, O'Brien (1960:44-45) states:

Although military posts had been set up as strategic scattered points

> (Governor) Stirling decide to placate the settlers by the establishment of a more adequate police force. The members were mainly recruited from the military, but some civilians and natives (sic) were appointed. Stirling referred to his police in a dispatch to the Secretary of the State saying 'Unless a police force be established and maintained for the purpose of protecting, controlling, managing and gradually civilising the Aboriginal race of this country, there will be a fearful struggle between the invaders and the invaded, which will not cease until the extermination of the latter be accomplished to the discredit of the British name'. Thus Stirling added yet a further duty - that of
>
> civiliser - to the load carried down the years by the Australian policeman, the 'packhorse of democracy'.

The altitude reflected in the preceding account was maintained and reinforced following further exploration of the northern and eastern regions of Western Australia, in the latter part of the nineteenth and early twentieth centuries. Vivid narratives about rich pastoral country and gold deposits encouraged the intrusion of non-Aboriginal people and institutions. This intrusion necessarily, in the eyes of the colonisers, sanctioned the authoritative role of the police in their bid to 'protect the settlers from predatory bands of blacks roaming the territory' (O'Brien, 1960:4).

Some of the views recorded above were, as observed, those which were to inform the foundation of Aboriginal/police relations. The following material brings us from the past into the present, initially by describing The Police Act (1892).

5.12.2 The Police Act (1892)

Today, the police in Western Australia are governed by a piece of legislation known as The Police Act 1892'. The Law Reform Commission of Western Australia cites Burr CJ's extra-judicial comment on that Act:

> It is often said that history is best to be found in rubbish tips. The Police Act is an active tip within which layer upon layer of the social history of our society can be found [para 16.4 Discussion Paper on Police Act, 1892].

The Police Act (1892) deals with matters such as 'night carts', hogsties, the firing of a cannon, the need to cover wells, it prohibits the throwing of dead animals into harbours (Part VII). The Act also deals with general provisions as to offences and penalties and the powers of police officers in the apprehension of 'offences' (Part VI and Part V).

In the matter of arrest powers the Act has direct bearing on the issues confronting this Royal commission, namely the excessive arrest rate of Aboriginal people. Additionally the Act is presently under review and certain elements of that review will be discussed here as some are relevant to the experience of Aboriginal people and of the criminal justice system in this State.

The issue of the exercise of police discretion is a major matter for Aboriginal people and it is believed it is exercised in a discriminatory fashion. So far as Aboriginal people are concerned it is tied in with the police power to stop people and demand their names. Section 50 of the Police Act (1892) reads:

> Any officer or constable of the Police Force may demand from and require of any individual his name and address, and may apprehend without warrant any such person who shall neglect or refuse to give his name and address or either of them when required so to do, or who furnishes information which that officer or constable has reasonable cause to believe to be false... Penalties are $100 or 3 months gaol.

This section previously only allowed the police to demand a name and address from a person not known. That limitation to the legislation was abandoned in 1982 when amendment was made to the Betting and Gaming Act.

The case law relevant to the application of this section of the Police Act (1892) limits the use of the power conferred to situations where a person is actually suspected of having committed an offence, or is a witness to an offence (Yarran v Czerkasow [1982] WAR 239). In the event that the police accept this limitation to their power to demand name and address, this results in the police interpretation of what constitutes 'suspicion' being the test of police intervention. Aboriginal people told this Commission that being Aboriginal constitutes 'suspicion' for some police.

The Western Australian police are provided with 'General Information' about Section 50 in the Police Gazette (27 September 1989) which Gazette also deals with the issue of arrest as against summons. Aboriginal people who spoke to this Royal Commission were not convinced that either the information about Section 50 or about arrests as against the use of summons had been ingested by police. Certainly most commentators agreed that arrests are still being made when summons could be used and Aboriginal people still complain of being stopped in the street and asked for their name and address when they have done nothing wrong.

Most other states which confer on police the right to demand name and address do so in legislation which provides the safeguard of ' suspicion' of an offence as the criterion for exercise of the power. The only other State which does not circumscribe this police power in legislation is Queensland. The States of New South Wales and Victoria do not confer this power on police in legislation at all. My Commission has heard from Aboriginal people that the power under Section 50 of the Act is often abused and recommends that Section 50 be repealed.

The Law Reform Commission of Western Australia has requested responses to a Discussion Paper on the Police Act 1892. My Commission has had the opportunity to consider that discussion paper. Section 50 is one of the provisions of the Act about which the Law Reform Commission is seeking comment. The Law Reform Commission asks whether the section should be amended. In the view of this Royal Commission it should not be amended, it should simply be repealed because even if amended, it is still open to individual police interpretation of 'suspicion' and from consultations held it appears that this clearly disadvantages and discriminates against Aboriginal people.

I now turn to a consideration of the contemporary circumstances regarding relations between Aboriginal people and members of the police force.

5.12.3 Aboriginal/Police relations in a contemporary setting

> it soon became evident that the greatest problems existed in the area of Aboriginal/police relations [EEO Review, 1989:13].

In spite, or perhaps because of the frequency with which Aboriginal people come into contact with the criminal justice system, evidence provided to the Commission indicates that there is continuing serious miscommunication with Aboriginal people throughout all stages of the law enforcement process. In the whole area of Aboriginal/police relations, matters such as socio-cultural beliefs and practices, and language, cause massive miscommunication. The lack of appreciation of the poor material conditions experienced by Aboriginal people only adds to this miscommunication and misunderstanding (see e.g. Parker, 1972; Foley, 1984; Australian Law Reform Commission, 1975; Liberman, 1980, 1981; Roberts, Chadbourne and Murray, 1986; Gale, 1990).

As noted in Section 5.1, Western Australian legislation recognises, through Section 49 of the Aboriginal Affairs Planning Authority Act (1972), that when an Aboriginal person has been charged with an offence which carries with it a penalty of six months or more imprisonment, a court has the right to refuse to accept a guilty plea (or a confession) if it believes that the defendant is not fully capable of understanding that plea or confession. This right is based on the view that the defendant fails to understand the nature of the charge, or the court proceedings. This provision has been narrowly interpreted by the courts, as they have attempted to restrict Section 49 to refer to Aboriginal people who are believed to maintain 'traditional' lifestyles and who have little contact with non-Aboriginal people. Not surprisingly, this Section has rarely been drawn on to support Aboriginal people within the criminal justice system and, from material lint before me, it is apparent that most Aboriginal people are unaware of that Section's existence or potential value.

Police in Western Australia are provided with guidelines in relation to confessions by Aboriginal people in Routine Orders 1-1.4 to 1-1.7. Reference is made to Section 49 of the AAPA Act (1-1.4). Police are adjured to 'take particular care about how the questions are framed' when obtaining confessions from Aborigines, 'particularly Full-blood Aborigines [sic]' (1-1.5). Police are further advised that:

> Where necessary members should speak in broken English and phrase questions so that they are short and easily understood ... [1-1.61.

In my view Routine Order 1-1.6 is inadequate as a guide to police interviewing Aboriginal people. The use of 'broken English' is wholly inappropriate. police should be given clear directions about the use of an interpreter and the necessity of obtaining a 'prisoner's friend' in such circumstances.

Over the years, a great deal of research has been focussed on Aboriginal/police relations in this State. Apart from the more recent pronouncements made in the Interim (Muirhead) and Vincent Reports, Eggleston's (1976) classic work observed that almost twenty five years ago, 1965-67, Aboriginal people were not treated equally before the Australian legal system, and part of that inequity concerned the poor quality of Aboriginal/police relations.

Parker's (1972) study also addressed the inequity of the law enforcement procedures and the discretionary powers maintained by police with regard to Aborigines in this state. Biskup (1973) wrote extensively about the historical, and unjust, circumstances surrounding Aboriginal/police relations in Western Australia, and the findings of the Report of the Laverton Royal Commission (1976) clearly

addressed the massive problems surrounding Aboriginal/police relations. The report by Roberts, Chadbourne and Murray (1986:179), which focussed on the Pilbara region in northern Western Australia, observes that 'Aboriginal/police relations are characterised by more violence than occurs between police and other groups ...'. It is crucial to point out that all these studies made recommendations to improve relations between Aboriginal people and the police, but few of those changes have been seriously implemented.

The Australian Law Reform Commission in its 1986 reference on Customary Law (Vol. 2, para 868) states that it had been provided with submissions about problematic Aboriginal/police relations. The Law Reform Commission cites findings of the House of Representatives Committee Report into Aboriginal Legal Aid that;

> There is evidence that harassment, discrimination, maltreatment and abuse of legal rights by police are still widespread and that in many areas Aboriginal/police relations are characterised by distrust and tension, if not open conflict and hostility [House of Representatives Standing Committee on Aboriginal Affairs Report on Aboriginal Legal Aid, AGPS, Canberra, 1980:72].

The Australian Law Reform Commission made reference to the Aboriginal/Police Relations Special Cabinet Sub-Committee as one of the initiatives in improving relations in this State.

The Equal Opportunity 'Review of Police Practices' Report (also referred to in Section 5.12 on Police Complaints), which was undertaken pursuant to Section 82(b) of the Equal Opportunity Act, makes a number of recommendations all of which are endorsed by my Commission. This review was commissioned in 1988 and completed in 1989 and commented that the relationship between Aboriginal people and police was so 'alarming' that it was deserving of 'special consideration'. The Review also commented that police believe Aboriginal people had 'something against the police':

> Some felt that the best way to deal with the problem was to pay particular attention to those 'disruptive influences' by treating them 'in the same way they treat the police' [1989:14].

The police spoken to in this respect by the review team saw the problem as one of 'control'. That is a long way short of the mark of the avowed police policy of 'community policing'. The review team went on to remark that:

> the almost universal sentiment from Aboriginal people about their relations with police is one of resentment at the level of control over their affairs and the way this control has been exercised [1989:15].

Of the Aboriginal people consulted by the review team, few regarded the police as a 'helping' agency and most were scared to go to the police (p.41 Review). In this regard, it is of interest to observe that both Commissioner O'Dea and myself independently found that relations between Aboriginal people and the police, were less strained in more rural, less formal, settings, than in larger regional settings where Aborigines were more likely to be familiar with particular police officers, some of whom they had good relationships with. It was also more likely that, when in custody, Aboriginal people would have visits from family members and friends (see also regional report of Commissioner O'Dea, Section 4.1). I must stress here, however, that this view is an intermittent observation only, rather than something I

consistently witnessed, and I would need to consider a whole range of other variables before I could suggest that relations between Aboriginal people and police are 'better' in rural areas. The following material expresses some major concerns that have been put to me on this critical matter.

5.12.4 Aboriginal views

Aboriginal people remember the police involvement in their lives from the 'old days':

> ... you had to be home - I think it was before dark - if you weren't the police would arrest you, either give you a hiding or lock you up. So that was safety, Aboriginal people knew go home to the Reserve before dark and you're safe, no white person could go there [RCIADIC Transcript in confidence, 1990].

As noted above, the problems confronted by Aboriginal people in their dealings with the police will be discussed further in the Section 5.12.11 on Police Complaints.

My Commission was told of incidents where police harassed people until they committed an offence. In one incident we were told in confidence:

> they charged this young bloke, they got him in there and he was in there for about four or five hours and they went and released him, and when they released him there was two police down in that side and they arrested him again. It was just in about 10 minutes, not even that, and they took him around and charged him again [RCIADIC Transcript in confidence, 1990].

A number of people stated that the police did not conduct proper searches on old warrants and that people consequently 'cut out' warrants more than once. People couldn't get access to the police records to prove that warrants had been executed. This caused frustration and consternation. The use of the 'padded cell' and stripping of prisoners was raised as a major issue in Perth and other large regional centres. Commissioner O'Dea also addresses this matter.

Informants often suggested that Aboriginal people in custody were not 'real criminals', they were just 'loaded up' by the police. The police did not tell juveniles their rights, did not caution them properly about their rights to silence, harassed and intimidated them. Some people thought the police should be ashamed to arrest the old people as they did. The Aboriginal belief is that:

> the police have a lot of fun with our people out there. They really do. They enjoy it [RCIADIC Transcript in confidence, 1990].

One Aboriginal man said of Aboriginal/police relations:

> It's dehumanising, degrading and it's still happening now. The police are still putting fear into our people [RCIADIC Transcript in confidence, 1990].

All over the State this Royal Commission was told that police were discriminatory in their arrest practices. This appeared to be one of the most major issues.

Aboriginal participants said that police often arrest Aborigines, when they would not arrest a non-Aboriginal. It was also contended that Aboriginal people are treated rougher than other people. I was informed that Aboriginal people are often:

> thrown into the back of the police van without any care to see that they're not injured in any way. Yet, if a white person is picked up, the doors opened for them and they're told to get in. I do think that Aboriginal people are treated a bit rougher than the white people [RCIADIC Transcript, 1990].

Even simple interaction at the police station is considered problematical:

> Even a friendly smile is enough to help people. You know, I know myself sometimes I've walked in the police station and they just look at you as if you're rubbish. A white person will walk in not long after and they say 'Hello, mate, how are you going?' It's a different thing. It makes you feel real bad, terrible. What's wrong with - like we've got leprosy or something ... [RCIADIC Transcript, Kalgoorlie, 1990:204].

Complaints were made constantly all over the State about young police officers. Even some mature police agreed with this assertion, saying that young police were a 'bit smart' when they came out to some areas. Even Hospital staff have commented on some occasions adversely about young police attitudes. It was also stated that magistrates always believed the police (RCIADIC Transcript, Northam, 1990: 10).

In addition, many people informed us that the police never advise communities of their visits for effecting warrant execution. Complaints were made about police entry onto Aboriginal communities or Aboriginal leased land in a number of areas around the State. Police were said to have picked people up at one detoxification centre which resulted in people not trusting the centre. I was further informed of police issuing warrants to people at school, and to football players as they ran out on the ground for the match. There were other distressing accounts of warrants being issued at cemeteries after funerals.

Throughout the Commission's inquiries, it also became apparent that the past continues to shape Aboriginal perceptions of the present. For instance an incident in the early 1950s was reported to my Commission. It was stated that a police officer beat a man to death with his baton: He was allegedly suspended from the Force for a week, there was an inquiry, and the Officer was reinstated and transferred. Mother incident remarked upon was the shooting by a police officer of an Aboriginal man in the 1960s. The man died. Aboriginal people were uncertain as to how that matter was resolved. Other evidence has been taken of a non-Aboriginal person being told of a police officer in recent times shooting and killing an Aboriginal person and burying the body. It is those sorts of oral histories, substantiated or otherwise, which promote a very sceptical view of police assertions that they have a welfare role and are interested in community policing (RCIADIC Transcript in confidence, 1990).

It was also stated in a number of regions that police leave juveniles out in the bush and 'drag them about like a sack of potatoes'. Girls are allegedly picked up and taken bush and old people are said to have been left at the cemetery to tighten them. Police, when asked to provide people with medicine, have been cited as saying - 'You'll live'. It was also reported that police have threatened Aboriginal

people with revolvers; they 'behave like cowboys'; and swear at Aboriginal people and 'nothing happens'. Police make fun of people, have 'fun with them; police don't show people warrants; police don't tell people their rights; police don't wait for legal aid to come and help; police set people up, waiting for them to come out of the lockup and then serving another warrant on people; and police don't feed people properly in the lockup'. These are some of the assertions made by Aboriginal people about their interactions with police all around the State. Certainly a number of Aboriginal people stated that police cannot be blamed for everything and that Aboriginal people had to face up to problems and deal with them.

What became apparent during consultations, was that Aboriginal people felt powerless to change the situation, felt that the police, the courts, the inquiry processes were not just inadequate, but were in direct conflict with, or in opposition to, Aboriginal people. They felt there was no justice anywhere and the police, being the first wave of interaction with the criminal justice system, were very much to blame for this situation. All the protocols and remedies for dealing with these types of allegations, were as useful as the freedom of a key is to a caged bird.

5.12.5 Police

Some police are clearly concerned to be seen to be doing their job in making the community a safe place for Aboriginals and non-Aboriginals. For instance, the Superintendent at Geraldton advised this Commission that when a vigilante group was said to have been established in Geraldton in February 1989 he had the CIB make inquiries which quietened the situation down. He was concerned:

> as a police force that we don't be seen to be not doing our job where Aboriginal people are concerned [RCIADIC Transcript, Geraldton, 1990:247].

Commissioner Bull in evidence to my Commission indicated that a number of positive steps were being taken which would eventually break down barriers. Such initiatives included, Blue Light Discos which are staffed by off-duty police, and where no alcohol or smoking is allowed; community policing; placing police in schools, which initiative was initially met with suspicion by the Ministry of Education but has now expanded and demand continues to grow for police in other schools (RCIADIC Transcript, Commissioner Bull, 1990:662).

Commissioner Bull is of the view that the police are 'doing more than our share' (ibid:638) to break down the barriers and that the 'whole community' must contribute. At Roebourne he indicated two police officers were involved in the Basketball Teams. At Shark Bay, the police had developed a leisure centre largely for Aboriginal juveniles which was built to 'show the kids a better way of life' (ibid:639).

Police are involved in and establish Police and Citizens Youth Clubs (PCYC). taking buses around collecting juveniles. In respect of juveniles Commissioner Bull stated that co-operation with the Department for Community Services is said to be working effectively at senior level and meetings are held every six weeks to discuss issues (ibid:6-40).

Some police have instituted their own Aboriginal Visitor's Schemes:

they haven't waited for a Government sponsored scheme that relies on finance [ibid:642].

Commissioner Bull stated in evidence that 'regulations are far from perfect but [we] have made a lot of headway' (ibid).

The Aboriginal cadets scheme continues to operate although the numbers have dropped from 20 to 14. This issue of Aboriginal people in the Police Force was raised by a number of people who stated that there should be a large influx to provide peer group support. It was also suggested that if Aboriginal people joined the police in numbers and the problems with Aboriginal police relations continued then at least the debate would have moved away from the simple assertion that the problems occurred because of racism (RCIADIC Transcript, CDBR, Perth, 1990).

At Geraldton there is a community based police officer who is of 'distant Aboriginal descent' (RCIADIC Transcript, Geraldton, 1990:257) who will be stationed at John Wilcox High School. Contrast this with the police officer who while asserting his knowledge of and empathy for Aboriginal people referred to an Aboriginal woman as a 'gin'. That woman had been arrested three times in the one day for the offence of drunk.

Police who were interested in resolving the problems of interaction with Aboriginal people stated that there was a need for interaction, community meetings and discussion. Police needed to be trained for work with Aboriginals (RCIADIC Transcript, Northern, 1990:11). However, some Aboriginal people stated that on at least one occasion when they attempted to organise meetings with the police to discuss issues, the police had said 'that's a family matter'. On the other hand, when police have tried to organise meetings with Aboriginal people, they had failed to respond as well.

It is apparent that there are often conflicting allegations about how and why Police/Aboriginal community meetings are not attended. In one country town, my Commission was told by the police that a quorum could not be obtained for an Aboriginal/Police Liaison Committee Meeting. It was suggested there might be two reasons for that - people were not interested or they got their dates mixed up. The police inference that it was the fault of the Aboriginal participants that there was no quorum was then flatly contradicted by the Chairperson of that Committee (RCIADIC Transcript, Northam, 1990:127). Aboriginal/Police Liaison Committees are now almost a state-wide initiative. In one small country town comment was made by a police officer that he has had trouble establishing a Liaison Committee due to lack of interest (RCIADIC Transcript, matters relating to Donald Chatunalgi, 1990:58).

In a recent response to a question from my Commission:

> Q: The Department has responded that 'police officers usually have good relations with all communities'. What is the justification for this statement as evidence before the Royal Commission strongly indicates otherwise?

The Commissioner of Police responded thus:

> A: The Commissioner and his Senior Officers move around the State on formal inspections and informally as well. On these occasions,

> contact with member [sic] of the public both officially and unofficially, indicates that good relations exist.
>
> As recent as the week commencing August 13 1990 the Commissioner visited a number of areas in Perth city and suburbs and it was his impression that the relations between the police and the public were as indicated.
>
> Assistant Commissioner (Personnel) and Inspector Court, from the Aboriginal Liaison Unit, both have recently returned from visits to the North of the State and they report favourably on this issue.
>
> Commander Carlson visited Warburton, Wilunga [sic] and Northam in August 1990 and his impressions and experiences were similar.

While it would be improper for me to contradict the findings as recorded above, and it is important to stress that my Commission has also witnessed signs of improving relations between Aboriginal people and the police, I continue to be concerned at the poor quality of relations that generally exist between the two groups. Commissioner O'Dea is of a similar view as recorded in his report.

I might add here that I have every sympathy for those officers who give up time and reward to help with activities, in addition to their duties and personal affairs. They are sometimes let down by members of the community who complain about the problems of youth and other matters, but who are too preoccupied with their own interests to lend a hand or provide support. Community policing is in danger of being a more intense version of the policing imperative if all sectors of the society do not take an active role.

5.12.6 Aboriginal/police relations and those who died in custody

> ... last year my cousin - they found 'im hanged down in Fremantle police Lockup and everytime they picked 'ira up - they pick 'im up probably for warrants and being drunk and even at the football matches when he used to come into the football ground - police see him, they used to walk straight up to 'im. And he used to see the police comin' and he used just take off outta the oval again. He said: nah, I'm not gonna get picked up again.
>
> And he wouldn't go to no pub. Couldn't sit in the park with other Nyungahs because police come up and pick 'im up. And everytime I see 'im drinkin' he's always drinkin' in a back alley somewhere. He said: nah, I'm not going nowhere else to drink. And at the police station the end cell in the manned section at East Perth Lockup they had a little sign up on the door, Benny Morrison's cell, and they had a little thing up on the door, in-out, 'cos round the comer they had if the Magistrate was in-out.
>
> And everytime they pick 'ira up cos I been in there four times when they picked 'im up and he said: they picked me up for nothin' again. I was drunk sure, but was goin' 'ome. And they just laughed and said: hello, we got Morrison back in there. Changed the thing there [the sign] and have a good laugh about it. And this is just four times when I was in there and plenty of other times, and they was driving this bloke mad. And then he went down to Fremantle. He said: I'm getting outta Perth. He went to

> Midland, he went to thing. Tried 'em all, I suppose. When he went down Fremantle that night people come around and told me that he was hung and I had to go and identify the body.
>
> But, you know, the police were laughing at the man too much and just buggered his life right up where he couldn't [do] nothing. And all these things are happening with all these Government institutions where white people are concerned who just do not see a side of Aboriginal people properly through the whole history they been here, I think, because nothing - they say: yeah, Aboriginal people just been shot and killed and it doesn't show where they have no pity. They think Aboriginal people got no pity - no feelings inside of 'era [RCIADIC Transcript, family member, 1990].

As documented in Chapter 4, Benjamin Morrison died on 6 April 1988 at Fremantle Police Station, as a result of asphyxia due to hanging. He came from Pinjarra and was born on 2 November 1932. At the age of five Ben Morrison was separated from his parents when they were 'banished' from their Guildford camp after his father had been convicted of disorderly conduct. Benjamin Morrison was transported to the Moore River Settlement, north of Perth, near New Norcia Mission.

Over a 30 year period, Benjamin Morrison was convicted of at least 275 offences, mostly relatively minor matters. When drinking he was reported to be unpredictable and aggressive. He had previously, in 1980 at Midland Police Station, tom up a police issue blanket, and been charged with wilful damage. It was noted on his information sheet, 'He is suicidal'.

Commissioner O'Dea observed in his report into the death of Benjamin Morrison that there was:

> the propensity of some policemen to refer to alcoholics, especially Aboriginals, in derogatory terms and to treat them less humanely and with less respect than other citizens [p.6 Report].

In the case of Ben Morrison he was known to at least one and possibly two of the arresting police, which gives credence to the family member's submission to this Commission. The police knew him:

> from previous (arrests he was) ... what we call a warb from the Lockup. That means someone who comes in drank all the time. They call them a warb [Report on Benjamin Morrison, 1989:55, Evidence of C.N. Graham].

That police officer had been stationed at East Perth Lockup where:

> you had your warbs and they are, you know, 20 different blokes that were always coming in for being drunk ... they were just called warbs. I don't know why they were called warbs [ibid].

In the case of the death of Bernard McGrath who died of asphyxiation due to hanging at the Kalgoorlie Police Station on 15 November 1987 the police gave a considerable amount of evidence about name-calling. A Senior Constable in the McGrath hearing, indicated that the police had a good working relationship with Aboriginal people in the Kalgoorlie area (Transcript on the Bernard McGrath case, 1990:866). At the same time he agreed with the assertion that Aboriginal people are called Blackfellas, coons, boongs (p. 868 ibid). These terms are used in

response to abuse such as 'white trash', 'whitey' (O'Dea Transcript on the Bernard McGrath case, 1990:924).

One witness gave evidence to the O'Dea Commission that:

> The police try and provoke you. They come up and ask you your name when you are not doing anything. When you ask them, 'Why do you want to know' they act smart to try and get a reaction. I've also heard police officers in Kalgoorlie calling Aboriginal people niggers [ibid:89].

A Constable agreed that the word 'nigger' gets:

> mentioned, yes, but ... wouldn't say that ... was racist or anything [ibid 3691.
>
> ... I have used (the word nigger)... jokingly towards Aboriginal persons before and they know that it is only jokingly used. There is nothing intended by it [ibid:385].

Yet another Constable agreed that he 'may have' referred to Aboriginal people as 'niggers' (ibid:405). He did not think that remark was offensive (p.406 McGrath). Additionally, the report on the death of Kim Polak by Commissioner O'Dea also relates concerns about 'racist attitudes and the use of racist language by some police officers serving in Kalgoorlie at relevant times ...' (Commissioner O'Dea's report on the Kim Polak case:48). The comments of two former senior police aides caused Commissioner O'Dea 'grave concern' (ibid).

A witness in confidence to my Commission described the police attitude to Aboriginal people when relating what happened when reporting an assault upon an Aboriginal person:

> ... I saw outside a hotel a white man and an Aboriginal man ... out the front. And the next thing I saw the white man kick the Aboriginal man - it was an old man, the Aboriginal man - in the head, right up in the air ... I... turned around. And by the time I was driving back there were about six people watching doing nothing. That Aboriginal man was being just bashed - bashed and bashed - by this one man. And as I drove past I had the Aboriginal man's head smashed into the back of my car ... I went sort of on. I wanted to get out but I thought they'd probably bash me too ... so I thought: I'll go to the police station. And on the way I thought that - it probably won't do any good but I went. And I told them what happened.
>
> And their first question was: was my car damaged - when I told them this man was being beaten to death and thrown to the ground [RCIADIC Transcript in confidence, Perth, 1990].

The case of Albert Dougal provides a graphic demonstration of the state of Aboriginal/police relations in Broome in 1980. What is alarming to my Commission about the treatment of Albert Dougal by the police, is not only that it occurred in 1980, but that police involved in that case continued to regard their actions as acceptable when giving evidence in June 1989.

Albert Dougal spent the first 10 years of his life at the Broome 'Native Reserve' until being removed to Beagle Bay Mission after being found to be 'neglected'. At the time of his last 'arrest' when found unconscious outside the Roebuck Hotel he

had three prior convictions. In 1978 he stole a sausage from a Derby store because he was hungry. He was fined $5 plus costs but actually served two days in default of payment. He was charged again in 1978, with re-entering licensed premises and the charge was dismissed. For an offence of disorderly conduct in 1980 he was fined $50 and costs and served 8 days default. On 4 December 1980 Albert Dougal was found unconscious outside the Roebuck Hotel in Broome. He had been hit by another person. He had defecated on himself. The police 'arrested' him and took him to the police station. The Senior Constable who arrested Albert Dougal told Commissioner O'Dea that:

> We hosed his bottom half down because he was such a mess [Report on Albert Dougal, 1989:157].
>
> This was done in the carport. This was done to 'clean him up a little bit' [ibid:158].

Asked in June 1989:

> Would you say that the treatment of Mr Dougal in hosing him down was treating him in a humane and dignified manner?.... I believe so --yes [ibid: 163].

Another Constable said that:

> I may well have hosed him down myself if the climate was right and the mess was great enough ... it's never happened [ibid:204].

At the time Albert Dougal was brought to the police station one Constable 'had a look' for injuries. He then:

> got the garden hose and we pulled him towards the end of the van so that the legs dangled down onto the ground and hosed down the trouser area with the garden hose [ibid:221].
>
> It was very hot during that time of the year, and I considered that he would certainly dry out very quickly - mainly for his sake, to be reasonably humane, and for our sake too - to have to carry him, in that condition down to the cells [ibid:222].

In June 1989 a police officer stated in evidence:

> ... I don't think it was undignified at all [ibid].

Albert Dougal was then laid down in the exercise yard on the concrete without a pillow or mattress:

> my experience showed me that they preferred to sleep out on the concrete. Most of them, as I recall, rarely used the mattresses... [ibid:223].

It is of interest, and some concern, to note that one of the police involved in the hosing down of Albert Dougal is now associated with police training.

5.12.7 The Police Union and relations with Aboriginal people

The Police Union submitted that there had been a 'regular' association between police and Aboriginal people 'in both policing and welfare roles' (1990:2). It was suggested that there had been little recognition of the 'welfare' role of police and This... could be said to reflect deliberate denigration of police' (ibid). The submission also argued that police have 'displayed a remarkable degree of compassion, understanding and assistance to their fellow man, the Aboriginal' (ibid:3).

Aboriginal people, while advising that there were some 'good' police were so universally of the view that police show little or no 'compassion, understanding and assistance' that I am left to wonder, how and why such diametrically opposed views can have developed.

The Police Union submission also provides discussion that reduces Aboriginal people into three groups - traditional, Group A, agricultural, Group B, and urban (fringe dwellers), Group C. 'Traditional' people have a 'pure blood strain'; 'agricultural' people are those 'of mixed blood' who 'exist outside Perth and Geraldton' (1990:5). The urban group is described as:

> the Perth metropolitan and, more recently, Geraldton, people, again predominantly of mixed blood and who are referred to as the 'fringe dwellers' [ibid].

This categorisation of all urban Aboriginal people as 'fringe dwellers' is plainly inappropriate and misleading. For instance Aboriginal people living on the fringe of Kalgoorlie in conditions which rival those of the Third World for poverty can clearly be classed under this heading but are not referred to at all. The Police Union's efforts to enter into the debate about Aboriginal displacement, marginalisation and pauperisation are facile in the extreme and reflect the stereotyping which has oppressed and adversely affected Aboriginal people since colonisation. The use of the 'blood strain' terminology is offensive and ill rounded.

The Police Union argues in its submission that employment, housing, 'mental depression' and lack of positive role models promote a number of problems presently confronting Aboriginal people and:

> Fragmentation of their traditional aims and ideals through lack of education, motivation and the breaking down of pure blood lines must add fuel to that fire [1990:6].

Further, the Union submits:

> Injection of money was tried by the Federal Government as a means to overcome the Aboriginal plight in the early 1970's. This led to an attitude problem where there is now complete expectation due to birthright with no requirement morally or legally to input by Aborigines [ibid].

This Union attitude was reflected at a Commission conference session in Perth when it was stated that:

> ... this sense of injustice that is bred into some of them. It's promoted by vested groups again that they are owed something by the broad community

> and therefore have an inherent right to be above the law ... [RCIADIC Transcript, Police Union, 1990:783].

During my conference with Police Union representatives, it was stated that there is a 'race relations industry' in this country, a 'pure money making business' (RCIADIC Transcript, Police Union Conference, 1990:760). Additionally, the suggestion was made by one Police Union official that:

> the Federal Government has to be convinced that social security payments to people of any origin, whether it's ethnic or not, have to be as a result of some work done, in order to be able to provide people with a feeling of wellbeing ... [RCIADIC Transcript, Police Union Conference, 1990:770].

In conference at Northern my Commission was told that Aboriginal people should receive vouchers as they 'can't handle money' (RCIADIC Transcript, Northern, 1990:19). And one Union official in conference suggested that it was his personal view:

> ... that there's a couple of fundamental questions that confront the Aboriginal community, and one is integration into the European lifestyle. And the other is either partial integration or the tribal style of living with some European influence on it.
>
> And there's a lot of history that shows the problems that do occur and one can look at the Italian migration that occurred to Australia, and what was at that time a lot of prejudice against those people by the community existing here at that time, and how it's been demonstrated over a period of time, the only answer really is integration, completely, into the community itself [RCIADIC Transcript, Police Union, 1990:772].

'Inappropriate' role models were also the subject of criticism by Union representatives:

> radicals you might term [them] ... [S]ome of them are wayout in terms of acceptability to the general community ... [B]ut there doesn't appear to be any substantial screening or quality control in relation to the appointment of some of those leaders [RCIADIC Transcript, Police Union, 1990:776].

The Police Union also argued that its members had to accept a 'welfare' component in their role, and that this needed to be understood and tolerated by Aborigines. However any advances which could be made in this area were eroded by Aboriginal lobby groups such as the Aboriginal Legal Service. The Police Union called for the abolition of all 'racially titled service groups and their absorption into the all encompassing agencies' (1990:8).

While acknowledging the underlying medical conditions of Aboriginal people the Police Union suggests that the 'physical malaise' of people is due to such disparate things as:

> Inadequate housing, lack of understanding of nutrition requirements, poverty, lack of morals and massive alcohol and other drug abuse [Submission, 1990: 10].

The 'blood line' issue is again advanced under the heading 'Underlying Issues',

where it is submitted that:

> In Groups B & C there is an increasing propensity for Aboriginals to commit assaults of the most vicious nature on members from any section of society, not confined to the domestic scene as in Group A.
>
> It is suggested that this has arisen due to the watering down of the blood line and the loss of traditional life style laws and codes of conduct [ibid].

The first thing that needs to be said about that statement is that whatever the statistics on assaults in the Aboriginal and non-Aboriginal community one major factor is that of Aboriginal people's visibility. As one participant to the conferences said:

> ... Aboriginal people are out in the open, so naturally people say they are violent people. They have got no homes to go to or to get behind closed doors and bash one another where you can't see it [Roy Walker Transcript, Commissioner O'Dea, 1990:56].

It is enlightening to see that the Police Union assertion ignores the sort of sociological features pertaining to Aboriginal society, features around which my Commission is centred, which were explored in the Alwyn Peter case, in Queensland. The published work by Wilson (1982) under the title 'Black Death, White Hands', provides detail concerning this well known case.

An examination of imprisonment statistics shows Aboriginal people imprisoned for violence offences at a proportionately greater percentage of the Aboriginal sentenced population than is the case for non-Aboriginal people but that does not in itself connote 'violence' (see Prison Census, 30 June 1988). The statistics also show that Aboriginal people are imprisoned at a much greater rate for minor and serious assaults, than are non-Aboriginal people. That may be a result of visibility, arrest practices and sentencing practices. The number of 'serious' assault sentences being served by Aboriginal people may also be a product of the fact that to assault a police officer is in the State of Western Australia an 'aggravated' assault. The Union also ignores the fact that what it refers to as the 'watering down of the blood line' has not automatically resulted in loss of lifestyle and codes of conduct, as later sections in my report will illustrate. Interestingly, the Police Union assured me that:

> Western Australian Police Officers have, in most instances, a reasonable understanding of the Aborigine in Western Australia wherever they appear [1990:15].

As noted this 'knowledge' of Aboriginal people has also been claimed by the Justices of the Peace in their dealings with Aboriginal people. My Commission is far from convinced that the confident assertion of the Union is correct, and in fact, an examination of police training suggests that police officers are not given sufficient training about Aboriginal issues or culture and consequently 'know' very little about Aboriginal people. Many police, who have given evidence to this Commission, commented on the lack of knowledge of police officers of Aboriginal issues and culture.

In response to recommendation 21 (b)(i) of the Vincent Report, which suggested positive encouragement of Aboriginal applicants for the Police Force, the Union observes:

> The Union agrees with this in its pure form, however, the Police Union is opposed to affirmative action which would see a certain percentage of a particular race which in itself could mean the varying of either entry standards or qualifications to achieve those percentages... [1990:271.

This argument is difficult to sustain when it is considered that the minimum schooling requirement for police is presently Form 2, even though Commissioner Bull advised my Commission that most of the people entering the force are 'well beyond that' (RCIADIC Transcript, Commissioner Bull, 1990:658). The Union, however appears concerned that there would be a 'lowering' of standards to allow Aboriginal applicants into the Police Force. I wish to make it clear here that this is not to suggest that the problems of a minority indigenous group are resolved by members of that group joining the police force. There are obvious complex problems in that, some of which are discussed in Section 5.12.10. Additionally a person joining the police force may then be seen as a member or agent of the majority. My Commission also heard oral submission from Mr Noel Olive of the Committee to Defend Black Rights, in which he states that:

> the whole attitude to policing in Aboriginal communities has to change from a police force which is European or non-Aboriginal and white to one which is Aboriginal ... that ... is the only way that there will be any development in this area... a lot of police -most police - have no tolerance with Aboriginal culture at all ... [CDBR Transcript, 1990:807].

The Police Union attitude to the Aboriginal Legal Service as evidenced in its submission to my Commission where it responds to the Recommendations of the Interim Report, give a further indication of reactionary police culture attitudes to affirmative action proposals. It is clear that the Union resents the intervention of the 'racially titled service group' (Police Union Submission, 1990:8) which it believes has instilled 'insolence' and false expectations of acquittals in Aboriginal people. The Police Union attitude evidences the arrogance with which some police allegedly deal with Aboriginal Legal Service representatives and their clients.

In response to the Muirhead recommendation that there should be a system of notification to the Aboriginal Legal Service when an Aboriginal person is detained, the Union states:

> The Union strongly resists this as any sort of workable recommendation. It is in itself discriminatory, would be far too time consuming, in fact would invade the privacy of many Aboriginal people who do not wish to seek the services or have their plight know to the Aboriginal Legal Service, or others, and for those basic human rights type reasons it should be resisted [Submission Police Union, 1990:34].

I find it difficult to accept the Union's reasoning in opposition to recommendation 11 of the Interim Report. Notification systems have worked in other states (notably Victoria); it takes no time at all for a telephone call to be made to either Missing Persons who then notify the Aboriginal Legal Service or a telephone call to be made directly to the Aboriginal Legal Service. Additionally, it is inappropriate to talk of an arrestee's fundamental human right not to have the assistance of a lawyer. My Commission takes the view that it is a basic human right for any person to seek and obtain the assistance of a solicitor when faced with criminal charges. It is also my view that the Police Union is not fully equipped to put forward Aboriginal views on this issue. The Police Union's substantiated view on this matter is propounded

in respect of the provision of legal advice in its response to recommendation 20 of the Interim Report. The recommendation reads:

> 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.

The Police Union response is that this is 'totally discriminatory' and that:

> There are provisions and requirements already in existence on the Police Force to seek legal services where requested. We believe this is satisfactory and no distinction should be made [p.36 Submission].

The Police Union is at variance with the Commissioner of Police on this issue. In the most recent Answers to Questions the Commissioner of Police (date 31 August 1990-5.1) indicates that:

> ... there does not appear to be any reason why members could not be required to ask this question (whether a detainee would like to contact Aboriginal Legal Service or other designated persons) as a matter of course with all prisoners [5.1].

Training of police in matters relevant to Aboriginal people, which would arguably result in better Aboriginal/police relations, receives the approval of the Police Union on the one hand, but the Union sees 'no reason to have that training course examinable' (1990:38) on the other hand. However, it seems reasonable to state that not only should there be 'consultation' with representatives from the Aboriginal community about the training course, but that such course should be taught by Aboriginal people and it should continue to be examinable, and exam results be part of the final assessment. Any Aboriginal person employed to educate police recruits on Aboriginal issues should be given every support and assistance in provision of the course. This is absolutely necessary to overcome the offence given to lecturers by:

> racism that was being delivered to the lecturers, on site, out at the Police Academy; so much so that ... about 50% of the lecturers ... quite frankly and openly refused to go back to the Police Academy to lecture. They just feel so fed up, and that's people who have a very, very good background ... [RCIADIC Transcript, Perth, 1990].

It has been observed to my Commission that the recruits have been racist and intimidating to lecturers. There was also no control over recruits in class until very recently. The presence of a senior police officer has been necessary to contain the outbursts of the Recruits. The police recruit exposure to Aboriginal studies in Western Australia is only two hours and forty minutes. In the Northern Territory, which is comparable, the police recruits undertake a 20 week course of which the largest special instruction component is that to train police to work among Aboriginals.

Police aides are said to receive the support of police officers and the Union in its submission states that it totally supports police aides (1990:39). Given the fact that Aides do not have equal powers, equal status or equal pay and yet are mostly members of the Police Union, this Commission is not convinced of the Police Union's commitment to police aides.

There appears to be, in the Police Force, a general lack of understanding of Aboriginal people, which is self perpetuating through neglect or active sponsorship. There is also an intractable attitude which is constantly reinforced by an ongoing problematic 'police culture' which is resistant to change, debate or useful discussion. Such an attitude is evidenced in the following:

> This perception that Aboriginals - seems to be engendered in a number of leading Aboriginals that the police particularly single out Aboriginal people for attention, I think is very wrong in fact ... And that is that other Aboriginals call the police in to restore some sort of order into a situation. And when the police invariably arrive they seem to be set upon by all groups then [RCIADIC Transcript, Perth, 1990:78].

This scenario was advanced in conference in Perth as a demonstration of the problems police confront in policing Aboriginal people. It deals with the sort of situation where Aboriginal people are feuding, and not with the daily anxieties of Aboriginal people that they are excessively and discriminatorily arrested for minor offences against public order or on 'suspicion'. For Aboriginal people to be black and living in poor material conditions results in the widely held perception that they are 'criminals'. The consequence is often arrest. In situations where Aboriginal people do call the police in remote areas, or to Aboriginal excisions/reserves, they complain of police insensitivity to community protocols. If the police wish to regard themselves as welcome in Aboriginal communities it is not unreasonable to require them to adhere to locally accepted social practices, as would potentially be the case in a middle class non-Aboriginal suburban enclave.

An observation that I think is worth making about the Police Union is that many of their numbers are only in their second year of service, and still on probation. The communication through the media of the Union's views on matters of criminality and Aboriginal people, especially on youth, are especially crucial and sensitive. Negative attitudes and perceptions are easily propagated for adaptation when there is no great knowledge about the history of race relations in this country. Leadership from the Union in respect of cooperation with my Commission can be readily contrasted with their cooperation with other relevant Commissioners. From a recognition of this dichotomy, I can only hope that, eventually, the cumulative nature of Aboriginal/police relationships can change and improve.

If the general public wants police officers on the streets in the shortest possible time with the minimum amount of human relationship skills being provided to them, then it is hard to see how the humanity and sensitivity required for dealing with Aboriginal custodies, or custodies in general, is going to be carried out.

The matter of training in relation to Aboriginal issues is dealt with in greater detail by Commissioner O'Dea in his report.

5.12.8 Commissioner of Police and relations with Aboriginal people

The Commissioner of Police is a member of the Police Union of Workers. Of Aboriginal/police relations, the Commissioner states:

> I would agree ... there is this reluctance by Aboriginal people to often come forward ... the community policing can break down those barriers ... so they see the police in a different role ... they see the police is also helping

> them ... I think this is evidence by ... the constant requests I am receiving ... for my officers to visit Aboriginal communities. They want us. They are making requests for us to come and visit and to help them. So they don't see us as the enemy. They see us as the agency. more likely to help them over and above all the other agencies [RCIADIC Transcript, Perth, Commissioner Bull, 1990:641].

Commissioner Bull believes that there has been a large amount of success in the breaking down of the barriers between Aboriginal people and the police. He sees the police aides as providing a very useful form of assistance to the concept of community policing, and believes that the role of the police aide is now substantially that of liaison work. Whereas previously aides were involved in law enforcement, this is no longer the case (ibid:654-655). It was noted that police aides 'do break down barriers, do help officers dramatically' (ibid:655). (The issue of police aides is discussed in Section 5.12.10.)

The idea of community policing is being very actively pursued by Commissioner Bull. He indicated that officers with proven ability to work with Aboriginal people were being sent to the areas where the population is predominantly Aboriginal (ibid:592) and that some police are undertaking studies of Aboriginal language in the areas in which they police (ibid:658). He stated that the philosophy of community policing is now being actively pursued in the Police Force, it is a relevant criterion for promotion and it is official policy that community policing be undertaken (ibid:595). This policy was adopted in 1987 (ibid:601). Civilian Councils have been established to impact upon this area and the thrust is to encourage police to be pro-active rather than re-active.

Of course, Aboriginal people say that police already police them in a pro-active fashion. Broadhurst (1987) comments, 'Experience suggests that, in general, the policing of drunkenness is pro-active and concentrated on special groups and special periods of time ...'. Police clearly need to be given careful guidance about how a pro-active policy should operate.

Further, Civilian Councils are to commence in Kalgoorlie and Geraldton 'fairly soon' and will also be developed State-wide. Commissioner Bull is convinced this community policing concept can work in Western Australia, as one of the really positive elements of it is that they will be dealing with Aboriginal people in a 'non-conflict' situation with people who do not fit the mould of 'all Aboriginal people being alcoholics'. He holds the view that community policing will 'prevent a culture because the police attitude is that we can't do without the public we serve' (ibid:603).

In the light of Commissioner Bull's positive view of Community Policing, it is alarming to discover that the view held by at least one member of a Community Policing Council is that:

> 'It seems full of well-meaning people trying to do the right thing, but I think that well-meaning is located in the wrong department completely. If they are talking about prevention ... this shouldn't reside in the police, because the police have their own agenda which is Neighbourhood Watch and truancy patrols ... Their definition of prevention is 'better detection and how to catch a thief. That is their definition. The community reps might have a different definition which is 'Let's look at some social causes. Let's look at the community issues'. I can't see the two merging in that sort of structure [RCIADIC Transcript, Juvenile Justice, 1990:68].

The Community Police are allegedly called 'lollypop cops' or 'soft cops' by the police on the beat. And it is the police on the beat who are involved with the community. Overall, the interest in community policing must also be seen in the light of the Commissioner of Police Answers to Questions on Law Reform issues (see 21.1 (c)). The Commissioner indicated that the Police Department response to the Law Reform Commission (Western Australia) Discussion Paper on the Police Act 1892, was to maintain provisions in the act which were necessary for:

> the maintenance of order in society...
>
> Although there is a tendency in other jurisdictions to curb police discretion in law enforcement and to restrict police powers of entry, search and seizure, any attempts to restrict, limit or to erode existing powers in this State will be strongly resisted by members of this Police Force.
>
> This resistance is based on a desire to maintain the status quo in order to effectively service the public of Western Australia. Whilst the argument for restriction in other jurisdictions may be justified by evidence of widespread abuse, the same cannot be said of police in this State.

The Commissioner of Police has indicated to the RCIADIC that the police were in fact requesting additional powers in this State, which include the power to search people apprehended on a Warrant, and the 'power to search persons visiting police lockups'.

Numerous Aboriginal community people do not agree with the Commissioner's view that there is no need to carefully prescribe the limits on the use of police discretions and other powers. My Commission has grave concerns about the use of police discretions in respect of Aboriginal people and is further concerned that although 'community policing' is being promoted as police policy it is certainly the subject of limitations given the other rationale of the Police Force as typified in the Answers to Questions cited above.

The issue of police discretion, is being dealt with in the regional report of Commissioner O'Dea and it is not proposed to examine the matter here, save to say, that the statistics for the arrest of Aboriginal adults and juveniles in this State suggest that police discretion to summons, rather than arrest, is not being employed in respect of Aboriginal people. As long as this situation continues, it does not conduce to good Aboriginal/police relations.

What could be said of the extensive reliance by the police hierarchy, on police discretion in this State, is that it can result in a virtually non-existent and ineffective control structure which is arguably open to abuse.

Additional to the community policing role of police, Commissioner Bull told the RCIADIC in relation to the 'welfare role' of police:

> ... it is not difficult for a police officer because that is part of their normal role - their everyday role ... they are interacting with the public and helping the public all the time so having a welfare role is not difficult for a police officer. A big part of their normal role is welfare, is people that are in need, whether it is elderly people, children - they are constantly going to the aid of people who are in need ... [RCIADIC Transcript, Perth, Commissioner Bull, 1990:614].

Contrast this with the view expressed by one official of the Police Union:

> We're given the job of having to catch people who infringe against society laws. Society makes the laws and we simply uphold them. We're faced with the problem of doing what nobody really wants to do, and that's take people's liberty away [Police Union Conference, 1990:772].

Not only does this demonstrate an attitude to policing which does not reflect the Commissioner of Police commitment to community policing but it indicates little interest in the welfare task.

5.12.9 Aboriginal/Police Liaison Committees

These Committees at a local level are said to overcome problems in relations (RCIADIC Transcript, Commissioner Bull, 1990:640). Superintendent Davies of Geraldton also thought the Aboriginal/Police Liaison Committees were a:

> good method of gaining the support of the Aboriginal people in the community. [He thought] it's important that these people are respected members of the community [RCIADIC Transcript, Geraldton, 1990:241].

Aboriginal Justice of the Peace Elizabeth Logan submitted to this Commission

> the Police-Aboriginal Liaison Committee stamped out violence in Norseman. The Committee was a forum for people to air their views. They just want someone to hear them. The problems were solved right at the table. It provided people with a sounding board. The matter didn't need to go any further. People don't want to take matters further if they are frightened of having to give evidence ... It was good for people to see the Sergeant listening to them [Submission to RCIADIC, Elizabeth Logan, 1990].

When these sort of committees work it is not because the committee is:

> very powerful, but because the individuals who make up the committee have their own pieces of power in their own areas. Like the Shire Clerk can go and get local Government to put in the funding when it is necessary to run a particular programme. The Police Sergeant does recognise when the Aboriginal community come and tell him around the table that there is a particular problem and he can go off and re-arrange his Police Officers [ALS Solicitor, RCIADIC Transcript, Juvenile Justice Conference, 1990:76].

This optimistic view is not shared by all the people who spoke to the Commission about Liaison Committees. One Youth Legal Service Lawyer commented that the police have their own agenda and that their idea of prevention is 'better detection and how to catch a thief. The community representatives might have a different definition.

The Special Government Committee on Aboriginal/Police and Community Relations was established as one of the two recommendations implemented from the numerous Recommendations of the Laverton Royal Commission (regarding

the 'Skull Creek incident'). It is not resourced to undertake a large scale education campaign on sensitive and difficult issues such as racism in this State. The Committee sees that as a matter requiring attention.

It has been operational since 1976 and it was through the auspices of Government Committee that local liaison committees in Aboriginal/Police Relations were provided with the resources to formalise their operations. The local committees started to become established after the 1984 Aboriginal/Police Relations Conference. There are now thirteen local liaison committees functioning throughout the State, including Kalgoorlie, Norseman, Esperance, Geraldton, Broome, Katanning, Fitzroy Crossing and Leonora. There are three more such Committees about to be established (RCIADIC Transcript Perth, 1990:93, Chairman of Special Government Committee on Aboriginal/Police and Community Relations). The Kalgoorlie Police advised the Commission of their 'joint approach' to Aboriginal/police problems through the Committee (RCIADIC Transcript, Kalgoorlie, 1990:347). These local committees address grass roots issues but are only effective if people feel comfortable to address the issues of police training, in Geraldton glue sniffing, in Kalgoorlie homelessness and the use of methylated spirits. Mr Main has said of the community work in Roebourne:

> ... we've done work in Roebourne ... where ... the interest of the committee in that town over a period of time has contributed quite positively towards improving Aboriginal Police relations in a town that's been notorious in the past ... [RCIADIC Transcript, Perth, 1990:500].

The Equal Opportunity Review found people generally positive in their views about these committees, the key to success lying in the 'equal representation of police and Aboriginal people' (EOC Report on Aboriginal/Police Relations 1989:46). The other important feature of these committees is that the initiative generally came from the Aboriginal communities. Additionally, the Equal Opportunity Review thought that the Departmental representatives on these committees should 'report directly to their Heads of Department and Ministers' (p.46 Review).

The former Executive Officer with the Special Government Committee on Aboriginal/Police and Community Relations gave evidence at the hearings of the Human Rights Commission into racist violence on 29 November 1989. He told that Commission that the Committee had developed two strategies. The first was to try to influence Government through research and report on issues - but that they had had very little success. They had as part of the second strategy, generated interest in the establishment of ten Regional Committees:

> The Committee has been criticised ... for not being able to create too much change; of ignoring problems that have continued to exist for a very long time; of not having sufficient Aboriginal representation and not being prepared to listen to as wide a range of the Aboriginal communities as it should [Human Rights Commission Transcript, 1989:73].

The Committee lacks legislative backing and as a consequence depends on political good-will which is clearly unsatisfactory given the extent of the problems of Aboriginal/police interaction. A significant observation concerning these committees finds expression in the following comment of the former Executive Officer of the Special Government Committee:

> ... I think the Police culture in Western Australia says that if you get too close to the Aboriginal community you are working against the Police

Force [ibid:80].

At the time this witness gave evidence to the Human Rights Commission he/she was of the view that:

> ... if you looked at the number of submissions and the effect of those submissions you would have to conclude that [the Government has] ... not taken on the advice of the Special Government Committee [ibid].

Mr Maine, the Chairman of the Special Cabinet Subcommittee advised that the Committee had been responsible for the implementation of the Aboriginal Visitor's Scheme which has been a very positive initiative in this State.

5.12.10 Police Aides

> ... I'm trying to look after 'em a bit more than what I was ... It's a good job. You do a lot a liaison work. You get kids ... In Meekatharra they don't call you 'Eddie' they call you 'Sir', you know. They've got a bit more respect for you. They respect you a lot [RCIADIC Transcript, Geraldton, 1990:2541.

> ... Are you going to be a police aide? I said, 'no, I have got too many relations' [RCIADIC Transcript, Broome, 1990].

The Police Aide Scheme was introduced in 1974 after requests were made for a 'liaison' service. The initial request came from Aboriginal people. Since its inception, the office of Police Aide has fallen into a hole. Aboriginal complaints about the office range from 'they're just the old black tracker', to 'they're worse than the police'. One Aboriginal participant in confidence said to this Royal Commission of Police Aides:

> Proper police. That's what they need because, I mean, they get it from their own people and they get it from the white man. The white man turns around and says, 'You're only a police aide, who are you to come and tell me ... [RCIADIC Transcript In confidence, Perth, 1990].

The 1986 Review of Police Aides conducted by the Special Cabinet Committee has never been released to the public. A subsequent Review conducted in October 1989 by the Police Department was only released to this Commission in July 1990.

From discussions with Aboriginal people it was observed that: police aides are seen as, and work as, 'regular members' of the Force; police aides were not consulted about the 1989 Review and had no input into it; police aides fill whatever needs the Department has at the time - liaison or policing; and police aides are not allowed to wear firearms, and are not allowed to arrest non-Aboriginals unless under supervision. They are taunted about their lack of powers of arrest by people in the know.

The 1989 Review of Police Aides provided to the Royal Commission by Commissioner Bull envisages extending the power of police aides - to be called Aboriginal Auxiliary Constables:

> Providing always that the situation calling for the use of such extended powers had arisen as a result of an Aboriginal-related matter [p.2 Police

Review of Aboriginal Police Aide Scheme, 19891.

This is little improvement to the present situation, and police aides commented that they still had no guidance or direction, no clearly delimited duty statements. Further, the Committee to Defend Black Rights (CDBR) submits that the Aboriginal Auxiliary Constable recommendations of the 1989 Review 'preserve the "second rate police" status inherent in the Police Aide Scheme' (CDBR, 1990:86).

Aides continue to work under adverse conditions and are criticised by other police for not getting involved in 'domestics'. Aides state that police do not understand what it is like to be an Aboriginal in uniform in feud situations where aides are expected to act as 'police'. Arguably under the new 'extended powers' police aides will continue to be used in these situations. Aides have informed me that about 95% of recruits at the Academy have never spoken to an Aboriginal person and that they view Aboriginal people as 'constant offenders'.

Aboriginal people have complained of the 'second class' status of aides. It is significant to note that the Department is now giving police aides Government Employee Housing Authority (GEHA) houses and that this is a new operation, and that aides do not automatically have air-conditioning. Their role has not been limited to liaison work. Police aides in the country are on occasion left to man the station. Police aides have acted as Court Orderlies in country areas.

One police aide confirmed information received by this Commission that police stop Aboriginal people for random vehicle checks. One aide told this Commission that the police response is to check a number plate when they see an Aboriginal person driving a motor vehicle with the comment:

> Don't most of the black fellas pinch cars? [RCIADIC Transcript in confidence, Perth, 1990].

While the police are more careful when police aides are present the word 'nigger' is used and when asked to comment about this I was told it was regarded by police aides as offensive. Words such as 'boong' and 'coon' are in common usage in the Police Force (see, especially, discussion contained in the report on the death of Kim Polak).

It is apparent that the Police Department want the aides to do both liaison and police work. Aides cannot liaise with people if they arrive in a security van. Officer(s)-in-Charge (OIC) tell them to take time in lieu rather than overtime. They do not do night shifts. There is reportedly a new shift allowance and Aides will reportedly be reduced to day shift and will not be eligible for it. Police aides could arguably be of greater use during night shift if that is a time when youths come to police attention for whatever reason and in whatever circumstances.

The most senior police aide is, I am told, still junior to the most junior Police Constable. Even with 15 years in the Police Force as an aide, he/she is still more junior than the most junior constable.

The Police Aide Scheme was supposed to be reviewed after five years. When that review finally occurred there were no Aboriginal people on the Review panel. Police aides also advised my Commission in confidence that:

- Aborigines get picked on by the media;

- At one State of Origin football match (June 1988), all the whites were summonsed while all the Aborigines were arrested;
- 90% of police do not caution kids about their rights prior to interviewing them;
- Police arrest Aborigines when they wouldn't arrest a white;
- Police go to Aboriginal domestics - because it's good fun;
- Police aides are not called in out of hours because it would mean more pay;
- Police don't follow up on advice about where a kid's family are staying;
- Aboriginal people are 'easy picking' for police;
- I've see an example was that a young recruit was questioning ... an Aboriginal kid, and the Aboriginal kid started waving his arms about and just being a bit vocal and because he was doing that the copper - the recruit obviously felt threatened so he had to draw his baton and hit that person ...;
- A lot of what's taught at the Academy about Aborigines is not relevant.
- There's one thing Aboriginal people don't do and that's forget; they pass that information on to their children so they get the idea of what's been happening previously, you know what happened 20, 30, 40 years ago;
- Police take over and do not take police aides' advice;
- The Police Radio broadcasts messages such as:
- 'doing a name check on a group of coons', 'all niggers should be shot', 'coloured friends'.

From all the research findings and evidence put before me, I can only conclude that the Police Aide Scheme is ineffective in this State. I therefore see no reason why such a Scheme should be retained, although I do see a need to have Aboriginal men and women act in a liaison role. I also see it as crucial that Aboriginal men and women have the right to enter the police force alongside non-Aboriginal men and women.

5.12.11 Complaints about the police

> A bit of history about myself. I drank alcohol about three times in my whole life but I've probably been spoken to by policemen about 93 times or 103 times about being drunk - if I'm driving a car - or accused of stealing a car - and it's my own car - and all that sort of thing: whose is this car?. so they naturally assume that it's not your car and all that [Former Aboriginal Welfare Officer in Prison, 1978-88, pp.997-998, Transcript of 6 August

1990].

> If anything police officers are subjected to a greater system of self-scrutiny now than ever through our feather foot system ... our internal investigation section ... [RCIADIC Transcript, Police Union, 1990:78].

Aboriginal people remain unconvinced of the efficacy of the process of Police Internal Investigations of complaints against police conduct. I am told that the process of 'self scrutiny' does not result in accountability of police for their actions. Generally, Aboriginal people fear and distrust the police:

> ... being hassled by the Police ... it is just a common event. Most Nyoongah kids... or adults for that matter, when they see the Police, instead of seeing them as someone there to help us in this society, people duck for cover and run away ... [Aboriginal evidence to the Human Rights Commission Inquiry into Racist Violence, p.20].

One remedy for this distrust would be to make police accountable by providing an effective, observable independent complaints procedure. Improved relations would flow from confidence in complaint resolution.

Aboriginal comment to me in my investigations suggests that people are subject to discriminatory and unfair police practices; excessive force in arrests and at police stations; intimidation in investigations; and racist abuse. It is clear to me that they have no confidence in the investigation process of police complaints.

Serious consideration should be given to the 1976 recommendations of the Australian Law Reform Commission in its reference 'Complaints against Police' (AGPS, 1976). Those recommendations were, in essence, that:

(1) all complaints be originated through or initially notified to the Ombudsman;

(2) investigations of allegations of police misconduct be conducted by a special internal discipline branch of the Police Force;

(3) an Independent Police Complaints Tribunal be established; the members to comprise legally qualified people; this Tribunal hear and determine serious complaints;

(4) the police investigation be oversighted by the Ombudsman.

It has been suggested that the sort of Tribunal envisaged in point (3) comprise an Aboriginal member if there is an Aboriginal involved in the complaint (see Foley M., 'Aborigines and the Police' in Aborigines and the Law (eds Hanks & Keon Cohen) @ p. 188). The presence of such an Aboriginal person would assist with installing confidence in such a system.

5.12.11.1 Furnell Royal Commission

This is not the first Western Australian Royal Commission to examine the issue of complaints about police. In 1974 the 'Furnell Royal Commission' was told in its consultations that police discriminated against Aboriginal people; perpetrated

harsh and unfair treatment at arrest; unfairly obtained alleged confessions for use in Courts. Those same complaints have been reiterated to this Royal Commission (AIU Report and consultations with Aboriginal people). In that Commission's inquiries discrimination was raised as an issue because of the high representation of Aboriginal people in arrests, lockups and prisons. There has been no improvement in this situation.

The position is no better for juveniles than for adults:

> Allegations that young Aboriginal people are subject to particular attention from Police are supported by DCS data on juveniles in custody. According to the Annual Report (1986/87) Aboriginal children make up 60% of offenders in juvenile institutions, while comprising only 4% of the State's child population [Equal Opportunity Commission Report No. 8 on Review of Police Practices, p.40].

The Furnell Royal Commission took complaints from people that young police who came to areas where they were policing Aboriginal people were the worst offenders in relation to harsh and unfair treatment. The response of that Royal Commission was to suggest that there are always occasions when excessive force will be used in arrests. The criticism of young police has been reiterated to this Commission on a number of occasions.

5.12.11.2 Aboriginal viewpoints

Aboriginal people perceive themselves to be the subject of harassment and discriminatory arrest practices. The men who spoke to Mr Darryl Kickett at the Mary River Bush Meeting told him: '[T]he question came up again: how come Aboriginal people were always going into gaol and not many white people?' (RCIADIC Transcript, Mary River, 1990:21.3).

At the Mary River meeting it was also stated that:

> One thing I would like to say about the Aboriginal people getting arrested is because they are Aboriginal. I have seen a lotta white people doin' the same thing as the Aboriginal people out in the street, fighting amongst one another, the Police comes along, he pat him on the shoulder, stop them and say: 'You just go home and no more fight'.

This opinion was also expressed at Gnowangerup:

> Police would generally question Aboriginal people before they go to white ... Police attitudes haven't changed all that much ... I know that there's Visitors Schemes and all sorts of things ... but that hasn't eliminated the ill treatment of people who've been picked up in the southern part of the State, totally [Aboriginal Comment].

That Conference participant went on to say that:

> ... complaining to the Inspector is a waste of time because it's dealt with internally and I don't know how severely they're reprimanded for these wrong doings, but that is the end of the story.

Aboriginal people have also told my Commission of instances of the 'double banking' of warrants. This is seen as vicious and intimidatory and Aboriginal people believe they are singled out for this treatment. Police allegedly wait until a person is eligible for release and then execute another Warrant to detain the defendant for a further period of time. At Mary River that matter was briefly addressed by Superintendent Sharrett when he stated:

> Mr Dodson asked about this Warrant business. At some Police Stations they wait until the fellow is nearly out of gaol and he finds another warrant for him and says: 'too bad old boy, you got to stay another two days because you got this warrant. That's no good, that's double-banking, that's no good. 'Since I've been here I found that happened on one or two times and I was very upset. It doesn't happen any more ... [RCIADIC Transcript, Mary River, 1990:129].

Aboriginal people at the meeting remained unconvinced although they were pleased at the acknowledgement of the truth of the assertion in that instance. In addition, Aboriginal people constantly told this Commission of incidents which happened to them or of stories they had heard from other Aboriginal people of police 'rough handling' of people. One woman told the Commission of people being 'flicked with a towel' to force them to confess to a very serious offence which a non-Aboriginal person had committed. It was said that police acted roughly, hastily, failed to give people a chance to deal with matters, they 'grab' people and 'chuck' them in the police van. People can be put in the police van unconscious.

Even when people take appropriate action such as having photographs taken of injuries sustained while in police custody they don't feel confident to take the matter further.

> One of his sisters took him down to - ... [the] photographer ... and taken some photos and taken the eye that was damaged. He also had a brace for his neck ... But I think he's a bit scared to talk out, I think one of the Constables must have said something ... [In confidence].
>
> One of the officers said ... that if anything was mentioned about what happened they'd make it hard for him to live in town here [RCIADIC Transcript in confidence, 1990].

At another community conference it was suggested that:

> ... after the person's been assaulted he's really angry at the time. But it's such a long process before the officers are charged, they have to set the hearing date and everything and you know that might take months. And by that time the person who has been assaulted has cooled off. Or otherwise the Police seem to get to them in the meantime and harass them and they end up withdrawing the charge, or just moving to another town [RCIADIC Transcript, Geraldton, 1990:479].

Comment has been made that police are 'okay' while they are in public view but once they get people down at the 'police station without anybody to witness their interviewing of those people, that's a different story'. The cynicism about the Internal Investigation process was widespread. Not one Aboriginal person commented favourably about the process. The best that could be said was:

> complaining to the Inspector is a waste of time because it's dealt with

> internally and I don't know how severely they're reprimanded for these wrong doings, but that's the end of the story ... I prefer Ministerials for things of this nature. And it seems that if you go to the Superintendent it always nearly results in a Ministerial I'm told [RCIADIC Transcript, Gnowangerup, 1990:52].

In fact, that is not necessarily correct. Ministerials only appear in the ALS complaints files when the ALS have directed their complaint to the Minister as well as the Police Department. Most Ministerial responses reflected the responses from the Western Australian Police Department Commissioner's Office. Some pans of Ministerial responses are quoted:

> ... Your correspondence was referred to the Commissioner of Police who now informs me that ... I note that you have also corresponded with the Commissioner of Police concerning this matter and he will reply to you [1983].
>
> I have requested the Commissioner provide me with a copy of his reply so that I may be informed [1985].
>
> Your correspondence was referred to the Commissioner of Police who has now advised me that ... The Commissioner does not propose to take any further action ... [1983].
>
> While the police denial is predictable there is no basis available to me for concluding that it is incorrect [1985].
>
> I am advised that your allegations cannot be substantiated [1984].

Investigations of complaints made to the Minister for Police are still conducted by the police. This does not address the criticism that the police investigate themselves and these investigations are not subject to the scrutiny of an independent tribunal.

It is not only Aboriginal people who distrust the operations of the present system of investigation. Church groups have expressed concern about police complaints as have welfare agencies, individuals and the Civil Liberties Council. The Council told my Commission that people felt it was futile to make complaints about the Police. A representative of the Council commented that Aboriginal people were:

> totally despairing of getting any sort of justice [RCIADIC Transcript in confidence, 1990].

Aboriginal people were concerned about police harassment of Aboriginal women (Mary River and Ninga Mia). At Mary River the Kimberley Superintendent, Mr Sharrett, stated that if this sort of thing was happening:

> if anyone can give me any evidence and some instance of that there will be action taken ... [RCIADIC Transcript, Mary River, 1990:111].

Although this sort of allegation has been made not infrequently no evidence was advanced to the Superintendent at that time and for the reasons advanced infra it is unlikely that any such allegations will be provided With supporting evidence. The observation of the Equal Opportunity Commission Review that helping agencies believed:

> Aboriginal women in particular suffered from less supportive treatment by police ... being brought to helping agencies in the back of police vans ... [1989:51].

The report (ibid:52) also stated that police generally viewed Aboriginal women as, 'being the guilty party in offences of a sex related nature'. These matters should be seen in light of the historical depiction and the general oppression of Aboriginal women by legislation:

> First she was considered of dubious moral character, a legislative whore, unworthy as a guardian of her own child who could be taken from her and kept in an institution. She could be sent to a school to be instilled in Christianity and service; if she were unsatisfactory at her task she could be beaten; her employer was not permitted to be Asiatic or Negro; she was subject to unannounced inspection by Police or the Superintendent; unless she married a white she was not exempt from the Act; if she failed to marry a white, but lived with him, he and she were guilty of a criminal offence. Her movements ... were circumscribed; she could not marry without the permission of the Chief Protector;, she possessed no citizenship fights ... The terms and conditions of her employment were settled and certain kinds of employment ... forbidden [McCorquodale, 1985:130].

The complaints procedure meets with obstacles institutional and otherwise, at every stage. Solicitors have given evidence that the problems include:

(1) complaints are so rarely successful that people lack faith in the system;

(2) clients lose interest in pursuing complaints for a number of

(3) it is difficult to obtain detailed information from the client;

(4) investigations take an inordinate amount of time;

(5) there is ingrained cynicism and mistrust about police investigating police;

(6) clients fail to keep detailed written records of incidents and forget to follow up;

(7) clients do not wish to make statements to police about their complaints;

(8) the client group is the most vulnerable in the community;

(9) the client group is the least able to present itself in the adversary forum;

(10) a lot of clients don't even mention being assaulted as they think it is par for the course (p.80, Juvenile Justice Conference) and complaints are often mentioned in an off-hand way;

(11) it is difficult to identify the offending police officer,

(12) Police 'punish' complainants in the court process by denying solicitors or clients access to particulars (p.24 Juvenile Justice Conference);

(13) clients need to pursue their complaints 'enthusiastically' in the face of obstructions and they frequently do not or cannot do so (see Human Rights Commission Transcript, p. 14).

As a graphic demonstration of these points one Aboriginal witness told the Human Rights Commission into Racist Violence that after being assaulted by

> I did not follow it up as I should have. I suppose it is the way I have been brought up. I tended just to think to myself 'Well, it has happened, that's it [Human Rights Commission Enquiry into Racist Violence, 1989:96].

Solicitors themselves have told this Commission that they have 'given up too' (RCIADIC Transcript, Juvenile Justice, 1990:80) because of the obstacles and impediments to pursuing complaints. Solicitors are also generally of the view that the complaints which do surface am only the tip of the iceberg.

Further comment was made at the Human Rights Commission heating that:

> It is hard to know just how often people are jostled in the police stations ... We certainly get our fair variety of complaints about in the course of arrest, people being jostled, beaten up. It is very difficult to prove these sorts of things[ibid:17].

The problems of proof cause solicitors a great deal of difficulty. It is often alleged that in the event of there being an assault upon a citizen the police immediately charge that person with offences which cloud the issue, offences such as resist arrest, assault police. The question at the hearing is then one of credibility. It is said that:

> Magistrates will believe the Police because the Police are professional in their evidence-giving, whereas our clients are not, and the Police evidence is likely to be more consistent and more concise and more logical [p. 17, Human Rights Commission Transcript].

It was also suggested to me that the police evidence is also more likely to be corroborated, often by the evidence of other police. Solicitors dealing with youth are particularly concerned about the issue of police complaints. This concern was mirrored in discussions held between the Royal Commission and youth offenders.

One juvenile, in discussions with my Commission, indicated that his arm had been broken when he was arrested by the police. He had not received treatment while in police custody even though he had requested a doctor. It was only when he got to Longmore that he was taken to Hospital and his broken arm was set. That youth 'never had a lawyer'. Another youth told of being detained in a suburban police station from midnight until 6am. He and his companions were not given breakfast. One of the youths was told to lick the floor of the police station and 'the police all busted up laughing'.

The problems confronting solicitors endeavouring to present a viable complaint are compounded by the youth of the complainant. They don't have 'independent

verification'; there's 'no doctor's evidence'; weeks might have gone by; they don't tell anybody.

> ... you are really not in a particularly good position to try and present that as an issue at the trial, because you have got nothing other than the evidence of that child [RCIADIC Transcript, Juvenile Justice, 1990:47].

An ALS solicitor present at that conference advised the Commission:

> I've had to tell children to shut up about being bashed up in the lockup because it will affect their credibility at a hearing if I haven't got the sort of back-up evidence - purely as a tactical thing not to mention it [ibid:47-48].

The ALS Field Officer from a country area advised the Commission that unless the Field Officer is actually present then the violence still goes on. The police if confronted with accusations simply say that the child 'attacked them first and ... needed three police officers to restrain him' (ibid:49). Children allegedly make admissions to avoid a beating. A lot admit offences just to get out of the police station.

There is a large degree of resistance by the Police Department to the involvement of ALS to stop this situation (ibid:50). At the Juvenile Justice Conference the Aboriginal Legal Service and other parties involved in processing complaints advised of growing frustration at the failure of addressing police complaints (ibid:51).

Police guidelines are inadequate in respect of youth interviews. It is interesting to note that the Police Routine Orders in relation to the questioning of juveniles (see R.O. 3-2.20) refer to the case of Dixon and Others v McCarthy and Another, (1975) 1 NSW LR617, about the interrogation of juveniles under 16 years of age without the presence of an adult. There is however, no reference to the decision of Police v J. of the Perth Children's Court where the police failed to provide any suitable independent adult during the interrogation of an Aboriginal juvenile. The confession was rejected as involuntary. It was held in that case that:

> ... where an Aboriginal is being questioned it is essential that a person independent of the inquiry, a parent or another person be present [Cited in McCorquodale, 1985:353].

Youths consulted by my Commission complained that police would not go and chase up their parents and that they were told 'go and do it yourself. On/y the Aboriginal Aides undertook this function. As Aides do not work night shift this means that juveniles might have to wait a number of hours before they receive any legal advice or any advice is given to their parents. As noted above, Commissioner O'Dea discusses the issue of questioning juveniles in his regional report.

5.12.11.3 Aboriginal Legal Service and police complaints

In its submission to this Commission the ALS indicated that there had been some improvement in Aboriginal/police relations in the Kimberley area and that this was due to the careful selection of Sergeants. The submission however made the observation that complaints are rarely pursued in the Kimberley (1990: 12) and also in the Pilbara (1990:42).

In the Pilbara the ALS received frequent oral complaints regarding 'police bashings' (1990:42). In that area the complainants did not follow up these complaints because they feared reprisal and harassment. Most complaints were therefore withdrawn.

The importance of a good Officer in Charge was apparent in the Albany and Murchison/Gascoyne areas. There had been isolated incidents of complaints about 'police bashings' in Albany but these were not established conclusively. Aboriginal/police complaints were seen to be reduced by the establishment of the Aboriginal/Police Liaison Committee in the Murchison/Gascoyne region and, as noted elsewhere, I believe this has a great deal to do with Regional Officer Superintendent Davies who is currently based in Geraldton.

However, from evidence put before me, Kalgoorlie and the surrounding area continues to be extremely problematical. The ALS in its submission suggests that although relations have improved since the death of Bernard McGrath and the establishment of the Aboriginal/Police Liaison Committee there are still a large number of oral complaints. People feared to proceed with complaints. The police were alleged to fail to act on Aboriginal complaints. This was one subject of comment to my Commission. The ALS commented that the number of deaths in custody in Kalgoorlie demonstrated that there had been an 'incredibly high incidence of neglect and callous disregard [of the rights and needs of Aboriginal people in custody]' (RCIADIC Transcript, Kalgoorlie, 1990:91).

5.12.11.4 History of complaints to the Aboriginal Legal Service

The ALS have made their 'Complaints against Police' files available to the Equal Opportunity Commission Review and the Human Rights Commission Inquiry into Racist Violence. The ALS made oral submissions to the Human Rights Commission into Racist Violence on 29 November 1989 at Clontarf in Perth. It is interesting to observe that its submission on 'racist violence' centred upon the Western Australian Police Force. The ALS files have also been made available to my Commission on a confidential basis.

The Legal Service has recorded a number of complaints about police conduct over the last twelve years, the number of formal and informal complaints totalling 163. Of those complaints out of a total of 29 matters potentially referable to the Ombudsman since the increase in that jurisdiction in 1985, only 9 have apparently been so referred. This was only done at the stage of initiating the complaint. Once the Ombudsman had referred the matters to the police, as be is bound to do, the matters were never referred back to the Ombudsman. While the records of the ALS are disappointingly incomplete for a number of reasons, it would appear that the following matters can be gleaned from the files which were made available:

- 16 complaints were withdrawn.
- 78 files provided no result of a complaint - the result was not recorded on the file and some complaints remained informal and were not referred to any complaints body.
- 2 files record that the response was sent direct to the complainant or his/her family and the ALS holds no record of the resolution of the

matter.

- 2 files only recorded that the matter was under investigation.
- 57 files show that the complaint was investigated and was not sustained or that the allegation in the complaint was denied.
- 2 files record that the police had taken action where the complaint recorded that police failed to act on a complaint.
- 2 files show that the police complained of, were transferred.
- 1 complaint of denial of medical treatment was sustained out of three complaints made on one file.
- 1 file showed that the police officer was being given 'future guidance'.
- 1 file showed that the police officer was being given 'guidance' and 'counselling'.
- 1 file showed that all parties had been 'warned'.

Examples of matters complained of included assault (78), racist abuse (3), racist abuse and assault (5), denial of medication (2), duress or intimidation to obtain statement (4), failure to act (13), prisoners being fed donkey meat (1), illegal search and entry (11), harassment at funeral (1), harassment (6), threats (5), theft (1), sexual harassment/theft (1). In 6 cases it was impossible to tell what the complaint had been, due to the incomplete records kept by the ALS.

Of the cases of the Aboriginal people who have died in custody there were two recorded instances of complaints made against the police. A complaint was made on 11 October 1982 that Hugh Wodulan had been assaulted by the police. The complaint was made by Hugh Wodulan after injuries he had sustained were explained to him by another prisoner. At the time Hugh Wodulan apparently could not remember what had happened as he was apparently too drunk. The complaint was found to be unsubstantiated, as there was insufficient evidence. Dixon Green made an informal complaint to the ALS field officer representing him, complaining he had been advised by the police to plead guilty to a charge while the field officer was out of the court on other business. The Field Officer had earlier advised him to plead 'not guilty'. That matter was never referred to a complaints board.

5.12.11.5 Equal Opportunity Commission and police complaints

Many of the observations made by Aboriginal people are mirrored in the Review of Police Practices conducted under the auspices of the Equal Opportunity Commission in 1989 and finally released in 1990. The Equal Opportunity Commission Review (1989) heard many complaints about alleged police harassment and was of the view that:

> [I]f (these allegations) were found to have substance they would undoubtedly mean that not only is Section 36(1) of the Equal Opportunity Act regularly breached by Police in their dealings with Aboriginal people,

but so are the Routine Orders [1989:37].

Aboriginal people regularly made verbal complaints to the Equal Opportunity Commission which were not followed up or pressed because of fear of further harassment. In particular the Equal Opportunity Commission Review heard complaints about:

- systematic harassment by constant surveillance, spotlighting, searches, undue attention; people were regarded 'as criminals because they are poor and black' (ibid).

- provocative language which was constant verbal abuse by use of names like 'nigger', 'boong', etc., this was a daily occurrence. Comment has been made in the Human Rights Commission Transcript that police provoke incidents, they spit at people and to react is to resist arrest (ibid:29).

- method of arrest where police incite situations and then charge people, where police arrest people who are 'sleeping it off (ibid:38).

- entering private property, showing no regard for private property, entering buildings without warrants, damaging Homeswest houses and leaving the tenants to pay (ibid).

- motor vehicle harassment, targeting cars at funerals, putting work orders on them (ibid:58).

- exploiting the meals allowance system which in itself promoted excessive arrest practices because it can be productive of considerable tax-free income (ibid:39).

- · treatment of Aboriginal youth, denying them access to DCS (p.39-40), failing to notify parents within a reasonable time, removing Aboriginal children from school for interviews, threatening youths with guns (ibid:40).

- sexual harassment and rape of Aboriginal women by police (ibid:40).

There is potential to address complaints about discriminatory police behaviour within the framework of the Equal Opportunity Commission. However:

> [F]ew informants were familiar with the Act or the complaint procedure specified in Section 83. Those who knew about the legislation, however, were doubtful about its potential for Aboriginal people. This was largely due to the process of laying a complaint, which was believed to be 'so foreign to Aboriginal people that it might as well not exist for them' (Perth) [ibid:43].

An Aboriginal Legal Service solicitor told my Commission that the Equal Opportunity Act:

> works on the basis of some vulnerability on both sides ... it forces [them] to attend conferences and so on ... Police officers are pretty resilient to that

> sort of stuff. The Internal Investigations Branch has not managed to get a confession out of a police officer, in my experience. It is unlikely that the Equal Opportunity Commission ... is likely to get them to ... admit that they have done anything. I think you are dealing with a much harder nut to crack ... it is part of the police training system ... that you just don't consider admitting that you might have been wrong in a situation [RCIADIC Transcript, Juvenile Justice, 1990:81-82].

Two factors mitigated against complaints being made and pursued, these being fear of further victimisation; cynicism that there was little effective investigation of complaints as the:

> odds were stacked against Aboriginal people, as all complaints were dealt with internally, and police officers would rarely testify against their colleagues [Equal Opportunity Review, 1989:56].

Other problems in the Equal Opportunity process included: difficulties in showing that discrimination took place on the grounds of race; the emphasis on conciliation which results in delays; doubts about the capacity to effect long term change; the need to put the complaint in writing (ibid). The Review team held the view that:

> while complaints against Police are investigated predominantly by the Police Department, Aboriginal people will continue to have doubts about their fairness and the chances of their complaints being investigated in an impartial manner [1989:57].

The Equal Opportunity Commission has earlier recommended an amendment to the Act to allow the Commissioner to initiate inquiries or to pursue a matter on behalf of a complainant including referring matters to the Equal Opportunity Tribunal. This amendment is supported by this Royal Commission. It would allow Aboriginal complainants a certain degree of anonymity, which may allay some of the fears of reprisal or further harassment. It could also mean that there could be uniformity of approach to the issue, it would alleviate the pressure on Aboriginal people to put their complaint in writing.

The Equal Opportunity Commission is to be commended for its decision to employ an Aboriginal Conciliation Officer which facilitates access of Aboriginal people to the service provided.

5.12.11.6 Police jurisdiction and the Ombudsman

On 1 July 1985 the general powers of the Ombudsman were extended to include the power to:

> investigate any action taken by a member of the Police Force or Police Department, whether or not that action relates to a matter of administration, where that action was, or purposed to be, done in the exercise of, or in connection with or incidental to the exercise of, that member's powers, duties or functions as a member of the Police Force or Police Department [Parliamentary Commission Act 1971, Section 14 (la)].

That power devolved to the Ombudsman after the failure of a Bill which specifically addressed the question of investigation of the conduct of police. The Bill which did

not pass into law was the 'Western Australia Complaints against Police Bill 1984'. It was drawn specifically to 'provide for the investigation of complaints concerning action taken by members of the Police Force'. The Bill had been drafted along the lines of the Commonwealth (Australian Federal Police) Act 1981, which Act followed the Australian Law Reform Commission Report on 'Complaints against Police' (1976 AGPS).

A vote of 'no confidence' was passed against the Minister in relation to the Bill after the Police Union 'mounted an unprecedented campaign against' it (Ombudsman's Annual Report, 1989:11), and the Police Union response to the Bill is recorded in 'Police News' May/June 1984 where the suggestion of external investigations was opposed as:

> abhorrent [as it] would remove all moral and civil rights of police officers [p. 10].

In the same publication members were assured that:

> this Council [of the Western Australian Police Union] will not allow their right of silence to be removed or their moral and civil rights to be diminished in any way [p. 10].

The response of the Opposition in Parliament was that:

> The Opposition believes that the Government should desist from confronting the Police Force ... [it] is not prepared to allow legislation to he rushed through the parliament which will deprive law enforcement officers of normal civil fights and protections which are granted, even to criminals and wrongdoers [WAPD, 31 October 1984:3253].

The Bill allowed for an overview of investigations by the Ombudsman. The Investigation Officer was to submit recommendations to the Ombudsman for approval after the completion of the investigation. This was regarded as an intrusion into the investigatory responsibilities of the police (WAPD, p.3261). Objection was made that the Bill allowed the Ombudsman the:

> ... dominant role in determining claims against the Police ... The Police would have less than equal rights to defend themselves against complainants who could remain anonymous ... [WAPD, 31 October 1984:3255].

The Bill also allowed for the following:

1. a complaint could be made whether or not the 'member (i.e. police officer) was named (Section 4);

2. the complaint would be investigated by the Investigations Section of the Police Force (Section 6);

3. the complaint had to be made in writing, but could be made by a representative (Section 8);

4. the complaint might not be investigated if it was older than 12 months, trivial, vexatious;

5. conciliation was permissible (Section 11);

6. information used in the conciliation was not otherwise admissible (Section 13);

7. in remote areas investigation could be conducted by a member other than from the Investigations Section (Section 14);

8. there were $200 penalties for refusal to answer questions or provide documents if the member did not have a legitimate objection that he/she might incriminate him/herself (Section 15);

9. the report would be tendered to the Commissioner of Police who would then provide a copy to the Ombudsman (Section 18);

10. if the Commissioner of Police and Ombudsman could not agree about charges to be laid the report was to be referred to the Attorney General (Section 20);

11. the Ombudsman was empowered to confer with the complainant, oversight the paperwork or with the approval of the Commissioner of Police interview people prior to the release of the report (Section 23);

12. the Bill provided additionally for a Special Investigator other than the Ombudsman, the Special Investigator having extensive powers of investigations (Section 30);

13. the penalty for non-compliance with directions of the Special Investigator was $200 (Section 31);

14. parties were allowed legal representation at any stage of the investigation (Section 37);

15. the Ombudsman was empowered to conduct his investigations as he thought fit (Section 41);

16. a member complained of was not compellable to say or produce anything to the Ombudsman which would not have been compellable in a Court (Section 41);

17. penalties for failure to attend, be sworn (or affirm) or obstruct the Ombudsman were set in the sum of $200 (Section 41).

Sections of that Bill have been cited in full to clearly demonstrate the reasonableness of the Bill, which was modelled on Federal legislation. It did not provide for anonymous complaints or strip police of civil rights. In any event, the 'unprecedented campaign' of the Police Union against the Bill saw it rendered incapable of enactment. The Parliamentary Commissioners Act was then amended by the Amendment to the Parliamentary Commissioners Act and Section 14(la) was inserted in the present Act.

Section 14(a) results in the Ombudsman having the power to investigate actions of members of the Police Force which are not pertaining to administration where the action was purportedly done in the exercise of police duties provided that the

Commissioner of Police has first had a reasonable opportunity to conduct an investigation. A reasonable opportunity is 42 days or such longer period as agreed upon.

The role of the Ombudsman in respect of police complaints is in no way more extensive than in other areas. When a matter is referred to him he is effectively still investigating allegations of maladministration. His powers upon investigation are to make recommendations to the relevant body, in the case of police complaints, to the Commissioner of Police and the Minister for Police (Section 25 Parliamentary Commissioner's Act 1971). His ultimate sanction in the event of non-compliance is to report his opinion to Parliament (Section 25). There is little optimism about the role and powers of the Ombudsman in addressing the perennial problem of police complaints.

In conference on the subject of Juvenile Justice, we were informed by an ALS solicitor that although the ALS writes to the Ombudsman:

> ... initially he will write hack to you and say, ‘I’ve referred this matter to the police investigators or the Commissioner of Police'. Most complaints finish there really ... It is investigated. I have spoken to people from the Internal Investigations branch ... and assuming that they are right-thinking people, and I think most of them are fairly senior police officers who have been around for a long time, they say, 'We go out there. We interview them. We interview the Police Officer or attempt to. We come back and all we can really say is we don't think the case is going to he able to he proved beyond reasonable doubt' and they write us back a letter saying, 'We find that the case cannot he pursued or is unsubstantiated' [RCIADIC Transcript, Juvenile Justice, 1990:79].

At one community conference we were told by a non-Aboriginal community member who was alarmed at what he saw as the abuse of police powers, that:

> ... my feeling on the Ombudsman, on taking [a complaint] to the Ombudsman is you really need an absolutely watertight case very well documented ... I was a little concerned at the percentage of complaints that had been made not just against police, but other authorities as well, that were actually upheld [RCIADIC Transcript, Northam, 1990: 142].

People in that community were concerned that, having sent their complaint off to the Ombudsman, he would send it to the Commissioner of Police, who would send it back to the local regional Superintendent 'who would then likely pass that to the local station Sergeant'. People felt then that the complaint would end by being 'very close to being back in the hands of the person the complaint was about'. People fear 'further victimisation'.

In the 1989 Annual Report, the Ombudsman cites the somewhat extraordinary instance of an 'Investigation of complaints by a police officer, the subject of those complaints' (p.25). The history of this matter is documented in the Annual Report but bears repeating here:

(a) the complaint was sent to the Chief Superintendent Discipline;

(b) he sent it to the Chief Superintendent Criminal Investigation Branch;

(c) he sent it to the Divisional Officer of the area;

(d) this was usual practice;

(e) the Divisional officer was one of four police actually complained of by the complainant

The Divisional Officer upon being interviewed by the Ombudsman:

> did not ... regard that matter as a complaint as such, but rather a matter that required an explanation. In these circumstances he saw no conflict in being involved [p.25].

The fact that this matter is reported in the 1989 Annual Report would indicate that it occurred reasonably recently. It is encouraging to think that the complaint was made to the Ombudsman and that he in fact sustained the complaint. The recommendation of the Ombudsman that police involved in investigating complaints be made aware that they should he no more than an interviewee in circumstances where the complaint concerns themselves has been the subject of a Police Instruction. It is still of concern to this Commission that an officer of the seniority of Divisional Officer failed to understand the 'conflict' in that situation. The reports of the RCIADIC on deaths of individuals have had, as an almost constant connecting thread, the problem of police investigating themselves.

In spite of some adverse comment, the Ombudsman has not been an apologist for the police. In *fact, in* his 1989 Annual Report in which he assesses the overall operations of his Police Complaints jurisdiction, the Ombudsman strikes at the very heart of the problem when he indicates that in his opinion the Police Guidelines Manual to the Internal Investigations Branch (which Branch conducts most of the investigations into allegations of abuse of police powers):

> ... is inadequate on such matters as minimising collusion and collaboration (which on occasion appears to have *occurred)* [Ombudsman's Annual Report, 1989: 14].

The Ombudsman however, believes that through his office the Police have been made accountable to the public. Certainly, some changes to the Police Routine Orders have been effected notably:

(a) consideration is to be had for the welfare of females or children found in the company of a detainee - they are not to be left deserted or stranded;

(b) privacy of female prisoners at East Perth Lockup is to be protected;

(c) searches of prisoners to be conducted in the presence of an ndependent witness;

(d) prisoners are <u>not</u> to be fed donkey meat;

(e) directions have been given to police as to their obligations n the location of sureties for Bail;

(f) some ambiguities in relation to arrest have been removed;

(g) powers of police incidental to the execution of search arrants have been clarified.

The actual status of the Routine Orders is discussed under the heading 'Police view of complaints process' and it is not intended to be further elaborated upon here, save to say that recommendations for changes to Orders, which are really only regarded as Guidelines by the Commissioner of Police, carry no more weight than the Guidelines themselves. The Routine Orders are not mandatory directions, it is not even clear if they could be said to be mandatory when stipulating that action 'should' take place to ensure compliance. Police 'discretion' is brought to bear in the interpretation of such Routine 'Orders'. It is a most unsatisfactory and alarming situation.

While recognising the extent of the problems in Aboriginal/police relations, the Ombudsman in his complaints process has been seemingly incapable of having any impact on the problem. He could in my opinion, usefully employ and deploy an Aboriginal liaison person not just to deal with police complaints, but complaints about all other departments.

In the Annual Report 1989 the Ombudsman acknowledged that one feature of his jurisdiction which was unsatisfactory was the:

number of cases, where because there are no independent witnesses, [he is] unable to resolve the conflict of account between the complainant and the officer. In these circumstances the complaint is held to be incapable of determination [1989:19].

This is clearly the most unsatisfactory of situations resulting in lack of public confidence. The Ombudsman sees his role as being that of an 'independent civilian oversight' which must:

> provide a balance between the need to maintain the public confidence... and the need to be fair to the police [ibid].

Clearly the public confidence cannot be maintained in the role of the Ombudsman when there is so much grass roots distrust of the police and their policing practices. As the office presently operates it does nothing to allay Aboriginal disquiet about the investigation of police complaints. Conducted by or through the Commissioner, investigations of the police are not seen to be independent and they are not even at arms length. The inadequacy of police investigations into the deaths of people in custody has been the subject of comment and *criticism* in the reports on individual deaths. Of his role, the Ombudsman states:

> If the current public expectation is ... that there should be a disciplinary body which does the initial investigation, holds public sittings, compels the officer complained about to give evidence and makes decisions, then the present system does not achieve this. Nor was it so designed. If such a system were implemented it would be quite inappropriate for it to be grafted onto the Ombudsman's general jurisdiction since it would be incompatible with it. The view has been expressed that if a system is perceived as being too heavy handed and onerous to the Police, it may be counter-productive and lead to a 'don't get involved' syndrome by officers with the result that they are less effective. It may also result in a more

> adversarial stance being taken by officers in investigations [1989:19].

Obviously, when the ALS solicitor conveys to this Commission the belief that investigating police do not receive the co-operation of police in investigations (see infra) it is not immediately apparent what further steps police could take so as 'not to get involved'.

In the light of the Ombudsman's 1989 Annual Report indicating that 6 complaints against police have been sustained it is interesting to note that no police officer has 'ever been charged' as a result of those sustained complaints (RCIADIC Transcript, Commissioner Bull, 1990:672). It is these sorts of comments and perceptions which militate against Aboriginal people having any faith in the police investigating their own members. The complaints process of the office of the Ombudsman does not increase public confidence. The process available through the Equal Opportunity Commission does not encourage Aboriginal people to seek redress.

The ALS had informed the Equal Opportunity Review that whenever complaints were made they were generally found to be 'without substance' (1989:40). Resolution of complaints made to the Ombudsman:

> have rarely been satisfactory ... as the Ombudsman is believed to pursue essentially the same channels as Police internal investigations and is therefore likely to come to the same conclusions [Equal Opportunity Review, 1989:42].

5.12.11.7 Other legal forums available for use in pursuing police complaints

The case of one ALS Field Officer gives a clear indication of the problems which confront a person who wants to take action to sue the police for damages for assault. The ALS file (1984) does not disclose whether or not a complaint was made to the Commissioner of Police.

The Field Officer was arrested at his home for the alleged assault of another player during a basketball game, which assault allegedly took place on the basketball court. The police officer involved was described as a 'friend' of the person 'assaulted'. The police officer (a member of the Drug Squad at the time) kicked and struck the Field Officer while be was in the police station and broke his jaw. He remained in custody for three hours after the assault. On 12 April 1984 the police officer was convicted of assault occasioning bodily harm and fined and dismissed from the Police Force. The Field Officer commenced proceedings in the District Court for compensation and the police officer through his legal representative paid $1,000.00 into court with a demand of liability. The matter ultimately proceeded by way of an Application before the Criminal injuries Compensation Tribunal. The former police officer attended, represented by counsel. Comment was made by the Tribunal Assessor hearing the application in the Reasons for Award' that that Counsel did not raise the issue of contributory behaviour. There being no conflict raised in the evidence before the Tribunal, the complainant Field Officer was awarded $1,800.00 compensation.

The District Court action was discontinued because of the problems of non-compliance with the Rules and Regulations of the Court. The requirements are onerous to say the least:

- one month's notice of the intention to sue has to be given to the police officer;,
- prior notice has to be given to the Crown of the intention to sue;
- the action has to commence no later than three months after the incident the subject of the action;
- there has to be direct proof of malice for the action to be
- if the complainant fails to prove malice the action fails and the complainant would be ordered to pay three times the normal amount of costs that could ordinarily be awarded [see Section 77(4) of the Interpretation Act 1984, Section 47(H) and (G) of the Interpretation Act 1918 which sections apply to the Police Act].

The ALS is proceeding with other civil prosecutions in other matters which will certainly result in challenges to the legal position of officers acting in the execution of their duty (RCIADIC Transcript, Juvenile Justice, 1990:80).

5.12.11.8 Police view of complaints process

The Police Department advised this Commission of the process by which complaints are resolved and assured the Commission that:

> All investigations into disciplinary matters are vetted at Internal Investigation before completion and filing [Answer 12.14 to Questions from Royal Commission].

The term 'vetted' was not explained but it is of interest to note the Ombudsman's comments about the letters which are sent to complainants and the shortcoming of same. He was of the opinion that in some responses the real issues were not addressed; all issues were not covered; the tone of some letters was 'peremptory'; jargon was used; the language used was sometimes obtuse. The Ombudsman did comment in the 1989 Annual Report that the situation had improved to some extent (p. 14).

The Police Department obviously believes that a cosmetic guarantee of impartiality flows from the 'oversight' role of the Ombudsman. As the Department told my Commission:

> [the Ombudsman] has the authority to examine Police investigations and may call for any file at any time either by his own will or at the request of a dissatisfied complainant [Answer 12.14].

The Police Department regards the present system as 'working satisfactorily' and there are no changes envisaged although the Police Department has recently made a submission to Government 'seeking a major increase in investigative staff in the Internal Investigations Branch (Answer 12.14(b)).

The Department commented that the suggestion of an Independent Police Complaints Tribunal was thoroughly canvassed prior to the Ombudsman being

granted the administrative 'oversight' role. The suggestion that there be an Independent Police Complaints Tribunal was rejected. The Ombudsman is seen by the Police Department as an 'effective and useful presence' in the police complaints area (Answer 12.14(d)).

The Commissioner of Police told this Commission that generally when the Ombudsman sustained a complaint:

> they've mainly been in regard W procedures. And not of a nature that there'd been a deliberate... breach of conduct by the officer concerned. As a result of the Ombudsman's investigation, no officer had been charged [RCIADIC Transcript, Commissioner Bull, Perth, 1990:672].

The Police Department cites as an indication of this 'effective and useful presence' the fact that the Ombudsman has requested 'numerous' amendments to Routine Orders. These amendments have apparently been incorporated in the Routine Orders. Where the Ombudsman has been sufficiently concerned about a matter to recommend changes to the Routine Orders it does not inspire confidence to discover that the Commissioner of Police regards the Routine Orders as providing:

> the basic guidelines for police... It is perhaps misleading to refer to all of these documents as 'orders'. They are essentially an outline of procedures with few, if any, mandatory instructions which require strict compliance. Instead there is scope for discretion and flexibility because of the geographical size of the state, the diversity of situations encountered and resource limitations [Answers to Question 11.1 (a)-(e)].

The Police Department received 1,031 complaints in the last year of which 63 were sustained, 806 unsubstantiated and 50 discontinued, the residue remains outstanding (see Answers to Questions). Commissioner Bull in evidence to the RCIADIC commented that if:

> officers need guidance, then they are supervised to see that there has been the required change. If an officer has difficulty then they are removed from the station and placed in an area of greater supervision. And I do that from time to time, just done that with several country officers who I felt had not responded to counselling and needed attitudinal changes ... And if need be ... I'll remove them from the force [RCIADIC Transcript, Commissioner Bull, 1990:509].

However, it is clear from a reading of the transcript of the evidence of Commissioner Bull that police daily exercise discretion which is virtually unfettered, tied as it is to local conditions:

> the whole role of the police officer is one of discretion by their very oath of office, of the common law oath of officer or constable, the very basis of their role is discretion [ibid:74-675].

Junior officers are subject to the guidance of their OIC in the exercise of their discretion. Comment was made to the Equal Opportunity Commission that the attitudes of Police OIC were 'believed to affect relations with police' (p.36, Equal Opportunity Commission Review). Young police officers were seen as the worst offenders and it was submitted to the review that they were ... 'trained to hate Nyoongahs' [ibid:36].

The complaint from Aboriginal people that they are subjected to moist abuse from police, met with the following response from the Commissioner of Police that, police are directed not to use derogatory terms:

> if for no better reason, it has the potential to provoke a situation, and that's stressed in training. That they have to be very careful what they say to people, because they could provoke them [ibid:673].

The Routine Orders presently preclude police from using the word 'native' (Routine Order No. 1-1.2). The Police Union does not think there is any need to expand on this prohibition:

> The Union has a general view that the more regulations you make, the more you've gotta break. If you attempted to define what's acceptable wordage and what's not acceptable wordage, then you've got straight barriers. And anything that's not defined as unacceptable therefore is acceptable. Generally it's the manner in which something is said rather than the words themselves. Generally police officers are very responsible people and I suggest, don't hold any real grudge if they do use those words on occasions [RCIADIC Transcript, Police Union, 1990:779].

Commissioner Bull, even though aware that 'members of the public fear even going into a Police Station' (p.678), believes people have access to remedies when subjected to insulting words without any changes to the Routine Orders:

> [I]f they use any insulting words or behaviour towards any person, or conducted themselves in such a way as to bring discredit to the Police Force ... could be charged under existing Regulations so if they addressed an Aboriginal or any person in a derogatory manner, they can certainly be charged right now [RCIADIC Transcript, Perth, 1990:672].

Racism was not seen as the problem by at least one senior police officer when talking about abusive, derogatory name calling. He stated to the Royal Commission conference:

> I don't believe... that there is a broad spectrum of racism as such in police officers. I think what you have ... is a reaction much the same as ... hotels; refusing admittance to drunken people or people that are dirty, smelly - hygiene problems and so on. I think you have the same reaction really in the young officers who have to deal with people they see and have to know that they're going out tonight to brawl with the same person they brawled with last night. And in my view that's basically where the problem lies; it's in that perception rather than actually racist views. The same thing goes ... for the term that's often quoted 'nigger' - Police making use of that term. My own gut reaction to that is that it's not a ... loving term but it's exactly the same term as we might use to describe, say, bikies or wharfies or whatever. It's just a terminology for a group of people that we have to deal with/RCIADIC Transcript, Kalgoorlie, 1990:331].

The police do not see themselves as being racist and therefore discriminatory in their policing practices (RCIADIC Transcript, Police Union, 1990:757). Some police have commented to me that a number of complaints about police are stimulated by the Aboriginal Legal Service who 'tour for complaints and ledge them and proceed with them in the face of clients requests that matters be withdrawn.

The Police Union in its submission to my Commission suggested that:

> the creation of the Aboriginal Legal Service ... has induced an expectancy of acquittal into Aboriginal offenders. This has led to insolence for authority mainly in the younger people, which is now visible in the development of hatred for those vested with the task of law enforcement [Police Union Submission, 1990:8].

The matter of Aboriginal/police relations is discussed in Section 5.12.3, but the above passage has been cited here as one which is indicative of the attitude of the Police Union to the 'Aboriginal offender'. There is inherent in the passage cited, a belief that Aboriginal detainees are 'offenders' and are necessarily guilty and there is an assumption that the assertion by an Aboriginal person of his/her rights visa vis police is 'insolence'. This sort of attitude is not conducive to good relations between the two groups, and suggests to my Commission the enormous depth of the problem.

In the light of the Police Union's submission, my Commission cannot, with any confidence, accept that there are not police who negatively stereotype Aboriginal people and therefore they do not exercise their very wide discretionary powers in a discriminatory fashion; that they do not use insulting words; that they do not use excessive force in arrest and detention of Aboriginal people. It is a shame that such officers are the ones that create the image and perception amongst Aborigines that all police must be the same. Further it is a misguided sense of loyalty and solidarity that enables such deficient officers to remain within the Police Force. Nothing will improve as long as solidarity overrides the need for truth and an ability to stand up to one's mates at times. The measuring stick for both Aborigines and police should he (i) whether they would like to be treated the way they treat others; (ii) why persist in actions and activities that do more to dehumanise oneself than another.

As the last word on 'insolence' I would like to cite the following comment made by an Aboriginal person in a small country town:

> I feel that the high level of arrests amongst Aboriginal people are brought about by Police making these arrests on petty issues. I think that could be dealt with or settled outside of arrests. And too often [Aboriginal] people are harassed by the Police and as a consequence of the harassment [Aboriginals] will speak up for themselves and become abusive and in doing so they are then charged with being - using obscene language and being disorderly and a charge arises from that son of harassment' [RCIADIC Transcript, Gnowangerup, 1990:47].

5.13 POLICE AND THE NEWS MEDIA

The Commission heard evidence that the police in Western Australia are a group who exert enormous influence on the way the media reports criminal and civil matters involving Aboriginal people (RCIADIC Transcripts, Perth, 1990). There is little doubt that the police and courts are a key source of stories for journalists and news teams on a daily basis. A glance through any major Western Australian newspaper will demonstrate that crime, violence and civil disturbances form a sizable part of the daily staple of dramatic news. Likewise, crime and violence are

nightly components for television news, whose format has evolved over the past decade toward news as entertainment rather than information.

These stories get into the news via three main routes. Journalists who have been assigned the 'police round' maintain close contact with the police force and individual police officers, who alert them to police activity, brief them on crime issues, allow them occasionally to accompany police on operations and so on. To varying degrees most journalists have similar contact with police. Secondly, the Police Department hold a daily media conference at Police Headquarters in East Perth organised by the police media liaison section. Most of the major media send journalists to these conferences, during which police provide details of recent criminal cases and wider law and order and policing issues. Thirdly, the police feed information into the media about their activities in the form of media releases, prepared by the police media liaison section, and distributed by facsimile or telex direct to news rooms. These releases were until recently prepared by police, and are now also written by a journalist employed by the Police Department. They are often written in newspaper copy style, making them very convenient source stories. Reporters spoken to by Commission research staff said it was not uncommon for police media releases to go straight into the newspaper with little or no alteration.

Close contact with the police is not restricted to newspapers, as a country radio station manager told the Commission:

> They [police rounds reporters] usually ring about 10 or 11 police stations around the region on regular rounds, twice, three times a day; four times a day. In Perth it's a little different. They would do rounds on the phone, and then there was a police briefing once a day, where the journalists appear [RCIADIC Transcript, Kalgoorlie, 1990, ABC Kalgoorlie].

The Editor of The West Australian acknowledged that although the paper had a full-time Aboriginal affairs reporter, it was in crime reporting that the bulk of references to the Aboriginal community were to he found:

> However, probably the main way that we get stories which might touch on the Aboriginal community is from our crime reporters. And we have four to five crime reporters [RCIADIC Transcript, Perth, 19901.

The Chairperson of the Perth Aboriginal Medical Service told the Commission Aboriginal people were concerned at the way police perspectives on the issue of car thefts by juveniles were heavily promoted in the news media:

> It is that type of reporting, I guess, that concerns us most is when the police, for instance, indicated they were going to crack down on car thieves in the community and there was 'a campaign with the media involved and police going around patrolling, looking to catch young criminals. Fortunately for them they happened to get a situation where they could use their force and use the media that was with them. And on it we had front page headlines, we had follow-up stories on pages 2 and 3 and, you know, how the police were very efficient in this crackdown on car thieves [RCIADIC Transcript, Perth, 1990].

A senior Perth newspaper journalist of some 35 years experience in Perth told the Commission of his concerns about the effect this was having on what the public

saw, read and heard. He felt that the police heavily influenced the editorial positions taken by the paper he worked for, and the kinds of news events chosen for reporting:

> The police hand us a large portion of our bread and butter. They have regular meetings with the editors and supply much of the headlines. This would have a big effect on stories concerning confrontation with the police. Stories won't get printed if they are critical of the police. Some Aboriginal stories are hocked back because they might be seen as anti-police [RCIADIC Transcript, Perth, 1990].

He mentioned that one of the contributing factors to this privileging of police versions was simply that the police were 'always on the phone' to journalists, whereas it was often difficult for reporters to contact Aboriginal people for their views. However, he also claimed that media stood to he disadvantaged by reporting matters in a way seen as unfavourable to the police:

> If a media outlet constantly writes stories criticising police behaviour towards Aboriginals, the police will refuse to give that outlet news. I've known it happen. They will dry up and then suddenly an outlet can find itself starved for very important news, and falling behind in the race - well, falling far behind in the survival stakes [RCIADIC Transcript, Perth, 1990].

Interestingly, although The West Australian had its Aboriginal affairs reporter present during this evidence, and that of many others, including its Editor and Chief of Staff, none of it was reported by the paper. In fact, only ABC radio journalists considered these serious allegations about police manipulation of the way Aboriginal/police relations are reported as an important topic for public discussion, and featured the issue on three current affairs and talkback programmes in the following days.

Numerous examples of the clear privileging of police views and versions of events by news media have been brought to the attention of the Commission. The 'Aboriginal gangs terrorise suburbs' headline and article from The West Australian of 28 February 1990, dealt with in Chapter 18, is striking for its absence of comment from Aboriginal people.

On 18 May 1990 The West Australian ran another bold front page headline, 'Aborigines in high speed chases'. The accompanying article quoted figures from a 'previously unreleased police report' showing that 'more than half the young criminals caught in high speed police chases by the police are Aboriginal'. Toward the end of the article, after the Law Reform Commissioner, the Deputy Police Commissioner and the President of the Law Society are quoted, the views of one Aboriginal person are included. This might be regarded by some as a 'balanced story', canvassing a range of comment, (in spite of the order of placing Aborigines at the end) and not biased toward police views. But the sensational headline and story are based on a police report, which, we read halfway through the article, 'was conducted from May to August last year'. It is important to question why a report of 9 month-old police statistics was splashed across page one as if it was of burning interest and relevance to the Western Australian public.

The Editor of The West Australian explained how the paper dealt with the story. It was felt the police report was of interest to the wider readership because of the disproportionate rate at which Aboriginal youths were being apprehended for car stealing compared to youth in general:

> That story had dropped on us but it was only from the point of view of the police report. We tried for about two hours that evening to find a wide range of people we might think would give us an Aboriginal perspective on it and I think we eventually got one of them at 11 o'clock and one of them at half past 10. At that stage we were rapidly approaching our deadline for our metropolitan editions and we would've run into great troubles if we hadn't been able to find Aboriginal people to give us comment on that matter given the controversy that had arisen some months previously when stories which similarly might've been seen to have been not negative - sorry, that would've been seen to be negative to Aboriginal people appeared on the from page of the West Australian without comment from a variety of spokesmen within the Aboriginal community [RCIADIC Transcript, Perth, 19901.

The headline came at the end of a week of extraordinary media treatment of high speed car chases and juvenile delinquency, much of which was attributed W Aboriginal youth. The week saw major reports with photos and headlines daily in Perth's three main newspapers, headlines on the issue in the dailies for four consecutive days, press and electronic media travelling around in police cars, calls for tougher police measures and powers to deal with youth offenders, stiffer penalties from the courts and hasty reactions from Government and opposition politicians can be properly described as police and media driven 'moral panic' over juvenile delinquency.

It is not questioned that the crimes that were reported so prominently by the media that week actually took place, but why should they assume sensational proportions at that particular time, as they have indeed at other times in the recent past, when all evidence presented by authorities suggests that they are occurring all the time? It can be argued that *such* sensational media themes are self-generating, that once the issue, in this case car thefts and chases, is 'picked up' by an influential section of the media, for instance the main newspaper, it automatically accrues a degree of newsworthiness for other media. According to Rock (1989:69) the effect of such media generated news themes can be that the content of this news becomes further and further removed from the originating event, and is sustained purely by the imaginative efforts of news producers:

> In this fashion, the press can create 'pseudo-disasters' which may have no discernible relation with events as they are known by outsiders. Pseudo-disasters, crime waves and panics create a reality which is organised by the structure of the newspaper office alone. Most probably, these autonomous news cycles are more conveniently constructed than any other to meet the space and timetabling demands of a newspaper organisation.

Cunneen and Robb (1987) showed that police crime statistics did not support the existence of 'crime waves' as reported in certain NSW country town newspapers, in which only Aboriginal offenders were identified by race. Fishman's (1981:112-113) research into crime waves in the US media identified the police and politicians as having the ability to 'channel the coverage of social problems into a definite direction' through their 'news-making power', with the police being the media's 'almost exclusive source' of crime stories.

Two days before the media storm over juvenile car thefts and other offences,

Judge Hal Jackson of the Children's Court, in an article in the Sunday Times (13 May 1990) criticised politicians and the media for 'whipping up an irrational "gaol-them mentality" among the public'. Judge Jackson, who is known for his reformist approach to the problem of juvenile delinquency also implied that too much emphasis was being placed on car thefts by youth rather than other more serious issues such as the sale of alcohol to juveniles, prostitution and illegal gambling. A few days earlier Judge Jackson had delivered a more detailed account of his views on policing methods and media's crime agenda in an address to the Press Club, in which be stated:

> Violence is inconsistent with law, in many ways its anti-thesis. The important recent Report of the National Committee on Violence has so far received little media publicity. The dally role of some of the media in reporting violence is not matched by its role in publicising the work of such bodies. The result is to divert Government and the public away from the real issues to the transient or superficial. I wish the media would spend more time on the important [issue 'All for Law and Law for All', Judge H. Jackson, 1990:3].

In his speech Judge Jackson also repeatedly drew attention to what he believed was the failure of police methods in dealing with juvenile crime and called for police to adopt diversionary alternatives to charging youth offenders. He also struck out at demands for tougher court measures to deal with youth offenders as wrong and having been abandoned elsewhere, and emphasised the underlying historic and social issues associated with Aboriginal involvement with the criminal justice system (Jackson, 1990:1-417). It can be argued that after these criticisms some people in the media and the Police Force may have felt the need to create an atmosphere of emergency over juvenile crime, to underline the argument for tougher punishment and increased police powers to monitor and regulate youth behaviour.

The media tirade also came a week before two critical state by-elections, a particularly vulnerable time for a government, when law and order issues are felt to heavily influence political fortunes. This is doubtlessly an opportune time for police to press for increased powers, resources, pay and conditions, and tougher sentencing of offenders or simply to remind political parties of their influential position. It was also observed that the cross-examination of police officers at the Royal Commission Into Aboriginal Deaths in Custody hearing into the death of John Pat at Roebourne commenced in Perth on Monday, 14 May 1990. The local news media paid scant attention to this, the Daily News not covering it at all and The West Australian carrying a single report. This was in marked contrast to the front page coverage given by the newspaper to the appearance of new witnesses for the police at the beginning of the bearing in the 7 March edition.

The issue here is that at certain points along the news editorial process, decisions were made not to carry out a thorough-going journalistic investigation of the incident and the whole issue of police treatment of Aboriginal people. Yet decisions are quite clearly made, as is evidenced by the examples of media coverage of Aboriginal crime, to highlight and probe incidents where Aborigines are seen as having transgressed societal laws and standards of behaviour.

In a sense access, control and the inner dynamics of how news is manufactured by the police, Aborigines or the proprietors of various types of media and press, is of interest to all Australians but as far as this Commission is concerned it is the negative perceptions gained of the police by Aborigines and Aborigines by

members of the police force which is of utmost concern. It is clearly a power game that has not dealt the cards evenly for Aborigines. However, both police and Aborigines suffer in an often senseless merry-go-round that gives rise to frustration, anger, hawed, retaliation, arrests and custodies.

As demonstrated in the material throughout the preceding sections, Aboriginal/police relations remains a critical issue with regard to Aboriginal people and their association with the State, and the criminal justice system. It is apparent that the foundations of Aboriginal/police relations are still poor: that Aboriginal people themselves are still primarily wary of the police, and that the police powers of discretion allow them to have an authority over Aboriginal people that, in many instances, is discriminatory. Aboriginal people still tend to be imposed upon by police for matters that non-Aboriginal people would not be. Being assumed to be drunk (rather than ill) is just one instance of this. While I will return to aspects of policing throughout this report, I now consider the penal system and the Department of Corrective Services. It is critical to observe that these matters are further examined in Commissioner O'Dea's regional report.

5.14 PRISONS AND THE DEPARTMENT OF CORRECTIVE SERVICES

> Have you ever had a door slammed, locking you out of the world, propelling you into timeless space, to the emptiness of silence?
>
> Have you ever rolled up into a human ball, and prayed for sleep to come ?
>
> Have you ever laid awake for hours waiting for morning to make yet another day of being alone?
>
> If you've never experienced even one of these, then bow your head and thank God, for it's a strange thing indeed - this rehabilitation system!
>
> (Robbie Walker, 1988)

According to Broadhurst (1987) 'Of the estimated 9,000 Aboriginal males over the age of 16 resident in Western Australia, some 15 per cent were received in prison in 1983-84. Over the last decade it is conservatively estimated that approximately one-third of this population has been incarcerated, suggesting very high levels of recidivism'. The recidivist rate for Aboriginal prisoners is not only much higher than for non-Aboriginal prisoners, but the average time in returning to prison is much shorter. The 'estimated probability of ultimate recidivism for male Aboriginals was 80%, with the median time to fall of about 11 months and a mean time to fail of 16 months' (Broadhurst 1988). The probability for non-Aboriginal male prisoners is around 48%, with a median time of 18 months and an average of 19 months. The recidivist rate also increases for younger male Aboriginal prisoners but decreases for prisoners released from minimum security northern prisons (e.g. Broome and Wyndham).

It is of interest to observe at this juncture, that the Crime Research Centre at the University of Western Australia which was established in 1988 in an attempt to coordinate the collection, collation and production of crime and justice statistics throughout Western Australia may, in the future, be able to provide informative data of a kind that will further inform currently available statistics which have, in the past, been quite difficult to acquire in this State.

As noted above, the issue of statistics in relation to offences is dealt with in great detail by Commissioner O'Dea. I now, however, briefly consider some background information.

5.14.1 Offences

The matter of offences is a *crucial* one, especially when considered in the light of earlier comments where I inquire whether systems of law are 'applied and enforced for the protection of its members, or whether the laws serve to sustain inequalities within that society' (p.3). That is, from evidence put before me, it would seem that the legal system as it is currently observed in this State, serves to sustain inequality. Considering the issue of 'offences' illustrates my point here. Initially, a quote from an Aboriginal informant:

> I remember going down there when I was a little kid looking up from the high street down the bottom there somewhere and looking up at the big gates of the wall ... and me auntie told me that's where all the prisoners are ... and I just never dreamt that I'd be working there. I'm probably the only one that's worked in the system, and a lot of the ones that's in the inside - the prisoners - never thought they'd get there too, but that's the way things turn out {RCIADIC Transcript, Perth, 1990:.1000].

While Aboriginal people have, over the years, often been charged and imprisoned for 'social disorder' types of offences, there is evidence of an increase in other and more serious categories of crime. Additionally, motor vehicle theft now involves more Aboriginal males than others. Rates (when compared per 100,000 Aboriginal male persons) for other crimes have increased:

OFFENCE	**1961**	**1981**
Homicide	12	63
Sexual Assault	48	490
Theft	980	6030
Motor Vehicle Theft	490	2880
Other Assaults	630	2460

(Broadhurst 1987)

The proportion of Aboriginal people committed for all traffic offences (excluding driving manslaughter) was in the early 1960s around 8% but by 1978 the proportion had risen to 35%. Broadhurst (1987) notes that Traffic-related violations now constitute a problem of greater magnitude than that faced by the police, courts and prisons for drunkenness in the early 1970s'.

5.14.2 Prison economy

Issues directly concerned with the economics of the prison system, and that of social justice, are examined in Commissioner O'Dea's regional report. However, the following tables and discussion. provide an insight into the 'prison economy'. As can he seen, such an economy absorbs a large amount of

State and Federal funding. Initially, it is necessary to observe that there are fourteen prison facilities, of varying degrees of security, in this State. These are:

Albany Regional Prison	maximum/medium security
Bandyup Womens Prison	maximum/medium security
Broome Regional Prison	minimum security with maximum facilities
Bunbury Regional Prison	medium security
C.W. Campbell Remand	maximum security
Canning Vale Prison	medium security
Eastern Goldfields Prison	maximum/medium security
Fremantle Prison	maximum security
Greenough Regional Prison	low/medium security
Karnet Prison Farm	minimum security
Roebourne Regional Prison	minimum security
Pardelup Prison Farm	minimum security
Wooroolloo Prison Farm	minimum security
Wyndham Regional Prison	minimum security

The following table provides indications concerning the average cost per prisoner in Western Australia (1990). Commissioner O'Dea's report also refers to some of these matters.

Table 4: Australia: average annual cost per prisoner

STATE	**COST PER PRISONER**
Queensland	20,140
Western Australia	35,765
Tasmania	24,568
Northern Territory	32,568
South Australia	43,470
New South Wales	40,880
Victoria	33,000
Weighted Average	**34,570**

And the next table makes available information concerning the avenge annual cost per capita of person under non-custodial supervision orders.

Table 5: Australia: average cost per person under non-custodial supervision orders

STATE	**COST**
Queensland	750
Western Australia	960
Tasmania	990
Northern Territory	1580
South Australia	1620
New South Wales	1800
Victoria	2500
Weighted Average	**1630**

(Quoted in Mukherjee et al, 1990, Source: Walker, J. 1988, Adults Under Supervision and Detention Orders, Trends and Issues, No. 14, Australian Institute of Criminology, Canberra.)

The above material also needs to be seen in the light of funding for prisons and related services in this State for the period 1984-1985 (other States are also shown in this table):

Table 6: State Government Net Per Capita Expenditure, 1984-1985

	NSW	VIC	QLD	WA	SA	TAS	NT
Police Services	81	83	85	93	90	87	246
Law Courts & legal services	30	9	29	24	23	14	86
Prisons & Corrective Services	21	15	21	44	32	20	74
Total Justice*	132	107	135	162	146	121	405

(Quoted in Mukherjee et at, 1990, Source: Budget Papers, 1985, Auditor General's Report, Government Finance, Australian Bureau of Statistics, Canberra.)
* Components may not add to total due to rounding.

Table 7: Factors influencing per capita expenditure on justice

	NSW	VIC	QLD	WA	SA	TAS	NT
Per capita spending on justice- $	132	107	135	162	146	121	405
Crime rate per 100,000 population	3131	3161	2294	3157	2982	1539	4163
Total per capita expenditure - $	2583	2818	2657	3048	2659	3506	7550
Priority for Justice spending per cent of total expenditure for justice - per cent	5.1	3.8	5.1	5.3	5.5	3.5	5.4
Proportion of population in capital/major Cities- %	74	74	58	71	72	40	48
Proportion of population in 15-24 age group- %	16.0	17.0	17.0	17.0	16.5	16.4	19.0
Imprisonment rates - per 100,000 population	117	70	125	171	87	80	378
Police Strength - per 100,000 population	194	211	188	211	239	221	460

(Mukhedrjee et al, 1990)

One of the crucial points to emerge by putting these figures forward, is the differences in state spending on criminal justice matters, as well as the amount of money which goes into the prison system.

5.14.3 Health Services in custodial settings

As recorded in Chapter 4, concerning those who died in custody, health services in custodial settings were often inappropriate. The next section explores this critical issue in some detail.

> In all cases the appropriate test for the provision of medical and other health care should be whether it is necessary for the health of the prisoner. Prisoners should receive the same medical and health care as a private citizen. The cost of such provision is no answer to necessity [Nagle Royal Commission, 1978:718, quoted in Fox, 1984].

The issues of appropriate, acceptable and accessible health care when in custody must he the guiding principles when discussing the issue of service delivery. In 1989, Australia adopted, in part, the United Nations' Standard Minimum Rules for the Treatment of Prisoners (1984), via the Conference of Correctional Administrators accepting a modified version called the 'Standard Guidelines for Corrections in Australia'. Both of these documents state that health care services for prisoners shall be organised in close association with the health administration in the general community. They tend to focus on the minimum medical care that should be available and provided to prisoners. They do not address the issue of well-being in the social health context. The Guide-lines, in contrast with the Minimum Rules, fail to address the needs of women who are pregnant or who are breast feeding. As Hookey (1990) has stated, even the adoption of these minimum standards addresses few issues that are of concern to the Commission.

Neither document addresses the issue of the role of prison health services and their obligations to their employer versus the people in custody. As Fox (1984) and the Royal Commission Interim Report (1988) have highlighted, it is essential that prison health service employees are able to be identified as being separate from the prison system rather than being agents of the control processes inherent within that system. Indeed the Nagle Report (quoted in Fox, 1984) comments on several situations in the NSW prison system where the latter has been the situation. The Department of Corrective Services' response to the questions put by the Commission fail to recognise the importance of having the Prison Medical Service independent of the Department. The 'care' provided to the man who died in Sir Charles Gairdner Hospital (W/9), prior to his transfer to Fremantle Hospital from the prison hospital, raises the issue of prisoners being denied access to the health services that are often readily accessible to those outside the prison. Commissioner O'Dea's report also refers to this *crucial* matter.

The following further illustrates how variable accessibility and appropriateness to prison health services depends on which part of the State is being considered. Health services in prison vary depending on which institution is being examined, and the time under discussion. Consider the changes which have occurred at Bandyup since the death of Nita Blankett in January 1982. Trained nursing staff are now available for much longer periods; medical officers from the Prison Health Service are now available on call; there are now peakflow meters and nebulisers available. In his report on the death of Wayne Dooler, Commissioner O'Dea comments on the much improved availability of health care in the Carnarvon Lockup since Dooler's death in 1980. Now Aboriginal Health Workers from the Carnarvon Aboriginal Medical Service attend the lockup at least dally. Since Paul Farmer's death in Albany Regional Prison in 1984, the procedures for observation and seeking health advice have improved markedly.

People in regional prisons do not have access to the same level of health services. For example, Roebourne Prison (minimum security) has an average of 65 prisoners, and a full-time nursing sister is available. People who arrive during those times when nursing staff are not available, are asked about their health and medication needs by one of the shift officers. Medication supplies are obtained

from the hospital if deemed urgent by the prison staff (RCIADIC Transcript, Roebourne, 1990:115). The nurse is available and is called after she leaves the prison if advice is needed, otherwise the hospital is phoned and the prisoner taken there for assessment (ibid: 142). A similar situation exists for Kalgoorlie Prison which is the third busiest in the State, with the addition of a Community Health nurse visiting once a week (RCIADIC Transcript, Kalgoorlie, 1990:370). Similarly, Geraldton Prison has one nurse on staff. She is usually called out three or four nights a week, and a local doctor attends the prison twice a week. In between these visits the nurse cares for the prisoners or they are taken to the hospital or the doctor's surgery (RCIADIC Transcript, Geraldton, 1990:290-291).

The first aid skills of prison officers is another issue relevant to this discussion. They are instructed in first aid during their initial training. There is no formal refresher course at present Indeed the nurse at Roebourne Prison has arranged a voluntary course to update the skills of the officers (RCIADIC, Transcript, Roebourne, 1990:128). This situation is starting to be addressed but it would appear to be in response to the new Occupational Health and Safety legislation rather than the welfare of those in custody! (RCIADIC Transcript, Geraldton 1990:38).

The issue of the mental health and welfare needs of those in custody was raised several times in my conferences. The lack of availability of psychiatric services is discussed in Chapter 14. The ability of prison officers to perform a welfare role, following the decision to remove welfare officers from the prisons, was questioned. The prison officers are unable to fulfil this role due to the absence of sufficient human resources to meet the immediate day to day 'needs' of prisoners. Contacting outside agencies or family is out of the question due to this. The nurse, doctor, or members of the Aboriginal Visitors Scheme (AVS) have to pick up this role (RCIADIC Transcript, Geraldton, 1990:292-3). The reluctance of Aboriginal prisoners to confide in someone who spends most of their time reprimanding them and who has a different cultural background was cited as another problem (RCIADIC Transcript, Geraldton, 1990:482; RCIADIC Transcript in confidence, Perth, 1990:34).

It should he noted that there are only 9 Aboriginal prison officers employed by the Department of Corrective Services, out of a total of 1206. Three have been employed for between 4 to 8 years each; 3 have recently completed the Department's training course; and 3 are undergoing the training course (Department of Corrective Services, Response to the RCIADIC Questions, 6 August 1990:28).

An example of the potential resources available to prisoners versus the reality can he found at Greenough Prison where there is a position available for a psychologist. It has been advertised 3 or 4 times and is still not filled. The prison currently has the services of a private psychologist once a fortnight (RCIADIC Transcript, Geraldton, 1990:293).

Members of the AVS informed the Commission of their impression of the growing use of prescribed medication (especially Valium, Mogadon and Serepax) in prison, reportedly to help cope with the isolation, compared with practices in the past (RCIADIC Transcript, Geraldton, 1990:476,479-80). In Perth there were reports by AVS workers that often the prisoners, in Fremantle and Canning Vale, are 'drugged to their eyeballs' and some have fallen asleep whilst talking with the visitors (RCIADIC Transcript in confidence, Perth, 1990:42,44). One visitor stated

that at Fremantle Prison 'there's a lot of heavy medication. And some of them just walk around like zombies' (RCIADIC Transcript, Perth, 1990:517). It is relatively common for Perth Australian Medical Service doctors to be requested to prescribe combinations of medication (again usually Valium, Mogadon and Serepax) by people who have been recently released from prison as they have been prescribed them whilst in prison.

The issue of care whilst in police custody was another frequently raised topic. The perception of what happened if a very drunk person was picked up varied considerably depending on the employment of the person telling the story. If someone is found injured or completely Drunk they are taken straight to the hospital, usually in the van, as the ambulance service is voluntary and it can take 30 minutes for them to get there. One person commented: 'None of us are doctors and we do not take the chance in making a diagnosis. We just take them straight to hospital. There is too much risk of infection in this climate' (RCIADIC Transcript, Roebourne, 1990: 195).

In Geraldton the police tend to take people straight to the Geraldton Regional Aboriginal Medical Service (GRAMS) from the lockup rather than to the hospital because there is no resident doctor on duty at the hospital, so the doctor would have to go to the hospital from GRAMS (RCIADIC Geraldton Transcript, 1990::27). The contrasting views included: the police can't take drunk people to the hospital because 'they won't have them' (RCIADIC Transcript, Kalgoorlie, 1990:312).

5.14.3.1 Acquired Immune Deficiency Syndrome (AIDS) in custodial settings

At present, as far as is currently known, the Aboriginal population in Western Australia is thought to be relatively AIDS-free. However, once AIDS does impact on the Aboriginal population there are fears that it is likely to rapidly spread. I cannot say whether this is true or not. The lessons from history concerning introduced diseases to Aboriginal people is that they have had disastrous consequences and decimated many members of the Aboriginal population. AIDS poses acute problems to contemporary Australian society, owing to its life-style. This, in turn, impacts upon Aboriginal people for a number of reasons. It has further implications for Aboriginal prisoners, as it has been found, world-wide, that prisoners are a relatively 'high-risk' group of people for the Human Immunodeficiency Virus (HIV) infection.

Currently the policy of the Department of Corrective Services, is to test for HIV infection, all prisoners who are considered 'high risk'. The 'high risk' category includes people who are, or have recently been, infected with a Sexually Transmitted Disease, males known to be homosexual, and' those reporting homosexual or promiscuous heterosexual behaviour. Any such person refusing an AIDS test is treated by prison officers as if he/she is infected and is, as a consequence, isolated from the rest of the prisoners.

While there is currently discussion underway to alter the existing policy, it is necessary to consider that compulsory testing has the potential to isolate people, and this could have severe consequences for Aboriginal people, who rely heavily on social relationships.

It is important to acknowledge (i) that the AIDS Council of Western Australia is opposed to compulsory testing, and that (ii) the Australian Institute of Criminology

Research Paper 21, states that the primary answer to dealing with AIDS in prison is 'an effective educational' programme for inmates and prison officers.

In the following section, the matter of education in custodial settings is discussed in detail. It needs to be noted here that Aboriginal Education, like Aboriginal Health, is fully considered in the relevant chapters of this report (e.g. Chapters 12 and 14).

5.14.4 Education in prison

In 1987 the Western Australian Aboriginal Education Consultative Group (WAAECG) Report concluded that 'there are few more urgent issues than those mentioned in connection with prisoner education' (WAAECG, 1987:25). Often 'prisoner education' suggests the various courses, programmes and learning opportunities which many prisons already offer. The efforts which prisons have made to develop educational opportunities in prisons are noted, as also the development of links with TAFE and with tertiary Colleges, such as Kalgoorlie Prison with Kalgoorlie College. There is still, however, a great deal to be done in this critical area.

Education refers to a much broader experience of life than schooling, learning the 3 Rs, even being able to take up a job in society. Education is essentially about the learning and developing of knowledge and skills which enable a person to make something better of one's life. And for those in prison, education is a most important means for enabling prisoners to develop a more positive and powerful sense of themselves, their abilities and their role in society. Prison can and needs to be an educational experience for each prisoner and it needs to take into account the distinctive ways in which Aboriginal people see themselves as learning and being educated. The experience of education in prison is one important way of reversing the high incarceration and recidivism rates of Aboriginal people.

One Aboriginal Prison Education Officer said in her submission: 'Education is fundamental in enabling [Aboriginal] people to exercise their rights and participate fully in all aspects of Australian Society'. Prison programmes worked to deal with 'basic' skills such as numeracy and literacy, skills which many Aboriginal prisoners do not have, but there was a need for an 'holistic approach to learning; challenging the learner to think for him or herself and to make decisions about those things that are important to him or hen and, also re-addressing the economic and social disadvantages of Aboriginal Australia, in a manner that reinforces rather than suppresses cultural identity' (Submission to RCIADIC, Doreen Bedford, 1990).

Examples were given of prisoners who did not understand why they were in prison, the offences for which they were in prison, or the legal processes which were due them (RCIADIC Transcripts, Broome, 1990:291; Roebourne, February 1990:124). Other examples were given of prisoners who have problems associated with petrol sniffing and alcohol, with relations in their family and communities (RCIADIC Transcripts, Kalgoorlie, 1990; Roebourne, 1990).

A greater 'holistic' approach to learning is needed in prisons today. Prisoners need to know that 'education' will be an essential part of their time in prison, as will work, eating and recreation. They will also need to be reminded that learning can he a positive experience which builds upon one's life, identity and history. Prison officers also will need to acknowledge the various ways in which education can occur. Prisons need to be in greater contact and communication with local

Aboriginal communities so that they can take a stronger role in educating their members in prison. For example, prisons in Alaska encourage the regular visits of elders to teach, heal and work with the prisoners. Others in North America allow the performance of special traditional

ceremonies in prisons. It is encouraging the see the efforts made by some regional prisons in Western Australia to allow the cultural needs of Aboriginal prisoners to be recognised and respected. Efforts such as special smoking ceremonies, corroborees and participation by prisons in local community celebrations such as NAIDOC week, are to be supported. On occasions, prisoners experience cultural obligations when relatives die. That some prisons are aware of these needs and obligations, and attempt to make allowances for these things, is important. It is also important that there is sufficient devolution of responsibility and authority delegated W the regional prisons which contain high Aboriginal populations, so that they can respond to cultural imperatives. The interest in developing art and other craft sells is also important and a number of prisons have made significant efforts in this regard. In all these ways prisoners are encouraged to learn more about their history, their culture and their traditional way of life in the contemporary world.

The forming of learning links between the prison and local Aboriginal communities is becoming even more important as the rate of participation by Aboriginal people in more aggressive and violent crime has increased in the past twenty five years. With the majority of Aboriginal violent crime being 'intra-racial' (Broadhurst 1987) those who are charged with such offences, and end up in prison, need to be provided with ways of being led hack into their own and the wider community. Education in prison, as education within the broader community, needs to be related to the total learning needs of the Aboriginal community (cf. Chapter 12 on Education).

As noted earlier in this report what has become evident about Aboriginal prisoners in gaol in Western Australia is that they exhibit much greater rates of incarceration and recidivism than non-Aboriginal prisoners. For example, in 1983-84 an estimated 15% of Aboriginal males in Western Australia, over the age of 16, were imprisoned. The recidivism among such Aboriginal prisoners was estimated at around 80% (86% for younger male Aboriginal prisoners), compared with a 50% recidivist rate for non-Aboriginal prisoners (Broadhurst, 1987). Aboriginal prisoners are also generally younger and their lengths of stay in prison tend to be much shorter than for non-Aboriginal prisoners. Western Australian prison figures for 1989 show that 63% of Aboriginal prisoners would stay for less than 12 months in prison and 45% for less than 6 months (Australian Prisoners, 1989).

What this means for education in a prison is that any experience for Aboriginal prisoners will need to take into account the relatively younger age and shorter period of time which many spend in prison and the fact that at the moment a large number return to prison. It will also have to take into account the generally low levels of formal education which many prisoners have received and the possible negative experiences of schooling experienced in prison. While prisoners in this State generally have not achieved high levels of formal education, Aboriginal prisoners have received even less. A study covering 1988-89 showed that 97% of Aboriginal prisoners had not gone beyond 3 years of secondary school, compared with 81% of other prisoners. A further 15% of non-Aboriginal prisoners had some post secondary education compared with only 3% of Aboriginal prisoners (Department of Corrective Services, 1988-89).

As indicated elsewhere in this report 'schooling' has been for many Aboriginal people a painful experience and even one of 'imprisonment'. For it to become a more positive experience educators need to be aware of what education has been for the people concerned and bow Aboriginal people themselves teach and learn. Aboriginal learning is often interactional, concerned with relating to the world and with others. Tasks are often learned in groups with skills developed by repetitive use, but not to the point of monotony. It was in prison, working with prisoners in a Life Skills course, that an Aboriginal person discovered what education could mean: 'It's great having the opportunity to discover mainstream education at long last in a really supportive and understanding environment; I now know that it wasn't my fault for not doing well at school. I now realise that the racism and lack of understanding by everyone pushed me to the brink. I hated school and everything that I thought it stood for... [now] I'm beginning to realise just how the European system operates and how and why they store their knowledge in the written word' (submission to the RCIADIC from Doreen Bedford, 1990).

One obvious link between education and prison is those in prison who cannot read and write, cannot obtain motor licences and who end up in gaol with licence related offences. As Broadhurst notes: 'Apart from poor literacy and language skills, fear of police contact leads many Aborigines, particularly in remoter areas, never to gain driving licences' (1987). A study of prisoners in Northern prisons in 1981 showed that only 8% held a valid licence while 73% of prisoners had never had a driving licence. In other words a very large number of Aboriginal men either did not have nor were likely to have a motor licence. That study recommended: 'Priority in any training courses should be given to Literacy and Numeracy, Motor Maintenance and Driving Instruction as these three areas are not only in high demand but also to some extent form a package aimed at the major growth area in Aboriginal offending, whilst providing possible job skills' (Duckworth et al, 1981:25).

The proportion of Aboriginal people committed for all traffic offences (excluding driving manslaughter) was in the early 1960s around 8% but by 1978 the proportion had risen to 35%. In 1985 the rate per 100,000 had doubled from that in 1978 from 394 to 734. 'Traffic-related violations now constitute a problem of greater magnitude than that faced by the police, courts and prisons for drunkenness in the early 1970s' (Broadhurst, 1987). In 1987 the Minister for Corrective Services, noting the large number of people being imprisoned in Western Australia for driving without a driver's licence, promised the development of driver training programmes including ones for Aboriginal offenders or ex-offenders at Roebourne, Broome, Kalgoorlie and Albany (Ministerial Statement, 1987). These programmes, as in the examples of Kalgoorlie and Roebourne Prisons, have had some success but with limitations (RCIADIC Transcript, Kalgoorlie, June 1990:368; Roebourne Prison Meeting, 13 October 1989).

Roebourne Regional Prison attempts to support prisoners in their quest to obtain licences. Not only can this assist a prisoner on release to obtain a job more easily, but it can also promote more confidence and skills outside of prison. However, prisoners find they can be refused a licence, being informed that they 'are not of good character' or ‘should not by reasons of the number and nature of your convictions for offences under the Road Traffic Act and Regulations be the holder of a motor drivers licence' (meeting, Roebourne Regional Prison 13 October 1989). Present regulations permit an appeal to the Court of Petty Sessions within 30 days, but it had been the experience of the prison that rarely did prisoners take up this option, the reception of the news that they had been denied a licence preventing them from going further. This prison has attempted to assist prisoners

obtain licences while in prison but their efforts have been frustrated by the 'poor character' label given to a prisoner. The matter of a prisoner's character and previous offending against the Motor Traffic Act leaves little hope or expectation in a prisoner to improve or make a new start once released. This often leads, on release, to further motor traffic offences. The experience of prison is itself punishment. Prisoners do not need to be doubly punished with a negative judgment of character which can stay with them for the rest of their lives. This is a 'dead end' situation as, in my Commission's view, it contributes to the maintenance of low self esteem and further custodies.

The efforts made by police in remote areas to run campaigns in driver education and motor licences was viewed as a positive effort for improving relations between Aboriginal people and police. Consideration should be given to an amnesty for those who have accumulated convictions against the Motor Traffic Act.

There could be some value in offering a variety of short courses in prison. Apart from people being able to learn skills which they can use in everyday life and which can promote their confidence, prisoners can also learn the value of longer term education. As the head of one college involved in prison education said:

> 'Short courses ... are extremely useful for people who have little experience of formal education' (RCIADIC Transcripts, Kalgoorlie, June 1990:220).

Many prisoners leave prison to face unemployment An attitude was summed up as: 'Most prisoners don't expect to learn anything which is going to affect their life outside. There are no jobs'. Some prison jobs, such as the boot shop in Fremantle Prison, offer little or no practical skills or work outside of prison. Others could be helpful if they could connect with jobs after release. The value in offering courses for people who are staying longer in prison, such as job-skill development programmes, are limited if people cannot be guaranteed jobs when they leave prison. The promise of a job, of something to look forward to after prison, offers people hope for their own lives. Otherwise as ex-prisoners they lose confidence, become frustrated and this can lead them back into further crime (RCIADIC Transcript, Geraldton, 1990:39).

What is important about prison education is that the time which prisoners spend in gaol be better organised and made more productive. This should also apply to juveniles in detention centres. While it is true that 'it was not until the mid to late seventies that Aboriginal prisoners began to attend regular school classes in some prisons' (WAAECG, 1987:33), now is the time for Aboriginal prisoners to expect that once in prison they will be choosing between various courses or experiences which may improve their lives.

This Commission recognises that present Prisoner Education Policy is that such a service be voluntary but that it also be accorded similar status and remuneration to prison work (Department of Corrective Services, 1990). There needs to be serious consideration given as to how custodies and recidivism, on a short term basis, can be reduced through regular attendance at education courses (as broadly defined in the above) as part of a daily prison timetable. Such attendance could be remunerated as any work in the prison. Incentives would be offered prisoners to make choices about the education they need, with greater incentives for the efforts which prisoners might make to attend such courses and address their own 'educational' needs. DEET and TAFE would also need to offer a greater variety and amount of resources and essentially the Department of Corrective Services

would need to give an even higher priority to education for prisoners and prison officers (whose skills and support for such courses would be critical). The review of the Prisoner Education Policy, which, according to Department Policy (1990) should be completed biennially, needs to examine the allocation of 'educational' resources by the Department and other agencies in achieving the above goals.

5.14.5 For those who died in custody

Despite there being recent arrangement made for St John Ambulance to provide upgrade training in First Aid to police throughout the State (RCIADIC Transcript, Kalgoorlie, 1990:309), the issue of safe custody is still crucial for a number of reasons. These include: not just the ability but the willingness of custodial officers to perform resuscitation even if they have the skills (with Nita Blankett, Stanley Brown, Hugh Wodulan, Charles Michael and Wayne Dooler no attempts at resuscitation were made; only partial attempts were made to resuscitate Christine Jones - cardiac massage with no mouth to mouth). Though custodial officers are now more aware of the importance of urgent medical assessment of those who appear very drunk, due to the risk of injury or other health problems being the real problem, the reported reluctance of hospitals to accept people needs addressing. The *custodians* must be able to discern those at risk. Where they are incapable or incompetent to do so, then the need for medical assessment to ensure it occurs is essential. Despite the comment above, custodians have the power to enable or deny access to medical treatment It

not hurt to be sure and safe, it can be fatal to be wrong. Faith Barnes, Wayne Dooler and Albert Dougal were all arrested, assumed drunk, and died. Two from a head injury and the other from alcohol poisoning. Even after Nita Blankett's death one of the nurses involved still felt oxygen was contra-indicated in asthma when questioned at the Commission heating. The death of Donald Chatunalgi who died from withdrawal fits, provides another example of the importance of training police and prison officers in basic life preserving health care skills and awareness. It is the responsibility of the employers and the custodians themselves to ensure that they have the appropriate skills.

The improvements in the methods used when dealing with someone assessed as being at risk since the death of Paul Farmer are noted. However, the current procedure at Roebourne prison is to monitor such a person every half an hour (RCIADIC Transcript, Roebourne Prison, 1990:156). This is inadequate when it only takes seconds to become unconscious after obstruction of the carotid arteries and only minutes before death ensues. Constant observation is essential for safe custody of those at risk.

The sensible and practical method of placing 'at risk' persons in the cells with other Aboriginal people, to keep an eye on them, should not diminish the duty of care required, and owed, to people who are taken into custody. It is an understandable approach for a number of good considerations, but should not be allowed to deny the real needs for financial resources, and personnel authorised with the responsibility of a custodian, to carry out their duty.

It is impossible to provide safe custody in unsupervised police stations no matter what a person's health is like. Medical emergencies are not usually planned events. It shows a lack of commonsense, especially if a significant proportion of the people in cells are Aboriginal, and hence even more likely to have significant

health problems which will place them at greater risk. Well-being, whilst in custody (e.g. with regard to food, exercise, time occupation, education, cultural identity, self-esteem, confidence building strategies and the avoidance of exposure to hazardous substances or infectious diseases [hepatitis, tuberculosis, HIV]) are all important issues which need addressing by the custodians.

5.14.6 Aboriginal Visitors Scheme

The Interim Report of Commissioner Muirhead recommended the establishment of cell visitor schemes to service police lockups. This scheme was recommended to be developed in consultation with Aboriginal communities (Recommendation 22). At the time of reporting, Commissioner Muirhead was aware that such a scheme had commenced operating in Western Australia. It was at that stage - December 1988 - believed by Commissioner Muirhead to be working well. The Aboriginal Visitors Scheme (AVS) operates in Broome, Geraldton and Kalgoorlie as well as the metropolitan area. There are about 56 visitors throughout the State.

AVS members were originally nominated by communities, but due to the number of interested applicants, an interview process has been developed. This has to some extent placed the scheme outside of community consultation. The selection criteria includes a police check on previous offences - 'after a certain time if you haven't committed an offence, you can be taken in to be a visitor' (RCIADIC Transcript, Perth, 1990:505). The time period is 5 years.

The budgeting arrangements were hazy up until at least May 1990. The Aboriginal Affairs Planning Authority (AAPA) has overall control of the AVS but it is operated under the auspices of a Management Unit and a Special Project Officer accountable to the AAPA. The AVS is funded by 'Funding for Economic Development of Community Organisations' (FEDCO). The operational guidelines of the AVS have been approved by the Ministers for Corrective Services, Aboriginal Affairs and the Police Department.

The guidelines bind AVS members to raise concerns in the first instance with the OIC of the prison or lockup. John Bridge, the Acting Co-ordinator of the AVS, told this Royal Commission that there had been some contention about the role of the AVS particularly with the Prisons Department as it was felt:

> that the visitors were encroaching on - were in fact dealing with welfare issues which they are in fact able to cater for [RCIADIC Transcript, Perth, 1990:508].

It was conceded that the AVS were still confronting problems in the operation of the scheme although support the scheme receives in regional areas was said to be excellent. One visitor advised, in confidence, that the police only call the visitors in when there is an emergency in some lockups and that the visitors were not always called in when someone was placed in the padded cell. People placed in the padded cell have their clothing removed.

Aboriginal visitors were for some time denied access to the Bandyup Women's Prison prior to May 1990, except in emergency circumstances. The reason for this was that it was felt the Visitors were 'over servicing' the prison. It was put to the Co-ordinator of the AVS by the Superintendent and Deputy Superintendent:

> they explained the over-servicing aspect and felt that Bandyup did not warrant the services of visitors in the normal rostering process any more than once a month. I said that that was totally unacceptable. We had further discussions and then a proposal was put that we he allowed to continue visiting Bandyup on one day per week with the normal emergency call-out 24-hour 7 day-a-week arrangement [RCIADIC Transcript, Perth, 1990:511].

Arrangements for visiting after this discussion were agreed to be two days per week, Monday and Friday.

The Management Unit of the AVS has discouraged visitors from sitting in on interviews of arrested persons because of the prospect of visitors being called as witnesses. Visitors do not feel comfortable assuming any pseudo-legal role as they do not have the legal training. In any event the visitors told this Royal Commission that they were not present when juveniles were interviewed by police as the police involved were often Central Investigations Branch. The juveniles were interviewed at suburban police stations, and were only delivered to Central Police Station at night.

The AVS reporting process follows this procedure:

1. Raise concerns with the OIC of the station or prison.

2. Raise issues of a legal nature with the ALS - which is understaffed and unable to respond as people would hope.

3. Leave the issue of making a formal complaint about treatment, if a complaint is warranted, to the ALS.

Visitors reports are examined by the Project Officers at the AAPA who examine the son of follow-up necessary. Project Officers are like 'overseers' to the visitors. After the report has been analysed it is forwarded to the Co-ordinator, who raises the complaint with the department concerned. The Management Committee or Project Officer of the AVS could go direct through the Ministers of the various departments but have not done so to date. For the purposes of documenting complaints about specific ill-treatment, there had been a perceived breakdown of liaison between the ALS, AMS and AVS.

In discussion with AVS members, I was concerned to discover that the AVS do not have any real power when a visitor discovers a case where someone is injured. The process is the same: speak to the OIC; inquire whether medical assistance has been sought; recommend medical assistance; follow up by carrying out further visits and obtain information which confirms or negates the fact that further recommended action has been taken. That is the process available to the AVS. There are no apparent sanctions, no backup and no regulatory powers in respect of the operations of the AVS.

Police procedure in relation to the AVS is not enshrined in Routine Orders and there is no proposal to make provision for the AVS protocols in those Orders. The Commissioner of Police has indicated, in Answers to RCIADIC Questions, that the scheme is endorsed as Departmental Policy and that members are to follow the procedures contained in the guidelines published in the Police Gazette (see Answer 5.4(d)). The Gazetted procedure is capable of modification to meet local requirements (see Answer 5.4(e)). Some police indicated in conference that there

had been no 'complaints' lodged about police in some areas since the implementation of the AVS (RCIADIC Transcripts, Geraldton and Kalgoorlie, 1990).

The Police Union in its submission to the RCIADIC 'totally agreed' with the Muirhead recommendation that cell visitors schemes should be established in consultation with Aboriginal communities (Recommendation 22, Interim Report). The Police Union has also indicated in response to Recommendation 20 (Vincent Report), that the AVS is a 'useful innovation' but it is supplemented by the use of trustees in lockups which could be further developed 'to advantage' (Police Union Submission, 1990:27).

5.14.6.1 The AVS and Aboriginal people

Aboriginal people thought the Visitors Scheme a good idea, but commented that it lacked parliamentary interest. No politicians had shown any interest in the scheme. People were frustrated because the AVS scheme did not go further than just the 'one step'. Of particular importance, it was thought crucial to have identity cards signed by the Commissioner of Police. The cards are presently signed by the AAPA Commissioner. Some Aboriginal people commented that the police were laughing at the AVS because they did not know who was the authorising officer.

The AVS called for more support in the welfare area and my Commission was told there was a need for a Welfare Worker in the Children's Court where the youth need to be observed and looked after. My Commission believes that this role should be filled by the Aboriginal Child Care Agency. If that Agency is presently not undertaking that role, it should be resourced to do so.

The Visitors spoken to by my Commission expressed a need for both medical and legal backup for the performance of their functions. In addition, the role of

the AVS spokesperson requires clarification and there is a need for that position to be totally independent of the bureaucracy of the AAPA.

Some police have reportedly been unco-operative with members of the AVS in refusing to give names when asked to do so. Some police were alleged to have used racist expressions in from of AVS members, and it was said they exploited the AVS members, calling them down to the station to quell possible trouble but not being helpful or co-operative in other circumstances.

The AVS reports on police and prison visits are held at the AAPA in Perth. AVS members complained that their reports were 'gathering dust' in the AAPA and that, in a number of matters, there was an urgent need for further action to be taken.

concerned Aboriginal participants told me that the AVS had no real power to deal with situations, in that all they could do was raise the matter with the station Sergeant and report it to the AAPA. There is no proper procedure institutionalised to resolve problems, no way to have complaints heard and determined. Some Aboriginal community members believe the police play games with the AVS by not bringing detainees in to the Central Lockup until just before court. They say that the 24 hour roster system is being exploited; that the AVS do not get a fair go from the police, they make smart remarks; and that the AVS has had visiting time restricted to 15 minutes in the lockups - a reduction from two hours.

The scheme in Geraldton has had a number of difficulties, not the least of which has been the fact that there has been one death in a police cell in Geraldton since the inception of the scheme. The situation clearly requires serious attention. Total police reliance on the visitors scheme as the safety net is misplaced. The visitors involved in that matter needed counselling and support as a result and that counselling had to be organised by themselves.

According to material put before me, there has been a 50% resignation rate of visitors. The main reasons for resignation are the stress involved in the job. A support panel for the visitors has had to be established because of the problems. The visitors are said to be filling the role of welfare officers at the Greenough Prison since Aboriginal welfare officers were abolished.

The AVS help the ALS to obtain sureties for people detained in custody because they do not want people detained any longer than is necessary. Additionally, they provide counselling in the prisons about misuse of prescription drugs.

The police and prison officers were said to be very wary at first but now rely heavily on the AVS. However, prisoners have been told that the Scheme is not there as a 'right' for prisoners it is only a personal comfort. Further, visitors were concerned about the lack of regional juvenile institutions and also the lack of support for people who are released from prison. Comment was made that the Visitors Scheme had been able to sort things out for prisoners in at least one prison in some areas:

> One of them was meals, and the other one was phone calls, and in the maximum security, instead of letting them eat in the dining-room or somewhere, they locked them in their cells, where they've got the toilet in the same cell. And they also complained about contact visits, but sometimes there's reasons for that - why they can't have those visits. There's a lot of internal matters, you know, that we can't really interfere with [RCIADIC Transcript, Geraldton, 1990:478].

At Geraldton, any complaints received by the AVS are reported to the ALS:

> sometimes when they're arrested they allege that they've been assaulted so we have to carry on from there, refer it to the legal service [RCIADIC Transcript, Geraldton, 1990:479].

The AVS in the beginning in regional areas, was not supported by Perth, their administrative centre. In sum, it would appear that because of considerable community interest and activity, and community determination to address the problem of deaths in custody, the A VS is a representative Aboriginal self-help organisation. Control however, is vested in the AAPA in Perth, and Visitors have been largely left to their own resources in the past. There were some suggestions that the administration of the scheme should be regionalised so that more control resides in the local community. This would require co-ordinating administration from Perth and regional support and backup.

5.15 COMMUNITY RELEASE PROGRAMMES

A matter which was brought to my attention on a number of occasions was that of

what occurs to prisoners after they are released from custodial settings. The Albany Community Release Programme seems to me to have some merit. This programme monitored by a wide group of Aboriginal and non-Aboriginal people, endeavours to support ex-prisoners on leaving prison who require their support and assistance. Advice presented to my Commission informs that community release programmes can be 'very effective in assisting ex-offenders, families and at-risk' youth (submission from Petterson, 26 March 1990). This son of agency (Outcare in Perth is another) gains support and endorsement from local Aboriginal organisations, Members of Parliament, the Chamber of Commerce, and various government and non-government agencies (ibid).

While my task and hope is that the over-representation of Aboriginal prisoners will eventually be reduced, I am also aware that the reality is that some Aboriginal people (like non-Aboriginal people) will spend time in prison. Programmes such as the above, which aim to assist ex-inmates back into their community environment, could also help to reduce recidivism. This type of work is very valuable because it deals with people for whom time and the world has stood still. On leaving prison, such people need assistance and support to find ways of making sense of the changes that have taken place while they have been locked away. This is especially true for those who have been incarcerated for some considerable time in maximum security.

In the next section, the meal allowance is discussed. Notably, Western Australia is the last remaining State to have such a system in place, and arguably, the continued existence of the system contributes to the high arrest rates.

5.16 THE MEAL ALLOWANCE

In Western Australia it is a long established practice for the officer in charge of a police lockup to provide meals for the people in his custody. This practice commenced in the 1890s and, even at that time, the fact that the system was open to abuse, was registered. The 1904 Royal Commission on the Condition of Natives (see section 3.0) conducted by Dr W.E. Roth, observed that: 'The larger the number of prisoners ... the better, pecuniarily, for the police'. An even earlier record, commented that:

> The system of paying constables 2/- per head per day must be open to grave abuse and I can see nothing to prevent an unscrupulous man from capturing every native he sees, and putting them on the chain and thereby earning a big cheque on the way down to gaol [Aborigines Protection Board Records, 1891-1897].

The system continues in this State, and relevant officers in charge claim reimbursement from the appropriate government department: The Police Department for unsentenced prisoners, the Department for Community Services for juveniles, and the Department of Corrective Services for sentenced prisoners. The officer is required to provide three meals a day on every day of the week. He pays for the food initially out of his own pocket, or runs an account with a local store. The present rate for each meal is $4.31 per meal north of the 26th parallel, and $3.92 per meal south of the 26th parallel.

It is important to recognise that, apart from the fact that Western Australia is the only State to continue the meal allowance system, it contains a number of

anomalies: (i) there are no control procedures to ensure that all prisoners receive adequate meals and that the money claimed has actually been spent on food for the prisoners; (ii) the officers are not required to provide receipts; and (iii) until recently, auditing procedures were very lax.

In 1980 the Law Reform Commission singled out the Western Australian meal allowance system for comment, concluding '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' (1980:para 176). Additionally, Recommendation 26 of the Vincent Report required the abolition of the Meals Allowance system and the establishment of a committee to decide upon an alternative system. This was suggested on 21 January 1988 at which time the Inquiry reported. The State Government has indicated that:

> An interdepartmental committee has met and researched arrangements in other states. The system for claiming meal allowances has been tightened, but to date no satisfactory alternative has been found which could operate on a state-wide basis.

My view is that it is totally unacceptable that prisoners, sentenced and unsentenced, are exposed to the possibility that their nutritional needs are not being met while they remain in custody.

5.16.1 Response of the Commissioner of Police

This Royal Commission has been told that the meals allowance is the subject of oversight by:

(a) the Ombudsman by invitation of the Commissioner of Police;

(b) Regional Officers;

(c) Chief Superintendents; and

(d) the Commander.

These parties (b), (c) and (d) make unannounced visits to 'spot check' meals. The Ombudsman has also advised that he visits lockups unannounced.

My view is that 'spot checks' are not an acceptable way to address the potential for abuse of the meals allowance. Such a practice in no way addresses the problem when it is considered that:

(a) there are no guidelines about meals content in Routine

(b) such checks would not necessarily disclose whether a prisoner was being fed beef, donkey meat or kangaroo;

(c) the persons conducting the 'checks' do not possess the skills to assess the nutritiousness of the meals provided;

(d) the persons conducting the 'checks' may themselves have a view

about what is 'acceptable' as prisoners meals, which view may not be appropriate;

(e) in cases where there is flagrant abuse checks may not be conducted often enough;

(f) conducting 'checks' does not address the criticism that police are arresting people unnecessarily to increase the numbers of meals provided and thereby the amount of money made.

I find it hard to accept that 'no suitable alternative system' can be found for the meals allowances. The Northern Territory system would seem to be wholly applicable in Western Australia. Commissioner Bull in evidence before my Commission (RCIADIC Transcript, Perth, 1990:652-653), indicated that in fact there had been a 'dramatic' drop in meals allowance payments after his directions to police which were, firstly, to Bail people for minor matters; and secondly, not to apply for Bench Warrants in minor matters. If this is in fact demonstrated by the acquittals or audit, then this, to some extent addresses point (f) above. It might be argued that if it has taken a 'direction' from the Commissioner for there to be a dramatic drop in meals allowance, the system has been substantially rorted in the past. However, it is not clear that such a reduction will continue in the wake of the decriminalisation of drunkenness where people 'detained' can be provided with a meal and it is also not clear in which areas this 'dramatic' reduction has taken place. In fact my Commission has been told that, at least in the Children's Court jurisdiction, it is police practice to require a Bench Warrant for a breach of Bail. Does the Commissioner's direction not include Children's Court matters or are police failing to comply with it? (RCIADIC Juvenile Justice Conference, 1990:12). Police are perceived as being 'very rigid and bureaucratic and formalistic' in their view of their duty to apply for Bench Warrants (ibid:124). The Commissioner further observed in evidence that a lockup:

> isn't like an ordinary hotel; you've got to provide or have a capacity to provide meals through three periods per day, from 7am to 9am; so any person who comes in during that two hour span is entitled to a meal. Any person who comes in between 12 and 2 is entitled to a meal, and 5 and 7. Now, it's unknown factors from day to day as to how many people you're going to have [ibid:653].

With respect, that problem exists in any jurisdiction of the Commonwealth and it is not insurmountable in the Northern Territory, and my Commission takes the view that it is not an insuperable obstacle to the abolition of the meals allowance in this State either.

5.16.2 Police Union response

The Police Union in its submission to my Commission on the issue of the Meals Allowance, comments that 'clearly, prisoners have to be fed' (1990:30). However, the submission, further submits that the use of outside contractors for the purpose has been investigated and rejected for a number of reasons. The reasons include:

(1) contractors would have to be available 7 days a week;

(2) contractors would have to be available on short notice; and

(3) the 'overall' cost of the meals would exceed the cost paid to station staff.

The contractor would presumably be paid on a 'fee for service' basis not on an hourly rate. The cost to government of meals prepared by contractors would arguably be less than is presently the case as there would be no monetary advantage for those police who allegedly abuse the system by arresting large numbers of people in order to gain funding for the meals allowance.

The Union goes on to state in its submission that:

> ... the cost of the food alone is about treble today's costs and this does not take into account the requirement the police would have to be at the station waiting for the meals to arrive to facilitate delivery of the meals and therefore the cost when this is factored in escalates out of control [p.30].

My Commission does not accept that argument. Police would in any event be on duty between the hours when meals are provided so how that can increase the cost of a contractor providing the service is not dear. It is abundantly obvious that police providing meals are not going to render themselves out of pocket by provision of such meals. In fact, evidence before this Royal Commission supports the contrary argument that where abuse of the system is occurring, the 'cost of food' does not exceed the meals allowance, and that the 'labour' involved in preparing the meals is either minimal, or non-existent where prisoners prepare their own meals.

Finally, sentenced and unsentenced prisoners are fed less well in police lockups than in prisons. It is totally unacceptable that an unsentenced prisoner, who has not been found guilty of any offence is fed substandard meals by an agency which has a clear duty to care for the prisoners needs adequately. Evidence provided to my Commission indicates that the matter of the meal allowance requires urgent attention, and that the maintenance of the meal allowance can, and does, have a direct effect on lockup rates. For example, in Hall's Creek, one informant noted that:

> it seemed that police were in the habit of going out each afternoon at around 4 o'clock, picking up the drunks ... this practice was referred to by some local Europeans as the 'meal run' ... there were also complaints about the food ... a marked improvement was noted when a relieving sergeant took over the lock up.

In relation to the meal allowance system, in my view, it should be abolished.

5.17 PRISON OFFICERS AND WELFARE

> You know, you have to have something that keeps you going, whether it be the role that you're working in, certainly in that area, you know, it was a hard task because you had the families as well as the prisoners and there's all sorts of problems come through that, but unless you put yourself in that position, you can't - I don't think that you're able to - I would not have lasted as long as I did if I didn't put myself in the prisoners situation by thinking: well, how would I feel if I was being locked up, why would I be

> asking for this or why would (I) be worrying for that. And unless you didn't think like that, I wouldn't have lasted -you know, I may not have lasted the six months that some of the officers said I wouldn't last [RCIADIC Transcript, Perth, 1990:1001].

Welfare officers were part of the fabric of the prisons in this State until 1988. They have been phased out with the development of the Unit Management/Case Management role of prison officers which has been promoted as an effective prisoner's management scheme since first expounded in the 1984 Corporate Plan of the Department. Aboriginal people are not convinced that Unit Management and the concomitant progressive withdrawal of welfare officers from the prisons provides a:

> More satisfying role for prison officers and a more effective method of managing prisoners [Evaluation of Welfare Services provided by Prison Officers, 1989:3].

In fact, criticism has been made of the abolition of the position of welfare officers. Many Aboriginal people commented that the Aboriginal Visitors Scheme is being exploited to fill the gap left by the curtailment of the separate welfare officer position. Aboriginal prisoners have made unfavourable comments about the lack of welfare officers, when discussing prison matters with this Commission.

The problems which prisoners encounter and for which they require a welfare officer range from language difficulties to making telephone calls. Some prisoners 'hardly spoke English', and had come in from the desert to Fremantle Prison. There is no interpreter service. Prisoners were frightened when brought in from the bush to the 'confinement' of prison. Some prisoners didn't know why they were in prison - they had already been punished by their community and were now undergoing imprisonment (RCIADIC Transcript, Theo Michael, 1990:942).

An example of the cultural difficulties cited by a former welfare officer demonstrates graphically the problems.

> ... an old man from the bush, he doesn't like to live above the ground like on a bed. You know, you get someone from the desert area and if he's a 'clever fellow' or someone that's afraid of the 'clever fellows' that might come and get him, they'd rather sleep on the floor - on the ground - and the old blokes didn't like sleeping up above the ground ... that's really bad news and we've had complaints of these old blokes that wish to sleep down below [RCIADIC Transcript, Perth, 1990:9431.

The process whereby such problems percolate down to the management of a prison is peculiarly Aboriginal:

> ... some of the inmates would be talking to some of these old chaps and then they'd get to me. As soon as the old blokes have a problem then some of the boys would come and tell me: so and so's got a problem. And then I'd get him across and if I couldn't talk to him then I'd get someone else to come across that could speak his lingo and find out what the problem is. Certainly we'd put them back down on the floor level anyway and if they decided to sleep on the floor at night, I don't know what happened [ibid].

Prison officers who spoke to this Commission in confidence advised that prisoners

problems 'as a general thing' get passed on from one shift to the next. Prison officers 'normally' contact the person required for a visit for a prisoner who is depressed (RCIADIC Transcript, Broome, 1990:303).

One matter that immediately springs to mind when confronted with that statement is: What constitutes a welfare issue? Some prison officers may well deal appropriately with this sort of matter some might not. For instance, one of the issues raised time and again was the need for Aboriginal prisoners to attend funerals and the fact that many requests were refused. This matter was presented to me as a problem for both prisoners and Aboriginal welfare officers.

> ... one of the hardest things was having to tell someone that they're [sic] father, or mother, or brother, sister or relation had died and ... that there's a very slim *chance* of that person getting to the funeral ... [RCIADIC Transcript, Perth, 1990:944].

Prison officers in confidence told this Commission that decisions about attending funerals were made 'down south' by bureaucrats in air-conditioned offices who did not understand the situation (RCIADIC Transcript, Broome, 1990:308).

In particular, this matter was raised in the case of Ronald Ugle and needs to be addressed. Considerations such as distance, prisoners security rating, cost of overtime, travel and airfares impact on the decisions made.

It appears that matters such as customary obligations, responsibilities and the welfare of Aboriginal prisoners, enter considerations when a concerted effort is made from a number of quarters, including from prison officers themselves. Ways of devolving the responsibility and authority to a regional prison superintendent need to be considered. This may have greater possibilities for medium and maximum security prisons.

Aboriginal welfare officers in some prisons used to become involved in the hearings of minor misdemeanours in the prisons and in doing so were able to put a case for a prisoner. Without that assistance a prisoner may well have remained mute and failed to make any representations on his/her own behalf. Obviously this role cannot be filled by anyone else in the prison; prisoners do not have the right to legal representation in these matters, so the ALS cannot be of assistance; and prisoners who are a long way from home might not be able to even ask for assistance in such a situation.

The problem with prisons/Aboriginal relations was said to be the 'system':

> Its a system that ... you've got people from right up through the top, that doesn't want to know these blokes ... and if they've been in there for a serious crime, then they are certainly starting in the back blocks, even though they've re-developed themselves as a person... I've seen people even been in there for five or six years and couldn't even get three months parole [ibid:949].

Generally, it was suggested that non-Aboriginal prisoners knew how to cope with the prison system which was essentially a non-Aboriginal system. Prison officers were said to have little understanding of Aboriginal prisoners. Rarely had they seen Aboriginal people unless it was in prison. This was said to particularly apply to officers who came from England. Officers frequently did not want to know about problems in the prison. An example of that can be found in the use at Fremantle

Prison of Yard 1A almost exclusively for Aboriginal people, until recent times when the Ombudsman inquired into the discriminatory practices of keeping/placing Aboriginal people there to avoid aggravation, fighting, etc. in other parts of the prison. The Yard was the solution to the problem by exclusion and avoidance. That is, as far as this Commission is concerned, no solution at all. The Ombudsman's findings appear in Section 9.16 of this report.

Previously prison officers did not know about Aboriginal networks in their town or area. Some did not know that places like Jigalong and Warburton Ranges existed, or that radio telephone was available for communication. Further, few knew bow a public telephone in an Aboriginal community worked.

Criticism was made of the prison system (and also of the police) that they now over react in some cases. Someone might be:

> a bit upset and trying to express himself the best way he knows how, (and) they think that: oh! he might be suicidal because he's acting strange and, you know, that's all they can do [put him in the observation cell] because with an Aboriginal person they don't know how to relate to him, don't know how to talk to him properly enough to try and find out if there was a problem and if they can come to grips with it.
>
> With the old people, like with the people from out in the desert areas, the blokes that couldn't even read and write, problems were that because they couldn't talk properly and they couldn't understand, they said that they were illiterate, they were strange, they were psychiatric cases and so they, you know, if a psyche [sic] went and tried to talk to them then they couldn't get anything because they couldn't talk their lingo anyway. So then they'd come round and get me to talk to them and then we'd find out that this old bloke may have been ... worrying about his missus or something [RCIADIC Transcript, Perth, 1990:994].

It is significant to note that there are officers who get on well with Aboriginal people and who try very hard to deal with things properly but there is 'just not enough of them'. In this regard, Commissioner O'Dea, in his report on Edward Cameron notes that:

> Mention must be made of the contribution to this improvement [of Aboriginal/police relations in Geraldton] by the Regional Officer Superintendent Davies. He was one of the most impressive police officers to give evidence ... He very closely monitors the activities of the police stations within his region and has developed excellent links with the Aboriginal community ... It could only be to the benefit of the Police Force if other Regional Officers emulated his approach [1990:33].

I must add that my contact with Superintendent Davies in Geraldton also impressed me with his approach and manner.

However, it should be firmly noted that if any system of recruiting Aboriginal people as prison officers is going to work there it has to recruit people in their numbers so that officers wishing to make complaints can do so without fear of reprisal. One prison officer told this Commission:

> If I was an Aboriginal I would not like to work in the Prisons Department [RCIADIC Transcript In Confidence, Perth, 1990].

> There is a certain amount of ill feeling at times ... not directed directly at Aboriginals, but directed at everyone ... [RCIADIC Transcript in confidence, 19901.

Few people have had a view of the inside of the prison system without the 'prison officer culture' colouring their vision. Welfare officers were one such group. Educationalists are another. Education services in prisons have greatly improved over the years due to the contributions of many dedicated and hard working people. Education officers have often acted as proxy welfare officers in prisons.

Cited as problems for educationalists were 'daily destructive comments and reports by custodial staff (ibid:334). Educationalists were accused of being 'do-gooders' and caring too much and being unprofessional. Prison was not a supportive environment for teachers and the attrition rate was high. Some were sacked, others were invited to leave or they quit (ibid).

Prison teachers who spoke to this Commission stated that they were engaged in welfare work with prisoners by default. It was also apparent to teachers in prisons that some of the prison officers did not have the counselling skills which were required for their jobs.

A senior prison officer advised this Commission that prison officers transferred to northern prisons did not receive enough training in Aboriginal matters before being transferred north. That presents difficulties if one considers that these same officers will be expected to adopt a welfare role in respect of prisoners. He went on to say that racism is alive and well in some prisons in this State. He did not suggest that Aboriginal prisoners were badly treated but rather that they were neglected, their welfare needs were neglected and given less priority than is the case for non-Aboriginal people. That opinion had been reported to his superiors. This attitude prevents prisoners approaching staff for basic normal rights. Prisoners 'tend not to do anything about it. Typically, they will shut up and keep quiet. Do their time and go out'.

The Department of Corrective Services (Western Australia) has compiled a report evaluating welfare services provide by prison officers (December 1989). That evaluation suggested that:

> there was no overall indication that Aborigines are getting less of a welfare service than non-Aboriginals [1989: 1].

That report recommends the continuation of delivery of welfare services by prison officers and additionally recommends:

(1) One phone call paid by prisoner per week without the need for justification. (Note that the Acting Principal Planning and Research Officer Bill Cullen recommended 2 free phone calls as at 15 May 1989.)

(2) A senior officer introduce a system whereby he/she can ensure that welfare needs have been actioned and that adequate records be kept.

(3) More importantly there is recognition of the need for further training for prison officers in Recommendation 5 of the report.

(4) Further welfare training be given to Senior Officers with the aim of providing leadership and clear role modelling in the area of welfare services delivery, thus resolving role confusion for themselves and other officers ... [1989:2].

With respect, this Commission does not feel that these recommendations address the problems confronting Aboriginal people in accessing welfare services available through prison officers. I might also add here, as observed by Commissioner O'Dea in his report on Graham Walley, that in the policy as initially envisaged by its pioneer, a former Director of Prisons in Denmark, the transfer of positions as was envisaged, and as it occurs in Denmark, stipulated a twelve week training course in relation to welfare for prison officers not, as occurs in this State, four days (1990:38). This lack of serious attention paid to such a crucial role, is evident in the way it is now undertaken by prison officers.

Essentially, it was revealed to me that Aboriginal prisoners: (a) do not approach prison officers for welfare needs; (b) are more likely to approach an Aboriginal welfare officer; (c) are presently using the officers of the Aboriginal Visitors Scheme for welfare needs; (d) do not receive the same consideration of their needs as do non-Aboriginal prisoners; and (e) often have problems which would not be picked up by non-Aboriginal people. The report evaluating welfare performance commented that:

> There was an evident confusion among officers regarding what are welfare matters [1989:7].

Prison officers regarded some routine prison procedural matters as welfare matters and this would indicate that any 'evaluation' of their welfare role may not truly reflect prison officers actual involvement in real welfare issues. The 'evaluation' must be viewed critically in the light of this statement.

Only 53.1% of the prisoners who saw a prison officer about a welfare issue were satisfied about the outcome of the discussion (1989:10). This figure might quite plausibly be inflated by prisoners reluctance, to say they were unsatisfied. The figure, canvassed externally, might be much higher. 'Directors Rules' were the most common reason for dissatisfaction with a welfare request, but the lack of interest by officers came second and lack of knowledge by officers third. It is in these second and third categories that this Commission has heard the bulk of complaints from prisoners. It is the view of this Commission that Aboriginal prisoners with complaints about those two issues were the prisoners most likely not to officially complain (ibid). Confidentiality of information was also a problem with this system. The report (1989:14) itself does not, in my view, support the assertion:

> the responsibility for the delivery of welfare services to prisoners has successfully been transferred from welfare officers to prison officers'. It is the Union's submission that the transition from being a free citizen to prisoner could be made far less traumatic if, in the city, there were holding cells where sentenced prisoners could be held for 48 hours to prepare them for the transition from freedom to custody. Telephones could he made available in the first 48 hours so they could contact relatives which would ease emotional trauma. Similarly, prisoners with access to telephones could make arrangements for children to be looked after or their domestic business attended to. This Union recognises that there

> would be some security concerns in the implementation of this procedure; however, these concerns can be met without much difficulty and this process of transition would considerably ease the trauma of a person being sent to prison and, therefore, decrease his [sic] likelihood of stress and depression and, therefore, minimise the risk of inflicting harm upon himself [sic] or others and ease the stress upon our officers in the institutions [ibid].

During the 48 hour period the prisoner could undergo counselling as to what to expect in prison, and be familiarised with the rules and regulations. All this could happen without the person being a prisoner who has to request and then wait for some time before (s)he be attended to in what would be a crucial period (1989:12).

In the preceding material, the experiences and some of the outcomes of Aboriginal people in relation to criminal justice matters have been examined. In the following chapters, I address some background material relating to Aboriginal people in this State, and canvass a range of underlying issues, or matters connected with the Terms of Reference as indicated in my Letters Patent. In sum, I further consider aspects of the greater 'why' of Aboriginal

powerlessness and marginalisation. I also put forward some ideas aimed at bringing about change and improved conditions for Aboriginal and non-Aboriginal people. Initially, some discussion on contemporary Aboriginal society.

CONTEMPORARY ABORIGINAL SOCIETY AND CHANGE: WESTERN AUSTRALIA

Throughout this chapter, my Concern is to provide information that may assist in a wider understanding of Aboriginal people and issues in this State. This chapter is, I believe, an important one not only because it discusses contemporary Aboriginal social life, but also because it attempts to put forward some of the concerns and aspirations of Aboriginal people today. While Chapter 7 deals more directly with matters to do with the economy, I commence in this chapter by discussing present day locations.

6.1 MATERIAL CONDITIONS AND LOCATIONS

At the outset, it needs to be established that the term 'community', which is often used to describe Aboriginal social formations, is applied with some caution throughout my report. This is because the term is often a misnomer as many Aboriginal 'communities' have emerged through social and historical dislocation since colonisation. Aboriginal contact history has included the 'bringing in' (by government, pastoral and mission representatives) of Aboriginal people from what can be considered, in non-Aboriginal terms, the more 'remote' areas of Western Australia. These people were often followed by family members seeking the continuation of significant social ties (see e.g. Bolger, 1987; Rowse, 1987; Kolig, 1981; Gallagher, n.d.; Hawke and Gallagher, 1989; Reece and Stannage, 1984). Hence the development of Aboriginal communities in Western Australia needs to be seen within an historical context of an Aboriginal and non-Aboriginal kind. Many communities have developed through the processes of colonisation, as well as the

social, cultural, legal, and economic ties that the people themselves have endeavoured to maintain. Some of these communities have come together through a process largely outside their own control: members of different language groups have been relocated, sometimes with disastrous consequences, to suit the servicing and administrative needs of Government, missions, pastoralists and the mining industry (see e.g. Bolger, 1988; Kolig, 1981; Howitt, 1989, 1990).

In Western Australia today, there are approximately 170 Aboriginal 'communities', containing fluctuating population numbers which range from 40 (e.g. Nillir Irbanjin in the Western Kimberley) to 350 people (e.g. Noonkanbah in the south-west Kimberley), that are primarily located in the Kimberley, Pilbara, Eastern Goldfields, and Western Desert regions. There are also several small communities in the southern part of the State (e.g. the Ngangara community, and the 'Lockridge Camp').

It needs also to be stated here that the outstation (or homelands) movement, is continually adding to the number of estimated communities. Some of the difficulties members of these communities and outstations are facing such as marginalised or non-existent *service* delivery and inflexibility of government systems, are examined throughout this report.

Given the diversity of present-day Aboriginal society, it is important to observe that each Aboriginal 'community' has its own history, its own contact with representatives from non-Aboriginal society and institutions, and its own way of 'doing business' (RCIADIC Criminology Research Paper, Edmunds, 1990). In this regard, the impact of Christian Missions, established throughout this State since colonisation, have also served as a catalyst for certain 'communities' to emerge and be retained (e.g. Jigalong established in 1946 in the Pilbara, and Balgo established in 1939 in the Kimberley).

A large percentage of the present-day Aboriginal population currently live in urban settings. For instance, while around 35% live in remote areas, the Aboriginal population in urban areas (i.e. areas with a total population of over 1,000 or more) account for 65% of the total Aboriginal population in this State. A matter that requires immediate clarification in this regard is that merely because many Aboriginal people live in urban settings, there is little reason to assume that a substantial number do not lead what might be termed an Aboriginal life-style that can readily contrast with the life-style maintained by non-Aboriginal people. For the purposes of this report my Commission is taking the approach that Aboriginal people adopt, which is to identify from their language grouping or background. For instance, in relation to Aboriginal people from the south-west of this State who currently live in what would be termed as urban or 'settled areas', that means identifying as a Nyungar (variously spelt Nyoongar, Nyoongah), not as an 'urban Aboriginal'. Essentially, this has to do with matters of 'identity' in Aboriginal terms, a subject which in my Commission's view, is crucial with regard to Aboriginal and non-Aboriginal perceptions, attitudes and modes of interaction both inside and outside custodial settings.

The Aboriginal people who constitute 'communities' that reside in urban or metropolitan Perth have their diversity and complexity as do those who reside in 'remote areas'. They are both nonetheless Aboriginal.

The biological stigmatisation of the 19th century has tended to render Aboriginal people who reside in urban and metropolitan areas as 'non-Aboriginal' or as 'not

real Aboriginals'. Both attitudes and perceptions are offensive. It displays gross ignorance at best and at worst highlights ethnocentricity and superiority. Australians do not for instance, refer to caucasians as 'half-caste South African Dutch' and deny them their naturalised status as Australians. It all seems so petty but when one considers the high degree of frugality that is imputed to Aboriginal people in terms of identity, low self esteem and lack of achievement, this type-casting is a recipe for confrontation and hostility.

6.2 ABORIGINAL IDENTITIES AND IDEOLOGIES

It has become increasingly evident throughout investigations with both Aboriginal and non-Aboriginal people, that the issue of Aboriginal identity is treated far too simplistically. Further, it is the very cause of much discrimination, confusion and bitterness. As Beckett notes 'there is some tendency to regard "Aboriginal identity" in terms of all or nothing' (RCIADIC, 1990). Such an observation finds expression in statements which have been made throughout our inquiries in comments like 'they're not real Aborigines', with regard to those people who may choose to live in urban settings, or 'the tribal people, they're still quite primitive' with regard to those people whose life is centred in the northern and eastern parts of this State. In addition to this, a lot of confusion has been generated because of the misunderstanding concerning 'the' Aboriginal view, rather than 'an' Aboriginal view. For reasons of an historical and political kind, Aboriginal people have been drawn together under the general heading of 'Aboriginal' denying not only language groups that can encourage great diversity, and individuality but also high degrees of commonality and unity. When a group or an individual falls out of the Aboriginal stereotype -a stereotype largely perpetuated by non-Aboriginal people and processes - there are misunderstandings of a kind that generate conflict and increased ethnocentrism.

Ethnocentric judgements concerning identity can be measured in a number of ways. Initially, such judgements accommodate government and legislative authorities, giving rise to circumstances where Aboriginal people are often placed in a situation where they have to make a decision about where their identity takes root. This was particularly observable during the middle of this century where Aboriginal people were, for instance, denied access to certain benefits if they were not regarded as being sufficiently 'white' and, following the introduction of the Citizenship Act (1944), their choice was to become a 'citizen' or remain an 'Aboriginal'. As noted earlier, these sorts of views and experiences were part of the life experience of many of those who died in custody. While this sort of racist ethos is not always evident today, it continues to exist in a guise which is as offensive and as destructive as it was in the past. Comments such as 'part-Aborigines', 'not real Aborigines', 'urban Aborigines', 'the natives', 'the coloured folk', 'partial Aborigines', and 'half-castes', continue to surround us in the 1990s: continue to misinform members of non-Aboriginal society, and generate alienation from the wider society for many Aboriginal people in urban, rural and remote settings.

For the purposes of proceeding with this report, my aim is to stress the diversity and complexity of contemporary Aboriginal social, cultural, legal, economic and political life in this State (see e.g. Dudgeon and Oxenham, 1988; Beckett, 1990; Crawford, 1989). Dudgeon and Oxenham (1988:2) stress that 'Our Aboriginal reality acknowledges and recognises a great complexity and diversity within itself. Aboriginal is now specifically self-defined, i.e. as someone who designates themselves Aboriginal and is accepted as such by the community; rather than

historically when Aboriginality was a categorisation by government, based solely on biological heritage'.

6.3 SOCIAL ORGANISATION AND CHANGE

In traditional and contemporary Aboriginal society, the kinship system continues to provide a 'blueprint' for most interpersonal behaviour. Kinship bonds are usually the sustaining link in people's lives, and the networks engendered by the system are extensive. They demand intense loyalty and obligation, while also providing an alliance and a sense of security.

Members of Aboriginal society, like members of all cultural groups however, undergo constant change and adaptation. Obviously, members of Aboriginal society have suffered the impact of colonisation from people with whom they held nothing in common with respect to land, societal and cultural values, religious belief and practice, and system of law. Economic usages and aims were probably the easiest to distinguish from non-Aboriginal society. Thus there has been a more rapid and acute, experience of change, especially in those areas where colonisation germinated and most vigorously flourished.

What needs to be appreciated, is that although social and cultural change has taken place in varying degrees among Aboriginal people throughout the State, and in many places my Commission has had evidence put before it that suggests a move toward smaller family groupings, there still exists a system whereby people know themselves to be part of a larger network among whom there are particular obligations and alliances that must be fulfilled. In addition there have been indications given to this Commission of the desires of Aboriginal people in towns and cities who wish to move back out to places associated with their parents, or grandparents. Often this has been put in the context of getting away from the trouble in towns with hope for a better social and cultural environment for their young people.

In this regard it is essential to appreciate that while there has been considerable social change in many parts of the State up until the present, the care and discipline of children continues to be extended throughout the kin network (e.g. a mother's brother usually has a significant role to play in relation to his sister's children), and the movement of children between family members provides opportunities that ideally enable different aspects of learning and forms of security.

However, there has been, as explored throughout my report, change both within and external to Aboriginal society, and this change has influenced the kinds of ties and responsibilities that Aboriginal people generally seek to sustain. For instance, in some places, avoidance relationships no longer occur due to socio-cultural change; in other places, grandparents have taken on the all encompassing role of being sole care-givers to their grandchildren, owing to the inability of the parents (suffering from the experience of institutionalisation and alcohol dependency) to properly care for their children; family members have been dislocated through the intrusion of Government policies.

Upheavals such as these have impacted on the intricacy of a system which was once so balanced; Aboriginal people attempt to accommodate these upheavals to incorporate the change. Sometimes this accommodation occurs with remarkable success, at other times the result is further conflict and pain as material put before

my Commission indicates.

In sum, social relationships continue to be the sustaining link in the lives of Aboriginal people, albeit within the context of change. Those relationships developed from, were originally centred around, connecting relationships to land.

6.4 ABORIGINAL LAND

It has become clear during investigations throughout this State, that the findings of the Aboriginal Land Inquiry, otherwise known as the 'Seaman Inquiry' in 1983-84 concerning Aboriginal people and Aboriginal land, continue to have relevance for many Aboriginal people. That is, many Aboriginal people in Western Australia today retain significant socio-cultural and historic ties to land. Seaman, Q.C., (1984b:12) observes that:

> A consideration of what Aboriginal people have told me demonstrates that although existing Aboriginal land relationships vary throughout the State, Aboriginal people everywhere in · Western Australia are deeply concerned for the future of their race unless security of land is restored to them ... I am satisfied from what I have heard and been shown at hearings that a subtle and elaborate Aboriginal system of law in relation to land is still in operation in many parts of the State.

The views expressed by Mr Seaman, Q.C., were also heard in various parts of the State at Commission conferences. For instance, a senior Aboriginal male, lamenting the lack of secure land tenure, expressed the following view:

> ... all people sitting around here whether white, black, we all know our people have problem ... that's why I keep raising this... for those people to go back to their land ... not only me speaking about it ... [RCIADIC Transcript, Mary River, May 1990].

The case for Aboriginal land rights has been well documented (e.g. Kimberley Land Council Newsletter (various dates 1980-1990); Berndt & Berndt, 1980; Berndt R.M., 1982; Hiatt, 1982, 1984; Lippmann, 1981; Maddock, 1982; Peterson, 1976; Peterson and Langton, 1982; Seaman, 1984a, 1984b; Stanner, 1969, 1979). In addition to published and unpublished works such as these, there has also been wide publicity with regard to the Aboriginal people's rights to land, although much of that publicity has misrepresented certain aspects of land rights matters and ultimately engendered contrasting reactions.

The wider non-Aboriginal Australian society generally became aware of land rights during the 1960s through what is known as the Gove dispute about bauxite mining in north-eastern Arnhem Land, and the Gurindji's strike on Lord Vestey's pastoral lease of Wave Hill in the Northern Territory. The Gurindji wanted to get away from the exploitation of Aboriginal stockman, and the sexual abuse of Aboriginal women, and in their hearts they held a burning desire to assert their indigenous rights over their land and law. Largely as a result of these incidents, there were a number of protests and questions asked in parliament. In 1976 the Federal Liberal Government amended that Labor Bill and passed the Aboriginal Land Rights (Northern Territory) Act 1976, which was implemented in 1977. Aboriginal land claims began to be processed and submitted for consideration by a specially constituted court headed by a Supreme Court Judge of the Northern Territory.

Previously gazetted 'Native Reserves' for the use and benefit of Aborigines were scheduled to the Act and for the first time 'the benefits' intended were made possible through mechanism of the Act enabling Aboriginal people equal negotiating status in 'arms length' commercial arrangements affecting their land and lives.

The States were expected to follow the Northern Territory, although not immediately, and not in the same format. South Australia did proceed and in 1981 the Pitjanjatjara Bill, relative only to the north-west reserves in that State, was passed.

The situation in New South Wales was quite different, and that Government introduced an Act in 1983 which effectively established, and provided limited power and funding to, State, Regional and Local Land Councils throughout New South Wales. This Act provided for a fixed 75 per cent of the land tax to be paid for a period of 15 years. Half of this annual amount is to be invested for the future needs of Aborigines in New South Wales.

The situation in Western Australia was greatly exacerbated by the Noonkanbah drama in 1980, where Aboriginal opposition to mining in an area of religious significance, raised issues of land ownership and mineral development, and the rights of Aboriginal people to have some say over their land (see e.g. Berndt, 1982:233-253; Vincent, 1983:327-338; Seaman, 1984b; Hawke and Gallagher, 1989). In another sense it was also about the Government of the day crushing the Kimberley Aboriginal peoples' aspirations to have their indigenous rights recognised.

In early 1983, a newly elected State Labor Government, under the leadership of Premier Brian Burke, established the Aboriginal Land Inquiry (ALI). It is important to observe that, during the election period, at both a State and Federal level, land rights had been part of the election promise: that is, the Labor Governments in Western Australia, and at a Federal level, were elected to Government with a promise to, among other things, institute some form of secure land tenure for Aboriginal people.

By May 1983, the Aboriginal Land Inquiry was established in Western Australia. Around that time, there was also discussion that the Federal Labor Government planned to institute some form of inquiry, aimed at providing a piece of legislation which would address the land rights of Aboriginal people throughout Australia.

The ALI was headed by Mr Paul Seaman, Q.C., an experienced barrister. The terms of reference provided to Mr Seaman were, briefly put, to consider: the most appropriate form of title over land for the use and benefit of Aboriginal people; what kinds of relationships to land should be protected; the terms and conditions upon which land should be granted and how rifles should be held; the extent to which waters adjacent to granted land should be protected; the relationship of granted areas to resource development, and in particular the question of compensation and royalties; the operation of the Aboriginal Heritage Act (1972-80) and to make recommendations to strengthen that Act; the social impact of development; and issues of conservation and land management that might conflict with Aboriginal interests in land (see Seaman, 1984a, 1984b).

Throughout extensive consultation with Aboriginal and non-Aboriginal people, there developed, on the one hand, an aura of excitement and apprehension that at

last the crucial matter of secure land tenure for Aboriginal people was to be addressed and, on the other, fear, hostility and resentment. This latter condition, largely held by members of non-Aboriginal society, was fostered by an extensive anti-land rights campaign waged by sectors of the mining industry, and pursued by the electronic and newsprint media. The Liberal Party was also consistent in its opposition to the introduction of any form of secure land tenure for Aboriginal people.

Against a particularly divided background, the ALI released a Discussion Paper in February 1984(a) and, ultimately, a Final Report in September 1984(b). Among other things, the Final Report recommended: a right to Aborigines to say no to mining; a tribunal to hear Aboriginal land claims; the establishment of Aboriginal resource agencies throughout Western Australia; the strengthening of the Aboriginal Heritage Act (1972-80).

It is important to observe that the so called veto on mining while, in part, being recommended because the submissions received by the ALI had largely put forward that view, was also recommended on the grounds that: 'for the last 80 years, the reactions of the broader Western Australian community to the threat of mining on private property has been clearly reflected by the state mining legislation. The great majority of West Australians have the power to control whether or not mining takes place on their land by virtue of provisions now enacted by Section 29(2) of the Mining Act 1978' (Seaman, 1984b:60).

In addition, as the Aboriginal Land Inquiry Report points out (while also acknowledging the powerful economic strength of the mining industry in this State: e.g. pp.60-61), ultimately the Mining Act provides the Minister for Mines with the power to refuse any form of land grant to Aboriginal people. In sum, the view that Aboriginal people would be provided with powers - a veto on mining - that other members of Western Australian did not already have, was a myth. The propaganda campaign waged successfully by the Chamber of Mines and other vested interest groups had convinced the ordinary Western Australian citizens that they were at risk and stood to lose wealth which they did not have and would be unlikely to gain. It was a victory not for Western Australia but for the Mining Industry whose collective wealth does not necessarily directly benefit the State.

Ten days after the Final Report of the ALI was publicly released, the Government rejected the essence of the Inquiry's findings, replacing it with its own 'statement of principles'. Government then instituted a drafting committee, inviting representatives from various 'interest' groups, to participate. Representatives were from: the Australian Mining Industry Council; the Pastoralists and Graziers; Primary Industry Association; Chamber of Mines; Department of Premier and Cabinet; Commonwealth Government representatives; representatives from Government administered departments concerned with Aboriginal affairs; representatives from an independent land council. The National Aboriginal Conference, declined to be involved in this process.

The drafting committee put together its own Aboriginal Land Tenure Bill, a Bill markedly different from that recommended through the ALI and a Bill not supported by the majority of Aboriginal people in Western Australia.

In 1985 the Aboriginal Land Tenure Bill (1985) passed through the Lower House of State Parliament. However it was defeated in the Upper House and did not become legislation. Premier Burke subsequently announced that the issue would

not be raised again during his term of office. A number of warnings that the Federal Government would impose National Land Rights Legislation on all States, were made but did not reach fruition.

It is necessary to re-state here that prior to the State Labor Party's successful campaign in February 1983, significant attention (essentially in the Aboriginal community) was being focussed on Labor's pre-election promises to address Aboriginal land concerns. I would suggest the subsequent failure of the incoming Government to address these matters impacted in a devastating and demoralising way, which left Aboriginal people pondering, when is there going to be some understanding by non-Aboriginal society, and when will there be political will and fortitude by government? Or are we still to live our lives amid broken promises?

What was not seriously ever in doubt was that Aboriginal people occupied and traversed all of what is now known as the Australian land mass at the time of European colonisation, and that they were dispossessed of those lands. But what was in doubt for some was whether the Aboriginal people had a right to reclaim their right to do so, to reclaim those rights within the findings and recommendations of the ALI (which could be regarded as moderate rather than radical, given the existing constraints of other legislation and limited resources); what was in doubt for those with the power was the potential threat to the continuation of non-Aboriginal expansion and consolidation of that power. Yet again, we find another example of Aboriginal powerlessness, and lack of recognition of that powerlessness. In the words of a senior Aboriginal woman from Roebourne expressing concern about land:

> ... we feel just this in our hearts - it is very hard to feel proud of ourselves. Nothing will be put fight while our culture is being destroyed [Seaman 1984b:72].

Final/y, Aboriginal people are often viewed as being dislocated at the cultural interface of Aboriginal and non-Aboriginal societies today. What is not seen in that vision is the alienation and angst that exist not only for those Aboriginal people who hold ceremony for country, but also for those who know there is no going back. Both understand that they are heirs to whom such rights were assigned forever.

6.4.1 Aboriginal land and the Church

In discussing Aboriginal land, it is imperative to consider the role of the church in both an historical and contemporary setting. The following letter is quoted at length because it sets out the broad parameters of the current situation:

> The Most Rev. J. Jobst PO Box 76
> Broome W.A. 6725
>
> Tel: (091) 92 1060
>
> 24.12.1984
>
> The Premier of Western Australia Mr B. Burke, JP, MLA, Parliament House
> PERTH 6000

Dear Mr Burke,

Recently, I received information from the Premier's Department in the form of a summary of Mr Paul Seaman, Q.C's report on the Aboriginal Land Inquiry.

From page 3 of this it appears that one of the recommendations is that Aborigines may claim Mission Lands. It says:

> Claims on mission lands should be granted except where the religious body has purchased the land with funds from its own membership. The Tribunal should determine compensation (payable from Consolidated Revenue Fund). Compensation should not be awarded for improvements which were made using unpaid Aboriginal labour. Government funds provided for Aboriginal purposes.

My concern is, that due to the complex political climate, the Church will lose land tenure, and consequent right of access to Mission Land.

The Catholic Church has been in the Kimberley Region for one hundred years.

It has provided its services for all people, including Aborigines.

The Catholic Church has always regarded land rights as part of basic human rights not to be infringed upon for racial bias or political expediency.

The West Australian Bishops have spoken openly in their support of Aboriginal land rights.

It may be of relevance to recall some historical facts:

> 1.1.1879: Bishop Griver requested the Governor for the reservation of 50,000 acres for the establishment of a Catholic Mission on the Dampier Peninsula. (i)
>
> 1.3.1885: Fr. D. McNab, Derby, wrote to Bishop Griver, Perth, saying that he was of the opinion that the Reserve on Dampier would not have been made, were he not there when the Governor came. (2)
>
> 12.7.1888; Bishop Gibney of Perth wrote to the Colonial Secretary with a request for the approval of His Excellency the Governor.
>
> Cardinal Moran of Sydney was in Europe trying to get a Religious Community of missionaries to take charge of a mission for the welfare of the Aborigines to the North of the colony. He needed to know what means would be available for the successful working of the mission. The Bishop proposes 3 concessions in favour of such a mission:

1. Lease of the Native Reserve of 600,000 acres on the North East coast of the North West Cape for stated periods, say of 21 years, renewable while the objects of the Mission required it.

2. The fee simple of 10,000 acres wherever the Missionaries should select within the area for the support of the community provided that a party of 10 Missionaries be introduced and provided they bring a capital of 5000 pounds, or make such improvements on the native reserve as within a stated period shall amount to the value of 5000 pounds.

3. The fee simple of 100 acres of the reserve to each married Aboriginal as soon as the natives became civilised and capable of settling upon and utilising the land, such grant to be given at the instance of the superior of the mission and upon such conditions as he may deem most advisable. (3)

27.7.1888,: a personal reply to this letter came from the Governor:

Dear Bishop,

Having considered your application for land for a Mission for the natives I wish to let you know (you will receive the letter in due time) that I can offer you a lease under the pastoral clause of 100,000 acres of the King's Sound Native Reserve, with a fee simple gram (in trust for the use of native mission of 100,000 acres of the reserve) as soon as the Mission shall have expended 5000 on improvements.

The reserve is not pastoral land of the first quality, but I have never heard that sheep or cattle could not live on it. F. Napier Broome.

If what I offer is somewhat less than you ask, you must not think I was not doing my best to assist you.

We live in times when concessions to Religious Bodies are watched with jealousy. F. Napier Broome. (4)

5.7.1890, Bishop Gibney took out a pastoral lease of 100,000 acres of land adjacent to, but outside the 600,000 acres of the Aboriginal Reserve. He paid Mr. Lodge, in Derby, the required 25 pounds for the lease (5).

It was on this land, off the Reserve, that he found Beagle Bay Mission. (At his request, the pastoral lease was later annexed to the Native Reserve.) In 1901, Bishop Gibney personally surveyed and claimed 10,000 acres Comprising Dampier location 5,6,7,8, from what had been his formed pastoral lease, as fee simple, for the 500 pounds worth of improvements effected by the French Trappists, church workers, assisted by Aborigines.

The Surveyors report is contained pp.112-115, inclusive in

Correspondence 3229/84,Vol. 1 (6).

While, and after the 'fee simple' was being negotiated, the Pious Society of Missions, and the Sisters of St. John of god, continued the maintenance and development of the Native Reserve, and took care of the education of the Aboriginal people on the Mission, of their sick and their indigents. A number of these remained resident for more than 30, 40 or 50 years. The missionaries contribution to the development of the Kimberley was unique. Church tenure of land helped them to stay.

Currently there is some land within Aboriginal Reserves to which the Catholic Church holds title:

1. Dampier, Loc. 5,6,7,8
2. Dampier, *Loc. 25*
3. Balwina Loc. 1
4. LaGrange Mission, 99 year lease No. 333/65 1
5. Doongan, Loc.4

With regard to this, the Church surrendered portions of land and some excisions were arranged by the Commonwealth Department of Administrative Service, 1979-1982, in liaison with the Crown Law Department, the Lands and Surveys Department, and the Aboriginal Lands Trust of W.A. for Aboriginal housing and industrial purposes as listed:

1. To the Beagle Bay Aboriginal Community: from Dampier Loc.6, of 1,280.7690 hectares, 247,7910 hectares have been retained by the Church for its operation. The title for Dampier 5,6,7,8, was given as 'fee simple' on the fulfilment of stringent terms which were negotiated by Bishop Gibney and Government authorities over a period of 16 years.

2. To the Lombadina Aboriginal Community: From Dampier Loc. 25, i.e., Lombadina Mission of 202.3903 hectares, for Aboriginal houses and road, 43.2279 hectares have been excised, 159.1624 hectares have been retained by the Church for its operation.

   21.2.92, H.O. Grady, and Cornelius J. Daly, wrote to Bishop M. Gibney, Perth from Lombadina Mission, '...We have this day taken over the station and pearling plant as you will see by the signed receipt, which Mr Hunter is forwarding by this to Messrs Bateman and Co...'(7).

   This land was held by the Pious Society of Missions after the turn of the century, and then by Thomas Puertollano. In August 1910, more Aborigines moved from Hunter's place at Boolgin, and the last of the Native Rations from there were brought in.

   31.12.1917, Lombadina Mission was officially closed by the Government, under the directions of the Minister, R.H. Underwood, and all subsidy withdrawn.

Nevertheless, the missionaries continued their work. 28.1.1918, Fr. Creagh, C.S.S.R., Administrator of the Kimberley Vicariate, wrote to C. Deakin, Secretary of the Archbishop in Perth, '...The land of Thomas Puertollano on which the Lombadina Mission is situated was recently bought by Mr Frenez and my brother, and they have made over the land to be for the Vicariate of the Kimberley. The land contains 19,000 acres. The lease title is at present in the office of the Lands Department.(8)

3. To the Balgo Aboriginal Community. From Balwina Loc. 1 of 2988 acres 3 roods, for Balgo Community living area, the area of land to be excised is being negotiated. The original mission was established in 1939 on a site at the Balwina Native Reserve, as it was thought to be. However, in 1960, an astrofix was made of the location of the mission and the adjacent airstrip, and this revealed that the Mission was actually on the Billiluna Pastoral lease. Since the negotiations for an excision of 17,000 acres to protect the mission premises failed with the owners of the Billiluna lease, the Church decided to move the mission to the Balwina Reserve comprising approximately 5,000,000 acres. On 13.6.1972, 2,988 acres 3 roads was granted in 'fee simple' to the Church.

4. To La Grange Community. From 291.2905 hectares of lease, 136.7046 hectares has been excised for Aboriginal housing and industrial purposes.

   154.5879 hectares has been retained by the Church for its future operation. On 1.1.1956, the Church took over the administration of what had been a Government Feeding Depot.

   On 1.1.1961, 191.2905 hectares were leased to the Church for 99 years, Lease, No. 333/651, to be held in the trust for the purpose of a mission station for Aborigines.

5. To Kulumburu Aboriginal Community - Doongan Loc. 4. An exchange of land surrendered to the Community from the Mission L. and on which the Aboriginal houses are situated, for an equivalent area of land on the Aboriginal Reserve, 21675, is being finalised. of letter from the Bishop of Broome to the Under Secretary, Dept. of Lands and Surveys, 13.12.1982. On the Native Reserve No 21675, a 999 acre freehold area was given in accordance with Act No. 31 of 1923. The lease which was originally granted to the Benedictine Community of New Norcia, was transferred to the Bishop of Broome, 22.11.1982.

There is therefore, some remainder of land on Mission Reserves to which the Catholic Church holds title. In comparison with the large tracts of the Reserves, it is indeed minimal, and still needed by the Church to function as an organisation with autonomy as a legal entity, in a very complex situation.

It would seem that Aboriginal Communities may wish to hold such title, on the same basis as unalienated crown land. However, the Church looks to

the history of the lands in question. Over the years, it has, because of the unpaid labour of many Church workers, created assets for the benefits of the Aborigines, particularly in the area of education. Literally this means that the Church has fulfilled the 'holding in trust' clause, and adequately satisfied the demands of the beneficiaries, retaining only minimal areas, comparatively speaking, of Kimberley land, to enable it to function in a fitting manner, in the continued service of all people in the area, whether Aboriginal or not.

To summarise my points:-

I wish to ascertain that the Catholic Church has the right to retain tenure of all land to which it holds legal title, and that these said

mission lands must not be claimed by the Aborigines just because they are 'mission lands'.

To this, however, an exception is made with regard to those lands which the Church has freely relinquished for the benefit of those for whom it was held in trust.

Acquiescence to Aboriginal claims for all mission lands should not be granted for the following reasons:

l. The Catholic Church does have property rights as a

2. The land at Beagle Bay, on Loc. 5,6,7,8, earned, paid for and developed with the labours of the French Trappists, was not just a gift from the Government of 10,000 acres.

3. The Catholic Church has created an equity by erecting buildings and maintaining them from Church funds provided by Church resources, and overseas Catholic Relief Agencies. To a limited extent Lotteries and Government subsidies have helped.

4. The Catholic Church has provided services for all people in the Kimberley.

5. At present, the Church has only retained a minimal amount of land, having adequately satisfied the demands of the beneficiaries, i.e. those for whom it held lands in trust, by surrendering land for housing etc., from the small amounts of land held by title. There are literally thousands of acres of crown land easily available for land grants without depriving the Church of land right.

At present, legal control over land and property by the Church is being challenged on racial and political grounds, as, for instance, described in my letter to the Seaman Inquiry, 27.4. 1984:

a. During the last few months the Kimberley Land Council and an inter church committee in Perth have issued statements in the press to the effect that only Aborigines have land rights, and they should have full ownership and control of mission and Church land as though the church had stolen the land from the

Aborigines.

b. On 20.12.78 I was formally requested by the Warmun Aboriginal Community at Turkey Creek to provide a Catholic primary school for their children. The Community wanted the Church to be given the land which they had set aside for that purpose; the W.A. Aboriginal Lands Trust and the State Lands Department recommended a temporary lease for the purpose of protecting the building and facilities provided and maintained by the Church; the lease was to be chosen from a former pastoral lease.

   Accordingly, I went ahead in good faith with plans. By the beginning of 1979, while the sisters taught under a bough shed, I had the school and staff quarters built from $82,000 from Church resources. However, when an agreement was drawn up by the Aboriginal Service lawyer between the Community and the Church as to the conditions of running the school, the then ALS officer and other outsiders prevailed upon the Community to change its mind, consequently the Church was denied land rights and land tenure. Naturally, I had no choice but to sign the agreement as both the Community and myself wanted the school just established to continue.

c. In December 1983 the Aboriginal Community at Balgo Hills occupied the office building and radio station without permission, both are owned by the Church and situated on church land. The Chairman whom I asked recently whether he was responsible for this illegally taking possession of Church property said that he acted on the advice of DAA officers and his lawyer (ALS) in Kununurra.

   This interview took place on 14.4.84. The priest in charge of the mission was sacked as Community adviser and barred from entering the building. This incident seems to reflect an attitude of some people who think that they are a law unto themselves and that the Church has stolen the land from the Aborigines.

Conclusion:

I trust, that as Premier of West Australia, you will support the claims that I have made in the letter.

You will appreciate that in the current land rights debate I have endeavoured to present my thoughts, so that they may be properly communicated to the interested parties, in order that the quality of Church tenure to the subject properties be clarified and

With best wishes and looking forward to your support in this matter,

Yours sincerely,

John Jobst
Bishop of Broome

The issue of the church and Aboriginal people is a complex matter, and it is referred to further in Section 10.5. What needs to be additionally stressed here is that the injustice which has been perpetrated with regard to land against Aboriginal people by 'the state' appears to be compounded when trustees rights are contrasted with Aboriginal aspirations for land.

Of further interest in this regard are the findings of the Mission Lands Report commissioned by the AAPA in 1986 (Bottrill 1986). The 16 recommendations made in that report, which have yet to be addressed, are available in Appendix 5.

The inability of Aboriginal people to negotiate circumstances such as these reveals their powerlessness. That powerlessness is also revealed in the following discussion which concerns the excision of living areas on pastoral leases.

6.4.2 Aboriginal land and excisions

The excision of 'living areas' in Western Australia, is one of the ways in which Aboriginal people can attempt to gain access back to their own land. Excisions arc areas excised from pastoral leases, vacant crown land, and lands held by Government departments. Documentation from AAPA advises that 'current State Government policy is to give priority to the needs of Aboriginal groups for living areas. Other land uses, especially to meet social, cultural and economic needs, will also be considered in association with living areas' (Application 4: AAPA, 20 September 1990).

The excision of living areas in this State, while potentially providing an avenue whereby Aboriginal people can gain access to tracts of country with which they hold an affiliation outside the imposed constraints of various community settings, has proved to be a drawn out and difficult process. From advice provided to my Commission by the AAPA (correspondence dated 27 September 1990) it appears that since March 1983 until September 1990, that Department has 'processed' 143 applications for excisions. However, out of those 143 applications only 42 were described as land tenure secured' (22 of these for 'pastoral leases' 20 for 'other land applications'). The following table provides details in relation to the application process.

Aboriginal Land Applications as at 20 September 1990

PASTORAL LEASES - 50 IN PROCESS:

A	Land Tenure Secured	22
B	Negotiations Finalised:	
Bi	Gazettal Anticipated within 6 weeks	9
Bii	Referred to Department of Land Administration for Documentation.	3
C	Agreement in Principle	5
D	Lessee Objection	2
E	Subject to Negotiation with Lessee	8
F	Commitment Required from funding Agencies	18
G	Applications Pended	5

OTHER LAND APPLICATIONS - LIVING AREAS - 50 IN PROCESS:

A	Land Tenure Secured	20
B	Negotiations Finalised:	
Bi	Gazettal Anticipated within 6 weeks	1
Bii	Referred to Department of Land Administration for Documentation	3
C	Agreement in Principle	11
D	Agency Objection	6
E	Subject to Negotiation with the controlling department.	12
F	Commitment required from funding Agencies.	11
G	Applications Pended	7

Source: AAPA records 27 October 1990.

As can be seen from the above table, the bureaucratic process in dealing with applications relies on matters which can delay applications for years. Evidence put before my Commission by the Aboriginal and Torres Strait Islander Commission, confirms this:

> The excision of living areas for Aboriginal communities in Western Australia has progressed at no more than a moderate rate throughout the life of the Aboriginal Communities Development Program (1986-present). The ACDP arose as a joint State-Commonwealth agreement following the failure of the Land Rights Bill and contained provision for the State to secure areas of land, by means of excisions from pastoral and vacant crown land, to satisfy Aboriginal residential needs in areas of traditional significance. The Commonwealth role was to provide infrastructure for the outstation communities once the land was acquired. Recent progress has been minimal, and many Aboriginal groups have been waiting for land for between three and seven years.
>
> In an attempt to overcome delays arising from objections by pastoral lessees to the granting of excisions, the State Government has mooted the resumption of living areas from pastoral properties where the pastoralist refuses to cooperate. This has only happened in one case - on Weebo station (near Leinster) - where the pastoral lease is held by a company involved in mining activity. In a second case, an excision from Carlton Hill station (near Kununurra) was recently achieved when the Minister for Lands wrote to the pastoralist advising that resumption would occur if consent was not given. This excision had been 'stonewalled' for seven years by the current and previous lessees.
>
> Six pastoral excisions were granted to ACDP. Progress in the four years since the programme commenced is as follows:

	Pastoral Excisions	**Other Excisions**
1986/87	0	0
1987/88	9	10
1988/89	4	10
1989/90	3	0
	16	20
Outstanding:	47	50

(Source: Correspondence from ATSIC, Perth, 23 August 1990.

The critical matter of secure land tenure, in providing access to an economic base as well as enabling the sustaining of significant socio-cultural and religious ties, continues to be a crucial one for Aboriginal people in this State. Without too much difficulty, it is apparent that all those who died in custody were, in some way, caught up in a process that saw them dispossessed of their rights to land.

With regard to the present situation, material referred to in Appendix 6, which concerns the Kanparrmi Community in relation to an excision on Gogo Pastoral Station in the Kimberley, fully demonstrates the difficulties Aboriginal people experience in their endeavour to access a living area excision'.

A significant issue in relation to land and Aboriginal people, is that of site protection. I now turn to that issue.

6.4.3 Aboriginal Heritage Act (1972-1980)

Sites, imbued with mythological meaning, are of cultural, economic and spiritual significance to Aboriginal people. Sites sustain a timeless quality, in keeping with particular features of the land. These features, which may include large trees, rock engravings, paintings, stone arrangements, increase sites and ceremonial grounds, hold particular significance for individuals and groups. In a sense, these features, or sites, serve to connect Aboriginal people to landforms which stand as creations of what is generally known as the Dreaming. Many Aboriginal people today, continue to maintain sites, continue to look after the country. One of the most public examples of the importance of the need to protect sites of significance to Aboriginal people occurred during the Noonkanbah dispute in this State in 1980 (see e.g. Hawke and Gallagher 1989). It was at this time that the Western Australian Aboriginal Heritage Act (1972), which was amended, and consequently further weakened in 1980 because of the dispute, was shown to be of little real value to Aboriginal people in their interest to look after sites.

It is not within the scope of my Commission to focus on the protection of sites, and this has been done in detail by Seaman (1984a, 1984b) in the Aboriginal Land Inquiry findings. Additionally, the Aboriginal Affairs Planning Authority has appointed two consultants to make recommendations for a Heritage Commission in this State. Further consideration regarding a Heritage Commission will, according to AAPA officers, take place following a review which is due to be submitted to State Government at the end of 1990.

Some discussion concerning the Western Australian Aboriginal Heritage Act (1972-80) as it now stands, however, is necessary because it is distinctly different from the Commonwealth legislation. This is because it provides a theoretical opportunity for Aboriginal custodians to: apply for the protection of sites; to appeal against adverse findings in relation to sites and in terms of the assessment of the significance of a particular site. The State Act requires developers or land owners to notify the Trustees of the Western Australian Museum of any action which may destroy, damage, conceal or alter an Aboriginal site. An important point is that there are no particular provisions that exist within the Act for Aboriginal people to make application for the protection of a site. In fact, the Act virtually divorces Aboriginal people from any role in the protection of sites, indicating that they are

almost 'incidental' to the protective decision-making process. In sum, Aboriginal people can be considered as virtually powerless in this process. Interestingly, the Museum Trustees can delegate their powers regarding site protection through Section 13(1), to Aboriginal bodies. There has been little evidence of this power being exercised.

The Act does not provide for Aboriginal persons to appeal against decisions made by the Minister for Aboriginal Affairs, the Trustees, or members of the Aboriginal Cultural Material Committee (ACMC). It does, however, provide for owners or developers to appeal. Overall, the Minister has the greatest degree of power, and can override the advice which is presented to him/her.

In addition, the Act does not strictly require the Trustees or the ACMC to consult directly with Aboriginal custodians when forming, or preparing, a decision, although some consultation would reasonably be expected to occur.

A further failing of the Act is that it currently allows for the importance of Aboriginal sites to be determined in terms of the 'general interest to the community' (Section 18(3)), rather than to Aboriginal people themselves, although Section 39(3) does note that sacred beliefs, and ritual or ceremonial usage are to play a primary role in the assessment of the importance of the site from an Aboriginal perspective. This latter section, however, does not take precedence over the former. Additionally, it would be true to say that such sentiments are based on 'traditional' and static, rather than 'living' and dynamic cultural criteria.

In sum, the Heritage Act requires attention to empower Aboriginal people with strong legislation which can protect their interests, identity and inherited socio-cultural beliefs and patterns. While I am hopeful that the Heritage Commission findings will consider some of these matters, I am still concerned that strong legislation is not yet in place. I am also concerned that Federal legislation in relation to this crucial matter continues to require attention.

I now consider changing forms of income and distribution among members of contemporary Aboriginal society.

6.5 CHANGING FORMS OF ABORIGINAL INCOME AND DISTRIBUTION

Of all aspects of Aboriginal society, economic pursuits, responsibilities and constraints are among the most difficult to demonstrate and understand. In part this is because of the impact of the colonial encounter. However, even when independent groups were not wholly disrupted, economic factors deriving from the impact of colonialism have continuously brought about demographic displacement and a very real decline in traditional modes of economic life. While in some areas of this State, Aboriginal people continue to maintain a largely subsistence economy, it would be true to say that with the introduction of Social Security entitlements in the 1960s, and the Federal Pastoral Industry Award in 1968 (when, as noted earlier, Aborigines were either evicted from, or walked off, pastoral stations), there has been massive change to the Aboriginal economy. In this regard, I am considering the economy in terms of the way in which Aboriginal people themselves receive and distribute various forms of income.

In Section 1.3 I stated that I was using the term 'economic' in 'the broadest possible sense ... and taking the view that economic interests concern making

choices about the production and allocation of scarce resources ... and maintenance of those resources'

In the present Section, it is necessary to develop this theme and to show how Aboriginal people in contemporary settings maintain and distribute their income. By income, I am taking the view that incorporates the day by day circumstances for most Aboriginal people in this State. This view brings with it the observation that such income may be centred around, or derived from, a variety of sources that are not always recognised by non-Aboriginal people and institutions. While it may appear that Aboriginal people have a particular income per fortnight, the reality can be quite different.

Current sources of income for Aboriginal people include: a cash wage or salary; entitlements from the Department of Social Security; winnings from the Totaliser Agency Board, lotto, the casino, card games; borrowings from family members; resources in the form of food, shelter or clothing; assistance from kin to attend funerals; community 'chuck in' (where community members contribute a fixed sum each week for particular community needs) and payment for participation in ceremonies. All these matters are rarely understood, or appreciated, by members of non-Aboriginal society who often make assumptions about the way in which Aboriginal people receive and distribute various forms of income.

In addition to the above, it is crucial to be aware of the responsibilities most Aboriginal people assume in relation to the distribution of resources. That is, most people adhere to guidelines which stress that no matter how small individual resources or income may be, there are certain people with whom that resource and income must be shared. Hence, during 'pension week' a Social Security entitlement may be spread among particular kin; following a large win at cards, the winnings might be distributed among particular kin; returning from a successful hunting or fishing trip will entail the sharing of meat to particular kin. In sum, the social responsibility that Aboriginal people maintain to others with whom they hold relationships of a sustainable and socially significant kind, usually outweigh those of a kind which are generated by that which stems from an accumulative or non-reciprocal mode.

It is important, however, to also observe that while such social demands, responsibilities and ties are often maintained by bonds of deep affection and alliance, that in today's setting, many of those responsibilities have been undermined and dislocated. For instance, the devastating influence of alcohol has meant that we are witnessing a time where kinship ties often suffer, or are abused, when drunks assert an obligation on someone with whom there would not formally be one, and where demands of sharing and exchange are based, not on Aboriginal guidelines, but on the illusory and often brutal effect of alcohol. This misuse of kinship obligations and ties has resulted in a system which once allowed for Aboriginal people to feel and be secure in their relationships with others, to now know the experience of uncertainty and unrelatedness.

Hence, the way in which survival of an economic kind currently influences Aboriginal life is complex at a number of levels: that of the way in which members of non-Aboriginal society assume Aboriginal people receive and distribute income which often fails to address requirements that come from within an Aboriginal domain, as well as the upheavals among Aboriginal people themselves whereby economic exchanges are not always based on matters to do with Aboriginal integrity.

6.6 ABORIGINAL MEDIA

Aboriginal people began producing radio programmes in Western Australia in 1978 at Radio 6NR in Perth. The early programmes emphasised and celebrated Aboriginal culture, writing and music, reflecting the re-emergence of Aboriginal voices after decades of assimilationist repression and exclusion. Community news and current affairs segments were soon added to the programmes as the Aboriginal broadcasters and their listeners realised the considerable potential to communicate alternative perspectives to the largely hostile or indifferent mainstream news treatment of Aboriginal affairs.

Radio 6NR continued to provide the bulk of training and airtime for Aboriginal broadcasters until 1985 when the Western Australian Aboriginal Media Association (WAAMA) in Perth and Waringarri Media in Kununurra were established, with both operating from their own radio studios by the following year. Also in this period, 13 remote Aboriginal communities in Western Australia established basic but effective community radio and television broadcasting facilities under a Federal Government programme called the Broadcasting for Remote Aboriginal Communities Scheme (BRACS). The Kuwinywardu Aboriginal Resource Agency in Carnarvon commenced a weekly 30 minute programme on the Gascoyne region's commercial radio network 6LN in 1988. The Wangkiyuparnanupurru Aboriginal broadcasters at Fitzroy Crossing opened a radio broadcast facility in April 1990 and, similarly, groups at Halls Creek and Broome plan to establish radio broadcastings in the near future. This period has seen the emergence of Aboriginal Broadcasting as a distinct sector of Aboriginal industry and community service with State conferences of broadcasters held in Perth (July 1988), Broome (May 1989) and Cockatoo Springs near Kununurra (June 1990).

6.7 ABORIGINAL ATTITUDES TOWARD NON-ABORIGINAL PEOPLE

How Aboriginal people are seen and understood, or misunderstood, by non-Aborigines is reasonably well documented. The views and understandings, or misunderstandings, of how Aboriginal people see non-Aborigines is less well documented and appreciated. In the following section, some ideas concerning Aboriginal perspectives are considered. Initially, a particularly powerful insight:

> It came to my mind a few years ago, when I was in Derby. I worked it out, what they were doing, and what we were doing.
>
> Then we asked for the land. They said 'you can't take it, this is for the white people'. One bloke said to me like that, 'This is for the white people'.
>
> I said, 'where were you born? What language are you talking? This is Walmatjari people's country. You don't talk Walmatjari, you talk the European language. You must be careful'.
>
> He said to me, 'Who taught you that?'
>
> I said, 'I'm big enough to think about it'.

The above narration comes from a recently deceased 'proper Walmajarri man' who was born at Kalyeeda in what is now known as the Kimberley region of Western Australia, not long after the 'White Fellas' had come and taken away his parents

country. He was buried at Noonkanbah on 28 September 1990.

It would be wrong to think that it is easy to summarise the attitudes of Aboriginals to non-Aboriginal people. They are as varied and complex as are the individual human beings who make up the Aboriginal societies and those societies themselves; to say nothing about non-Aboriginal society itself. How Aboriginal people encounter non-Aborigines is very important. There simply is no one attitude about non-Aboriginal people. Non-Aborigines are interpreted to Aboriginal people through the Aboriginal experiences of public servants, police, justices, prison officers, miners, workers, or fellow unemployed Australians. Those with a lot of wealth, power and influence among non-Aboriginal people are often considered much the same way by Aboriginal people as they are by non-Aboriginals. Either as the 'high and mighty' or very good individuals. Aboriginal understanding about non-Aboriginal people tends to come from a focus on terms of a general nature such as 'The Government', 'the Welfares', 'the Police', 'Wadulahs', 'Gadiyas', 'Whitefellas' or 'Europeans'. As with any generalised term the context of their use often provides a more exact meaning of bow exactly non-Aboriginals are being considered.

Underlying their use can be positive or negative concepts or perceptions. They mirror for Aboriginal people, past and present knowledge of shared and individual relationships with agencies that have reflected non-Aboriginal society to them.

Protocols, regulations and customary practice of non-Aboriginal societal groups can be absolutely confusing, offensive or humorous to Aboriginal people. Non-Aborigines always spend a lot of time wanting to know about Aboriginal people, but rarely seem to learn anything. The ignorance of the history of how Aborigines have been dealt with since colonisation through legislation and the 'policing imperative', often appears strange to Aborigines when non-Aboriginal people make a sudden discovery about these matters. Such things are so much an integral part of Aboriginal societies. It is often a mirthful moment when non-Aborigines are seen lying out in the sun trying to fry their skin. The wanton waste of food, fish or game is always a source of dismay and upset. The response evoked in these circumstances is why do they want to do that?

Elderly and young non-Aboriginal people are usually viewed, by Aboriginal people, with more empathy than other sections of non-Aboriginal society. There is often a lot more forgiveness of those who in earlier times may have been hard or even cruel towards Aboriginal people. This does not vindicate the practice, but highlights the humanitarian nature of Aboriginal considerations of fellow human beings. There are, of course, situations of no forgiveness because the scars have not found a way to be healed.

Non-Aboriginal people are held accountable for the policies and their negative effect upon Aboriginal people that politicians approve. Aboriginal people often wonder if non-Aboriginals know and understand in what way Aboriginal people are affected by their planning regulations, laws and development schemes when sacred sites are placed at risk or in fact desecrated. Aboriginal people cannot understand how non-Aborigines get upset about the needs of the fourth world and think Aboriginal people in Australia 'get heaps'.

Further, Aboriginal people cannot understand why they always appear to be left out in the promotion of the 'community', and they get frustrated at the technical use of the English language or the use of what is called 'high English' when non-Aboriginal people are meant to be communicating with them. This is not a

license to use some colonial type version of the English language, although Aboriginal English may be quite acceptable such as, 'I'm the Boss'. The notion of 'Boss' usually creates the impression of utmost seriousness and inflexibility. When coupled with its pretence to authoritarianism, it becomes incongruous and causes such laughter amongst Aboriginals even if at the time they could not display it. Aboriginals usually consider their old people or lawmen and women as 'Bosses'. This is usually with endearment and respect.

Non-Aboriginal experts are often considered with suspicion and with a sense of have 'they no shame' to talk about us like that. This is different to Aboriginal people asking non-Aboriginal people to speak on their behalf, although this can be, and often is, a source of conflict within Aboriginal society itself. There are other non-Aboriginal people who this would not apply to. Respect has to be earned and won from Aboriginal people. It can never be assumed, even when non-Aboriginal people think they may have it from one Aboriginal group, it does not follow that they will have it from another. Usually another Aboriginal person will have to present the credentials of the non-Aboriginal person, but there is no guarantee they will always be accepted. Aboriginal people in this situation can sometimes feel compromised and distressed themselves, not only if rebuffed by Aboriginal people, but also if it is something that is required of them in relation to the job they have to carry out.

It is often offensive to Aboriginal people when some non-Aboriginals presume they have a right to be in a meeting that is about Aboriginal matters. A non-Aboriginal who puts themselves in the middle of a meeting about Aboriginal Law can create extreme problems for himself/herself if not given permission to be there. It certainly strains the relationship between the Aboriginal Bosses themselves. It is an offence or presumption which is interpreted as lack of respect for the culture and the confidential nature of the Law. There can be serious punishment for the non-Aboriginal and Aboriginal person involved as well.

Aboriginal people are often embarrassed and feel shame themselves when non-Aborigines conduct themselves outside of protocols and respect. This can produce anger and resentment against non-Aboriginal people, and can cause Aboriginal people not to participate in mainstream activities such as School Boards, Shire Clubs and local action groups aimed at improving cross cultural relations. Aboriginal people are usually in the minority at such events and often do not have the numbers if they nominate for committees. It is very embarrassing to them if, having nominated, nominees not present at the meeting are elected. This can also be embarrassing for non-Aborigines who encourage an Aboriginal person to participate.

Aboriginal people are often more conscious of their presence amongst a majority of non-Aboriginals. This can be for a number of complex reasons, but at times it can be tied up with the personalisation of the negative stereotypical assumptions that go with the colour of their skin. Going into large shopping centres, walking down the street of a town or city, Aboriginal people often feel 'shame' and that they are being 'looked at' by non-Aborigines. This may be a harmless gaze by non-Aboriginal people, but Aboriginal people often feel they are on trial or being judged, either because they are Aboriginal, or because of the clothes they wear, or because of the negative news reports projecting the popular view that all Aborigines are criminals, bludgers or non-contributors.

It is essential, in my view, to consider non-Aboriginal people who have travelled overseas to find they are in a different world. They may have had experiences of

isolation and alienation. For a lot of Aboriginal people, that experience sits like a never lifting smog on their day to day existence.

Aboriginal people often resent having to justify who they are to a non-Aboriginal person. This is especially true in relation to the police.

Aboriginal attitudes to non-Aboriginal people are best understood when non-Aboriginals communicate as mature adults and behave with respect. Aboriginal people do not want to be smothered with misguided goodness. They expect to be accorded the status of thinking, feeling human beings who have rights that go back before the British and Federation established non-Aboriginal control over certain social, cultural, legal and economic dimensions of their lives.

Aboriginal people, while often presuming non-Aboriginal people should know more than they display about Aboriginal/non-Aboriginal history, remain largely uninformed about the practicalities that make up individuals and groups within what is generally known as non-Aboriginal society. The reasons for this, for lack of knowledge on both sides, are scattered throughout this report.

Having provided some insights into Aboriginal peoples views of non-Aboriginal people, I now turn to discuss Aboriginal men because, throughout research and investigation, it has become apparent that a major concern of this Commission has constantly returned to young Aboriginal men. The following touches on some of the issues that have been brought before me.

6.8 ABORIGINAL MEN

A serious focus for this Commission has been the experience, in its broadest sense, of young Aboriginal men today. Not only have the majority of deaths in custody been men in their early thirties, but a number of people have pointed out how the phenomenon of deaths in custody appears to have been paralleled with deaths of Aboriginal men outside of custody. Hence it has been important to focus on the experience of young Aboriginal men today and the underlying issues which affect their lives and experiences.

Within Western Australia there is an enormous variety in the present day experiences of Aboriginal men. Whether living in cities, towns or remote communities these men live in different economic, housing, health and social environments. However at a deeper level of identity and experience, there is much that is common to them all.

Of an estimated 9000 Aboriginal men over the age of 16 in Western Australia in 1983-84 some 15 per cent were received into prison. This number indicates in turn a much larger number of Aboriginal men who over the years were taken into custody in Western Australia, such that 'over the last decade it is conservatively estimated that approximately one-third of this population has been incarcerated' (Broadhurst 1987: 161). The level of recidivism of this one-third group has been estimated at around 80 per cent, compared with others of around 50 per cent. For younger male Aborigines the rate of recidivism is around 86 per cent [ibid, 162]. Prison experience is and has been one constant factor in the lives of Aboriginal men in Western Australia, especially over the past 20 years.

Robert Walker died in custody at the age of twenty five years at Fremantle Prison

in 1984. He was a poet who wrote, not just about his prison life, but of his experience of being an Aboriginal person, caught in the essential struggle between the forces of life and death.

> The rose among thorns may not feel the sun's kiss each mornin' and though it is forced to steal the sunshine stored in the branches by those who cast shadows, it is a rose and it lives [Robert Walker].

The 'revolving door' cycle of young Aboriginal men going into custody has required detailed examination of the underlying issues affecting their lives today, and over the course of this Commission many men spoke of their experiences in prison, in their community and in their family and personal lives. Members of the research unit attached to my Commission also examined in more detail one group of 50 Aboriginal men from a remote desert community.

Rather than discussing a group of Aboriginal men more secure and less 'at risk' in relation to custody, this group from the western desert showed that they were as vulnerable as any other Aboriginal males in Western Australia to be taken into police and prison custody. Of this group 98% has spent at least one occasion in a police lockup, 64% had spent some time in prison custody. On the day when the group was being surveyed, 6% were in prison for long term offences, 10% were awaiting Court, 2% were in the lockup and 8% were staying in the local town, running a very high risk of being arrested. Hence one quarter of the group was either in custody or at high risk of being taken into custody. Contact with police is also another phenomenon which is and has been common to many Aboriginal men in Western Australia.

As indicated elsewhere in this report (e.g. Chapter 2) the effects of colonisation from 1829 to the present, have continued to be experienced by Aboriginal people in Western Australia. This has especially been evident in the effects upon the identity, roles and coping abilities of Aboriginal men. Their traditional role as father, husband, protector, hunter and provider has been undermined, not just by cultural change, but also by the lack of jobs and training which could have substituted or complemented traditional male roles. Men were denied control over the forces which influenced and shaped their own and their communities' lives, and nothing of significance was negotiated as a replacement. Living in the context of extensive unemployment and poverty has been a further common experience for Aboriginal men.

Ethnocentric values are often imparted by non-Aboriginal representatives to Aboriginal men, upon the importance of Aboriginal men living and working as non-Aboriginal men. However, as mentioned in Chapter 11, unemployment is extremely high among Aboriginal people. The traditional male role of hunter' is not replaced by jobs but by those things which non-Aboriginal society puts forward as appropriate male behaviour accompanying or associated with men whose primary identity is that of community work, playing football, listening to or playing music, driving vehicles and drinking alcohol. These images of manhood, reinforced by the media, videos, advertising and particularly the example of non-Aboriginal men, ensure a vulnerability of men denied opportunities to be Aboriginal men according to their own traditions or according to new cultural demands or possibilities. They are finally forced to suffer moral judgements from others about what they are not allowed to be nor cannot become. Aboriginal men have suffered not only the judgements of what others believe they should be but also the denial of opportunities to become what they want to be.

Even Aboriginal men who appear to have more confidence than many other Aboriginal men find the non-Aboriginal world difficult to engage. One man spoke to this Commission of the difficulties he experienced in going to a neighbouring town for shopping: 'I walk in the Karratha shops and I feel all a bit frightened' (RCIADIC Transcript, Roebourne, 1990). Sensitivity to the glances and attitudes of non. Aboriginal people put further strain upon this man, his wife and children. If shopping can prove traumatic for one young married man, how much more the whole legal, political and social processes which permeate and underpin non-Aboriginal society and have such great influence over Aboriginal people?

Historically Aboriginal men found themselves struggling, fighting and competing with the men who were invaders, the leaders of the 'punitive expeditions', their 'protectors', their 'missionaries', and their 'custodians'. Today Aboriginal men find that they are competing with non-Aboriginal men for jobs, for their women and families, for the experience of being able to be strong, skilled and respected. To be leaders in their own eyes and also that of their families and communities. They compete in being able to be men. That is, Aboriginal men.

Children see the ways their fathers are treated. They perceive the lack of dignity and respect which non-Aboriginal people have towards them. Not only does this engender within them a lack of respect and pride in their parents but also a lack of respect and pride in their culture and in their own selves.

> As early as I can remember, I was made aware of my differences, and slowly my pains educated me: either fight or lose. 'One sided', I hear you say. Then come erase the scars within my brain, and show me the other side of your face: the one with the smile painted on with the colours of our sacred land you abuse [Robert Walker].

The quest for domination and expansion of the land of Western Australia by non-Aboriginal people, generally extracted a high price from Aboriginal men. They were moved off their land, denied access to their sacred places and forced to watch as their sites were destroyed. These men, whose spirit was deeply bound up in experience of the land, and in performing the sacred ceremonies for that land, suffered a prolonged living death at the hands of many so-called 'Christian' men, seemingly oblivious to the spirit being crushed and denied.

In particular Aboriginal men have often found themselves in conflict with those non-Aboriginal men who exercised particular power and control over Aboriginal people, namely the police. As mentioned elsewhere, historically the police have exercised a distinctive role for non-Aboriginal society in relation to Aboriginal people. They have been the arm of government policy and the hand of law enforcement to ensure that Aboriginal people were forced to accommodate to the wishes of the dominant culture. Those who first encountered this forced accommodation were the men of Aboriginal society. Their efforts to resist non-Aboriginal domination often saw them wounded, humiliated and taken into custody. Their resistance to colonisation was constant. But as the years passed their efforts to free and protect their people were debased and re-interpreted in the pages of non-Aboriginal history. Unlike Red Cloud, Sitting Bull, Chief Joseph and the other tribal leaders of North America, the statesmen and heroes of Aboriginal groups, such as Jandamarra (more commonly known as Pigeon), Yagan, Weeip and Calyute were never recognised for the leaders and warriors they were. Not being respected for being the warriors and protectors of their people continued on even when as men they enlisted, fought and died in both World Wars (cf. Hall, 1990).

The conflict and even contradiction between how Aboriginal men were seen by their own people and non-Aboriginal people is well exemplified in the person of Stanley Brown. Not only was he an Aboriginal man heavily involved in matters affecting traditional Aboriginal law and active in the revival of its ceremonies but his role as Law man provided him with respect and status in his own community. As Commissioner O'Dea has noted in his report: 'His position as a law man and the important part he played in ceremonies helped maintain the high respect in which he was held within the Aboriginal community' (Commissioner O'Dea's report on Stanley Brown, p. 8). In contrast is how a police sergeant describes him and the manner of his death in custody: 'I was really surprised that he had hung himself because he was such a wimp. I never thought he would have enough guts to do something like that. His only attempts at violence were at Mary ... basically he was gutless' *(W/13/45). The* essentially contradictory perceptions of this one person stem, at least in part, from the way in which non-Aboriginal law, and the enforcers of that law, refused to recognise what the law meant for Aboriginal men.

The historical denial in British law of the very existence of Aboriginal Law placed Aboriginal men in a position where allegiance to their own history and its values was deeply undermined. Not able to enforce their Law, not able to experience respect or even understanding of their Law by non-Aboriginal people, Aboriginal men found the very basis of their culture and identity being particularly threatened by the police who not only came to enforce another quite alien law but who demonstrated no knowledge or appreciation of Aboriginal society.

The introduction of compulsory award wages, which, as noted earlier, came to Aboriginal pastoral employees at the end of 1968, brought more cultural change to Aboriginal people than simply being forced to live off pastoral properties. While people lived on stations they managed to survive under a strictly rationed way-of-life, often under very authoritarian, at times harsh and even cruel regimes. Some of the men even managed to exchange their labour for other benefits, forming an identity as part of the 'cattle station culture'. As families they were able to stay together and maintain some relationship with each other, their land and the Law. When not needed for station work, and especially over the summer and wet seasons, they had time to independently renew ceremonies and cultural obligations.

Moving off these pastoral stations, and often reduced to live on the edges of country towns, Aboriginal men lost a most important connection, not just with their land, but with a form of work on their own land which enabled them to successfully compete with other men. An identity as stockmen was formed, not just because they found themselves needed by the pastoral industry, but as a consequence of their prowess and durability in conditions which many non-Aboriginal men could not endure. They were people committed to spending their lives with their families on their land, a commitment not equally shared by non-Aboriginal people.

The shift in being forced off these stations provided even further trauma. These were men whose identity lay with the maintenance of cultural and religious responsibilities for their land, their countries. Their traditional lives, while compromised by the demands of pastoral managers and owners, did continue. However when living on the edges of towns, in reserves or on missions, men were separated from, and often prevented from, renewing their culture by rituals and ceremonies. Instead of being paid to work men were now paid not to work. They were paid to sit and do nothing as if their worth in the eyes of non-Aboriginal people was essentially that.

Hence the effect of the welfare system on Aboriginal men can be likened to the effect which the welfare system can have on many other people: a deepening of dependency, with a lack of pride and lack of motivation. Here for the first time they were being told that non-Aboriginal society considered them of so little value, their contribution to life and work so negligible, that it would prefer to pay them not to work, in effect to sit and do nothing. In a broader sense the whole Aboriginal community was to experience that non-Aboriginal people would share from their culture, namely their 'hard-earned money', to keep Aboriginal men from competing or having any power over work or land.

It then became easy for the police, in many ways the mirror of the attitudes of non-Aboriginal society, to take into custody Aboriginal men who began to live out more and more what non-Aboriginal society believed about them, namely they were people who needed the control, care and custody of non-Aboriginal society. At the same time Aboriginal men were allowed for the first time to drink alcohol. The combinations of family and cultural dislocation with access to a drug which for so long had been denied to Aboriginal people was to provide the scenario for a rate of incarceration of Aboriginal people not seen elsewhere in Australia.

The late 1960s is when the percentage of Aboriginal men in prison started to noticeably increase. Where it had been around 12% in 1957 it had doubled to 25% by 1967. It continued to rise in the seventies until it peaked at 37% in 1981 (Broadhurst, 1988). What also happened is that as the percentage of Aboriginal men in custody increased the percentage of non-Aboriginal men decreased, largely as a result of the use of parole and non-custodial sentences. Custody, however, became the preferred form of control over Aboriginal men. This initiated the period of time in Western Australian history, when the custody of Aboriginal men became the preferred way of control by non-Aboriginal people over the lives of Aboriginal men.

Many Aboriginal men believe today that being arrested and placed in custody is simply a result of their being Aboriginal. They perceive that they are set up to be arrested and have warrants put out on them as soon as they leave prison. Or, as one prisoner said of the police: 'They wait for him to finish a warrant and then put another on him' (Kimberley Meetings, Wyndham Prison, 4 November 1989). At the heart of such helplessness to get out of the 'revolving door' of custody is a felt inability to speak up for one's rights. Men can often feel intimidated by police and can accept the premise that one will be always be found to be guilty. Not surprisingly Aboriginal people find young policemen, especially those who 'walk around like John Wayne' (Kalgoorlie Meetings, Ted McGrath, 1 December 1989), as more difficult to relate to, as if it is they, the police, who need to prove their prowess against Aboriginal men their own age. The struggle of these people today is not very unlike the struggle in Western Australia 150 years ago when Aboriginal people must have started to realise what they were facing within the processes of colonisation. Aboriginal resistance is continuing in particular, often seemingly passive, ways.

My Commission has recorded a number of occasions where young Aboriginal men believed that they were arrested unjustly by the police. In those cases, the police seemed to be more concerned to arrest an Aboriginal person rather than a person who was identified with a particular offence. Among the desert group of men under discussion, the following remarks were put (RCIADIC research notes, July 1990):

(i) I was trying to stop others throwing rocks at the police ... I went

home. The police came during the night to the reserve and arrested everyone.

(ii) I was arrested ... for no reason. I didn't know why.

(iii) Every pay we used to go to town. Just drinking around. Got arrested a lot of times ... The police would come around and pick up same bloke. If you were hanging around maybe pub they would pick you up ... They would pick up anyone.

It is not surprising that many Aboriginal men hold strong feelings against the police. Their belief, from experience, that they can and will be arrested as an Aboriginal person in preference to a non-Aboriginal person is based also upon what they see. In the Kimberley, for example, in the time before the recent decriminalisation of drunkenness, it was extremely rare for non-Aboriginal people to be arrested for offences relating to drunkenness. For example, in the towns of Halls Creek and Fitzroy Crossing for the year 1986-87 there was a total of 4740 arrests for drunkenness. However 99% of these were Aboriginal people, suggesting that either non-Aboriginal people did not ever get drunk or, if they did, they were not arrested. That the latter was more likely the reason was apparent to Aboriginal people who commented to such effect at one Commission meeting (RCIADIC Transcripts, Mary River, 1990).

Custody in prison, as with encounters with the police, have been regular experiences of most Aboriginal men. It was, as evidenced in an earlier study of Aboriginal prisoners in the north of Western Australia, 'an inevitable fact of life' (Duckworth, 1981:22). This feeling of 'custody-inevitability' has been found to be the case with Aboriginal prisoners in another State where it was found that 41% of the ex-inmates and 39% of the inmates said they did not worry about having to go to gaol ...'because as they said, nothing could be done about it, or that they had been there before' (Alexander, 1987). For some it seems to have become 'an accepted rite of passage': the punishment of being isolated from family and friends, the stigma in the eyes of non-Aboriginal people, the burdens placed upon family and relations, all part of the accepted way of growing up to be an Aboriginal man today (cf. Broadhurst, 1988; Duckworth et at, 1982).

While some appreciate the 'benefits' of prison and say:

> A good thing about prison is that is makes you do things you never would have done eg. leather work. You also make new friends, white and black, and even prison officers. The meals am also good, and being able to watch movies.

Many commented:

> In prison you miss family, friends and home.

Robert Walker spoke of prison in his poem 'Solitary Confinement'. He spoke of the removal of one's dignity as one enters:

> Have you ever been ordered to strip before half a dozen barking eyes,
> Forcing you against a wall -ordering you to part your legs and bend over?
>
> Have you ever laid on a wooden bed - In regulation pyjamas, And tried to get a bucket to talk - In all seriousness?

> Have you ever begged for blankets From an eye staring through a hole in the door, Rubbing at the cold air digging into your flesh - Biting down on your bottom lip, while mouthing 'Please, Sir'?
>
> Have you ever heard screams in the middle of the night, Or the sobbings of a stir-crazy prisoner, Echo over and over again in the darkness - Threatening to draw you into its madness?
>
> [Robbie Walker's, Solitary Confinement].

Aboriginal men have responded to this experience of powerlessness in different ways. One way to respond has been simply to keep behaving as one has been doing. In my view, a person will continue to fight even if the price of continuing to fight is the gradual erosion of one's spirit. Stubbornness and resistance continue. Another way is to allow the frustrations and anger to be released:

> One time I was arrested and picked up ... because some people were served before me. I got abusive and the police arrived and arrested me. I was speaking up for my rights and I felt discriminated against [RCIADIC, Dampier Peninsula Meetings, Beagle Bay, 1990].

Violence is a common factor that underlies the history of contact between Aboriginal and non-Aboriginal people. The interference over Aboriginal peoples' lives, by both church and government, has involved non-Aboriginal people using both structured and personal acts of violence to dominate and control Aboriginal people. Communities have strong memories of the various degrees of violence they endured - having many aspects of their lives under the direction of non-Aboriginal people, having their children being forcibly taken away from them, as communities being removed from their land or being forced to live with other Aboriginal communities or live in towns and so on. There were also the depredations which miners, pastoralists, explorers and pearl fishers inflicted upon the people and especially the women. Violence, in all its various guises, has become a consistent way by which non-Aboriginal people have not only demonstrated their power over Aboriginal people but also it has been used as a model for assuming and maintaining the power of the one dominant group. The violence of this dominant group is one significant reason for the amount of violence which has been internalised within the Aboriginal community.

Research overseas suggests that what Aboriginal people experienced in Australia in many ways is similar to that experienced by indigenous peoples overseas. There is evidence that the amount of self-inflicted violence is directly related to the experience of cultural dislocation where 'the more traditional the tribe, and the more stable the religious traditions, clan and extended families, the fewer the mental health problems and the smaller the number of suicides. The evidence also shows a higher incidence of self destructive behaviour among the tribes which have been displaced from their traditional living areas' (Taking Control, 1990:8).

Violence, as observed in Chapter 20 of this report, has become part of the personal lives of many Aboriginal people in this State and elsewhere, as they experience various changes and aspects of social and cultural destabilisation. The active devastation to members of Aboriginal society, the forcing of a new dependency on the non-Aboriginal welfare system, combined with a belittling of the role of Aboriginal men and women, has led to an increasing level of both serf-destructive behaviour and external destructive behaviour by Aboriginal men in

particular. Over the twenty year period, 1961-1981, the rates for Aboriginal men (per 100,000 Aboriginal men) involved in homicide increased from 12 to 63, for sexual assault from 48 to 490, for other assaults from 630 to 2460 (Broadhurst, 1987).

Within the sample group of men from the desert community 16% are or have been in prison for violent offences. There are others who were reported as being violent to their wives. One has had two wives who have died after a history of receiving physical abuse. Another is well known by other men for constantly beating his wife. In terms of internalised violence a significant number carry permanent injuries as the result of violence accompanying alcohol use (some self-inflicted, some inflicted from outside agents and some as a consequence of both). Alcohol use, certainly as often experienced in the local town, involves a precise form of internalised violence. At least 4% have been in hospital over the past year because of serious sickness related to alcohol. And this is all within a group whose average age is 26 years.

One theory, used to explain the violence some Aboriginal men impose on their women, is that 'Violence is used by men on "their" women folk to re-assert their lost "authority", (a situation that is apparently not infrequently accepted by those females who remain living in the violent dwelling), and many other men in the community refuse to intervene because they too hold a belief in the "legitimacy" of such violence' (Taking Control, 1990:27).

One of the concerning features of the group of men we looked at was that less than half of them were married. Obviously they were young enough to marry later in life and some of these were looking for wives outside the members of their own community. However 12% of the group had been married and were now separated and this did not include 44% who had always been single. Those who were married ranged from those who had spent a number of years in the dormitory (and at boarding school) and those who had spent little or no time there. What was significant was that those who were married, and who had children, tended to live more settled lives. They were more likely to have a job but less likely to travel out of their communities, drink in the local town, and be taken into custody.

Marriage, both as television and videos portray it and as Christianity has often preached about it, offers a very different perception of adult relationships than what was traditionally experienced in this community and what is experienced today. Kinship and promised marriages were not values taught in the dormitory. Not only were children cut off from their families for long periods of time but they were taught very different values about human relationships. For the girls, being cut off from other Aboriginal women, was even more severe. While the boys were able to visit their families in the camp quite regularly the girls were only permitted to visit their families one day a year. For both the men and women it was not just that they were exposed to new values and new images of what it meant to be a mother, wife, father and husband in the context of moral and religious teachings, but they were effectively separated from the experience of learning the cultural skills of being an Aboriginal parent from their own parents. The women also tended to stay longer in the dormitory, working in the kitchen, dining hall and laundry while men were encouraged to leave the dormitory once they completed their schooling. Much greater effort was put into socialising the young women into the ways of non-Aboriginal society. It is not surprising that as each group of men and women passed through the dormitories some would come to see the other in quite different ways from what their own families believed and taught. Today we find that none of the men under direct discussion are married to non-Aboriginal women,

although a number have married women from other communities. On the other hand there were several women in the community, of similar age, who had married non-Aboriginal men.

Living in the context of rapid change, where the power and traditional authority of a group has been assumed by another group, it is not surprising that mechanisms, which traditionally were used to control violence or disturbed behaviour, remain unknown, uncontrolled and unstructured. Nowhere is this more acute than in the area of personal relationships: 'Relationships are one of the few commodities available to many Aboriginal people. The feared loss of a valued relationship is far more personally threatening in a context of on-going poverty and deprivation than it is for an individual who has access to other opportunities for self gratification and self-definition such as meaningful employment' (Taking Control, 1990:27). This has become quite evident for those people who have been taken into custody and threatened with the loss of a close relationship. One of the factors which has led people to injuring themselves with fatal consequences in custody has been this experience.

That there have been different experiences by Aboriginal men and women of their own roles, power and possibilities has been related to the ways in which non-Aboriginal people related to them as men and women. I have already discussed the ways in which Aboriginal men found themselves in competition with non-Aboriginal men. Nowhere was that more acutely experienced but in the relations which non-Aboriginal men often formed with Aboriginal women. Some of these relationships were stable, others formed as the result of non-Aboriginal men's use, domination and subsequent abandonment of Aboriginal women. As to the effect this had on Aboriginal men it has been suggested that 'Aboriginal men were likely to accept it - apparently a survival tactic, considering the number who were shot' (Ross, 1989:44). What is evident is that Aboriginal men were largely powerless to do anything about it, and as one man has said: 'I wouldn't know [what the Aboriginal men thought]. They might be think something else, but you understand Aboriginal got no arms to do that. He got no help to do that. You can see that all the way along, to right [to] this time of day. I got no rifle to shoot era, nothing' (Hector Chunda quoted in Ross, 1989:44).

Aboriginal men are not faced with many helpful options, that is options which provide a dignity and independence from non-Aboriginal men. Their seeking help or assistance may even increase one's experience of powerlessness: 'The conspicuous display to outsiders of 'problems', albeit not a deliberative strategy, has been another self-damaging way in which the vacuum of powerlessness has been filled to elicit responses of concern and providing resources. Male social roles have been particularly eroded in the course of these incursions by outsiders and organisations into their domains (Lowe, 1988).

This is not to say that Aboriginal men are not seeking the advice and support of non-Aboriginal people, nor that such advice and support is not helpful or even needed, but that some relationships are by consequence, if not by intention, dependency forming. Where there is reciprocity and equality of respect Aboriginal men can be empowered but where there is an orientation by a non-Aboriginal person towards being a provider or rescuer dependency develops. The use of alcohol is another way of responding to the pressures, the vulnerability, the felt inevitability of life's experiences.

There is no simple explanation for the importance of alcohol for many Aboriginal men. The history of changing roles in their communities, the loss to their

experience of manhood through the changes to what their fathers had done for thousands of years, mission teaching, the control over their lives especially by non-Aboriginal men, the lifestyles of other men and their drinking patterns, the ways in which their parents were prevented from drinking until the early 1970s, the various Christian responses to alcohol, these all form part of the pattern of reasons and causes why men want to drink and why at times they experience an aversion and even guilt towards alcohol. Alcohol, withheld from the people for years and promoted as part of the male 'toughness' and identity of the outback, became like a talisman full of hidden power to those who had been denied access to it. It could be used to appropriate land, to prevent people from voting at elections, as a commodity for exchange of women, as the reward one was given if one lived according to non-Aboriginal values.

While there are obvious benefits for men drinking together, such as the reinforcement of social relationships, recreation and relaxation with humour and story telling, there is evidence that at a deeper level drinking is very much a two edged sword. While it brings celebration, confidence and the opportunity for a person to more fully express oneself it also can unleash enormous violent forces, cause immense suffering and loss of self-respect.

As observed in Chapter 19, the use of alcohol by some Aboriginal people points to a much deeper pain within. In particular it would seem that alcohol has become a way of resolving the grief of what men know they are and what they have lost:

> Their retreat to alcohol use and the violence it often precipitates can be interpreted as a surrogate form of regaining lost power roles and as a palliative for deep unresolved grief at their loss. After all, initial exposure to the use of alcohol by western outsiders evinced their monopoly of use and supply, a form of control and a consolation for lost, distant countries and families. The Aboriginal desert terms 'wama' (Pintupi, Pitjantjatjara) and 'pama' (Waripiri) for 'grog' signify the high value and power conferred on the exotic new substance: The shift in reference of the Aboriginal terms is a 'maladaption' in response to the new order [Lowe, 1988:12].

Even the use of traditional words to describe alcohol indicate how alcohol has been given a place in modern Aboriginal society. 'Wama' traditionally refers to sweetness and sweet substances, and includes the honey ant. It later became used for 'sweet tea' and then attained a further meaning, namely alcohol. 'Pama' also refers to sugar substances. However in the Warlpiri language it is one of three major food categories (the others being animal meat and vegetables). 'Pama' is highly valued, can be used as a gift of exchange and is related to traditional dreamings and ceremonies. Alcohol has become more than a new food substance. It has been deeply integrated and given a place among the traditional values of the Warlpiri (variously spelt Walbiri) people.

Aboriginal society today places many demands upon its younger male members. Some, especially those who undertake further studies, find themselves in new positions of power and responsibility. Working in government departments, in Aboriginal organisations or in their own communities provides them with a new status and their communities with new hope. Non-Aboriginal society places much importance upon 'men of high degree', men who have attained influence and power by reason of achieving academic status and out of that status, power in the community. However as one Aboriginal adult said:

> If you have not got a piece of paper that says you have the same

> qualification as a non-Aboriginal person, you do not - and your opinions also - do not count [RCIADIC Transcript, Broome, 1990:539].

Apart from not respecting Aboriginal men who are in the eyes of their people truly 'men of high degree' non-Aboriginal society finds that those with more schooling are often placed in positions of power and influence irregardless of their standing as men within their own communities.

The efforts which Aboriginal men are making to build up, strengthen and encourage their people, especially the younger generation, are many. This Commission met men across the State whose lives were dedicated to helping their people. Too often their efforts remain unrecognised and unsupported as people focus on the 'problems'. One man, whose son died in custody and who himself has died only recently, spent his life in trying to keep the Aboriginal Law strong for the young people despite all the suffering and misunderstanding he had experienced with the destruction of his land and its sacred places, and the death of his son. Despite all that, this old man could still finally comment that:

> White people still hurt us, but we still love them ...[RCIADIC Roebourne meeting, 11 October 1989].

Despite the suffering, the imprisonment, the deaths inside and outside custodial settings, it would seem that some young Aboriginal men continue to be hopeful that their traditions and spirit will survive. As Robbie Walker wrote:

> Just as no cloud
> can black-out the sun's light,
> no matter how dark it be,
> No wall Can black-out my light,
> No matter how tall it be.

The Commission's research and investigation has revealed that 3 out of the 32 deaths in custody, for the identified period, were women. What needs to be considered, however, is that women were sometimes the victims of the offences for which men are incarcerated. While it is not within my brief to consider the extent and seriousness of such a proposition, it is necessary to refer to the position of Aboriginal women. The following briefly considers Aboriginal women with regard to their relationships with men, non-Aboriginal society, and factors such as change and continuity in Aboriginal social life.

6.9 ABORIGINAL WOMEN

At the outset it needs to be recorded that traditional Aboriginal society involved a lifestyle that was all encompassing, comprising a complex set of interrelated systems and structures which nurtured in group members a strong sense of belongingness. Role clarification of group members was integral to the functioning of the group and the roles of men and women were defined in the context of the group's overall needs. Although clearly defined and distinct from each other, they also complemented each other which aided the social and cultural cohesion of the group. Catherine Berndt (1978:78) states that traditional Aboriginal society functioned on a 'two sex' model, which resulted in men and womens roles being defined to allow for the division of labour in everyday and religious affairs.

Whilst forced cultural change has had a substantial impact on the traditional role of Aboriginal men, Aboriginal women even though they have been exposed to the same cultural forces have basically retained the role of gatherer and child cater. This is despite the application of external forces in all manners and forms via the processes of government which could have severely undermined the role of women as it has done the men. In fact there is concrete evidence to suggest that throughout the 'protection', 'assimilation', 'integration' eras of the twentieth century, Aboriginal women have been consciously nominated targets of government in its pursuit to destabilise and dismantle Aboriginal society.

The processes of colonisation have seen many unjust practices perpetrated against Aboriginal people. From the outset Aboriginal women were under threat initially, according to Goodall (1990), and others, this was because of the shortage of European women throughout the colony, and subsequently because of their 'culture bearing' capacity. As noted in Chapter 2, the shortage of European women throughout the colony meant that European men felt at liberty to acquire Aboriginal women for sexual services. This enforced sexual union often resulted in 'illegitimate children' which severely impeded traditional processes. For example, through birth one was assigned group status which was matrilineally and patrilineally affiliated (Healey et at, 1984). The continued practice of the male colonisers preying on traditional Aboriginal women and their subsequent bearing of 'half-caste' offspring, effectively began the dismantling aspects of social organisation. If Aboriginal women were not exploited for sexual activity by European men of the colony, they were exploited as domestics within the households of the colony. One did not necessarily exclude the other.

The Aborigines Protection Act (1886) was conceived to deal with the issue of 'half-caste' children. The administration of the day concerned about the rate at which they were increasing, as well as the threat to their own sense of well being and security. Through this Act and subsequent Acts of 1905 and 1936, an instrument was devised that enabled the administration of the day to assert authority over the lives of not only 'half-caste' children but Aboriginal people generally. As recorded in Chapter 2, the application of these various Acts had major implications for the future of Aboriginal people. The aftermath of the practices associated with these Acts is still being experienced and witnessed within contemporary Aboriginal society, examples of which are referred to in my report.

Aboriginal women were particularly vulnerable throughout the protection era because of their culture beating capacity. The administration of the day calculated that to capitalise on Aboriginal women's capacity in this regard would expedite the process, thereby, negating the need to inject additional resources in pursuit of the governments aspirations to destabilise Aboriginal society and its inherent values. Whilst this was achieved to some degree it also has been shown to be a self defeating purpose because of the manner in which it was executed. Aboriginal women have been instrumental in withstanding the enforced cultural indoctrination, ironically, through their role as culture bearers. The severing of biological ties over generations has proven to be a contentious factor. It has influenced the survival, revival and demise of Aboriginality. It is a proven fact that to be forcibly removed from parents at an early age is very traumatic and can scar an individual for life. It can also have the same effect on the parent. Through such a process both panics are put in a powerless position. The child not knowing where he/she is going and why, and the parent not knowing where the child was being taken to and why, embedded in both parties, a seed that feeds on suspicion and mistrust. The Aboriginal Children's Research Report (1982) sums it up in the following

statement. 'Aboriginal society today, though not directly experiencing such injustices remembers them only too well because they have been passed down through the generations and as such have conditioned a general distrust of authoritative bodies.' There are many recorded accounts of the forced removal of Aboriginal children and the impact of such removal on the parent(s) and Aboriginal community. The most notable is that of the late Margaret Tucker when she was taken from her mother. Margaret in the video 'Lousy Little Sixpence' gives a descriptive account of how her mother chased the 'protector's' car down the road crying for her baby, subsequently wandering into the bushland where she whined for days only to be found by another Aboriginal person who thought the whining sound was an injured animal. The experience of Margaret Tucker and her mother are not restricted to the protection era. Similar experiences can be recounted throughout the eras of assimilation and integration to the present; injustices which are entrenched in the living memory of many Aboriginal people. The following account verities this statement, which was recorded by a member of the Commission's research staff (RCIADIC interview notes, Perth, 1990).

Ms E is presently 39 years of age, has been married twice, has three children aged 20, 19 and 17, resides in Homeswest accommodation, is presently employed as a public servant and identifies strongly as an Aboriginal. At the age of 3 Ms E, her 5 year old sister and baby brother were taken from their grandmother who was looking after these three and two older children. When the police came to 'snatch' the children the oldest boys took off and ran away so they were left behind. Ms E stated:

> I still remember being taken. I remember them talking about what they were going to do with us - keep us together or separate us. I remember clinging to my sister and they decided to put us together and my brother was going to be taken somewhere else. My sister and I were put in to a Christian home for girls. Went from there to another girls home when I was about 5. I vaguely remember being placed in foster homes before this placement. It was from this second girls home that we started school. I remember this was very stressful because they shaved our hair and I don't know why they shaved our hair. We were in this home for a couple of years. While we were there we had no contact and yet I can always remember asking where was my granny. It was at this home that I remember we had a visit from one relation and it wasn't until years later when I was reunited with my mother that she told me that it was her. We thought it was our aunty. We were never told it was my mother. I would have been about 6 when we were told that we were going to be sent to foster people and that's when we met our foster parents. He was a Scotsman and she was Australian. They were very Victorian in their attitudes and never had children of their own. We lived here for about four years until the foster mother got sick and they thought she had cancer.
>
> While with foster parents we used to get a box of clothes every Christmas from welfare and attend the Lord Mayors Christmas party for disadvantaged children.
>
> I remember at one Christmas party when I was about 10 or 11 we were looking at this boy's name. We could see his surname. It was the same as ours. When we saw his Christian name we knew it was our brother who had been separated from us years ago. Me and my sister were really excited. We found out where he was and I remember we were bossing the foster mother to go and get him out. She took us up to the boys home to

see him and we took him home for a weekend. That was the first real contact with a member of our family. Things were okay until our foster mother got sick.

I remember being a rebellious child. The one thing that I clearly remember is wondering where my grandmother was. I knew I was different in the foster placement because everyone reminded me. Because I was so rebellious I never settled down. Because of this welfare made a decision that we couldn't stay in foster home any more so they made a decision to remove us and place us in a hostel for adolescent girls. It was for Aboriginal girls run by missionaries. I can remember that day clearly because we went from an all white middle class environment to one just for Aboriginal gifts. That was our first contact with other Aboriginal people. It was like a culture shock and it was a hard culture shock because we always knew we were different but didn't know why but all of a sudden we came under attack from our own people because they (the other girls) considered we were different because of our isolated upbringing in terms of our Aboriginality. I found out later that most of these girls were from the same area as me and my sister and some were in fact our blood relations. This was about two months after we had been there. I must have been there a couple of years. They weren't easy years for me because I was still rebelling. I remember the welfare coming quite often and threatening to move me if I didn't behave myself. I remember the hostel parents beating the residents of the hostel and welfare not doing anything. I remember one day my sister went and got her ears pierced and when she got home the hostel parent growled at her and attacked her. Her earring ended up being ripped out of her ear which drew blood. When I saw the blood I wrestled the hostel parent. After this incident I was taken without my sister to a holding centre. I didn't stay there very long because I set fire to my bedroom/dormitory. It was at this point that I remember welfare saying 'what are we going to do with you'. I remember saying 'why don't you send me back to my grandmother?.' They just said 'why don't you grow up and forget about that because your grandmother died when you were nine'. I turned the desk over on the welfare officer. I don't think it was what she said it was more the way she said it. There was no compassion it was like I had no feelings. I don't really remember where they put me after that except that it was a place with high walls. I was there for about two or three months or longer. I remember welfare coming when I was fifteen and saying that they had now located my mother and they were sending me to her because they had no-where else to send me. Then I got put on a train by myself and was sent to my mother. I never saw my sister again until my mother's funeral when I was in my mid twenties even though we kept in touch by letter.

When I was reunited with my mother there was a lot of conflict because I started blaming her for every thing that had happened to me and it wasn't until years later that I realised that it wasn't her fault it was the system.

The whole experience has made me want more for my kids. I more or less isolated myself and my kids and became very protective. Like, Community Health would come around to service my kids and I would never let them in fearing they would observe something and claim I was neglecting my kids and take them away even though I was a conscientious mother. I also wouldn't drink alcohol because I vividly remember welfare and other white people while I was growing up constantly saying that I was taken from my

> family because of the alcoholism and the poor living standards. These people were forever saying that government shouldn't have given blackfellas drinking rights. From hearing this constantly I came to the conclusion that if I drank I would lose my children. I never got over this fear until my youngest child was about 10.
>
> I see my Aboriginality as being the thing that gave me strength, purpose and a sense of spirit even though I was never in direct contact with the culture there are parts of my makeup that were very much tied to the culture. I have only come to realise this when I have reflected on the whole experience. I believe it was the thing that kept me going. Since I have become politically aware I get angry because I now know that I only got treated the way I did because I was Aboriginal. On reflection I look at my rebellious behaviour as a challenge to the welfare to try to break my spirit in terms of my Aboriginality. I believe it was my rebellious behaviour that has enabled me to survive the experience. In those days to me on reflection my rebellious behaviour was a way of retaining my Aboriginality. Even today, I believe that is why a lot of Aboriginal kids are rebelling because their Aboriginality is not accepted, its the system. The system condones the treatment of Aboriginal people as inferior constantly treating them like non-persons.
>
> Over the years I have rekindled links with my core group of relations. All up I have eleven brothers and sisters. Out of these eleven there is still a sister that I have never met. She was also taken by welfare and no-one in the family has a clue where she is.

Subsequent to the protection era, the Government activated a number of strategies that were not as explicit, but were just as imposing in pursuit of dislocating Aboriginal society. The persistence in this direction has seen Aboriginal women attempt to maintain aspects of their own socio-cultural beliefs and practices. Much of this has occurred within aspects of social organisation which, in some regions, has centred around women, partly because of the high incarceration rates of Aboriginal men. From material trot before me, this has sometimes meant that Aboriginal women have had to compensate and compromise many of their own needs. Domestic violence is an example of where women have suffered greatly. In the report of the Task Force on Domestic Violence to the Western Australian Government 'Break The Silence', Healey (1984) is recorded as stating 'The outlook for Aboriginal women is grim because recourse to white institutions, particularly the police, is regarded as a community betrayal'.

Aboriginal women can he placed in a precarious position when one considers the role attributed to them, sometimes by members of a partner's family, if the partner is taken into custody. They can be blamed and become the victims of retaliation. The likelihood of death or injury in custody has cultural and social repercussions, which are more likely to dissuade Aboriginal women from seeking police intervention in a situation of domestic violence, even if that violence is directed at someone else in the relationship structure.

The unrelenting imposition of non-Aboriginal societal values and attitudes requires an extreme level of resilience on the part of Aboriginal women. Despite such impositions many persevere, fearing that they have more to lose than to gain if they weaken. Many women, however, suffer difficulties and constraints that they attempt to overcome. The following account illustrates my meaning here:

> ... they try to strip you down ... You can't he yourself. You can he yourself, but they try to change that. They try to put you into something they think you ought to he. Give you the ideas, force them upon you ... if you're not strong, or got a good sort of grip on yourself inside, well you'd sort of get lost [cited in Atkinson, 1990:25].

Then again, many Aboriginal women, like their male counterparts, appear to get so overwhelmed that they get absorbed by a situation of hopelessness and despair, existing through the repetitious struggle of survival, violence and worry which finds in drinking to excess a relief and solution to the 'no-one cares' and 'no-one worries' environment. That situation in itself can become self-perpetuating and produce massive problems for future generations of Aboriginal and non-Aboriginal women and men. One such issue, is caring for children and constraints and change within kin structures. The following material deals with one aspect of this, which is that of grannies caring for their grandchildren.

6.10 PARENTING AND THE GRANNY SYNDROME

One issue that came to light throughout the course of my Commission related to parenting and what has been termed the 'granny syndrome', where grannies are left with little support and assistance to care for young children for unlimited periods of time by their parents. One thing which needs to be made clear at the outset, is that the care of children by members of the extended family is acknowledged and appreciated as a culturally appropriate model of child care. However the issue here is how the positive and negative aspects of child rearing practices can become abused to the point where it begins to become ineffective.

On the positive side, my Commission heard that the extended family can be a major source of socio-economic security for Aboriginal people. That is, in an environment of hostility it is sometimes the only forum that provides the emotional nourishment needed to withstand the onslaught of hostility waged against Aboriginal people through various sectors of Aboriginal and non-Aboriginal society. That hostility is, I suggest, driven mainly by racism on the part of non-Aboriginal people, and jealousy on the part of Aboriginal people.

The extended family is, I suggest, still the primary forum where the practice of reciprocity and collectivity enable survival when one's own individual resources have been depleted. When all other avenues fall, many Aboriginal people believe that resources within the extended family will he available. There is always a place that one could access basic food and shelter. It was a forum that had an inbuilt model of respite care for parents and children. The responsibility of caring for children did not necessarily rest entirely with the biological parents. The presence of an extended family network meant that children had access to forms of support other than their biological parents. Their sense of security extended beyond that offered by their biological parents. It is the forum that instils in its members a sense of group identity, thus, a sense of socio-cultural survival and belonging.

On the negative side I heard that the extended family was more of an hindrance than a help. In Carnarvon it was stated that it was difficult to deal with Aboriginal children within the school system because if there was some follow-up required within the home, it was difficult to ascertain which members of the family to follow up with because of the high rate of mobility of the children between residences (RCIADIC Transcript, Carnarvon, 1990). In the Kimberley the exploitation of the

practice of shared child care was raised. Young parents were purported to be leaving their children unnecessarily with the older grannies for unlimited periods of time, and often without any form of assistance, while they retained the full entitlement of the Supporting Parents Benefit or other income for their alcohol or gambling exploits. Grandparents with only their limited Social Security income, were finding it extremely difficult to care for the children. The cost of individual food items in isolated areas made it even more difficult, and their limited income was barely meeting their own basic needs of survival. From the grannies' perspective it was seen as irresponsible parenting. However, they (the grannies) did not know how to control it. The problem got so bad at Oombulgurri Community in the State's north-west, that the community ended up calling on the Department for Community Services (DCS) to assist them to son out the problem. The Supervisor of DCS advised members of my research staff that they are presently working the issue through with the community adopting a community development approach to a problem which requires the parents of the children to participate in any strategies devised to resolve the present situation (RCIADIC research notes, September 1990).

Elements of the extended family network have benefits for the individual as well as the community. Its status as a forum for cultural enhancement and consolidation should not be undermined. By the same token the exploitation of the grannies can be perceived negatively. The practice of leaving children with grannies for unlimited periods of time indicates a confusion between the practice of shared child caring that is very much a part of the Aboriginal community's infrastructure and responsible parenting. The presence of one does not exclude the other, and they are in fact complementary roles. The focus of both is the emotional, physical and psychological nurturing of the child. However, it is generally understood and expected that the biological parents, or at least the mother, is the primary caregiver with other members of the family assuming a secondary caregiver role. While that role in the case of grannies may be significant the role and responsibility of the biological parent(s) does not necessarily diminish unless by negotiation which usually results in role reversal and the transfer of entitlements and benefits. It is certainly not ad hoc, as is the case of the grannies in question.

The incidence of the granny syndrome highlighted that there was a lack of parenting roles for younger women. Although, the abdication of their parental responsibility, by offloading their children on to the grannies, may have been done unconsciously it is having a negative impact in the community. Yet, it would seem that no one has the answer to counter the problem. On the one hand, the grannies focussing on it as an issue, indicates their inability to deal with it. On the other hand, the parents obviously think it is an acceptable practice, indicating a sense of immaturity on their pan. In sum this presents a real dilemma for the community at large. The lack of answers for this critical issue, and the apparent level of incompetence of both parties, means that the children are at a severe disadvantage and, inevitably, could become ineffective parents themselves.

Given the material provided in the preceding sections, I turn now to Aboriginal youth.

6.11 ABORIGINAL YOUTH, FAMILY LIFE AND THE STATE

In this next section, I consider, within a number of themes, the crucial experience of Aboriginal youth within contemporary social life, as well as within the parameters

of the State. The fact that Aboriginal youth need to be considered within a number of identified themes, expresses some of the concern which has been put to the RCIADIC.

6.11.1 Juvenile offenders

Aboriginal juveniles were constantly discussed throughout my Commission's meetings and conferences. Juveniles were also discussed at meetings held by the Aboriginal Issues Unit (1990). Regardless of whether the comments were raised in the context of the Department for Community Services, the Department is implicated because of its child focussed mandate, and its role in the administration of juvenile justice in Western Australia.

> Aboriginal young people under the age of 15 comprise approximately 40% of the overall Aboriginal population [Families in Focus in Western Australia, 1988:6].

The fact that Aboriginal youth represent 68% of children in custody (Department for Community Services, 1989:40) should be of particular concern to the Department for Community Services. Particularly, when the potential impact of the current institutionalisation process on the next generation of Aboriginal people is considered. The observation a Director of the Department for Community Services presented to my Commission, indicates that the Department for Community Services is aware of the consequences of maintaining the present approach to the issue of juvenile offending.

> What in fact was happening with a number of these youths were that they were institutionalised; they would come out of the institution before there would be involvement by the department; they would offend, be picked up by the police, then back into the institution. So it was a circular event in which there needed to be some point of intervention in regard to trying to halt that continual cycle of movement of the child back into the institution [RCIADIC Transcript, Perth, 1990].

The Department for Community Services states that incarceration is not a desirable option. However, this statement is undermined by Aboriginal youths, 67% incarceration level, a level that has been fairly consistent over a number of years.

> Most juveniles, we would argue, don't require incarceration, and therefore should be contained in the community. And if punishment response is required from the court, that consequence should be community based, rather than a form of juvenile imprisonment. The basis for that would go back to the number of sources. Partly the philosophy of juvenile justice. But also to do with ... rules United Nations minimum standards where it is argued that incarceration would be the last option [RCIADIC Transcript, Perth, 1990].

6.11.2 The 'why' of juvenile offending

> In some ways we were better off in the olden days. Kids were better off then. Knew where they were. Not in the streets and that and they did what

> they were told. They didn't try to know too much like the kids of today. Police and welfare take too much notice of kids in terms of parents' discipline. Kids know that and so they will tell the welfare or police if they don't like the discipline. Hard to cope with grandchildren. No control. Mix with all elements. Different forms of discipline olden days. Young ones not to talk back to elders in previous times. Since kids go to school they think they know much more. Know everything. Good thing education as long as it doesn't go to head. Change has been good for some things not for others [RCIADIC, Interview with 'Pop', Perth, 1990].

This statement sums up generally the feeling of Aboriginal parents and their relationship with their children. Many Aboriginal parents felt that there was no support for their methods of problem solving. They also felt that there had not been sufficient consideration by departmental people to understanding and adopting their approaches. The effect of this has been to withdraw from what, on occasions, may appear crucial matters that effect their children when the Department was/is involved. This indifference to what Aboriginal parents think is a legacy of the welfare days. Yet there is evidence to suggest that empowering Aboriginal people to deal with problems within their own family and community, produces more favourable outcomes than dealing with problems outside the cultural context of the family and the Aboriginal community. Two such examples exist within the confines of the Department for Community Services. One is the Department's Substitute Care Programme and the other is the Station (Alternative Custody) Programme.

6.11.2.1 Aboriginal child placement

The aim of the Aboriginal child placement scheme is to try to ensure that consultation occurs with extended family, significant others and, where appropriate, Aboriginal organisations; to arrange appropriate substitute care as warranted which is in the best interests and promotes the welfare of the child, and which takes into account the importance of customary roles and responsibilities of the Aboriginal family in child rearing; to promote and maintain relationships and contact between the child, his family, kin and culture; to explore with Aboriginal communities and organisations the potential for them to exercise functions, in relation to the welfare of children; to facilitate the transfer of appropriate functions which those communities and organisations have demonstrated a desire and ability to undertake; and to support those communities and organisations in the discharge of those functions (Department for Community Services Aboriginal Child Placement Principles).

Given the above, there has been a dramatic reduction of 58% over five years in the number of Aboriginal children, compared to a 25% reduction of non-Aboriginal children, in departmental subsidised foster care. Factors which have probably contributed to the dramatic reduction in the number of Aboriginal children, particularly wards, in care are:

> The recognition of the importance of the Aboriginal family and culture which culminated in the development of Aboriginal Placement Policy; the move away from utilising wardship as a strategy by responding to cases of neglect caused by poverty and disadvantage [which has**]** positively affected the ability of Aboriginal children to remain within their family groups; and the long term wardship orders made in the early seventies [which] are now terminating [Department for Community Services,

1990:58-59].

At this juncture, it is necessary to state that I have not been asked to inquire into the wardship system, and the consequences that accrued to Aboriginal children who were subjugated to it. My observations are that its relative merits seem to have been overshadowed by the anguish, pain and frustrating search for meaning in later life encountered by many who were put through that system. As noted on a number of occasions throughout this report, the conflict caused to serenity, identity and esteem cannot be discounted as a contributing factor to custodies.

6.11.2.2 Station (Alternative Custody) Programme

The Station Programme has been primarily used to assist Aboriginal youths. The Department for Community Services is aware of the need to ensure that Aboriginal youths are placed within the geographic boundaries which are culturally appropriate. Care has been taken to ensure that there are older Aboriginal people working with all the youths to provide role models, to support the youth and to help the youth maintain their identity as Aboriginals while obtaining the advantages of employment.

Great care has been taken to ensure that the stations chosen are operated by appropriate people. Local Aboriginal people have been consulted extensively to determine the attitudes and past behaviour of the station operators to Aboriginal employees. Parent consent to be obtained for the station placement. Up to the end of May 1990, the following had occurred:

- there have been 28 individual youths involved;
- and 30 placements of which;
- 3 have failed and the youths have been returned to custody;
- 6 are currently on the programme;
- 21 placements have been successfully completed;
- 9 youths have been placed in employment or further training; and
- of the 28 young people placed on stations between December 1989 and May 1990, 26 were Aboriginal [DCS, 1990].

The Departmental assessment of these two programmes infer that the accommodation of cultural contingencies and involvement of Aboriginal people in that process are contributing to an improved outcome.

History has shown that social dislocation and cultural alienation only serve to exacerbate the problem. Whereas, the two examples alluded to above which have acknowledged the family and community as fundamental components to a programme's acceptance and success are achieving the desired results of all parties, the outcomes in comparison to past practices associated with the out of home placement and custody of Aboriginal children and youth speak for themselves. The role of the extended family, as noted above, should not be undermined in any process of government to deal with an issue. Evidence put

before me indicates that it is basically the only socialisation mechanism that Aboriginal people are exposed to that has any real meaning, mainly because of the group consensus element which determines acceptable/non-acceptable behaviour within the groups confines. However, when an outside institution assumes that role it can lead to the manifestation of a problem rather than its cure, as families retreat owing to bureaucratic constraints and misunderstandings. The irony of the situation is that their conscious abstinence from impending processes is used against them, their children and the Aboriginal community generally, as such action is interpreted as that they 'couldn't care less' attitude resulting in the child being 'rescued' from a perceived hostile and unsupportive environment. Subsequently they are placed into an environment that is considered by the processes of Government to be more morally appropriate and supportive to the individual child. An attitude that has its basis in traditional services (see Substitute Care Review, 1990).

Aboriginal children within the contemporary situation are confronted with the same value based assumptions that saw so many of their adult members introduced into an alien system for indoctrination to a 'better way of life', value assumptions that entertain a strong racial bias, which perceive their Aboriginality as a handicap which needs to be treated as such. Therefore Aboriginal youth, like many adult members are confined to an environment that is biased toward the dominant value system of mainstream society. Cultural acknowledgement is piecemeal and at best tokenistic.

Aboriginal youth in contemporary settings have to endure some of the same misfortunes that confronted members of their adult population, where, within the confines of the compound, all endeavours are geared toward them acquiring a 'respectable' position within society. In the youth context the formation of social relationships within the institutions that continue on their release from such institutions, is particularly pertinent to the issue of offending and reoffending. Submissions put before my Commission often referred to peer group influence when the issue of juvenile offending was discussed.

The high ratio of Aboriginal inmates plus the interconnectedness of the Aboriginal community throughout the State, means that the likelihood of inmates forming a lasting or ongoing relationship, regardless of the period of confinement, is substantially heightened, as incarceration is the factor on which the relationship is aligned. Incarceration as a deterrent has been shown to be an ineffective means of dealing with the issue of Aboriginal juvenile offending. If anything it has been observed as having a net-widening effect. In my view, peer group influence needs to be acknowledged as one of the major contributing factors to juvenile offending amongst Aboriginal youth.

Incarceration should be avoided at every possible opportunity to short circuit the imposing threat of long standing consequences. Engagement of the family and Aboriginal community are basically cultural imperatives in pursuit of this conquest, as they are the only factors that have been shown to have any positive impact to date, and cannot be continually ignored.

It is apparent that the role of the family needs to be given a greater emphasis in programme design and content to attend to the issue of Aboriginal juvenile offending. In this way the individual is not unnecessarily exposed to elements that may persuade him/her away from the influence of his/her family. To the contrary it could serve to consolidate the family unit, providing the necessary resources and support structures are put in place. Involvement of family and community would

ensure that programmes engender a cultural balance to prevent the likelihood of mixed messages that has its own set of problems.

The Station Placement Programme reveals the benefits of a community based approach to the problem of Aboriginal juvenile offending which should inspire the authorities to extend the parameters of the programme beyond the Stations. The ideal extension is of course into the Aboriginal community's own infrastructure where a relearning and enhancement of the culture can become the focus to deal with the issue of low self esteem caused by a sense of cultural inferiority which is manufactured within the present processes. Programmes should be family and community focused and based. Precedents for this approach have been established in the treatment of alcoholics, where an individual's addiction to alcohol is dealt with within the context of the family environment. The continued practice of externalising parents invariably impacts on their sense of parenting responsibility because it is perceived that the various processes of government, by their very nature of externalising the parents, have assumed responsibility for the role normally undertaken by parents. As stated earlier, this can lead to parents 'buying out' of the situation. The Aboriginal parenting role must be properly recognised and supported to enable the greatest opportunity for our youth.

Further, in my view, to be totally effective, acknowledgement of the role and impetus of the family unit needs to occur right across Government, and in all forums to which Aboriginal youth are exposed. In many cases the seed of culture conflict is sown in the forums that Aboriginal children and youth encounter such as education, welfare, childrens court, police.

In Chapter 12 of my report, there is evidence that Aboriginal children are overrepresented in the expulsion and suspension rates within the education system, welfare services, children's court statistics and police statistics. Additionally my Commission heard that there is a strong correlation between the suspension and expulsion rates of Aboriginal children from within the school system and their rate of incarceration. Such a situation begs the question as to whether Aboriginal children are any more 'deviant' than their non-Aboriginal counterparts or is it that their cultural 'difference' is considered intolerable by the administrators and practitioners of the respective programmes. My Commission also heard in submissions that it is more than likely the latter. Allegations and inferences associated with the education system were raised with me as being insensitive and unaccommodating of the cultural difference of Aboriginal people. The result of this appears to be reflected in an attitude that requires students to conform or be denied programme access. Such a practice has to have some psychological effect on the individual child concerned. For example, Aboriginal children can go to school and learn about the works of Nelson Mandela, Mahatma Ghandi, and Martin Luther King and how they strived and fought for the principle of human rights for their own people within their own countries, yet Aboriginal heroes and heroines are not acknowledged in the development of this country.

In such a setting Aboriginal children can, and do, learn through education about the spirit of humanity, yet when it comes to their own sense of wellbeing, the principles espoused within the education process are left wanting. The examples provided highlight the inherent contradictions of the education process and furthermore highlight the conflicting messages that Aboriginal children receive from the two forums of education and their own community.

The importance of family in the lives of Aboriginal children and the Aboriginal community generally cannot be overstressed. From a number of social, legal,

cultural, economic and political perspectives, the Commission process has exposed that Aboriginal people are engulfed in a predominantly hostile environment which often renders them marginalised and powerless. The education process and the government, generally, are remiss in not acknowledging this. All are examples of how Aboriginal children and youth are expected or required to adopt behavioural patterns that embrace values conducive to non-Aboriginal society. All processes represent nothing short of a further practice of 'taking the kids away', although not always opting for total physical removal. Continuing along this path will, over time, reveal destabilisation that could be compared with that experienced by their adult Aboriginal population who were left to deal with the aftermath of inhumane and insensitive policies and practices.

Parents and families need to be involved in the preventative and custodial situations confronting their children if they are to have any relevance and any long standing benefits for the individual concerned. The authorities can no longer assume a role and responsibility that fundamentally belongs with the parents and extended family. Alternatives need to be sought and acted upon. To enable alternatives. which incorporate family networks, the respective authorities need to give consideration to entering into contractual arrangements with families and community groups within an Aboriginal domain, that will enable the delivery of programmes that are both culturally sensitive and socially appropriate. Apart from dealing with the issue at the individual level, there will be a natural flow on to all sectors of the Aboriginal community as such a structural arrangement will enable the social and cultural values which have been the subject of erosion over past decades to be revitalised in a meaningful and productive way.

6.11.2.3 Incarceration and youth

If in fact incarceration is the last resort, then the over-representation of Aboriginal youths in custody encourages an inquiry of the Department for Community Services with regard to how they are addressing such an over-representation. Submissions from Departmental officers throughout the State focussed on mainstream programmes that were devised to curb offending behaviour (often a criteria for participation) implying a higher concentration of Departmental resources in their Juvenile Justice Programmes than any other programme area of the Department in which Aboriginal people are represented. This is because of the mainstream element of the Department for Community Services Juvenile Justice Programme, where cultural considerations are of little consequence. What can be deduced from this is that the Department for Community Services perpetuates the problem rather than affecting a solution.

The RCIADIC heard from the police, the Department for Community Services, and members of the public that Aboriginal children were being detained in police lockups. Meal allowance sheets, which are submitted to the Department for Community Services for payment because of that department's responsibility toward juvenile detainees, verify this. On one particular sheet my Commission observed that a juvenile was detained for over a week in a country police lockup.

The placement of juveniles in the East Perth Lockup to deal with the overflow from Longmore and Riverbank Juvenile Institutions, is hardly an indication that incarceration is a measure of last resort. The need to use the lockup as a detention facility indicates that other areas such as bail, arrest procedures and sentencing options are not really considered. Such a lack of consideration could also be seen

as a direct contravention of the Beijing Rules relating to juvenile offenders' institutional treatment is to provide:

- care, protection, education and vocational skills to assist offenders to assume a socially constructive and productive role in society, and so they are not disadvantaged;
- all the necessary assistance that children may require because of their age, sex, and personality;
- separation from adult offenders;
- special attention to the personal needs of female offenders and to provide them with the services equivalent to male offenders; and
- access by parents or guardians, and - adequate academic or vocational training so that juvenile offenders are not disadvantaged [Lipscombe, 1989:48].

If the need to use the East Perth Lockup is added to because of the bail issue then the police and the Courts could also be seen to be acting in contravention to the Beijing Rules as they relate to the presumption of innocence of juvenile offenders. If this guideline is accepted and adhered to then bail should not present as a factor that determines whether or not detention is necessary. Yet, the 'Missing Ingredient' Report of the Youth Legal Service which was commissioned by the Department for Community Services asserts that in the Longmore Remand Centre there are juveniles being detained for long periods because of an inability to meet bail conditions applied by the police or the courts. Presuming that a juvenile offender is innocent ball should be extended except in extenuating circumstances such as posing a very serious threat to the community. Data contained in the Report of Juvenile Arrest and Summons, indicates that between 12-25% of juveniles remanded in custody actually receive post court sentences, indicating that approximately 75% of juveniles are unnecessarily exposed to the juvenile justice system. The remanding of juveniles under such circumstances requires serious consideration given that my Commission has been told repeatedly by all sectors of society that such exposure results in more detrimental effects than positive gain for juveniles.

In order to alleviate the potential of novice juvenile offenders being unnecessarily exposed to the juvenile justice system, the Children's Suspended Proceeding panels should be focussed on. However, at this time, present guidelines associated with the panel process may indirectly discriminate against Aboriginal youth because of their parents' low socio-economic basis. One such guideline relates to the requirement on the offender to make restitution. The consequence of this requirement is that it would add to the hardship already experienced by many individuals and their families. This factor contributes to many young Aboriginal juvenile offenders being denied access to the panel which is less intimidating than the court process and appears to be more productive in terms of positive outcomes. Thought should also be given to increasing the attendance before a panel as a diversion from the legal process. The restrictions on the panel process in Western Australia such as age 7-16, restitution and admission to guilt do not apply to the panel process in South Australia. This has resulted in 60% of matters being dealt with by panel in South Australia as opposed to 10% in Western Australia.

On the positive side submissions were received from various Government departments in the Murchison/Gascoyne region that alluded to an inter-departmental approach to the issue of juvenile offending. Such input revealed that although the approach had only recently been adopted, nominated strategies were already producing some positive outcomes, such as the Station Placement Programme, as an alternative to secure custody.

The objective of the Station Placement Programme is to provide a closely supervised skill and work based programme as an alternative to ordering secure custody or for sustained employment for young juveniles. A Department for Community Services officer was appointed to seek out potential pastoral stations for participation in the programme and to provide the necessary backup and support to the station management and the detainee. Presently there is a pool of approximately thirteen stations in the programme. The Department meets all the costs associated with the placement, approximately $250 per week per individual placed. This, in economic terms, compares favourably to incarceration which is estimated to be somewhere in the vicinity of $1,500 per individual placed. In part this costing is due to the station manager's role which is on site as a supervisor in a work environment. It is also proving to be productive in terms of its social outcomes. My Commission heard that response to the programme by a number of pastoral stations has been reasonably positive to date. My Commission also heard that a few of the participants in this programme had managed to secure ongoing employment at the conclusion of their placement period.

The Department for Community Services was appointed 'project manager'. The participating departments were: Sport and Recreation, Police and Citizens Youth Club, Department of Employment and Training, TAFE, Ministry of Education, Equal Opportunity Commission, and the Aboriginal Affairs Planning Authority.

Although only a short time has lapsed since its inception, from all accounts to date the inter-departmental approach to the issue of juvenile offending presents as a viable option to the more traditional approach adopted to deal with juvenile offenders. It affirms in a practical way that incarceration is a last resort, which is an approach that should be monitored and encouraged for extension to other regions of the State. In my Commission's view, representatives from Aboriginal organisations, keeping in mind cultural and social affiliations and sensitivities, should be encouraged to be involved in this process.

In recognising that there will be some instances where there will be removal of juveniles to institutions, every effort should be taken by the Department for Community Services to reduce the impact of social dislocation. In these instances the Department should look to engaging the services of the Aboriginal Visitors Scheme or, if guidelines restrict the utilisation of that service, then the Department should seriously consider the development of a similar type service.

6.11.2.4 ' Department for Community Services and youth

The Aboriginal Child Placement Principles which have been adopted by the Department as policy are a move in the right direction. The main thrust of the principles is involvement of family, community and Aboriginal organisations such as the Aboriginal Child Care Agency (ACCA) in the decision making processes. Thus principles are incorporated into legislation which will legitimise the role of

Aboriginal agencies such as ACCA in statutory functions of the Department that pertain to the 'out of home' placement of Aboriginal children. This move also sets a precedent for the formation of a relationship between Aboriginal people and the Department within its other functional areas.

The statutory requirement on the Department in terms of juvenile justice is an area which should be given consideration in this regard. Involvement of the Aboriginal community should be optimised in this area. The Department's current pursuits towards non-custodial options are to be encouraged. By the same token the Department needs to be mindful that if diversion from custody is the anticipated outcome of non-custodial options then options geared toward Aboriginal youth need to be culturally sound to avoid reflection of a piecemeal approach to Aboriginal youths' overrepresentation in custody and as a means to overcoming the consequences associated with social and cultural dislocation. Engagement of Aboriginal people in the Department's juvenile justice role should be pursued at all levels of the process from arrest through to release. In particular, the Aboriginal Legal Service and the Aboriginal Child Care Agency should be targeted for involvement in all such processes. The ALS for legal matters, and ACCA or a more appropriate Aboriginal organisation, for social and cultural input. The present court process appears to be deficient in its capacity to take account of cultural factors as they pertain to Aboriginal youth and their presence in the legal system. From advice put before my Commission, it seems that Aboriginal youth are more susceptible to the legal process than their non-Aboriginal counterparts because of legal, social, economic and cultural factors.

The RCIADIC is aware that the Department is pursuing mandatory legal representation for young people and seeking to have cultural input recognised in the court process, as well as encouraging the use of cautions, attendance notices and summonses over arrest. The Department is encouraged to pursue these courses of action and should, in the case of Aboriginal youth warranted by their overrepresentation in the legal system, stipulate the role of the family, and community and Aboriginal organisations such as the Aboriginal Legal Service.

6.11.2.5 Aboriginal organisations and youth

There are a number of community based organisations whose functions would enable them to assume responsibility for the administration and implementation of welfare orientated services to the Aboriginal community. The most notable being the Aboriginal Child Care Agency whose objectives can be equated with those maintained by the Department for Community Services. The ACCA is a body that is expected to be more attuned to the social, cultural and economic circumstances of Aboriginal people.

The Aboriginal Child Care Agency was established as an alternative for Aboriginal people to the Department for Community Welfare as it was known in the 1970s. The main thrust of the Agency is to avoid wherever possible the introduction of Aboriginal children into the system by providing culturally appropriate service alternatives. However, because of a funding dilemma between the State and Federal Government, the Agency has been unable to realise its full potential as a culturally appropriate alternative to the Department for Community Services. Consequently, the Agency is severely handicapped in terms of its service ability. The funding dilemma revolves around whether funding of the Agency should be a State or Federal responsibility. Since its inception, the Agency has been funded by

the Federal Government through the Office of Child Care. However, because of its welfare focussed service, the Federal Government, through the Office of Child Care, are claiming that 'welfare' as an issue is a State responsibility and as such the State should assume the responsibility of funding the Agency. This debate has been going on since the mid 1980s without any resolution. It seems that the debate has reached 'stalemate' status until the outcome of a national review into Aboriginal Child Care Agencies is completed.

The whole funding demarcation dispute between Commonwealth and State Governments has caused considerable detriment to the Agency. The present funding arrangement is that current levels of funding from the Commonwealth will be maintained with no consideration being given to funding new initiatives, i.e. regionalisation of the service. At present it only has the capacity to service the metropolitan area. However, from time to time depending on a respective client situation, it will provide a service to country clients. The extension of its service to country clients is restricted to those situations that the Department for Community Services supports through case specific resource allocation.

Regardless of the funding debate the potential of the Agency as the welfare interface agent with Aboriginal people, needs to he maximised by the Department for Community Services through the extension of necessary support and resources. Wherever possible the Department should attempt to empower Aboriginal agencies such as ACCA by assuming a secondary role in the delivery of services enabling Aboriginal people to take control of the decision making. This can be facilitated through legislative change as with the Aboriginal Child Placement Policy or through some other process, i.e. community development. The former applies to the Department's statutory functions, the latter applies to the Department's non-statutory functions and is consistent with the Department's philosophical rhetoric.

It needs to be noted, however, that the Department for Community Services cannot be held solely responsible. It is acknowledged that the Police Department is accountable for the arrest of juvenile offenders. Likewise, it is also acknowledged that the Crown Law Department, formally since 1989, is responsible for the functioning of the Children's Court. Nonetheless the Department for Community Services, present response to the issue of juvenile offending is, as noted earlier, considered a contributing factor to the high incarceration of Aboriginal youth. This is because of its service bias toward the police and Crown Law Department. Concentration of resources in the Juvenile Justice Programme area of the Department to deal with the issue of 'offending', also infers such a bias. This bias compromises the Department's obligation to advocate for, and ensure, a child's rights as contained in the Declaration in the Rights of the Child and the Beijing Rules.

6.11.2.6 Media, youth and self-esteem

Media reports which highlight criminal matters involving Aboriginal people, for instance youth gangs and car thefts, or interpret Aboriginal actions as a threat to the public good, for example in coverage of struggles to protect sacred land, to gain land rights, to demand political and institutional reforms, may tend to increasingly alienate some Aboriginal people from society and lower their self-esteem. This was illustrated in July 1990 when Western Australian police took the decision, in contravention of the Children's Court Act, to release to the media

the name and photograph of an escaped Aboriginal juvenile offender. The news media proceeded to sensationalise the police hunt for, and capture of, the youth. In previous weeks a spate of car thefts, most of which were publicly associated with Aboriginal youth by discriminatory identification of race in dramatic media reports, had prompted calls for tougher police surveillance and questioning of youth in the streets (Daily News 16 May 1990, West Australian 17 May 1990). Negative media imaging of Aboriginal youth was commented on by Rob Riley:

> You can imagine the effect this sort of reporting is having on young Aboriginal people around the city, going to school or work, or just walking down the street. It would be very difficult to feel positive about yourself or that other people were going to have a positive attitude toward you [Personal communication to RCIADIC research staff, 12 July 1990].

In this manner, media can directly impact on the way Aboriginal youth see themselves. Of course, media reports do not assert that Aboriginal people in general are likely to be criminal, violent or disruptive, but powerful pre-existing stereotypes to this effect do circulate in society, and sensational and discriminatory reports can reinforce and amplify these.

On 28 February 1990 the West Australian ran a bold from page headline 'Aboriginal gangs terrorise suburbs' and a story that was widely believed to be unfounded, sensationalised and to have had a damaging influence on public opinion. This incident is dealt with extensively in Chapter 18 of this report.

On 26 August 1990 while opening a public seminar on the media and Aboriginal people, at Murdoch University, the Western Australian Premier, Dr Carmen Lawrence, made scathing criticisms of the story, and referred to its likely impact on Aboriginal and non-Aboriginal people:

> It was one of the worst examples of pandering to the public's fascination with the sensational, over a story that on closer reading did not reflect or warrant the headline. It is also an example of how irresponsible exaggeration can cause extreme hurt to the Aboriginal community. In the one-and-a-half years I have been Minister for Aboriginal Affairs, I cannot remember a media report or headline that has been the subject of such a huge number of calls to my office.
>
> In short, there was sheer bewilderment among Aboriginal people that a newspaper could be allowed to run such a headline. It was considered a slur on the Aboriginal community in Perth. I recognise that in the weeks preceding the story, there had been a spate of offensive juvenile behaviour and that some, and I emphasise 'some', Aboriginal people were involved. However, in the view of many Aboriginal people, this sensational treatment of one or two specific incidents was little more than a 'black bashing' exercise. Such generalisations are extremely demoralising for Aboriginal people, and do nothing to raise their self-esteem or help them take their rightful place as valued citizens within our society.
>
> The only purposes that story can possibly have served was to reinforce negative, stereotyped attitudes towards Aboriginal people among some non-Aboriginal Australians [Lawrence, 1990:3].

An association between self-esteem, self-perception and a range of problems amongst Aboriginal youth was pointed to by many people who attended

conferences of the RCIADIC around Western Australia. These people linked low self-esteem with poor educational motivation, anti-social and criminal behaviour, unemployment, alcohol, drugs and substance use. The similarity with which these problems were manifested across all regions of Western Australia testified to the almost universal experience of Aboriginal youth. A youth worker at Northam told the RCIADIC:

> I think alcohol is an indicator of a deeper malaise, Concern. It's a question I think, like I was saying earlier, why do young people offend? I also think we need to ask them: why do people drink or drink to excess? And I think there's a thing to do with pride and pride in who you are and pride in your Aboriginality, and being able to live with dignity or not having the respect of the white community that leads people into a position where they have to use the catchy phrase of lower self-esteem, self-concept and an identity crisis. And I think that's one of the things we aim to work with is encouraging kids to have a pride and an awareness in their Aboriginality [RCIADIC Transcripts, Northam, 25 May 1990].

A police sergeant in Kalgoorlie asserted that low self-esteem was a cause of the suicide of Aboriginal people in custody). Low self-esteem, he said, was attributed to unemployment:

> There's too much unemployment in Kalgoorlie. If a person's employed they've got a chance of providing better accommodation, a bit of a chance of looking after their family, and generally with unemployment comes a low self-esteem and in some cases your low self-esteem unfortunately leads to suicide. A person with high esteem just doesn't commit suicide. Anything that can raise, you know, the level of self-esteem has got to be looked at and employment's just one of them [RCIADIC Transcripts, Kalgoorlie, 1990].

A teacher at Carnarvon Senior High School listed low self-esteem as one of the major factors contributing to poor educational attendance and performance by Aboriginal students:

> The Aboriginal student population makes up approximately 30 per cent - just a little bit under that, these are very approximate figures - of the total school population and the Aboriginal students comprise approximately 73 per cent of the behaviour problems at the school. [RCIADIC Transcripts, Carnarvon, 9 April 1990].

Another teacher at the same school noted:

> Some of the students, feel: I can't do that, or there's no confidence. They've lost the confidence in themselves, so they tend to think to themselves: well, I'm not good enough,
> that's where that self-esteem seems to just fall right down to nil, and that's the feeling they get and it's just trying to get them to feel like that they mean something, that they are somebody and they - they got something to contribute to. You know, giving them that self-esteem back [RCIADIC Transcripts, Carnarvon, 19901.

The effect of the media on the self-esteem of Aboriginal people was commented on at the Perth conference:

> Unfortunately the media are very critical of Aboriginal people. They don't know what it is w print something that's good for Aboriginal people. All they're interested in is the negative side of Aboriginal people. They're not worried about what people are doing W build the self-esteem of Aboriginal people [RCIADIC Transcripts, Perth, 1990].

and another example:

> There's been a lot of police propaganda in the media lately about Aboriginals. There is only one side of the story going in -Aboriginals don't get a say in anything - and as a result Aboriginals have been called at as they walk down the street -called car thieves. They shout out to any young person: which car are you going to steal? [RCIADIC Transcript in confidence, Perth, 1990].

An Aboriginal radio journalist voiced concerns about what was seen as the tendency of the media to negatively stereotype Aboriginal people:

> I think it boils back to people being unaware and ignorant of Aboriginal issues, and, well the media here, and probably in pans of - well, in other pans of Australia, too - always portray Aboriginal people as drunks, unemployable, worthless, savages, and, you know, a whole lot of other things. And it just boils back, like they paint Aboriginal people with the one brush, if you like. So because one person's an alcoholic, everyone must be an alcoholic. And they give that impression to the listeners, which of course, you know, the listeners believe. And I think that that indirectly causes racism within the community [RCIADIC Transcript, Kalgoorlie, 1990].

Of course, the negative self-perception of many Aboriginal youth cannot be attributed solely to a single source of negative imagery such as the media. Rather media messages are part of a network of negative, oppressive and exclusionary social relationships that Aboriginal youth find themselves in. The often cited lack of educational achievement, in spite of the apparent well meaning efforts of many teachers, may not simply be caused by a pre-existing low self-esteem within Aboriginal children. The school system itself should be examined as grounded in quite arrogant assimilationist assumptions about the universal worth of Western education, which may be disguised behind further assumptions that this education is the key to individual and collective survival. While not entirely wrong, this assumption can tend to take the focus away from the more oppressive structures and procedures of schooling. It also diminishes the responsibility to make teaching, learning and school itself, more adaptive to Aboriginal peoples survival and support

The chronic crisis experienced by many Aboriginal families in the city and country towns, a cycle of unemployment, poverty, unstable and overcrowded housing, poor diet and health and alcohol addiction is not one conducive to either the self-esteem of youth or the attainment of formal education. Neither is the frequently mentioned racist, hostile or simply ignorant attitudes and treatment of Aboriginal people by non-Aboriginal people in State institutions such as the police, shires, public services, and private businesses such as shops, hotels, and taxis.

Thus Aboriginal youth experience a whole set of relations with institutions and people that are already laden with suspicion, hostility and discrimination without their having to do anything to justify these on an individual basis. Furthermore it

must be considered that delinquent behaviour or criminal activity may be the only form of resistance seen to be available to powerless and frustrated youths who have no real opportunity, nor a desire necessarily, to lead lifestyles based on idealised middle-class models. The RCIADIC heard numerous views that the sensationalised manner in which juvenile delinquency tended to be treated by some sections of the media further encouraged similar behaviour, and that such reporting in effect functions as a public challenge, appealing to youth's desire for excitement and to resist or strike back at authorities or society generally. Equally, media reporting of problems such as substance use was said to cream a 'copy cat' effect.

The Northam youth worker quoted earlier pointed to the provocative effect of media sensationalism in tempting youth to copy delinquent and criminal activities:

> The media, particularly television news programmes, give us high speed chase as a high profile. This is unfortunately because, like glue sniffing, the high media profile engages others in trying the same things and it gives the offenders a degree of status.
>
> I was in Rockingham in the early 80s and that [there] the issue of glue sniffing got a lot of headlines and suddenly, you know, the sales of glue and liquid paper and other similar substances that have been reported in the media, either the sales went through the roof or there were a lot of bottles disappearing off their shelves and the incidence of glue sniffing and other solvent sniffing went higher.

And I haven't got the data to back it up but my reaction is also with the police chases, the high-speed chases is that similar to glue sniffing, when there is increased media attention of a way of bucking the authority or doing something a bit different or a

> particular problem that other people will do the same. And we've certainly seen that in suicides as well, there's a certain copy cat and data backs it up, unfortunately I can't quote where -research, but you know, often when there's a suicide in a community there are a number of other suicides or suicide attempts [RCIADIC Transcripts, Northam, 25 May 1990].

The question of the 'copy cat' syndrome is dealt with in Chapter 14 of this report. Police have asserted to the RCIADIC that sensational media coverage of issues such as substance use, civil disorder and juvenile crime contributes to escalating such behaviour among Aboriginal youth (RCIADIC Transcript, Roebourne, 1990). However, it must be considered that police themselves, particularly senior officers, can play key roles in maintaining cycles of juvenile crime inspired in part by dramatic and sensational media reporting. The role of police as sources of dramatic crime news, and their ability to influence the setting of media agendas about Aboriginal youth is examined elsewhere is this report. The week of sensational media coverage of car thefts and high speed chases that occurred in mid-May 1990, which prominently featured strong statements by police, can be seen as an example of self-fulfilling prophecy. This is not to suggest that the media should refrain from reporting juvenile crimes, but to seriously question the need for them to be splashed across the front pages of newspapers or heading television and radio news reports for a number of consecutive days, particularly if this is believed to cause an escalation of the problem. Material contained in Chapter 18 also addresses this issue.

The cumulative effect of many years of sensational negative reporting is that it is now difficult to find an image more representative of an internal threat to order and well-being than that of Aboriginal youth, who must surely perceive this and feel correspondingly isolated, alienated and persecuted. Aboriginal youth appear to be focused upon as the new breed of 'criminals' from amongst the Aboriginal race. There appears to be little attention paid to the needs and requirements of those few who exhibit 'anti-social' behaviour. Apart from eliminating such sensationalised and often distorted reporting practices, Aboriginal people around the State have put to the RCIADIC that the media needs to reorient its priorities to present more positive coverage of Aboriginal affairs (RCIADIC Transcript, Perth, 1990; Kalgoorlie, 1990; Roebourne, 1990). One such criticism came from the Head of the Centre for Aboriginal Studies at Curtin University:

> Much of it is overtly prejudiced, responding to and reinforcing prejudice and negative stereotypes in the community. It's adding to the array of messages that Aboriginal people receive that their culture's worthless and, at best, criminal. Some papers and television do put the odd positive story across about Aboriginal people but often these come across as patronising [RCIADIC Transcripts, Perth, 1990)].

Positive coverage of Aboriginal affairs can include highlighting Aboriginal achievements in diverse fields, providing in-depth reports on efforts by Aboriginal people and groups to redress social problems and gain control over their lives. Good examples of this can be seen in recent TV series such as ABC's 'The First Australians' and 'Black Out' and SBS's 'First In Line'. The regular GWN programme of Milbindi has been commented upon favourably on every occasion. In September 1990 The West Australian newspaper ran several commendable feature articles including ones on Perth leader Robert Bropho and the Aboriginal struggle for rights and cultural protection (Big Weekend, 8 September 1990), Aboriginal playwright Jack Davis (West Magazine, 1 September 1990), and a double-page background on various Aboriginal cultural and historical issues (West Australian, 11 September 1990). These kinds of articles are in sharp contrast to the sensational and distorted reports of negative crime and disorder incidents that frequently occupy the front pages of Perth newspapers, and, if they are not to serve as token concessions to positive and educational journalism, must become thematic and characteristic of media's approach to Aboriginal affairs in Western Australia. By this means, within the context of the broader role of the media in contributing to the liberation of Aboriginal people from oppression and marginalisation, media can help to improve the self-esteem of Aboriginal youth, to eliminate the association between Aboriginality and negativity, threat, disorder and deviancy.

A number of journalists who spoke to the RCIADIC acknowledged the need to present more positive coverage of Aboriginal affairs, but felt they were constrained by issues such as lack of regular contact and liaison with Aboriginal people and communities, lack of awareness of the background to issues, or were subject to the priorities and agendas set by editors, sub-editors and news directors who may not be as sympathetic toward the need for change (RCIADIC Transcripts, Perth, 30 May 1990, 1 June 1990; Kalgoorlie, 5 June 1990).

One of the salient points to emerge from the above discussion, is the lack of access Aboriginal people have to information that is about their own ways of life, their own beliefs and practices. The next section addresses just one of the areas in relation to the issue of access to, and control over, information and resources.

6.12 ABORIGINAL ACCESS TO AND CONTROL OF INFORMATION

Given the extensive way in which the State has intervened in the lives of Aboriginal people, access to material concerning family histories, which became the 'business' of various government departments, is contained in the archives held at the State Battye Library, in conjunction with the State's Aboriginal Affairs Planning Authority (AAPA). Following the election of the State Labor Government in 1983, Aboriginal access to records which contained their own family details, could be provided to people on 'restricted access' grounds. One of the *restrictions,* is that material which is less than 30 years old, cannot be released without special permission from the AAPA Librarian {prior to 1983, the State Liberal Government placed a 50 year restriction on accessing material).

Aboriginal people have put before the Commission concerns about accessing old records as a way of retaining, identifying, and reinforcing access to family histories. In a submission made to the Commission (RCIADIC Broome, submission, Haebich and Kickett, July 1990), it was stated that 'there are two major sources of information available for research into Aboriginal family history: Aboriginal people and archival records' (p.4). The importance of providing Aboriginal people with greater access to knowledge and information about their own lives cannot be underestimated. Access to knowledge can assist: to reinstate pride in family experiences; enhance a stronger sense of identity; re-establish contacts with family members; reaffirm interaction within broad family networks; revive and maintain Aboriginal traditions (such as marriage traditions); understand the historical background of contemporary personal issues (e.g. long-term unemployment); re-claim ownership of material pertaining to family life; develop resources which can be channelled into the local school curriculum, historical societies and community groups; and enhance research skills which may be useful in the labour market (Haebich and Kickett, pp.2-4).

It is appreciated that there may be sensitive notes, commentaries and criticisms about various Aboriginal families made by independent and individual personnel over the years. However, such comments may be more revealing about those who made them, or about the nature of the policies and attitudes towards Aboriginal people of that time. Whatever the truth, access to the information should not be denied to those Aboriginal people who wish to know about their history and the mechanisms to facilitate this should not be obstructive but sensitive to their wishes (cf. Anemaat, 1989:38-49).

During the processes of my Commission, I found that Aboriginal people do not have access to, and know about, historical records which have been written about their personal lives. Very few have knowledge about contemporary material from surveys, studies or inquiries upon which other people are often putting forward decisions about them and their affairs. Recognising these matters suggests that research into family history can make a significant contribution to the empowerment of Aboriginal people. Not only to knowledge and information for their own family background, but also to the control over that information which, in terms of 'natural justice' Aboriginal people should hold, in order to enable that empowerment to come into being.

In Section 6. 13 1 consider Aboriginal people as producers and sellers of an and craft. The economic and cultural marginalisation of Aboriginal people in this industry is also considered.

6.13 ABORIGINALITY IN THE CONTEXT OF ART AND CRAFT

While this Commission's investigations have indirectly touched on Aboriginal art and craft, it is necessary to comment on this industry as it is potentially one of the ways in which Aboriginal people can become economic producers and sellers of their own cultural items: it is a way in which Aboriginal culture and the wider economy can combine to secure an economic base for various Aboriginal groups throughout Western Australia. In a paper distributed by the Policy and Research, Strategic Development Unit of the Australia Council (June 1990), it was found that half the visitors to Australia (49%) were 'interested in seeing and learning about Aboriginal arts and culture' (p. 1). The research paper also observed that 30% of visitors in the survey purchased Aboriginal arts or 'items related to Aboriginal culture', and that the value of those goods was estimated at $30 million 'most of which accrues as a direct exonomic benefit for Australia' (ibid). What obviously needs to be explored is (i) how Aboriginal people themselves can become more involved in an industry which is currently producing a $30 million annual turnover, according to the 1990 Australia Council Report, and (ii) how Aboriginal people can ensure cultural autonomy and control.

During the course of this Commission the presence of Aboriginal art and craft was observed in most of the prisons. There were motifs painted by an Aboriginal artist on one of the cell walls in the Norseman lockup. This appeared to be the result of the initiative of the Officer-in-Charge. These motifs, by local Aboriginal artists, appear to be respected by those held in custody and no defacing had occurred at the time of the Commission's visit there.

It was seen as a small positive step towards helping those who are placed in custody. There are other police cells that have commenced adopting similar trends and this should be commended. The costs involved with such small ventures would appear to be offset by the initiative taken by the local police and Aboriginal people in response to deaths in custody. The Police Department should seriously assess this initiative. Some of the prisons, where a significant if not majority of the people in custody were Aboriginal had, on occasions, attempted to promote aspects of Aboriginal art and craft. The marketing and income management from the sale of art and artefacts needs to be done by agents or persons who are reputable. This is not to suggest Prisons Administrators are not, but it removes any suspicions concerning whether artists in custody receive the best service and price for their work.

6.14 ABORIGINALITY AS AN UNDERLYING ISSUE

The matter of 'Aboriginality as an underlying issue' is politically complex and crucial. The moral considerations of it are often over-ridden by economic pragmatism and ethnocentric priorities. It can also be side-stepped by a sense of shame, hurt and misguided loyalty. Its complexities need to be seen in the context of unceded indigenous rights, the historical processes of colonisation underlined by the legal fiction of 'terra nullius', the influence of international pressures, and government practices and policies. The influence of the Aboriginal rights movement, whilst popularised around 'land rights', has always involved two major poles. That of unceded indigenous rights and basic civil rights. These concepts are not synonymous, but appear to relate to two separate legal types of status. When Aboriginal rights are advocated, both can easily be confused and blurred, thus making it difficult, at times, to ascertain what it is Aboriginal groups are advocating.

These concepts currently appear contradictory and unreconcilable. Some Aboriginal people have proceeded as citizens without prejudice to their indigenous claims. The Citizenship Act of 1944, with all its demands, is testimony to this.

Attention has only recently been directed toward the complex and sometimes thorny question of Aboriginal sovereign rights with the announcement by the Federal Government of the need to find a means of reconciliation through a treaty or an instrument of reconciliation between Aboriginal and non-Aboriginal people in this country. The development of structural mechanisms that are able to progress this most important matter for nationhood has yet to be developed. It is now further being referred to as a 'process of reconciliation'. The States, Territory and Commonwealth may seek to redefine their power relationships and the opportunity for Aboriginal people to redefine their rights in this context should not be denied. The concentration up until the Government began to consider 'an act of reconciliation' had been on various policies ranging over assimilation, integration, self-management and self-determination. To Aboriginal people these have usually transposed as acts of welfare directed at the improvement of their basic needs as citizens in this country, and aimed at turning Aborigines into replicas of non-Aboriginal people. It is unfortunate that this is how it has transpired over time.

So successful have non-Aboriginal policies been at dividing, marginalising, excluding and controlling Aboriginal people's lives and thinking, that many Aboriginal people themselves do not recognise their own strengths, and that they have unceded rights which need to be politically and morally faced up to in State and Federal arenas. For the assertion of these rights, there needs to be a recognition and fostering of their inherent strengths by Aboriginal people themselves. Non-Aboriginal concepts of Aboriginality, and of maintaining control of an agenda that defines Aboriginal problems and solutions, will not be helpful in resolving the fundamental tension that gives rise to the myriad of underlying issues that lead to custodies, or death in custody, if allowed to persist. Non-Aboriginal people have to overcome, not only their preconceptions associated with Aboriginality, but to an equally challenging notion which has been referred to throughout this report: that of power.

The effects of such dynamics over which Aboriginal people have had little control, or power, has been to create societal destabilisation, cultural modification and degrees of non-Aboriginal acculturation. With this however, there has also been a strong retention or restatement of Aboriginality and identity. Aboriginal people identify with their Aboriginal groups such as Yamaitj, Nyoongah, Wongai, Walmajteri, Yaoro, Ngaangatjarra, Injibandi and so on. Non-Aboriginal people have, unfortunately, often remained victims of their society and culture by considering these complex groups under terms such as 'part-Aboriginal' or 'urban' and 'tribal' Aboriginal. Not only does this miss the richness contained in the diversity of these individual Aboriginal societies and cultures, it is also an injustice which cuts deeply the Aboriginal person who is not permitted to define him or herself. Exploiting this type of ignorance by non-Aboriginal people is likened to the bully who is confident surrounded by his/her numbers, but hollow and cowardly when forced to interface with an individual who will not back down from the pride he/she places in identification as a member of a particular Aboriginal group. The other aspect of this is that it tends to stop new insights and learning, because Aboriginality is already defined and preconditioned to other interpretations by non-Aboriginals through the establishment of stereotypical views built up over the years in the non-Aboriginal world for their purposes.

It would be wrong to consider that all was well and unaffected within the Aboriginal

societies themselves. Laws and protocols that regulated the various Aboriginal societies and cultures have been damaged and severely disrupted by the many aspects of contact and domination by non-Aboriginal people. Their essence has not been irreversibly taken away, although the messages from non-Aboriginal society would want Aboriginal people to believe that. The structures and systems that are meant to govern the 'common good' for 'the community as a whole' have not been entirely grafted onto Aboriginal people's culture and societies. In fact it has always been resisted actively and passively. It has usually been under extreme duress that Aboriginal people have abandoned their own ways, or because they saw and became disillusioned with what was happening as a consequence of intrusion by non-Aboriginal ways among their own people. Some obviously were not even given these extreme choices and others are searching in the straggle for their birthright in the hope of a 'Bran Nue Dae'.

To witness kinship abuse under the influence of alcohol or drugs is a shameful experience for most Aboriginal people. Brothers fighting brothers, cousins, nephews or brothers-in-law, sisters doing the same with mothers, sisters, cousins, nieces and sister-in-laws, old people being stood over and robbed of their pension money or food by their grannies (grandchildren), sons, daughters, brothers, sisters. Abuse being hurled with reckless but hurtful venom at husbands by wives or husbands towards wives. Children being neglected while parents chase the 'good time' or are out gambling. Sexual abuse of the young, and the physical and verbal violence within families themselves are, indeed, not the source of any pride to Aboriginal people no matter what language group we belong to, or where we come from. These and other abuses have become only too common since the unorganised and poorly managed forced transition from the various Aboriginal societies to what was meant to take place with citizenship rights. Aboriginal people must find answers to some of these complex cultural and social problems. Participation in the opportunity of a process of reconciliation, however, may well be a useful way of removing some of the fear and hostility that clouds both Aboriginal and non-Aboriginal societies. In turn, both Aboriginal and non-Aboriginal people obviously need to reconsider the quality of their relationships. All too often failure to reconsider relationships between Aboriginal and non-Aboriginal people, and among Aboriginal people themselves, underlines many of the issues that give rise to the custody of Aboriginal people.

By considering the social and cultural circumstances that prevailed prior to, or just after the death, of some of the people who died in custody, there are very serious and perplexing problems that cannot be readily explained. These are sensitive matters but, in my view, they need to be mentioned. This is not done to blame anyone, but to highlight that there is much to be done about tension, violence and neglect within those sections of Aboriginal society where alcohol use has created its own alien environment that exhibits no respect for anyone. In order to protect the families of those who died in custody, I have changed the names of specified individuals:

- 'Ms S' was arrested at a time when she was allegedly bashing her cousin sister.

- 'Mr R' was allegedly left lying on a railway bridge by his drinking mates.

- 'Mr M' was not allowed back into Milliya Rumurra as he was considered a 'trouble-maker'.

- 'Mr K' was living in an Aboriginal Hostel shortly before he died.
- 'Mr P' died in a cell he shared with his step-father.
- 'Mr W' was allegedly assaulted by another Aboriginal in the cells. This wound led to the infection which ultimately killed him.
- 'Mr K' had served many gaol terms for assaulting his wife, once rendering it necessary for her to have 30 stitches.
- 'Mr G' was not taken to hospital by his family.
- The internal family relationships of individuals with their fathers were also alleged in some of the deaths.

The tragic deaths of those people should not be lost on us, but serve to remind us of serious questions that relate to the meaning of Aboriginality in our societies. If reciprocity and collectivity are to have true meaning in Aboriginal lives, they have to be practised. It is only when these principles are more manifestly clear in both Aboriginal and non-Aboriginal societies, that there will be a diminishing of scepticism and cynicism.

To dwell on these negative aspects of Aboriginal society is not to gainsay the many positive achievements made by Aboriginal people in this State with the widening of the field of opportunity. However, if they were to be glossed over, then some of the underlying issues the Commission was set up to bring to light, would remain hidden and continue to grow as a cancer upon all that is beautiful, wonderful and good in Aboriginal people themselves, their cultures and societies. It would also mean that many non-Aboriginals would never come to understand that there are aspects of Aboriginal societies that are sick and that most Aboriginal people themselves are sick of violence, misery, poverty and continuously being put down and left out. Aboriginal people want to find better ways out of what they know can be a hell on earth for some of their families and relations.

Most Aboriginal people attribute many of the negative aspects in their societies, to the deeds that are done, or not done, when alcohol or drugs or both have the dominating influence. What is often not understood is the way guilt, remorse, shame and lack of respect compound together, and are just as much the ingredients for deeds done ostensibly under the influence of alcohol but not always so that lead to fights, arguments and destruction of life.

Death can appear as the only means of escape from oneself, one's deeds and the perceptions of an uncoordinated mess created by the lack of effective Aboriginal control and conflict resolution systems, as well as misguided non-Aboriginal actions. Where there are conflict resolution mechanisms in place within Aboriginal societies, they can be avoided because of the aberrations created by alcohol misuses and misguided authoritarianism. Where there are no aberrations, Western law does not always provide the required support.

It is easy to blame the victims of this social morass, and lose sight of the systematic approaches that have produced, or even maintained, this type of non-existence for many Aboriginal groups. On a number of occasions, this Commission was told by Aboriginal people that there was no justice to be found in

the non-Aboriginal criminal justice system, its courts, inquiries, and commissions including the RCIADIC.

Psychological and physical violence from alcohol use and drugs (to a lesser degree) seems to manifest itself in a type of fratricide within Aboriginal societies by 'brother killing brother' or 'countryman killing countryman'. There is no evidence that can be succinctly produced to validate this claim. It comes from living and witnessing what goes on in far too many Aboriginal societies. Many who began drinking with citizenship in the 1960s, now abstain. Maybe they know and understand, not only the destruction caused to themselves and their peoples, but they seem also to see a broader picture. That picture shows alcohol playing a part toward further destabilisation and genocide.

Non-Aboriginal people tend to be bound by rules and regulations that seek to control and direct programmes that may provide some remedies to the problems they see in some Aboriginal societies. Aboriginal people often sense that they have little support for their proposals. Getting together to analyse whether there is a real problem or not is what the challenge is really about. If attitudes can be developed to adopt the latter approach, matters that seem hopeless can often be found not so. Some remedies may involve recognition of aspects of Customary Law in respect of punishment. Others involve re-offering opportunities to experience and learn the Aboriginal way as it has survived in its many and varied forms throughout the State. There are other remedies to be offered such as opportunities for education and skills development for employment and participation in non-Aboriginal society.

Ultimately, while considering 'Aboriginality as an underlying issue', it is crucial to address both past and present influences over the lives of Aboriginal people in this State, in order to place in a proper context where that past and present has brought us to today.

I turn now to a further matter in relation to considering contemporary aspects of Aboriginal life. The next chapter is titled 'The Aboriginal Economy'.

THE ABORIGINAL ECONOMY

From research findings put before my Commission, and in receiving evidence from Aboriginal and non-Aboriginal people throughout various conferences and hearings, it became apparent that economic matters are crucial to Aboriginal equity in this State. While this matter is dealt with elsewhere in my report (e.g. in Chapter 11 on 'Economic development and work'), the next section canvasses some of the more fundamental issues.

Initially, it is necessary to place what I am referring to as 'the Aboriginal economy' into a context. The most striking common economic factor amongst those who died in custody is the material poverty of their backgrounds. None of those who died in custody had experienced long term stable employment as material recorded in Chapter 4 details.

Chapter 4 also documents that most of those who died in custody, were from backgrounds which had known various types of severe destabilisation. All had come from families who lived below the poverty line. In common with the significant percentage of Aboriginal families in Western Australia, poverty is a

common factor. For Aboriginal people, like many people elsewhere, the corollary of poverty is powerlessness. Unlike, however, most other economically marginalised groups, Aboriginal people's situation is complicated, and worsened, by long term consequences of dispossession. In sum, poverty and powerlessness arise from causes that are discussed throughout my report. These include: a history of exploitative labour and community relations; a lack of education and resource development opportunities; a lack of civil, legal and industrial rights; and the lack of status accorded to Aboriginal history and culture in the education system.

Significantly, like Aboriginal people in most pans of this country, Aborigines in Western Australia have been more concerned with survival than with developing strategies to combat economic inequality and to pursue economic development. Also significantly, while much of the wealth brought into particular regions throughout this country has been sustained by the consequences of Aboriginal dispossession throughout colonisation, and Aboriginal participation (such as looking after the land, labour in pastoral, agricultural, marine and domestic industries), for reasons of a structural kind, Aboriginal people themselves have been primarily excluded from being involved in the development process. In the present day context, this exclusion can readily be extended to Aboriginal contribution to local economies, such as that which exists in rural towns which have a high Aboriginal population and where funds from Social Security entitlements go into the hands of local non-Aboriginal entrepreneurs. Section 17.2 on the 'taxi economy' deals with just one example of this. (See, in particular, Crough, Howitt and Pritchard 1989 for an excellent analysis on this matter in relation to Central Australia.)

While it is not within the scope of my Commission to examine this issue in great depth, Aboriginal inequity requires urgent recognition and attention by Government at Local, State and Federal levels. If the primary cause of Aboriginal poverty is the inequity of their situation within society, it is necessary to find immediate and practical ways to redress the situation. It is also necessary to explore the issue of compensation for labour, and to inculcate an awareness of Aboriginal rights in relation to opportunities for paid employment. Forms of employment need to be seen as those which are culturally and regionally appropriate to Aboriginal needs and aspirations, a point I discuss further in Chapter 11.

In relation to employment, Aboriginal people constantly reported to the RCIADIC that they wanted access to employment opportunities. For instance:

> This is one of the most racist areas I have lived in. The Nyungar people were generally treated as second-rate citizens, and were never really given the opportunity, the equal opportunities, alongside their white counterparts in regards to employment and the general acceptance of being a human being [RCIADIC Transcript, Gnowangerup, 1990].

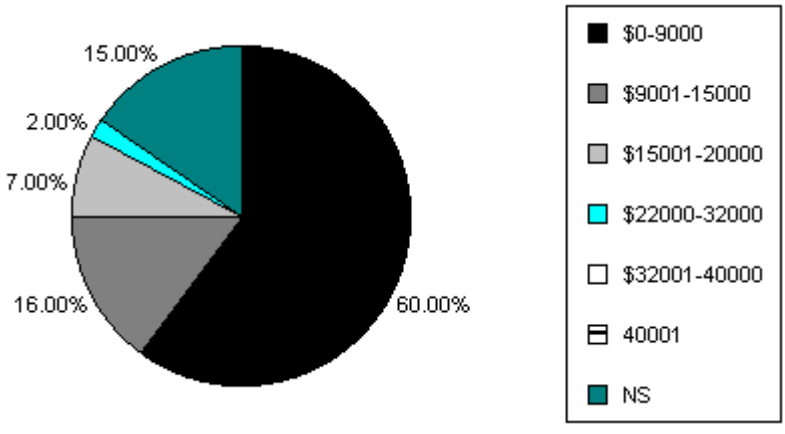
As noted in Chapter 2, it was never in the interest of European expansionists, either for mission or commercial purposes, to treat Aboriginal people with respect or provide them just recompense for their labour. This lack of recompense has meant that there is a real economic backlog in relation to Aboriginal people and equity. The disparity which often exists in government policy and practice provides cause for alarm in a number of areas. For instance, as demonstrated below 'citizens entitlements' (e.g. use of public services and amenities) comes out of the 'Aboriginal budget' rather than from the 'public purse', as it does for all other Australian citizens (cf. Crough, Howitt & Pritchard 1989). Referring to Aboriginal people as 'Australian citizens' adds to, rather than detracts from, their rights as

indigenous citizens of this country. This point will be further addressed, but I now describe some of the economic realities for Aboriginal people in this State.

7.1 EQUITY AND DISTRIBUTION

Significant findings that emerged from our research indicate that: the majority of Aboriginal people continue to live below the poverty line in this State (e.g. according to Fisk 1985:131, Aboriginal people in Perth in 1981 were in receipt of the lowest income per adult, at $4,300 per year, out of all populations in capital cities throughout Australia). The following graph provides information regarding Aboriginal income in this State in 1986.

Graph 4: Aboriginal income, Western Australia



As the above graph reveals, most Aboriginal people lived below the poverty line. The reality of poverty is further portrayed in the following comment to me, and the table below which indicates that 56% of Aboriginal people are represented in the lowest income bracket:

> This led to an incident that seems funny in hindsight: Two young fellas stole a large knob of polony from the supermarket and the security guard attempted to apprehend them. They panicked and whacked him with the polony and they were subsequently charged with assault. The polony was worth about $5 and they ended up going right through the court process. A humorous story but it indicates what can happen when people are hungry [RCIADIC Transcript Northam, 1990].

Table 8: Aboriginal family income, Western Australia, 1986. Families with dependents

Family Income $	Two-Parent %	One Parent %
9000	7.5	49.8
9001-15000	26.9	27.6
15001-22000	25.6	12.2

22001-32000	22.0	6.9
32001+	18.0	3.7

Source: ABS Census of Population and Housing 1986. Unpublished tables.

Being on such a low income clearly means that many people do not have an adequate income to cover basic food and shelter. While contingencies such as these are often supported through Aboriginal practices (e.g. securing bush food, sharing shelter with kin) such supports cannot always be relied on, nor, in attempting to maintain day-by-day survival, is it appropriate that Aboriginal people should have to be dependent on such resources, especially from family who are often in similar circumstances.

An example of the economic difficulties sustained by Aboriginal people in this State is revealed through research undertaken by my Commission. Following a survey conducted in the Pilbara and Kimberley regions, it was found that as well as being low income recipients, people often have to pay expensive prices for essential foods. The survey also showed that people on the same level of income, often have to pay higher prices for the same goods. For instance, people in a coastal community in the Kimberley pay $99.70 per week for the same quantity and type of goods that people in Roebourne are required to pay $159.97 for. Appendix 7, containing raw data from the survey, makes available further details. Further, the survey figures need to be seen in light of the low weekly income people receive. In addition to day-by-day survival needs, it is also important to stress that most Aboriginal people do not have an adequate economic base. Material contained in Chapter 6, especially in 6.4 where land is discussed, and Chapter 11 on 'Economic development and work', illustrate my meaning here.

While the issue of Essential Services is detailed in Chapter 17, the following table illustrates how the services and utilities taken for granted by the general society, are administered and funded for Aboriginal communities. These services are in the main provided by various levels of Federal, State and Local Government. The revenue for service provision is provided primarily through taxation, rates and, for some areas, user pays.

Table 9: Comparison of services and utilities

SERVICE UTILITY	**RESPONSIBLE AUTHORITY**	**PAYMENT**	**RESPONSIBILITY OF ABORIGINAL COMMUNITIES**
Government/ Administration	C'wealth/state/local	rates/taxes	ATSIC
Utilities			
Power	state	personal/ subsidised	ATSIC
Water	water	personal	ATSIC
Roads	C'wealth/state/local	fuel/vehicle tax	
Refuse disposal	local	rates	ATSIC/CDEP
Housing	Cwealth/state/private	rents/subsidy	ATSIC
Commerce/food,. clothing, etc	private	personal	ATSIC
Services			
Health	C'wealth/state	Medicare	ATSIC/state
Education	C'wealth/state	taxes	state/private

Transport	state	taxes/fares	na/private
Community Support			
Family	C'wealth/state	subsidised	
Children & youth	C'wealth/state		
Aged	C'wealth/state		
Recreation	state/life		
Legal	state/private	free/personal	
Disability	C'wealth/state		

SERVICE UTILITY	RESPONSIBLE AUTHORITY	PAYMENT	RESPONSIBILITY OF ABORIGINAL COMMUNITIES
Benefits/Citizen			
Unemployment Benefit	C'wealth	tax	ATSIC
Pensions	C'wealth	tax	DSS
Low income support	C'wealth/state	tax	DSS
Employment			
Economic enterprises	state/private		
Cultural/Religious Institutions			

(DSS = Department of Social Security.)

If the provision and status of each of these services is considered in terms of Aboriginal access on discrete communities, it is found that there are major deficiencies. These deficiencies manifest a form of powerlessness for Aboriginal individuals and communities. That powerlessness is reflected throughout the following account, recorded from Aboriginal people in the south-west of the State. This account, has been provided in detail because it illustrates not only insights into Aboriginal life in an urban setting with regard to matters such as housing, alcohol, unemployment, and reliance on family networks, but also some of the economic realities which are sustained by many Aboriginal people in a present day context.

7.1.1 Economic reality and 'Nan and Pop'

'Nan' and 'Pop' were both raised in the rural south-west where their parents and themselves were used as cheap farm labour. Both achieved only very basic literacy standard to grade three level. Presently, both are non-drinkers of alcohol. However, Pop previously was a heavy drinker, but ailing health required him to abstain from consumption of alcohol. In 1970 they moved to Perth for the following reasons:

> Pop went on long service leave from the Shire and returned to find his job given to a white man;
>
> Many other relatives had moved to Perth when it became difficult to find farm jobs due to the rural depression;
>
> To secure employment, their sons moved to Perth and were residing in a working boys hostel in Perth which was controlled by the Native Welfare Department;
>
> Pop thought he might secure permanent employment in the city to maintain his family.

Nan and Pop have six sons whose present age range is 36 to 43. They have a total of twenty three grandchildren ranging in age from 7 to 22.

They have four great grandchildren with a further one expected. One son died aged 32 leaving two small children whom Nan and Pop assumed responsibility for because their mother developed a dependency on alcohol which was considered by family to be to the detriment of the children's welfare. Another son had five children from his first marriage (wife died in car accident) and three children from his second marriage (ended in divorce). Nan and Pop also assumed responsibility for rearing seven of these children from an early age. This time because the son developed a dependency on alcohol which once again Was considered by family to be to the detriment of the children's welfare. This son is currently unemployed and in receipt of unemployment entitlements. He is also an alcoholic.

The other four sons have families and regular employment. Only two completed year 10 and the rest left school at year 8. One son subsequently acquired a university degree at the age of 36 via an employer sponsorship and presently occupies a management position. He had achieved junior certificate level at year 10. Another son acquired an apprenticeship and became a qualified housepainter, the eldest is a clerk and the youngest a labourer. Of the six sons, four have been arrested with two of these being sentenced to terms of imprisonment.

Fourteen of the twenty three grandchildren are presently in school. The nine that have left school range in age from 15 to 22 years. One withdrew early due to an intellectual handicap, two were expelled, another withdrew after year nine, one withdrew due to early pregnancy and four completed year ten. One of these nine earns a salary as an Aboriginal education worker, two receive supporting parents benefits, and six are in receipt of Unemployment Benefits. Apart from the two sole parents, five grandchildren are in de-facto relationships, one of which is an expectant parent. One has her own Homeswest accommodation, the other two are transient between relatives. Three, including the handicapped one with two dependant children, are residing with Nan and Pop. Two are residing with their parents, and one resides with his de-facto who has a flat.

Nan and Pop's fortnightly household budget is as follows:

F/nightly Inc. $			**Expenses $**
335	Nan (Aged	105	Rent
245	Pension)	300	Food
200	Pop (Aged	50	SEC
34	Pension)	50	Phone
	Board	50	Transport
	2 dependents	70	Schooling
		50	Clothing
		20	Medication
		50	Hire purchase
		40	Entertainment
Total		Total	BALANCE
$814		$785	$29

This budget does not allow for unplanned contingencies such as funerals,

transient relatives, school excursions and activities, extended family crises, and credit payments.These contingencies from time to time prevent, or delay, regular financial commitments being met. Insufficient income has forced a continuous reliance on relatives and welfare organisations to provide a 'top up' in order to survive from pay day to pay day or to meet any other necessities. Generally, final days leading up to the payday mean a diet of cheap meat and bread. Social Security payments to two young adult grandchildren are received on the alternate week to that when Nan and Pop receive their pension. Within two days of that payment being received, the total is spent on either alcohol, other entertainment, clothes, taxis or food. A heavy reliance is then placed upon the financial resources of Nan and Pop during the period between when they become broke and the next pay day. Some ten or more days. In addition, Nan and Pop provide food and support to the friends and peer relatives of the grandchildren who come to stay from time to time. There is a chronic lack of money to acquire basic household necessities such as furniture so reliance is heavily placed upon welfare or charity organisations for these things.

Foster allowance had been paid to Nan and Pop up to 1982. However, Nan had informed the Department for Community Services in an interview that her alcoholic son had been working (albeit casual employment) and that he had given her some money for the keep of the children. Since then the Department has denied any further foster payment to assist in the care of the grandchildren. Repeated approaches by Nan have been to no avail. Ironically she has been recently advised to reapply for the payments but is so disillusioned by the whole process that she does not feel like going through it all again. This sort of response is not unusual among Aboriginal people for whom approaches to welfare are often constrained.

With regard to heating, Nan and Pop have lived in their current Homeswest house for over 13 years. Since the commencement of tenancy the dwelling has only received a replacement door handle (for which Homeswest demanded payment). Recently, with the onset of winter, once again a heater became an urgent need like last year. Chronic illnesses like asthma, arthritis, bronchitis and susceptibility to the cold demanded the need for a reliable heating source.

Nan and Pop's Homeswest residence is in a very dilapidated state. Unsealed caves near the house roof allow cold air to penetrate throughout the rooms. The shower leaks through the wall into the adjoining bedroom. Brick mortar has become chalky causing bricks to become loose. The roof is sagging both at the tile level externally and at the internal ceiling level due to drainage malfunction. The internal walls require painting and plaster work. As a consequence it does not provide much protection from the elements. This is particularly so during the winter months when their health is affected considerably. Nan and Pop's bedroom is virtually an icebox. Being in possession of only a small one bar heater they could only stay warm by either sitting very close to the heater or by remaining fully covered up in bed. On one occasion, Nan had sat too close to the heater and received bums to the front of her legs. The other alternative available to them, was being dependent on a wood supply and to sit next to a fireplace in the lounge room amongst the noise of television and children. A fireplace that generated little warmth because of the unsealed eaves.

Access to a regular wood supply is a problem. There is no transport at their disposal in order to get wood. Sometimes relatives provide wood. When the household was without wood, the one small bar heater served the whole household. The Aboriginal Medical Service became involved with Nan and Pop's situation, and wrote to Homeswest advocating that a pot bellied stove be installed. Homeswest responded by informing them that it was not Homeswest policy to provide pot bellied or slow burning stoves for city tenancy homes, as they were only available to country tenants. In the country the stoves were installed and a small amount was added to the rent to pay for it. Homeswest eventually installed a gas heater in Nan and Pop's house. This meant that if no wood was available gas heating could be used. It also meant a significant rise in power costs which Nan and Pop would have to meet out of their income which was already stretched to capacity. The irony of the whole heater episode is that whilst it was installed to counter Nan and Pop's discomfort with the cold weather, Pop was unable to benefit from it because the gas inflamed his asthma condition.

With regard to diet, Nan's blood sugar level is far too high. The Aboriginal Medical Service urged Nan to go on a special diet in order to reduce the level of sugar. The special meals could be delivered daily to Nan at a cost of $150 every three months. On her behalf the AMS sought assistance from the Department of Community Services {DCS(1)] to meet the cost associated with this service. They responded by stating that it was not their policy to fund such a service and to do so in this instance would set a precedent for similar requests. Lack of a response from the Department for Community Services to the request has meant that Nan's limited finances dictate a diet that can accommodate all members of the household. Basically, a diet consisting of plenty of red meat.

The eldest daughter of the alcoholic son now has two sons of her own aged 2 and 3. She suffers from a condition of intellectual handicap. Her education was provided in special schools. She has had two de-facto relationships. Each time the partners were addicted to alcohol and tended to use her income to meet their alcohol needs. Nan and Pop always stepped in and brought her back home so that the grand-daughter and her children could be cared for properly. Nan receives no financial assistance for this. Additionally, the 3 year old son of the intellectually handicapped grand-daughter has a speech impairment. He can only communicate by kissing, noises and gestures. Twice per week he attends speech therapy. Nan and Pop have to pay $10 per week for transport to and from speech therapy.

The floor coverings, after 13 years became dilapidated and worn. In some of the rooms they were so bad that they had to be removed. The Chairman of the Aboriginal Housing Board was approached by Community Services representative, but the Chairman failed to respond to Nan. A relative assisted Nan, but was finally told that the policy of Homeswest was that the Department only had responsibility for floor covering of cement floors. Other floor covering was the responsibility of the tenant. Yet, Homeswest has installed a driveway which nan and pop have no use for because they don't have a car. Pop couldn't seem to understand how they [Homeswest] were prepared to install this but not prepared to deal with the issue of bare floors. The bare floor boards are hard to keep clean and increase the dust which dramatically affects Pop's asthma.

A few of Nan and Pop's grandchildren are also becoming deeper involved in drugs and the culture associated with it. They have been known to assist friends in the actual sale of drugs which enables them to partake in its consumption without having to find money to pay for it. From time to time teenage and young adult grandchildren come home drunk with others, and become boisterous, aggressive and often fight amongst themselves. Sometimes Nan is forced to call in the police to stop it which can result in arrests. Police have noticed this activity. The grandchildren have been labelled as 'troublemakers' by police. As a consequence police are giving them a fair amount of attention.

One afternoon, recently, four officers (in plain clothes) raided the home of Nan and Pop. Two officers went through the front door (which was open) and two came through the rear door. They did not knock and identify themselves. Instead they caught Nan and Pop in the kitchen having a snack. They asked for a grandchild who was in the toilet at the time. They took him to his room and searched it for goods he was supposed to have stolen. No search warrant was produced. They then took the juvenile down to the Police Station for questioning. Nan and Pop were not asked to accompany the police to be present for questioning of the juvenile. At the station the youth stated that he was punched around and asked to own up to a number of break and enter offences. He admitted to one and signed a confession prepared by police so that he could get out of the station and away from the beatings. The ALS advised him to plead guilty. No follow-up action was taken by the family.

Each time a grandchild is arrested Nan and Pop assist with matters such as bail. Each time a grandchild is due for court appearances they are reminded by Nan and both grandparents are present in court to provide support. Their age dictates that they be escorted to the court building so dependency on taxis or sons becomes necessary. No support is provided by any agency in this area of transport.

Some government authorities do recognise that Nan and Pop require help. The Home and Community Care programme provides relief to assist Nan and Pop in some household duties at least one day per week. The Silver Chain Nursing had provided a reasonable service some years ago. The helper provided had to leave the organisation and no replacement was provided. Southcare (a charity agency) wanted to assist in advocating for the service to begin again. However, after a couple of months the AMS offered to provide the service obviating the need for the Silver Chain Nursing involvement. The AMS worker involved was in fact a niece of Nan and Pop which appeared to make it more attractive. The first time she came, little work was done and there was confusion about what she should do. She did not like to do the washing due to the faulty washing machine. She did not like to clean the floors due to them being uncovered.

The skill level of Pop (the main breadwinner) meant that he could only be employed in labouring or jobs that required only basic skill (as acquired on the Shire or the farm). The sons were only able to gain employment in the city as both parents and sons were affected by the rural depression and racial prejudice. Further, their educational standard meant that the majority of the sons could only be employed in jobs which required relatively low skills and attracted only basic wages. Low income added to the sheer

volume of basic needs brought about by family, social, cultural, and technological factors, ensures that Nan and Pop have little choice about matters to do with lifestyle such as locality, enterprise, health (including diet and illness), and education.

In relation to the grandchildren it would appear that, comparatively speaking, very little has changed since Pop's father's days. Particularly in terms of skill and literacy level with only marginal improvement to living conditions and employment opportunities. The families' unsuccessful attempts to access the services provided by authorities involved in housing, employment, aged care, handicapped care, legal aid etc, is indicative of either poor advocacy skills within the family, or incompetence flavoured with racial prejudice on the part of the civil servant. The family is then reduced to a day to day existence with no hopes for the future. Government agencies themselves appear ready to only apply the laws that will not bring attention to their own deficiencies. The number of beads in the household are conveniently ignored even though it is a direct contravention of the tenancy agreement.

Throughout the discussion Pop often referred to the fact that because he had worked all his life surely he was now entitled to some things without having to exert energy in justifying an obvious need. Nan expressed her consent to this sentiment by nodding her head in agreement. Pop stated that the constant need to heckle and hassle for basic services or entitlements make him 'bitter'. Presently Nan and Pop are engaged in negotiating services to address their medical, housing, child support, an account for great grandchild's speech therapy and services to assist their son who is recovering from an incident of domestic violence in which he was severely burnt. From all accounts it seems that very little service is forthcoming to assist them to deal with any of the adversities in their life, unless they exert an enormous amount of energy and endure a lot of stress in the process. For example, the Department for Community Services was contacted regarding the non-payment of foster rates to Nan and Pop. However, little information was forthcoming except advice that the Foster Rates Review Panel had declined the submission.

Nan and Pop feel that if things keep going the way they are there isn't much hope for the future. Through their own personal encounters with non-Aboriginal people and systems they have adopted a pessimistic outlook. Nan and Pop were afraid to move away from the house whilst it was being painted for fear of not being 'let back in'. As a consequence they elected to set up a living area out in the backyard during the daytime. The fear was due to Homeswest recently putting pressure on them to move into a pensioner unit. However, Nan and Pop refused stating that if they couldn't house their grandchildren they would end up homeless and inevitably on the streets which leads them to stealing food and other things and they were not prepared to let that happen. Nan and Pop believe that if they don't support the grandchildren then no-one else will [RCIADIC, research notes, September 1990].

Essentially, Nan and Pop's situation is a clear example of the anomaly that exists for Aboriginal people between income received, and fortnightly expenditure. Nan and Pop are not alone in that situation and, as the detail provided in their account reveals, economic realities of one kind impinge on another. One of the more damaging views which are often held about Aboriginal people and Aboriginal

affairs, is that Aboriginal people 'get heaps' (see especially Chapter 8). The above illustration challenges comments about this view. In the next section, I briefly comment on some of the 'myths about funding'.

7.2 MYTHS ABOUT FUNDING

As noted in Section 7.1, by looking at the source of monies essentially contributed by Aboriginal people into local economies, and also looking at funding which is extracted from the 'Aboriginal budget' that actually gets diverted to the maintenance of essential services, there are a number of myths concerning Aboriginal funding that need to be challenged. The Government appears to be aware of the situation. For instance, in the opening paragraph of the State Department of Employment and Training's (DET's) response to this Commission's formal questions addressed to that Department, they advise:

> The ability of Aboriginal people to make the same life choices as other Australians rests above all on their participation in the economy and this in turn depends amongst other things upon their participation in education... [DET response to RCIADIC, July 1990].

From evidence put before my Commission, I would suggest that there are still some urgent matters in this regard that need to be further considered and supported (see for instance material contained in Chapters 11, 12, 13, and 17).

Additionally, in the budget allocations for 1990-91 the Federal Government proclaimed that it intended to spend $542.24 million on the Aboriginal and Torres Strait Islanders population. What is not clearly pointed out is that $433 million of this amount is for the provision of essential services and the Community Development Employment Programme (CDEP). There is an allocation also of $22.4 million for Housing Loans, which will provide for, at the most 224 houses in the current market place. Art and Culture merit an allocation of $3 million and the administration of ATSIC $10 million. It would therefore appear that in reality most of the Aboriginal funding is contributing toward essential services and entitlements. More than three times as much is spent on administration than matters directly related to Aboriginal culture and its maintenance.

7.3 ECONOMIC ENTERPRISES

Largely as a result of a redirection of Federal Government policy toward attempting to improve the self-sufficiency and self-reliance of Aboriginal people, and subsequently, with the formulation of the Aboriginal employment and development policy, there has been a new range of programmes developed aimed at assisting Aboriginal people to develop their own enterprises. Some writers (e.g. Altman, 1990), suggest that Aboriginal enterprise development is the solution toward obtaining economic equity. However, what has emerged during the course of the Commission's inquiries, is that the development of Aboriginal enterprises is a complex and controversial matter. For instance it has become clear that the objectives of owners in starting a business, or enterprise, are not necessarily commercial in orientation. One example which has been put before the RCIADIC is that of the 'Turkey Creek Road-house', otherwise known as Canila Pty Ltd. In evidence provided by the State Manager of ATSIC on behalf of the Warmun community, who reside at Turkey Creek a community 150kms west of Kununurra,

it became apparent that the Warmun Community Inc. was funded by the Aboriginal Development Commission (ADC), the Aboriginal Enterprise Company, and a private business person for a total of $600,000. The prime purpose for purchasing the enterprise was because the previous owners had made application for a liquor store licence at the local road-house. Intention to provide the licence to the road-house was made known to the members of the Warmun Community, who are located 2kms away. Members of the community totally rejected the idea of the liquor licence proposed by the roadhouse, and were successful in their opposition. Consequently the liquor licence application did not proceed (see correspondence from ATSIC to RCIADIC, dated 25 June 1990).

A similar example occurred at Fitzroy Crossing, an area in the south-west Kimberley where 95% of the population is Aboriginal. Again according to advice provided by ATSIC (ibid), it is clear that the intention for purchasing a local hotel and supermarket in 1989 was primarily based on social and economic reasons, rather than purely commercial grounds. Purchase of the hotel is a 50/50 joint venture with a Perth business person. It is interesting to note that 'due to the involvement of the management liaison group (comprised of local Aboriginal people) ... since taking possession of the Fitzroy Crossing Enterprises in November 1989, the businesses have traded profitably and above budget' (ibid).

Pastoral enterprises are another area where Aboriginal people wish to participate and indeed, as observed earlier, Aboriginal labour primarily developed the pastoral industry in this State. Many Aboriginal people have racial, cultural and historical ties with stations where they lived and worked for generations before the introduction of the Federal Pastoral Industry Award in 1968. In addition, mechanisation and fencing scaled down the need for labour, and ultimately led to Aboriginal people being removed or evicted from stations. However, throughout the latter part of the 1980s there was change on this front, and in 1989 three stations in the Kimberley were purchased and transferred to Aboriginal Community Groups: Louisa Downs, Bohemia Downs and Mt Pierre. In preparing documentation for Government with regard to particular Aboriginal interests, it was observed that, 'Aborigines of the area, predominantly those of middle age and older, say that they want work for themselves, their children, and their children's children, that is some stake in the economic future' (Arthur, 1986:14).

Given the material in the preceding section, and that which went before it, it is apparent that Aboriginal involvement in the economy can be seen to be a complex one. At one level, and in some circumstances where the Aboriginal population is high, Aboriginal people can be seen to be contributors to the local economy, yet marginalised by it. At another level, Aboriginal people remain in a constantly impoverished situation, such as that expressed through the reality of 'Nan and Pop's' lived experience. At yet another level, Aboriginal people, as indigenous citizens, are denied access to services that the rest of the Australian population takes for granted (this point is considered again in Chapter 17). Further, there are ways in which Aboriginal equity is starting to emerge, through situations that are generated through economic enterprises over which Aboriginal people have major control. While these and other matters are further explored in my report (e.g. economic development and work in Chapter 11), I now turn to what, I believe, is one of the most critical underlying issues facing Aboriginal and non-Aboriginal people in this State: that of race relations.

RACE RELATIONS OF AN ABORIGINAL AND NON-ABORIGINAL KIND

> ... the survival of Indigenous peoples will depend on a fundamental change in government policies and practices [Working Group on Indigenous Populations: Seventh Session, 1989:73-74].

If it is accepted that much of the discrimination and social difficulties faced by Aboriginal people, including high imprisonment rates and deaths in custody, are in part due to community attitudes toward them, then it is necessary to inquire how these attitudes are formed. We need to know about the kinds of images and information concerning Aboriginal people that are circulating in society, and how these might influence the thinking and actions of individuals and institutions toward issues that affect Aboriginal life. Firstly, it is useful to note evidence of the way many non-Aboriginal Australians see Aboriginal people and issues.

The inculcation of non-Aboriginal values and life-styles has always been integral to the political and economic history of Western Australia in relation to Aboriginal people. This largely occurred through the enforced removal and resocialisation of Aboriginal children from their natural families, and the assumption that the protestant work ethic should be imposed on Aboriginal people as they were made to serve as a labour force for European interests.

Comments contained in the work of Stafford (1988) exemplify many of the notions about Aboriginal people maintained by non-Aboriginal people in this State, notions which have been recorded throughout various RCIADIC conferences, where matters to do with race relations were often not far from the surface. A quote from Stafford (1988:147-148), recorded from a manageress of an hotel in Kununurra in Western Australia's north-west in response to a request for accommodation for participants in an East Kimberley Impact Assessment Project meeting, captures the essence of many non-Aboriginal attitudes toward Aboriginal people:

> We had a bad experience here earlier this year. There was some big meeting, a conference or something, and we took telephone bookings for accommodation. The whole town was booked out by some people from Canberra. We didn't have one room spare. Then, all these blacks turned up and some whites too ... Well, we didn't know what to do. Fancy having blacks staying at your place. It's not that I'm prejudiced or anything but you just never know what to expect from them do you? ... Actually they were quite well behaved. I thought they'd be drunk and bringing gins and all home but they didn't.
>
> Anyway there was nothing we could do, so I thought, well, I'll just have to wash the curtains and bedspreads when they're gone and disinfect the place.

Views such as the above are concerned with the way in which non-Aboriginal people maintain images about Aboriginal people and their lifestyles. The following material develops this point further.

8.1 ABORIGINAL IMAGES IN WHITE MINDS

In 1984 the Federal Government commissioned Australian National Opinion Polls

(ANOP) to research community attitudes toward Aboriginal people and issues. ANOP's report delivered in January 1985, entitled 'Land Rights, Winning Middle Australia', painted a bleak picture of a nation with scant understanding of the position of its indigenous citizens.

> The attitude situation in white Australia is quite monstrous; the problem is not that white Australians have little sympathy for or appreciation of the plight of Aborigines; rather the problem is that white Australians actually regard Aborigines as over privileged, in receipt of overly generous Government handouts, and living on the benefit of undeserved concessions [ANOP, 1985:14].

The report presented evidence that the views and understanding of average non-Aboriginal Australians about Aboriginal affairs issues were characterised by the following:

- no widespread understanding of the special significance of the land and 'only a rudimentary knowledge of sacred sites [p. 17];
- a lack of sympathy for Aboriginal people and lack of appreciation of their social problems [p. 17];
- no depth of understanding of Aboriginal culture [p. 18];
- 'real' Aboriginal people 'were considered to be those full-bloods living a traditional tribal lifestyle' [p. 13];
- ‘positive' views about Aboriginal people that do exist largely 'stem from the traditional stereotype of the noble savage' [p. 19];
- alcohol abuse is seen as the main problem confronting Aboriginal people before other perceived problems such as chronic unemployment, poor education and lack of self-respect [p.16];
- Aboriginal people are perceived as a 'privileged group' and as 'suffering from a hand-out mentality' [p. 14];
- a rejection of 'any historical right to land as prior owners/occupiers' and 'compensation deriving from guilt over white settlement and subsequent mistreatment' [p.22].

Views similar to those expressed through the ANOP survey from members of the 'general public', are reiterated throughout this report (e.g. Chapters 5, 13, and 18).

Racial discrimination against Aboriginal people is not new (cf. Human Rights Commission Occasional Paper No. 15, 1986). Racism can be shown to affect virtually all aspects and areas of Aboriginal existence. Racism is historic and entrenched, but so too is indifference. That form of indifference, commented on at the commencement of this report (p.2) is also characterised by one of my fellow Commissioners, Commissioner J.H. Wootten, AC, QC, who, in his report on the death of Mark Wayne Revell, observes:

> How many depressed or disturbed young people must die before Governments provide the funds to carry out (the) recommendations? [

1989:15].

Indifference and discrimination against Aboriginal people is the outcome of colonisation and marginalisation, accompanied by attitudes of superiority and by a projection of Aboriginal people as inferior and over-indulged by government. Projections of inferiority tend to often exclude Aboriginal people from participating in the dominant society, while also serving to disallow meaningful contact between Aboriginal and non-Aboriginal people. There must be social change or more young people will not meet anything like their full potential. Part of that change is immediate attention to race-relations in this State, and one of the attempts to bring about change might be through the Incitement to Racial Hatred Bill.

8.2 INCITEMENT TO RACIAL HATRED BILL

The purpose of this section is to provide some comments and a broad statement of principle in respect of this Bill. The perceived need for an Act prohibiting and sanctioning offences calculated to incite racial hatred in Western Australia developed out of concerns about a vicious poster and graffiti campaign against Jewish, Asian and 'coloured' people in Western Australia. This racist campaign had become progressively more apparent in the years leading up to the establishment of a Law Reform Commission reference on incitement to racial hatred, which resulted in a report in October 1989.

A Bill for 'an Act to amend The Criminal Code to create offences relating to racist harassment and incitement to racial hatred and for connected purposes' has been drafted. A preamble of the Bill has since been put to Parliament and is, after amendment, about to be re-introduced to Parliament in the next sittings.

My Commission, like the Law Reform Commission Chairperson, Moira Rayner, does not necessarily believe that Western Australians are more racist than the population of any other State, and it is encouraging to note that Law Reform Commission research:

> has shown a refreshing resistance to and repugnance for the messages contained in the posters [Moira Rayner, Law Reform Commission Chairperson in a speech to WACOSS on 20 November 1989].

However, what has become apparent is that Aboriginal people are daily exposed to actual and subtle displays of racism which stop short of such things as poster campaigns. Racist poster campaigns were waged against Jewish, Asian and 'coloured' people because those groups actually present an economic challenge to the status quo. Aboriginal people are not so perceived. Clearly, when the Land Rights 'controversy' was taking place in this State after the findings of the Aboriginal Land Inquiry were made public, Aboriginal people were perceived as an economic threat to the mining monopolies and as a result were crushed by an extremely ill-founded advertising campaign. Arguably, the reasons that this State is now debating an Incitement to Racial Hatred Bill, are that:

(1) the people engaging in the perpetration of vicious racist propaganda are powerless enough to be capable of being legislated against;

(2) the people against whom this activity is directed, are powerful enough to lobby and campaign for the inception of the Bill (this is not

in any way to decry their right and indeed obligation to do so).

Unfortunately, neither of these features characterised the debate about the land tenure matters in this State (see discussion in Chapter 6). In the first place, the groups galvanised against Aboriginal people comprised the economic engine of this State and Aboriginal people were reduced to powerless pawns by the unification of the State and capital interests. As to whether that campaign promoted or incited racial hatred, one only has to view the results of the ANOP study undertaken after the campaign to conclude that that was, in fact, considered the case.

At the time of the circulation of the Law Reform Commission Discussion Paper, the only Aboriginal organisation to respond by way of submission was the Aboriginal Legal Service. This is probably appropriate given the fact that the paper was mooring legislative change, but it is interesting that other organisations did not see themselves sufficiently affected by the proposals to provide their insights to the Law Reform Commission. It might be that the Discussion Paper was not widely circulated amongst Aboriginal people, but it is impossible to be sure of the reason.

At the time of the discussions about the issues underlying the perceived need for a Bill there were three suggested options:

(i) no change to the legislation;

(ii) implement the present law effectively;

(iii) amend the law to address the issue specifically for the purposes of sponsoring prosecutions.

The Criminal Law already covers such activity as the use of threatening and insulting words. This is discussed in the section on Aboriginal/Police Relations. It also addresses poster billing and graffiti, even though the intention of the legislation is to protect private property. Ultimately, in its report, the Law Reform Commission recommended that the Criminal Code be amended to:

> outlaw certain kinds of racially inflammatory activity [Incitement to Racial Hatred Report, 1989: 16].

The offences to be proscribed were possession and/or publication or display of racially inflammatory material - namely material which was threatening, abusive or insulting - with a view to promoting hatred of an identifiable group and possession and/or publication or display of such material if it is intended or likely to cause harassment, alarm, fear or distress in a group.

The Law Reform Commission found there was a 'high degree' of community acceptance of the suggested legislation. Additionally, the offences as proposed by the Law Reform Commission were not perceived to 'extend the thresholds by which speech is regulated under existing law' (Moira Rayner, 20 November 1989 to WACOSS). People are entitled to freedom of speech but that must be balanced by the rights of others to a:

> dignified and peaceful existence free from racist harassment and vilification [ibid].

The amended form of the Bill is now being re-submitted to Parliament. The rifle of

that Bill has been changed from Criminal Code Amendment (Incitement to racial hatred) Act, to Criminal Code Amendment (Racist harassment and incitement to racial hatred) Act. The amendments to the Bill are arguably capable of making it more difficult to pursue a legitimate complaint. The fact that 'identifiable group' has been reduced to 'racial group' (see Section 76 Definitions) for the purposes of prosecutions, obviously poses difficulties in respect of Jewish people who, although an ethnic group with common traditions and therefore an 'identifiable group', might not in some quarters be regarded as a 'racial group' for the purposes of this Act. (Evidence of Mr Dovon at Standing Committee on Legislation, 27 July 1990.)

The excision of the words 'will be likely to cause' from Sections 79 and 80 has been quoted as 'emasculating' the Bill. That phrase has been replaced with the simple statement that a person 'intends' the consequences of the acts. The media, particularly the press in Western Australia, have been involved in lobbying for the latter change in the Act.

Comment was made to the Report of Standing Committee on Legislation in relation to the Incitement to Racial Hatred Bill in August 1990:

> it is ridiculous that the Press is afraid of this Bill. What is there to be afraid of?. If the Press is reporting something accurately, it has nothing to fear ... why should anybody take the Press to Court if it has stated the truth? [p.46, Mr Dovon].

I am in general agreement with the Commissioner of Equal Opportunity, where, in conference, she indicated that in other countries where the issue of racist comments in the media was raised and dealt with by legislative means:

> ... it's been singularly unsuccessfully dealt with anywhere ... Whether or not the bill that's currently before parliament will do that really remains to be seen. It's still being debated but it would be my guess that it won't [RCIADIC Transcript, Perth, 1990:650].

In any event legislation will not impact upon the problem unless it is appropriately and rigorously policed. Given the evidence we have heard about the use by police of racist and derogatory names (i.e. 'nigger', 'boong', 'coon', etc), it is apparent that before police are required to give effect to the legislative intent, there would need to be a substantial education process undertaken within the Police Force itself. In fact we were advised by Commissioner Brian Bull (as at 31 August 1990 in correspondence, Answers to further Questions 12.8) that: 'On our interpretation of the evidence in the Kalgoorlie cases, the use of derogatory and racist terms was not widespread and did not reflect a systematic practice'. Overall, from the evidence put before me, I remain unconvinced by that comment, and must admit to having little confidence as to the policing of the Act. Greater emphasis needs to be placed upon human relations and cultural sensitivity in the training of police officers for an eventual Act such as the one foreshadowed in this Bill. Of the Bill itself, my Commission takes the view that anything which promotes an informed debate about racism in this State is commendable. However, the Bill, once passed, will not necessarily prohibit racism.

In the following chapter, relations between government agencies and government and Aboriginal people, are discussed.

GOVERNMENT AGENCIES, LEGISLATION, POLICIES AND PRACTICE

In earlier chapters of this report (e.g. Chapter 2), some of the extensive changes in government legislation and practice were described. From evidence put before me it seems that, despite a number of enlightened moves toward legislative change, in the form of repeal or amendment, Aboriginal people are still primarily constrained and marginalised by agencies of government. In my view, this constraint and marginalisation is worse for Aboriginal people in Western Australia than in other pans of this country. The Northern Territory is an example of the contrast where, despite various shortcomings, Aboriginal people have the benefit of the Aboriginal Land Rights (Northern Territory) Act (1976). Examples of the difficulties encountered by Aboriginal people in this State regarding government legislation, are scattered throughout my report (e.g. Chapters 5, 10 and 14).

What has become apparent throughout the Commission process, and complementary to the findings as documented in the Aboriginal Issues Unit's (1990) final submission to me in relation to Government, are a number of salient points. These include: the problem of Commonwealth/State relations; duplication of services; adequacy of service delivery; and appropriateness of the service and/or relevant programme. While a number of these issues have already been addressed (i.e. in Chapter 7 on the Economy) or will be (i.e. Chapter 14 on Health addresses the appropriateness of service delivery and funding), in the following section further detail is provided.

9.1 LOCAL GOVERNMENT

Local Governments in this State are diverse in nature, and there is little consistency with regard to the population levels of their constituencies, size of land mass, and infrastructure (cf. Report on remote Aboriginal communities and Local Government, 1989:15).

Responsible local government can potentially play an important role in improving the material and social conditions of Aboriginal people in this State. This could be in areas such as electoral education, representation over relevant issues, service provision and funding. From the findings put before me, I suggest that Aboriginal people, despite being entitled to vote in Local Government elections since 1985 (when amendments were made to the 1960 Local Government Act providing for full adult franchise), and also despite the fact that Aboriginal representatives have been voted onto Local Government councils in several areas throughout Western Australia (since 1989, 17 Aboriginal councillors have been elected onto local governments located in the shires of Wiluna, Laverton, Roebourne, Wyndham/East Kimberley, Broome, Halls Creek, Derby/West Kimberley and Shark Bay [ibid:17]), they are still effectively prevented from exercising their fights in relation to local matters, owing to the accumulation of historical legislative and administrative discrimination. This situation is exacerbated by the ongoing poor material conditions of the majority of Aboriginal people in this State, as well as, in a number of instances, the social and physical isolation of communities.

In relation to my Commission, one hundred and ten copies of the 'Underlying Issues Discussion Paper' were circulated to Local Government bodies in this State. While some of the elected council members from local Government decided to meet with my Commission, only seven provided written comment. Six of those

seven advised that they had little to offer the RCIADIC, this was despite two which have Aboriginal populations of between 300 and 1500 people. The Association that represents shires and local councils would not, in my view,be an appropriate body to lend weight to in respect of Aboriginal peoples local government aspirations.

The most crucial aspect to emerge from my Commission's inquiries, can be noted in the following: Aboriginal communities frequently do not receive services or if they do those services are at a 'far lower level than that provided to non-Aboriginal settlements by local Government' (Aboriginal Participation and Equity in Local Government, 1987).

Reports issued by the Equal Opportunity Commission (EOC) (1989) confirm the statement mentioned above. In particular the EOC report focussed on four discrete shires in Western Australia as part of its 'review of governmental policies and practices'. The most informative report concerned Roebourne where it was found that there were serious problems in relation to racial discrimination and that, 'clearly, the residents of Roebourne are disadvantaged because they do not have access to the same level and quality of services and facilities provided by the Shire as do those people who live in Karratha' (1989:58). The report also observed that, 'very few Aborigines are employed by local authorities, and the few that are, are usually to be found in outside jobs. Services for Aboriginal people are therefore provided by employees who have little direct experience of and, in some cases, little appreciation of the needs of the people' (1989:13).

As noted later in Chapter 17 on Essential Services, and as earlier noted in Chapter 7 on the Aboriginal Economy, the provision of services to Aboriginal people who live in rural and remote settings requires urgent attention. The responsibilities of local authorities in this regard should not he left idle. The introduction of an adult franchise only began in the 1975 local elections. However, as Aboriginal people do not, in the main, own their own dwellings, this has meant little change as far as local political participation is concerned. Added to aspects such as these, there has also been the issue of Local Government and Aboriginal land. Such land, as part of the holdings vested in the Aboriginal Lands Trust has been traditionally considered 'private' land, and this has provided an impediment to the State Energy Commission and other services in making available proper resources. While this has not been an issue of any consequence in the Northern Territory, where public authorities have managed to come to agreements with Aboriginal communities holding inalienable freehold title to their land, it has continued to be an issue in Western Australia (RCIADIC Transcript, AAPA, 1990:4). Aboriginal corporate ownership of land by way of a trust mechanism, should not be subverted to enable the provision of services to take place. Options as to how this can be avoided while Aboriginal communities are enabled to carry out the functions and services commensurate with local government, need to be seriously considered.

A further issue with regard to Local Government is that of rates. Aboriginal Lands Trust land has been considered non-rateable, as with most land set aside for public benefit. When coupled with a traditional view by local Government agencies that their priorities are with rate-payers, and not all constituents, Aboriginal people have remained excluded.

One of the most contentious issues with regard to Local Government is that of funding. Despite a number of myths which suggest that Government agencies are not receiving money for the provision of services to Aboriginal people, it needs to be noted that money paid into Local Government comes from the Grants

Commission. This money is based on the actual number of people within the Local Government Area. Obviously, in many areas, that population contains a high number of Aboriginal people. Hence Local Government does have a responsibility and a means to assist with the provision of services to non-Aboriginal and Aboriginal constituents (cf. Rumley, 1986; Rumley and Rumley, 1987; and RCIADIC Transcript, AAPA, 1990).

With regard to funding and Aboriginal communities, it needs also to be noted that in some circumstances, Aboriginal communities have opted for incorporation under a State or Commonwealth Associations Incorporation Act to allow for direct funding allocations. This means that some Aboriginal communities, which have become incorporated, also take on functions that would normally be undertaken by Local Government (e.g. community street lighting). I understand that, to date, 59 remote Aboriginal communities in the State are charged with the operations of town management under either State or Commonwealth Association Acts (Report on remote Aboriginal communities and Local Government, 1989:17). These incorporated communities do not, however, take on all functions and responsibilities of Local Government, nor do they have the same form of political power in relation to decision making and funding allocations.

Recently, the Local Government Grants Commission in Western Australia has taken the initiative to remove the funding elements from local government agencies who do not expend a fair amount of their grant on Aboriginal communities. According to Gerritson (1990:28), the State Government in 1988 'agreed to discount the proportion of the Local Government Financial Assistance Program due to Aboriginal communities when local governments reneged on their road provision obligations'. That statement demonstrates how local government agencies can be instrumental in the exclusion and marginalisation process.

However, what Local Government can or should do in relation to Aboriginal members, is further complicated both in the way Aboriginal communities have developed in recent years, and how Aboriginal people see their own form of community development. While some communities may wish to become part of 'mainstream' processes, others obviously wish to maintain their own particular Aboriginal decision making processes. Hence one of the main concerns and complexities of this issue, and one to which I shall later return is this: Aboriginal people do have the right to the provision of essential services such as power, water sewerage. However, must they subsume aspects of their Aboriginality in that process by becoming part of 'mainstream' institutions? A suggested answer to this inquiry was put to me by AAPA representatives who stated (RCIADIC Transcript, AAPA, 1990:48): 'What we want [is] ... the Aboriginal identity maintained [where] there is not a threat that in fact in years to come that identity could be undermined and power taken away, but allow that community to access existing services on the basis of that identity, and that is, they don't require {sic] to argue with other groups on the basis of Federal funds coming into an area, where in fact there's no reason why they cannot access the Grants Commission on their own right'.

In September 1989, the Western Australian Department of Local Government's report suggested a number of options in relation to this matter: (i) mainstream; (ii) modified mainstream; (iii) contractual, where the delivery of municipal works is contracted either to a local authority or remote community; (iv) community based; and (v) the inclusion of local Government whose constituents may be Aboriginal. According to the conclusions contained in the report, the preferred option is a combination of the above where 'delivery is coordinated and arranged by a joint cooperative approach amongst Aboriginal organisations or local governments or

both' (Western Australian Department of Local Government, 1989).

While various concerns have been put before my Commission in relation to this issue, on a positive note, I was impressed with a project being sustained in Tambellup, in the State's south-west. It seems that members of the Tambellup Shire are working alongside the local Aboriginal population where a number of projects are developed (e.g. woodwork, ceramics, apprenticeships). It seemed to both myself and the Head of the AIU in this State, that there was something to be gained by local Aboriginal people and members of local Government authorities working together. The project is, however, still in the early stages. I am left to understand that there are future meetings planned where a 'master plan' will be developed (correspondence from AIU Report, 14 October 1990).

Aside from these sorts of local initiatives, which are enormously constructive and, possibly, more relevant where little option for self-governance is possible for Aboriginal people, local Government matters in relation to discrete Aboriginal communities needs to ensure that Aboriginal people are given a clear and fair presentation of what limited rights they may or may not exercise under a system of local government. There need to be clear discussion about control and authority as it devolves from the upper levels of Government. Aboriginal people also need to be properly informed about any consequences that may arise in relation to how particular options might impact on particular Aboriginal aspirations for self-governance.

Mowbray (1990:11), in relation to the Northern Territory, also stresses this Concern, while acknowledging that there are ways in which essential services can be provided without denying Aboriginal integrity. Mowbray (ibid) considers examples in the Territory (e.g. at locations such as Elliott and Borroloola) where Aboriginal bodies constituted under the Commonwealth Aboriginal Councils and Communities Act, have been resisted by local non-Aboriginal people and agencies. The problem seems to be couched in terms of Aboriginal people being denied control, or 'true' self-determination. One of the matters I shall later turn to is that of self-determination.

There would seem to be good reasons of both moral and political kinds to develop and strengthen the role of ATSIC, and other regional and local Aboriginal councils and organisations, which could directly apply for Federal funds to provide an alternative to local government and the provision of services. Given changes such as these, we may begin to see and experience the reality of serf-determination. Councils such as the Pitjantjatjara and Tangentyere in the Northern Territory make available models where Aboriginal people sustain empowerment, create employment and are able to co-exist, when given the necessary recognition and support, without duplication.

9.2 COMMONWEALTH/STATE RELATIONS AND ABORIGINAL AFFAIRS

This next section needs to be read in conjunction with other sections of the report, especially Chapters 2, 5, 6, 14, and 17. The material also needs to be read within my overall Concern that self-determination should, and can, become a reality for Aboriginal people.

There are a number of complex matters with regard to the issue of Commonwealth/State relations and Aboriginal affairs that require critical analysis

and attention. In particular, from research findings put before me, Aboriginal people in this State need to establish proper structural relations to the many institutions and instrumentalities that have legislative backing and support in this country. The Commonwealth's redefinition of its major portfolio areas concerned with Aboriginal people has culminated with the establishment of ATSIC (see above). The State is proposing, through a new AAPA structure, to 'piggy back' onto this structure. This appears, on the face of it, to maintain more of the uneasy relations that have existed in the past. ATSIC structurally allows for greater participation of Aboriginal people in their affairs than was previously possible, although it does not fully provide for greater autonomy and control of Aboriginal affairs, except in particular ways, and it is not yet the final answer on how administration of policies and funding allocations are to ultimately take place. In fact, at this stage, it only deals with a very specialised area of the total policy and funding available to advance Aboriginal peoples legal, racial, cultural and economic affairs (see also below).

The State still attracts funds from the Commonwealth Grams Commission for various matters through its 'general purpose' grants, and through other arrangements with federal departments. In this general way, State and Federal Governments are able to control Aboriginal affairs and, in effect, Aboriginal people. The demarcation of their respective responsibilities, powers and service provisions are then often constrained by agreements about Federal/State powers.

With regard to AAPA, it was noted earlier that the AAPA came into being in 1972 following the repeal of the Native Administration Act (1963). The AAPA functions as an advisory and coordinating body in relation to State Government. Aside from administration of the Aboriginal Community Development Project, $5.5 million funding, which was provided to the AAPA by State Government following the failure of the Aboriginal Land Tenure Bill in 1985 (see Chapters 2 and 6 for further discussion of this Bill), the AAPA does not have the authority, or the funds, to make available financial assistance or grants to Aboriginal people in this State.

The AAPA, in functioning as an advisory body, holds regular meetings with representatives from different regional centres throughout the State. The chairperson of the Advisory is Mr Cedric Wyatt, who is also the current Commissioner of the AAPA. Some of the responsibilities which come under the jurisdiction of the AAPA, as noted earlier, include the Aboriginal Lands Trust (see also Section 6.4.2), the Aboriginal Visitors Scheme (see also Section 5.12.6), and the State Working Party on Petrol Sniffing (see also Section 19.7). Relevant pieces of legislation, such as the Aboriginal Communities Act (1979), are also administered through the AAPA. A discussion of the Aboriginal Communities Act (1979) follows in Section 9.4.

Given that one of the most critical issues is the matter of Commonwealth/State relations, it is of interest to note that following extensive negotiation between the relevant Commonwealth and State bodies in 1986, an agreement was entered into whereby the sum of $100 million was to be provided for Aboriginal 'advancement' programmes in Western Australia. Under this agreement, each government was to contribute $10 million per annum for five years to the Western Australian Aboriginal Land and Communities Improvement Programme (WAALCIP). This programme was renamed in 1987 when it became the Aboriginal Communities Development Programme (ACDP). The overall thrust of the programme was aimed at improving the 'living conditions' of Aboriginal people in this State. To date, I have not been able to entirely discover any audit trail or inventory as to whom or to what effect the totality of this amount was delivered.

As noted in Chapter 2, the Aboriginal and Torres Strait Islander Commission (ATSIC) legislation was finally passed on 2 November 1989 after some forty hours of Senate debate and more than 100 amendments. On 5 March 1990, five Commissioners were nominated on an interim basis by the then Minister for Aboriginal Affairs, the Honourable Gerry Hand, and took office for a year. Following that period, the first ATSIC elections were to occur before 5 March 1991. They actually took place on 3 November 1990 for the regional councillors. There are sixty regional councils with up to twenty members each elected for three years by the local Aboriginal community. These regional councillors will elect commissioners, and represent the seventeen zones into which the regional councils are grouped. The Federal Minister appoints the chairperson and another two councillors of the Commission. It is essential to consider the potential operations of ATSIC councils before critically pursuing how effective a body ATSIC may be for Aboriginal people in this State.

Briefly put, each regional council may formulate a plan to improve the socio-economic and cultural status of Aboriginal constituents in the local region. It is also required to assist, advise and coordinate with Commonwealth, State, and local agencies in the implementation of a regional plan; to put forward proposals for Commonwealth expenditure in the region; and to ensure that local views are represented and advocated through the Commission process. Some of the difficulties which are already apparent with the ATSIC process are that most regions, especially in the northern and Eastern parts of Western Australia, include discrete communities which do not always share similar socio-cultural backgrounds and economies.

My Commission suggests that if these councils are to work effectively, there will have to be coordination at the regional council level of the Commission, and Federal, State and Local programmes need to be directed toward local Aboriginal people. Without that coordination and cooperation, ATSIC, like its predecessors, will fail on behalf of the Aboriginal people it has been set up to represent. It will also fail if it is required to deliver and provide more than it is presently legislatively able to do. This is because the important ideology of this legislation is undermined if it primarily concentrates upon structures and procedures in government terms as they presently exist. As a piece of legislative reform, it was meant to accentuate Aboriginal peoples prominence in Aboriginal affairs.

There are restrictions that place controls on the Commission by the legislation. The Minister ultimately has power to give general directions to the Commission (and ultimately to the Commissioners), and there are stringent requirements with regard to accountability to both Minister and Parliament.

The provisions that relate to audit and evaluation will hopefully produce better value for the available funds. Whether they will determine and control the cultural, social, legal and economic developments and directions of Aboriginal people, in their requirement to properly assess projects and account for funds allocated, has yet to be seen.

Another restriction is that the Commission is unable to make staff appointments. Senior positions are made by the Minister. Section 55 of the ATSIC Act (1989) is that employees be employed under the Public Service Act (1922). This arrangement effectively disallows direct Commission control of staffing. In both philosophical and practical grounds, the current limitations of ATSIC indicate that it is likely to continue the theme of powerlessness, rather than the empowerment of

Aboriginal people in this State. In sum, while I believe that ATSIC has enormous potential to empower Aboriginal people, as observed above, there are a number of issues that require attention before that potential can be realised. The 1967 referendum, in the view of Aboriginal people, gave the fight to the Federal Government to occupy the field for their benefit. This has always been done through agreements and sensitivities to State Government's preferences and priorities, and rarely has the Federal Government been able to assert any domination in this area. Broadly speaking, Aboriginal affairs has been caught up with so many other major legal, economic and political considerations, that Aboriginal people as the indigenous race of this country, are either marginalised, mainstreamed, excluded or denied recognition. We can only begin to understand why there is Aboriginal resistance to the imperative of non-Aboriginal society, when we can appreciate a sense of injustice that comes from a basic denial of indigenous rights as experienced by Aboriginal people. We are at a point in the history of Aboriginal and non-Aboriginal relationships where it is possible for this to be redressed in the proper manner. Matters such as these require critical attention.

9.3 ABORIGINAL COMMUNITIES ACT (1979)

Initially, it needs to be observed that aspects of the following material on the Aboriginal Communities Act (1979) need to be read in conjunction with material recorded on the Liquor Licensing Act (1988), which is located in Chapter 19.

The Aboriginal Communities Act (1979) in Western Australia germinated from the interest of Broome Magistrate Terry Sydall, MBE, in improving the understanding of Aboriginal people of the Court system in the northwest. He had initially invited Aboriginal elders to sit with him on the Bench. He sought their advice as to the sentences imposed. In some ways, it might be argued this reflected the intention underpinning the 'Native Courts' of 1936-54. In 1977 Magistrate Sydall undertook an inquiry as to what could be done to further improve the understanding of non-Aboriginal law by Aboriginal people. During consultations two primary observations were made. The first was that many Aboriginal people's understanding of non-Aboriginal law was limited. The second was that Aboriginal people did not distinguish between arrest, trial, charge and conviction. Alcohol was seen as a major problem for the communities consulted and a need was felt to control this situation. It was resolved that By-laws be developed to control certain aspects of community interaction. This was not to be to the exclusion of ordinary laws such as The Police Act and the Criminal Code operating within these communities.

The By-laws were initially introduced on an experimental basis at La Grange and One Arm Point in the Kimberley region and the proposal was that the Act be extended to other communities in the event that the pilot programme was successful. A training course for Justices of the Peace was originally conducted under the tutelage of Magistrate Sydall. Bench Clerks were also to receive training in the necessary skills and it was envisaged that Honorary Probation Officers would be appointed to ensure supervision of orders.

It is interesting to be aware that at the time of these developments a Court Manual for Aboriginal people was produced which was translated into the Walmadjeri (variously spelt Walmajarri, Walmatjeri), language for the understanding of Aboriginal people in the Fitzroy Valley area of the north-west of Western Australia. This was prompted by the concern in 1979 that not only did Aboriginal people not

understand the Court process, but that there was also a need for the process to be explained in their own language.

One response in Parliament to the proposed establishment of By-laws for Aboriginal communities was to assert that it was the 'first step along the road to apartheid' (Western Australian Parliamentary Debates (WAPD), 9 May 1979:1271). Comment was also made that the Bill was 'paternalistic' (ibid: 1272). During the Parliamentary debates on this Bill, interest was so 'keen' that members had to be reminded that the reading of newspapers in the Chambers was out of order (WAPD, 24 April 1979:604).

It should be noted that there was no universal acceptance of the need for such an Act. No bipartisan approach was adopted to deal with the perceived need to attempt to address one of the acknowledged problems for Aboriginal communities: that of alcohol use. Problems of alcohol importation and misuse in communities were addressed in the first gazetted By-laws and in every such gazettal since.

The Communities whose By-laws have at this stage been gazetted are:

(1) Balgo Hills

(2) Bardi Community

(3) Beagle Bay Community

(4) Bidyadanga - La Grange

(5) Lombadina

(6) Ngaanyatjarra.

The two 'experimental' groups, Bardi and Bidyadanga, By-laws deal with land, traffic and other matters. The land provisions deal with prohibition against trespass without permission. The traffic provisions regulate driving matters. 'Other' matters include:

- damage **-** rubbish

- causing a disturbance interruptions to meetings alcohol traffic (By-Law 13).

In both communities the By-laws state that permission may be obtained for the possession of alcohol from the Council at the Council's discretion having 'regard to the welfare of the Community as the paramount consideration' (By-Law 13(3)).

Police are empowered to take control of the proceedings and can remove people for 24 hours. Comment was made at my Broome Conference that police had initially been loath to stay over night at communities but that now police are keen to be rostered on for community duty. The By-laws subsequently made for all the other communities provide for protocols in respect of entry onto land, and in all but the Ngaanyatjarra Council By-laws there are regulations in respect of traffic matters.

Provisions in respect of prohibition of alcohol without permission appear in all the subsequent By-laws. Only in the Ngaanyatjarra Council By-laws are there specific

provisions for confiscation of alcohol illicitly transported to and used in communities. The By-laws of that Council take the matter further by allowing for entry and search of premises or vehicles using reasonable force. Further, no 24 hour limitation is placed upon the removal of an offender from the community land, and By-laws also prohibit the possession and sale of 'deleterious substances' used for inhalation.

Additionally, these By-laws arguably recognise the real situation in respect of their status by failing to provide the 'defence' clause which appears in every other gazettal of By-laws namely the defence that:

> the defendant was acting under and excused by any custom of the Community [Clause 17 of all other By-Laws].

Ngaanyatjarra Council allows for exemptions in respect of alcohol if it is for sacramental or medical purposes or if a person is merely 'travelling through' the lands.

It is important to stress here, too, that my Commission has been told that the Pitjantjatjara Council has had to enter into correspondence with the Human Rights and Equal Opportunity Commission about the issue of discrimination with reference to liquor licensing conditions.

An extensive review of the application of the Aboriginal Communities Act was conducted by John Hedges (LLB) in 1985. In that Review, which is referred to in some detail throughout the next section, he concluded that there was 'continuing optimism' about the operation of the Act but that lack of funding for educating Court Officers and the absence of participation of Probation and Parole Services was a problem.

Hedges quotes Aboriginal comment that Justices of the Peace received no training (1985:10); and that Community Service Orders (CSOs) were 'a joke' (ibid:13). He also states that there was inadequate supervision of CSO's (ibid:20); Aboriginal people were concerned about the lack of alternatives to fines or imprisonment, a lack of legal protection for people chosen to enforce By-laws; delays in the dispensation of justice; the inadequacy of the fines imposed by Justices; and there was frustration at delays in the appointment of further Justices of the Peace and delays in making amendments to By-laws (ibid:43). It was Hedges' considered opinion that the penalties for breach of the By-laws were ineffectual and should be increased from $100.00 or three months gaol, and he concluded that some Justices of the Peace did not understand their powers (ibid:20) and at least one community did not understand the purpose of the By-laws (ibid: 19).

Delays in processing By-laws and proclaiming communities were a constant problem, resulting in communities becoming frustrated and enthusiasm waning (ibid:36). For instance, there was a lack of Government activity and no sense of urgency about proclamation of communities under the Act. The community at Mt Margaret had been requesting assistance to become a 'dry area' for years and had been told the Government would 'look into it' (ibid:27).

Hedges made a number of major recommendations which include:

(i) the appointment of an 'Administrator' so that legal formalities not obstruct implementation of the Act. It was envisaged that the Administrator could;

co-ordinate consultations; co-ordinate introduction of legislation; minimise delays; monitor effectiveness; co-ordinate development of programmes [p.59];

(ii) the 'Probation and Parole Act' be amended to allow Honorary Probation Officers to be appointed by Stipendiary Magistrates;

(iii) educational requirements for the successful implementation of the Act should include:

(a) two four day workshops;

(b) continuous legal education.

The adoption of those recommendations is plainly fundamentally necessary for the Aboriginal Communities Act. In addition, of the education process, Hedges said:

> the long term success of the Aboriginal Communities Act will be significantly enhanced through the development and implementation of the proposed educational programmes [1985:51].

My Commission has been advised that the AAPA does not have the funds for Mt Lawley TAFE to conduct Aboriginal Communities Act training for Justices of the Peace. One Magistrate who consulted with my Commission observed that although a lot of communities wanted to avail themselves of the Aboriginal Communities Act they 'didn't really know why'. Communities believed that they could get rid of trouble-makers through the Act, but there are difficulties with that as:

> some offences are not offences outside Community boundaries;
>
> the Act lacked the powers to effect proper resolution - it had no really effective sanctions.

So, communities continue to be denied educational resources necessary for the proper implementation of the Act. There is also arguably some difficulty with the consultation process.

The education priority of the Hedges Report has never been expanded to meet the needs of the communities subject to the Act. 'Experimental' at its inception, it

could be said it has never been taken seriously. Apart from some individual Magistrates, no-one has seriously acknowledged, enhanced or sponsored the legitimate right of Aboriginal people to develop self-management legal process programmes for their own communities. Arguably increasing numbers of communities being drawn into the Aboriginal Communities Act are still suffering the same problem.

Of the problems confronting Justices of the Peace this Royal Commission has been told there have been thirteen Aboriginal Justices of the Peace appointed in the Kimberley area. The Crown Law Department has informed me:

> There are no separate [Aboriginal Community] Courts as such however members of the Aboriginal communities have been appointed as Justices

> of the Peace and they sit alone or sometimes with the Magistrate who visits each community approximately every 3 weeks ...

In the Pilbara the 'Community Court' is apparently floundering because of 'avoidance' issues inbuilt into Aboriginal kinship structures. The By-laws of the Ngaanyatjarra Council (Aboriginal Corporation) were published in the Government Gazette on 28 July 1989. This Commission was told in June 1990 by a Magistrate that three Aboriginal Justices of the Peace have been nominated for the Warburton Community but it is not certain they are 'interested' and they need to be 'chased up'.

Hedges recommended that the Aboriginal Communities Act make provision for the establishment of wardens. This has not been done. No provision was made in the Act initially for wardens as people were apparently happy to have the police presence. There is now a situation in at least one community whereby unofficial wardens are inflicting 'tribal' punishment for offences against the By-laws, and the offenders against the Act are seeking legal redress for assault. These 'wardens' were allegedly armed with handcuffs, spears, batons and were 'overdoing' their job.

Policing continues to be a function of the Western Australian Police Force. There is presently a Police Post being built with ATSIC funds at Balgo. One remote community has had a Police Post complete with cells built which has been in use for some time. The difficulty of Aboriginal community self-policing was commented on by one ALS lawyer who observed:

> ... there is a difficulty for Aboriginal communities - particularly the smaller they are, the more difficult it is for them to actually police their own community because of the family relationships ... So, when it gets serious, you do need an outside Police Force ... [RCIADIC Transcript, Juvenile Justice Conference, Perth, 1990:81.

In 1985 the Commissioner of Police, Commissioner Bull, advised Hedges (1985:52) that it was the view of the Police Department that only Aboriginal communities could effectively police the By-laws. There has, however, been a shift in Police Department attitude about policing the communities. Commissioner Bull now says that:

> They want us to help enforce their law, their efforts to get away from the liquor, and we are co-operating [RCIADIC Transcript, Commissioner Bull, 1990:619-6201.

The Police Union in its submission on underlying issues refers to the powers of confiscation under the Northern Territory Legislation but makes no reference at all to the Aboriginal Communities Act which can provide for dry areas if not for confiscation except in the case of Ngaanyatjarra Council By-laws in respect of alcohol. The Police Union is apparently in disagreement with the Commissioner of Police in that the Union submits:

> the Union supports the principle where the Aboriginal people themselves enforce the rules and regulations particular to their communities [1990:61].

The whole issue of the status and role of 'wardens' remains totally unresolved. There is a clear need for properly established community infrastructure for community policing. Hedges was of the view that non-violent customary penalties

could be employed in respect of the Act (1985:47). This view is also advanced by at least one ALS solicitor who suggested that community penalties could be laid down in the Act itself (RCIADIC Transcript, Juvenile Justice, 1990:12). There is a need for community consultation about penalties, traditional or otherwise.

These penalties in the Act were no deterrent in 1985 as far as the Aboriginal people consulted by Hedges were concerned, and that is still the situation. Hedges recommended that an increase in fines, sentences and compensation may address the problem. I am not convinced that such increases would address the problem.

Recently the Warburton community By-laws were employed in relation to numerous offenders after alcohol had been brought into the community. That community quite clearly thought the breaches of the By-laws were very serious. The Magistrate who heard the charges, reportedly imposed the maximum sentence of three months gaol in almost all cases (RCIADIC Transcript, Juvenile Justice, 1990:9).

The view allegedly taken by the Magistrate was that the offenders should be deterred and that a time in gaol would be a time free from the abuse of petrol and alcohol, and the defendants would be fed. People spoken to by Commission research staff in the Central Desert area made comments that it was too harsh to just send people away to gaol. It also needs to be noted that Aboriginal people were concerned that the police did not consult with them when they came out to arrest people and they were further concerned that people who were arrested and taken into towns to serve sentences, were just let out at the end of their sentence to roam the streets and had no way of getting home (see report prepared by Charlie Staples on behalf of the Ngaanyatjarra Council for the RCIADIC, 1990).

Commissioner Bull indicated to my Commission that he was mindful of the problems inherent in arresting people for warrants, removing them to a town like Laverton thereby exposing them to the ready availability of alcohol (RCIADIC Transcript, Commissioner Bull, 1990:620). Commissioner Bull suggested that he saw the problem as cyclical, but upon making representations to the Crown Law Department about the situation, he was advised by the Department that the problem could not be circumvented by not executing warrants. Further, the Commissioner advised that:

> short term ones, we're executing them and we're merely asking them to remain in the vicinity of the Police Post that, as you know, the community built for us to ensure our continued presence at Warburton ... [ibid:620].

Consideration should be given to an amnesty on old warrants or that some alternative be provided to serving time in custody on warrants. Conversion to Community Service Orders also needs to be considered.

9.3.1 Aboriginal voices

Aboriginal people all over the State complained to this Commission of the social disruption, poverty and violence consequent upon alcohol use (see also Chapters 19 and 20). In the Central Deserts there seemed to be a general recognition that if alcohol wasn't readily available the problem would not be so pressing.

Much has been said and written on the 'opportunistic' pattern of alcohol use, facilitated by 'ease of access' (see Brady, M., 1985, 'Report tendered in support of the Objections to a Liquor License at Yamarna Station, Western Australia'). This view had been supported by Hedges in his Review and acknowledged as correct by the Northern Territory Liquor Commission:

> [The] Northern Territory Liquor Commission found that if liquor is not readily available most Aboriginal people will not worry about it [1985:70].

Thelma McLean, a Pitjantjatjara speaker and one of the research assistants contracted by my Commission in the Central Deserts area has commented:

> We're frightened. We got sons and daughters and they drink and look for fight. We frightened. We don't want trouble in our community, it's been killing a lot of people, we been losing a lot of relations, and lot of families ... [cited in Brady, 1985:22].

Aboriginal people feel that the problem of availability of alcohol needs to be addressed urgently. It was regarded as an urgent priority by Hedges in 1985. He reflected long-standing Aboriginal opinion to the same effect.

In 1985 the Ngaanyatjarra Executive Council told John Hedges (1985:38) that 'many fruitless requests' had been made seeking help to control trafficking and the consumption of alcohol.

> [Hedges] was requested to convey to the Minister the meeting's request that legislation be implemented immediately prohibiting the possession and consumption of alcohol within the Central Reserves.

My Commission was told at Warburton that it had taken four years for that community to be proclaimed under the Aboriginal Communities Act 1979. The procedure whereby Aboriginal Communities are proclaimed under the Act remains totally unwieldy and promotes delays. The AAPA provided my Commission with the guidelines for the implementation process. These are quoted in full:

> Aboriginal Communities Act [ACA] - Implementation Process:
>
> 1. Receipt of correspondence which narrates an expression of interest in the ACA's implementation and a request for a consultation visit to assist the community.
>
> 2. A letter of acknowledgement and detail of an appropriate action in response is sent.
>
> 3. A consultation visit is scheduled to assess the appropriateness of the Acts implementation.
>
> 4. Drafting of By-laws;
>
>   (a) Aboriginal Legal Service
>   (b) Community drafted By-laws modelling existing documents.
>
> 5. The Crown Law Dept Solicitor examines drafted By-laws.
>
> 6. A letter requesting the officer in the Land Administration Dept. to

provide certified copies of the community lands as supportive documentation, which identify the areas of land the community has title and can be recognised as land to which the Act applies.

7. A letter is forwarded to the Minister for Aboriginal Planning recommending the Minister's approval:

   (a) pursuant to Section 4(1)Co) (b) pursuant to Section 6(1).

8. Upon receipt of Ministerial approval, a letter is sent to Parliamentary Counsel requesting preparation of Proclamation Paper (Ministerial approval attached and supportive documentation) in pursuant [sic] of Sections 4(1)(b) and 6(1).

9. Upon receipt of Proclamation papers from Parliamentary Counsel, the Proclamation papers are presented to the Parliamentary Clerk.

   (a) the Parliamentary Clerk places the papers on the Governor's Agenda- the following signatures are affixed:

   1. Governor's
   2. Premier's
   3. Minister's.

10. A letter requesting that the Officer in Charge of Publications, State Printing Division, publish the documents (Proclamation Papers) in the Government Gazette.

11. Upon the appearance of the Proclamation in the Government Gazette, the Administrator obtains the ratification of the By-laws in accordance with the Community's Constitution which prescribes the procedure whereby that community may affix the Community's Common Seal.

12. Upon receipt of the By-laws with the Common Seal and signatures, a letter (By-laws copy attached) to the Minister for her endorsement that she (the Minister), in pursuant (sic) to Section 8(3) is satisfied that the By-laws are necessary and desirable.

13. Upon receipt of the Minister's endorsement, a letter (Ministerial endorsement attached) requesting that the Parliamentary Counsel prepare a Proclamation Paper in pursuant (sic) of Section 8(4), for the Governor's consideration, that the By-laws be published in the Government Gazette.

14. Upon the appearance of the Proclamation in the Government Gazette, a letter requesting that the Minister lay copies of the published documents before both Houses of Parliament as required by Section 36 of the Interpretation Act, 1918.

9.3.2 Aboriginal Legal Service comment on the Act

It was clear from the comments of one ALS officer that there is a degree of

confusion about the boundaries which delineate the communities; there is also confusion about keeping drink 'out of communities'. Some old people tell the younger people to drink away from camps, but in complying with this direction they remain in breach of the By-laws if there is a total prohibition or a need to have council permission to drink alcohol.

In its submission on underlying issues, the Aboriginal Legal Service indicated that it was presently processing the applications for inclusion in the Aboriginal Communities Act of the Cheeditha Village and Warralong Communities and that By-laws are presently being drafted upon instructions (ALS Submission, 1990:42).

The ALS has, in its submission (1990:99), focussed on an issue raised with my Commission, concerning the powers of the Wardens. At Kanowna, wardens chosen to enforce the laws are traditional 'law men' and it is alleged they have handed out excessive punishments, generally a 'flogging'. Traditional punishment has been exacted when those punished respond by swearing. At one other community the allegation was made that enforcement of By-laws is not uniform in that the family members of community elders are above the law (ibid). The ALS could provide no recommended solutions to these problems.

9.3.3 Other Legislative backup

Hedges was of the view that some communities lacked the:

> population, organization or inclination to settle community By-laws, and appoint Wardens or Jusices of the Peace [1985:83].

It was his view that for communities which wished to prohibit liquor, the Government should provide legislative sanctions as precedents for this sort of legislation already exist in the Northern Territory and South Australia. The South Australian Police Force were in 1985, co-operating with the Pitjantjatjara people in training wardens for use in the application of their Land Rights Act (1981(which provide for confiscation/prohibition of alcohol.

The Northern Territory Liquor Act section 74 empowers the Northern Territory Liquor Commission to declare specified areas ‘restricted’. Such a provision could be added to the Western Australian Liquor Licensing Act 1988. Hedges was supported in this view by Ian Pitman who acted as a consultant to the Review. Hedges was also of the view that the Western Australian Liquor Act (since replaced by the Liquor Licensing Act 1988) should prohibit the sale of fortified wines. This has not been done in the new legislation.

9.3.4 The Law Reform Commission and the Act

In the reference ‘The Recognition of Aboriginal Customary Laws’ the Australian Law Reform Commision made a number of observations about the Abouriginal Communities Act. These observations included:

(1) it did not establish a special Aboriginal Court;

(2) there was inherent in the legislation the capacity for conflict of laws, ie., the offence of disorderly conduct merited a maximum sentence

of 3 months under the Aboriginal Communities Act and 6 months under the Police Act;

(3) the By-laws are 'non-controversial', with limited scope and provided no requirement for Aboriginal participation in Court;

(4) the extent of the inclusion or exclusion of customary law was indeterminate. Aboriginal people had little responsibility or autonomy under the legislation [para 141, Summary Report].

At the time of the completion of the Reference, the Hedges Report had not been completed. The Hoddinott Report `That's Gardia Business: An Evaluation of the Aboriginal Justice of the Peace Scheme in Western Australia' (Perth, 1985) was completed and reported that:

(a) there was no real independence of Aboriginal JsP, they remained powerless;

(b) the system failed to incorporate local customary laws at Beagle Bay;

(c) the system created havoc on kinship obligations -expectations;

(d) tribal laws were being ignored and overtaken by an 'alien value system'.

The Aboriginal Communities Act had however, never purported to be a recognition of traditional law. The Australian Law Reform Commission observed that:

> Structurally, it was from the beginning an extension into local communities of the general court system, with certain adjustments and with the addition of local personnel [para 757, ALRC].

That observation remains substantially true today. The Courts established to hear offences committed against community By-laws are, it has been argued, assimilationist in their underlying philosophy, transplanting into Aboriginal communities the values and authority system of Australian law (Getches Submission [22 January 1981], para 816, ALRC Report).

It is, however, clear that there is a considerable amount of local support for the Aboriginal Communities Act. Six community councils or community corporations have been proclaimed under the Act. This includes the Ngaanyatjarra Council which represents eight Aboriginal corporations in the Central Desert area. The By-laws of one community at Coonana have been approved and Ministerial signature has been requested. Eleven communities have submitted draft By-laws for consideration. Six communities are presently consulting about inclusion under the Act and six other communities have requested consultation. Aboriginal communities are availing themselves of the right to make provision for regulating their own communities.

It is hard to accept the argument that the Aboriginal Communities Act is assimilationist. It does not and never has dealt with Aboriginal customary law matters, save that Clause 17 of the By-Laws of some communities allows the defence of customary acts. There is a demonstrated demand for inclusion of communities under the Act. Aboriginal people are clearly enthusiastic about proclaiming By-laws even though their comments are contradictory and sectional.

Serious consideration should be given to:

(1) the education programme suggested by Hedges be undertaken. This could be co-ordinated by the ATSIC Regional Council;

(2) an administration position as recommended by Hedges - this position should be filled by an Aboriginal person supported by an Aboriginal Advisory Committee and co-ordinated through the ATSIC Regional Council;

(3) training for Aboriginal people who may wish to sit and advise Magistrates in hearings;

(4) legislation sanctioning the appointment of 'Wardens' where communities require them and training of Wardens;

(5) an extension of the non-custodial sentencing options;

(6) cessation of powers of Justices of the Peace to gaol people;

(7) education of Magistrates and encouragement of interaction with the community in such a manner as to promote a dialogue about offences, penalties etc.

Aboriginal people wish to control crime and disorder within their communities and some clearly see By-laws as providing the forum in which to address this issue.

One of the most significant changes in relation to some of the issues which are under discussion in this report, have been considered by the Equal Opportunity Commission in Western Australia. While a number of the EOC's reports have already been referred to, the following considers the EOC in some detail.

9.4 THE EQUAL OPPORTUNITY COMMISSION AND ABORIGINAL PEOPLE

This State has had the services of an Equal Opportunity Commission since 1984. The Equal Opportunity Acts aim is the promotion of equality of opportunity in Western Australia and the provision of remedies for discrimination on the grounds of race, sex, marital status, pregnancy and religious or political conviction, or sexual harassment. The Act has, subsequent to 1984, been amended to provide remedies for discrimination on the grounds of impairment. In some celebrated instances the Act and the Equal Opportunity Commission has been responsible for redressing individuals complaints about racial discrimination by publicans, taxi drivers and radio broadcasting companies.

The Commissioner for Equal Opportunity, June Williams, and Conciliation Officer Chris Puertollano attended one conference convened by my Commission. Commissioner Williams advised my Commission throughout that conference and in a later submission, that Aboriginal people in this State deal 'daily' with discrimination.

My Commission was advised that only a small number of Aboriginal people use the Equal Opportunity Act. The complaint process is one of the major problems in overcoming this failure to use the Act. Individuals have difficulties using the Act

because of their position of powerlessness. To use the Act draws personal attention, particularly in small communities. To overcome the problems confronting individuals there is contained in the Act, the facility to make a 'representative' complaint (Section 83(1)(b), Equal Opportunity Act 1984 [Western Australia]).

Commissioner Williams stated:

> It's quite unique within our legal system and as far as we're concerned we'd like to see that being used where communities have got particular issues of discrimination to deal with [RCIADIC Transcript, EOC, 1990:649].

Commissioner Williams also raised the issue of complaints being made by the Commissioner on behalf of a complainant. This would be a totally new function for the Commissioner and although she advised this Royal Commission she had some reservations about that addition to the role of Commissioner, she stated that it was necessary because:

> time and again blatant discrimination comes to our attention and we are unable to get any of the people who are suffering that discrimination to actually make a formal complaint [ibid].

The issue of the media and racist comments was raised by the Conciliation Officer of the EOC, and comment was made that although Aboriginal people frequently complain about racism in the media the Equal Opportunity Act does not cover that area. Time will tell, as noted above, whether the 'Incitement to Racial Hatred' amendments to the Criminal Code will address that problem.

Commissioner Williams suggested that Aboriginal people failed to use the provisions of the Act for a number of reasons, namely:

(1) they have no reason to trust any law;

(2) they have no reason to believe any law will 'do much for them';

(3) they have difficulty in standing out from the crowd and complaining;

(4) they have difficulty with the burden of proof placed upon them;

(5) they have to wait a long time for the investigation to be completed;

(6) they have to wait a further time for the conciliation process;

(7) they have to finally appear in a 'court-like' environment - the Tribunal - for a hearing.

The Act is not a universal panacea and its operations have to be properly explained. Commissioner Williams thought people in communities were more receptive to the approaches of Equal Opportunity personnel when they were unaware they were dealing with Government instrumentalities. This comment conveys a number of insights concerning Aboriginal views of government bodies. Aboriginal people need to have confidence in the procedures and this can be effected by publicity for the cases which go before the Tribunal. In some instances, however, the conciliation process has led to an apology being proffered by a publican, the apology is accepted and then the behaviour continues.

The Commissioner's staff sometimes endeavour to facilitate the process of bringing a matter to the attention of the Equal Opportunity Commissioner. When a number of complaints have been received, the officers attend and take statements. Complainants are advised that the first priority is to resolve the matter. Towns like Leonora, Laverton and Gnowangerup have been visited after complaints have been received. People never pursued their complaints. Comment was made by the Conciliation Officer that Aboriginal people make the original complaint and then feel they have 'no more responsibility' for the issue (RCIADIC Transcript, 1990:653).

The Equal Opportunity Commissioner has caused a number of reviews to be undertaken in respect of Government Departments pursuant to Section 82 of the Act. The Reviews on Police, Housing and Community Services are discussed in the relevant chapters of my report.

The Commissioner takes the view that there is little point in conducting a review unless it results in action being taken by the relevant Department and for this reason, reports of reviews are always provided to the organisation being reviewed so that discussions can be held and action taken to address criticisms. The Equal Opportunity Commission will then review the practices of those departments again in the future to evaluate the response to criticism.

In the Equal Opportunity Commission submission to the RCIADIC, the Commissioner indicates that not only does it undertake complaint investigation and conciliation, research and review subject to Section 82, but also community education. In pursuit of the latter, the Commission has carried out research into community attitudes and promoted media campaigns to combat racism.

In a study conducted in 1989 the Equal Opportunity Commission discerned from the sampled views that:

> people thought Aboriginals experienced a 'lot' of discrimination (60% of those sampled) [Equal Opportunity Commission, 1990:5].

In the study conducted in the Bunbury area, the Equal Opportunity Commission discerned the following:

> ... there appeared to be prejudice against Aboriginal people amongst both community leaders and the general community. This prejudice was expressed in negative generalisations based on past experience in other pans of Western Australia or on media reports. The research also found people's attitudes and beliefs towards Aboriginals were characterised by ambivalence and confusion [EOC Submission 1990:8].

The Bunbury area was targeted with an 'Aboriginal Employment Week' which, when examined, indicated amongst other things that:

(1) there was high awareness of the 'week';

(2) TV was more effective than other media;

(3) Only 4% of people were opposed to the 'week';

(4) Only 18% admitted changing their minds;

(5) The overall attitudes to Aboriginals in the workforce shifted considerably [EOC Submission, 1990: 10].

As a result of the Bunbury campaign, Kalgoorlie and Port Hedland were targeted for 'pilot programmes'. The initial research at Kalgoorlie demonstrated that 'public drinking by Aboriginals and inter-racial conflict' were viewed as major issues. 'Special treatment' and 'handouts' to Aboriginals were the subject of criticism and resentment. People in Kalgoorlie were of the opinion that jobs were available and discrimination was not a major factor, while in Port Hedland the Aboriginal problem was considered a 'major social issue' - 'visible excess drinking, visible congregations and youth crime' being the highlighted areas.

> Perceptions of Aboriginal hopelessness and helplessness were far more extensive than those experienced in Bunbury or Kalgoorlie [ibid:13].

In Kalgoorlie 65% of those canvassed supported the campaign and the campaign itself 'had a small but consistent positive effect' (p. 15) on perceptions. In presenting an Aboriginal 'self help' week the Equal Opportunity Commission's campaign eroded the view that Aboriginal people would not take responsibility for themselves, would not use opportunities for advancement, would not help each other. The view that Government money was 'wasted' decreased (ibid:l 6).

The Port Hedland campaign promoting the positive steps being taken by Aboriginal people to overcome 'alcoholism, homelessness, lack of job skills and social skills and lack of achievement motivation' (ibid:14) resulted in a number of people (22%) indicating that they had changed their minds about Aboriginal people lacking initiative (ibid: 16). No impact was made on the view that Government money was 'wasted'. This was apparently a view held by 59% of the group canvassed.

The Equal Opportunity Commissioner in her submission to my Commission refers to future campaigns as having the capacity to reduce 'negative attitudes towards Aboriginals'.

The Review of Discrimination in Police Practices conducted by the Equal Opportunity Commission has been discussed in Chapter 5 of this report. Its major finding was that Aboriginal/police relations are 'alarming'. The Commissioner of Police when asked in 'Questions' responded that 'No negative trends have been brought to notice' of the Department in respect of progress of Aboriginal/police relations (Answer to Question, 12.2(b)). He also advised that 'police officers usually have good relations with all communities' (12.4(a)).

Further, the Commissioner of Police in Answer 12.4(a) made these additional observations of police-community relations:

Question:

12.4.(a) The Department has responded that 'police officers usually have good relations with all communities'. What is the justification for this statement as evidence before the Royal Commission strongly indicates otherwise?

Answer:. The Commissioner and his Senior Officers move around the State on formal inspections and informally as well. On these occasions contact with members of the public both officially and unofficially, indicates that good relations exist.

> As recent as the week commencing 13 August 1990, the Commissioner visited a number of areas in Perth City and suburbs and it was his impression that the relations between police and the public were as indicated.
>
> Assistant Commissioner (Personnel) and Inspector Court, from the Aboriginal Liaison Unit both have recently returned from visits to the North of the State and they report favourably on this issue.
>
> Commander Carlson visited Warbuton, Wilunga and Northam in August 1990 and his impressions and experiences were similar.

The Review of Police Practices made two recommendations cited by the Commissioner for Equal Opportunity in her submission, these being:

> Training programmes for recruits should incorporate Aboriginal (and other minority group) issues in each of their components, which would be assessed in the same way as other components of the course.

The [Police] Department should develop mechanisms for ensuring that only police officers suited for work with Aboriginal people are posted to locations with high Aboriginal populations.

The first of these recommendations reflects recommendation 33 of the RCIADIC Interim Report. The Police Union sees no reason for the Aboriginal component of training to be examinable (Police Union Submission, 1990:38). The Western Australian Government advises that this recommendation has been implemented. In addition, the Commissioner of Police, in answer to questions put to him by my Commission (Nos. 12-10), advised that examination of the 'Aboriginal' component of the police training course does now take place. It needs to be noted here that the 'Aboriginal' component of the police training course is 4 x 70 minute periods. Assessment is by multiple choice question paper and 600 word essay (12.5).

The efficacy of the implementation of same is doubtful given the comments which have been made at the RCIADIC conference in Perth. Aboriginal people are not convinced that the training period is long enough, that enough time is given over to Aboriginal studies or that assessment results in the subject are being taken seriously. It is, however, commendable that the subject is being examined.

Young police officers canvassed for their opinion of the training they received at the Police Academy have indicated that it is inadequate in respect of Aboriginal culture. There is a need for updating at the Academy (RCIADIC Transcript, Kalgoorlie, 1990:310).

The second of these recommendations reflects both recommendation 32 of the RCIADIC Interim Report and Recommendation 21(b)(ii) of the Vincent Report. We have been advised that efforts are made to ensure that police officers with knowledge of Aboriginal people are posted to areas where there are large Aboriginal populations. Advice has also, however, been received that the young police are a major part of the problem in Aboriginal/police relations and the Kalgoorlie Police Station is used as a training ground for them - 'very new officers with limited experience' (ibid:314). It is in the Kalgoorlie area that my Commission has heard a large number of continual complaints about police. This Royal

Commission has also been told that a major part of the training of young police takes place at the station. The training received at the Academy could only be considered basic 'survival training'.

It was apparent to the Equal Opportunity Commission that Aboriginal people were not prepared to use its Complaint process. The ALS had made some complaints over the years but 'very few have been successful' (p.25). No 'class action' (Section 83) complaints had been received.

It has been acknowledged by the Equal Opportunity Commissioner that:

> it is unlikely that the legislation will be 'all things to all people' or that it will be able to perform miracles in areas which are so problematic as Aboriginal/police relations. The Commissioner has publicly stated her opinion on a number of occasions that long term community educational programmes have greater potential to bring about lasting improvements in community relations than anti-discrimination legislation or other coercive laws such as incitement to racial hatred [EOC Submission, 1990:28].

The Equal Opportunity Commissioner also indicated that the difficulties Aboriginal people contend with in taking up and pursuing complaints have not been 'adequately addressed' due to a number of factors such as:

- lack of resources
- size of the State
- spread of Aboriginal population
- isolation of some Aboriginal populations
- subsequent communication problems.

In my Commission's view, the Equal Opportunity Commission is to be commended for the appointment of two full-time Aboriginal Officers - Aboriginal Conciliation Officer and Aboriginal Community Education Officer. In my view, there should be serious consideration given to the Equal Opportunity Commission reviews, and the proposal concerning extending the Equal Opportunity Commissioner's powers to present complaints for individuals.

The following section considers one of the present mechanisms available to Aboriginal people whereby they can seek redressal for matters in which they believe they have been unfairly considered with regard to Social Security entitlements.

9.5 DEPARTMENT OF SOCIAL SECURITY AND SOCIAL SECURITY APPEALS TRIBUNAL

Currently around 53% of Aboriginal people receive some level of financial support from the Department of Social Security (DSS). This compares with only 11% of the non-Aboriginal population (Health for All Australians, 1988). Information provided to the Commission by the Department shows that Aboriginal people comprise

approximately 55% of the Department's clients in receipt of a 'benefit' (DSS response to RCIADIC Questions, 1990).

Some of the strategies the Department has instituted in Western Australia in recognition of this and the high proportion of its clientele being Aboriginal include: the establishment of the Aboriginal Interpreter Service in March 1990; employment of local community people with language skills when DSS field staff visit communities; Remote Visiting Teams; the employment of Aboriginal Liaison Officers; the Support Network of Aboriginal Parents Programme; access to toll-free phone contact to DSS offices if people live away from the local office; more readily acceptable information distribution mechanisms including T shirts, comic type brochures and videos using language. There is also a desire to increase the current proportion of Aboriginal employees in Western Australia from 6 to 7% with a recruitment target of 25% of all recruits to be Aboriginal. Currently staff are employed at a range of levels from ASO 1 to ASO 6 and there is a programme, the Aboriginal Management Skills Development Program, to identify and support people so that they may progress to senior management level. There is also an Aboriginal mentor scheme for new staff. Some of the groundwork for these changes has come about through the research arm of the Department of Social Security, the Northern Australian Development Unit (NADU), which has provided to my Commission some informative and enlightened research papers.

In order to address issues of misunderstanding and lack of awareness of non-Aboriginal staff, the DSS has instituted cross-cultural training for all regional office staff. This is run by Aboriginal people both employed by the Department and from Curtin University. This is an important initiative as the experience relayed to the Commission by many Aboriginal people was one of dissatisfaction with the style and quality of service they received across the counter at DSS. This is also the experience of staff of Community Legal Centres (Submissions from Sussex Street Legal Rights Agency, 1990; Brewer Street Welfare Rights Centre, 1990).

The initiatives mentioned earlier are principally directed at Aboriginal people in remote areas. Greater recognition is required for the difficulties of access to entitlements of the increasing number of Aboriginal people who live in the Perth region. Indeed Ted Wilkes' comment quoted elsewhere regarding access to health services has relevance to other areas such as DSS entitlements. The DSS response indicates that the metropolitan area initiatives only include the employment of ALOs in four offices, two of the State's three Support Network for Aboriginal and Islander Parents (SNAP) workers, and toll-free phone access.

The current options for someone who disagrees with a decision of the Department are that they may request that the decision be reviewed and appeal to the Social Security Appeals Tribunal (SSAT) if the decision is not changed; appeal direct to the SSAT; or accept the decision of the Department.

The SSAT is the first level of external and independent review available to people who are unhappy with a decision of the Department of Social Security (DSS). Since 1 November 1988 the SSAT has had 'determinative powers'. This means that the decision of the Tribunal is binding on the Department which is obliged to implement the decision.

Once an appeal is lodged with the SSAT, this may be by phone, letter or appeal form, then a hearing time is set in consultation with the appellant. The hearing is usually conducted in the SSATs office in Perth with the person appearing before the Tribunal. Occasionally a hearing may be conducted over the phone or with the

Tribunal travelling to the appellant if there are particular problems regarding access for the appellant. Clients who are serviced by the Broome office of the DSS have access to the SSAT in Darwin which periodically travels to Broome to conduct hearings.

The SSAT in reviewing the decision of the Department is able to affirm the decision, set aside and substitute a new decision, or remit the matter back to the Department with a direction to the Department to reconsider the matter.

If the appellant is not satisfied by the decision of the Tribunal then they may appeal to the Administrative Appeals Tribunal (AAT). Similarly if the DSS disagrees with the decision they too may lodge an appeal to the AAT.

It is the experience of welfare agencies, community legal centres and members of the SSAT that Aboriginal clients do not have ready access to the review and appeals mechanisms in place for those unhappy with a decision of the Department. This is recognised by the DSS and the SSAT. The SSAT has attempted to address this issue in the past by community education visits to both metropolitan and country regions, the appointment of an Aboriginal person as one of the part time community members of the Tribunal, targeting remote areas to increase the awareness of appeal rights and regarding DSS entitlements and trying to be flexible with appointment arrangements for hearings. The reality is that very few Aboriginal people appear before the Tribunal in Perth and certainly not at the level one would expect from the proportion of people who are in receipt of DSS entitlements.

It should be noted that neither the DSS nor the SSAT record Aboriginality in their data collection regarding requests for reviews or appeals. Hence the reliance on anecdotal evidence for access to appeal rights in the above discussion.

The issue of flexibility regarding the requirements of the Social Security Act for certain information to be provided within a time limit is not addressed. For example, the questionnaire used to determine if someone is in a de facto relationship or not has to be returned in 14 days.

The issue of Social Security entitlements is also tied into the Aboriginal Economy (Chapter 7) and CDEP (see in Chapter 11). In the following section another potential form of appeal, through the Ombudsman, is detailed.

9.6 THE OMBUDSMAN: PRESENT POWERS

The office of the Parliamentary Commissioner for Administrative Investigations (Ombudsman) was established in 1971 pursuant to the Parliamentary Commissioner's Act 1971.

The Officer's functions were to:

> undertake investigation of the administrative action taken by or on behalf of certain government departments and other authorities [Preamble to Act].

At its inception the Charter of the Ombudsman specifically excluded the investigation of complaints against police. This function has subsequently been

added to those of the Ombudsman and is discussed in the section on Police Complaints.

The Office was to deal with complaints about the administrative operations of government departments such as Community Services, Education, Housing, Corrections and also Local Government. It should also be noted that the Ombudsman has some specific prohibitions on his/her investigatory powers. Section 13 details the extent of the jurisdiction of the Ombudsman. The Act does not apply to Courts of Law or Judicial officers or the decisions of Ministers of the Government.

In 1986 the Ombudsman was asked to investigate a decision of the Minister for Housing where an eviction of an Aboriginal woman from State Housing had been ordered. In circumstances such as that, the Ombudsman cannot investigate the Minister's decision but only the administrative processes leading up to that decision being taken, that is, whether the Minister has been properly informed.

The Ombudsman's lack of jurisdiction to investigate the decisions of courts is the source of some problems in that detainees in prisons have on a regular basis, complained of the decisions of visiting Justices. There is a second element to that sort of complaint in that a prisoner might not only be complaining of the judicial process and resolution but also of victimisation by prison officers. In such a case, the Ombudsman would enquire into the victimisation allegations.

The Ombudsman in informal discussions with this Commission in July 1990, indicated that be did not think there was any need to have an ALO attached to his Office. There is an ALO attached to the New South Wales and South Australian Offices (part-time). He had had discussions with the ALS about the making of complaints and a practice has now developed whereby Aboriginal people wishing to make complaints can now go through the ALS Field Officer. Complaints can be brought to his notice through the ALS.

In these discussions the Ombudsman expressed his continued support for the process of liaising through the ALS. It has been argued that the police, when investigating complaints, will ensure that both the Aboriginal Complainant and the ALS obtain a copy of the official response. It is clear from an examination of the ALS complaints files that this had been a problem in the past.

The Ombudsman advised this Royal Commission that he had a small office and staff with which to deal with a vast task. This task is not made any easier by the mobility of some of the complainants. In the event people complain and then cannot be located, it is actually impossible to get any feedback and problems develop in attempting to communicate with complainants.

It is for these reasons that my Commission, with the greatest respect, feels there is a need for the employment of an ALO within the Office of the Parliamentary Commissioner. A Liaison Officer would be able to locate people through community networks and effectively communicate with people who need support or assistance with their complaint.

The Ombudsman commented in discussions flint them are plainly some problems in Aboriginal/police relations in some areas when he has conducted investigations or engaged in discussions. The Swan Valley Fringe Dwellers complaint (referred to in the Ombudsman's 1989 Annual Report) was a case in point, as was Northam, where although there is a local Aboriginal/Police Liaison Committee, both the

police and members of the local community requested separate meetings.

Matters which presently Concern the Ombudsman include:

(1) Police failure to use their discretion to summons people instead of arresting them. Police lack of knowledge about the use of their discretion in that they do not appear to be aware that they can change their minds about the use of summons, even after they have arrested someone. The Ombudsman is aware that police have received directions about this practice, but he is still concerned about the situation.

(2) Imprisonment for non-payment of fines. In respect of this matter, the Ombudsman advised that he had dealt with a matter in 1984 where the mother of five children was taken into custody after the non-payment of a fine for a Dog Act offence. The initial fine had been $6.00, the costs were $150.00 by the time the woman was arrested on warrant for non-payment. The Ombudsman stated that people were ending up in gaol because they are poor. In the case cited, the Dog Act does not fall within the Work and Development Order scheme. This is a major problem as far as the Ombudsman is concerned. He has made representations to Government about the situation to no avail.

Another element of concern about the 'Fine Default Scheme' is that the fine notification system does not spell out at the earliest possible opportunity, the fact that there are alternatives to custody when a person cannot pay a fine. The Ombudsman has suggested to this Royal Commission that it should be mandatory that a Magistrate tell the defendant of Fine Default Options, that this advice not only be given at the end of the process.

(3) Tenant liability for Homeswest housing is a perennial problem. The Ombudsman advised that complaints about this are made every year but that they seem to be casing off. One of the possible reasons for the reduction in the number of complaints could be the new Homeswest Appeals System. The Ombudsman believes he will be asked to 'audit' that Appeals process. Aboriginal people's complaints about housing are discussed in the Housing Section.

(4) The fact that there is no automatic cross-referencing of complaints which on occasion go to the Equal Opportunity Commission.

The Ombudsman has had some marked impact on social justice issues in this State. The most notable of these being the result of the investigation into discriminatory practices in Fremantle Prison. In 1988 the Ombudsman inquired into complaints by Aboriginal prisoners about discrimination in the Fremantle Gaol after the riot and fire sustained there in 1987. The complaint made by the prisoners was that Yard 1A was principally an Aboriginal yard. It lacked standard equipment and was open to the weather and in this it was unlike any other yard in the prison. Prison officers spoken to indicated that they believed the Yard was used for 'punishment purposes'. The Ombudsman commented that:

> ... it could be seen that Yard 1A was principally an Aboriginal [sic] yard and that prisoners released from separate confinement were much more likely

> to be placed there if they were Aboriginal [sic] ... It was therefore understandable that Aboriginal prisoners believed that they were subject to discrimination. This perception was accentuated by the fact that Yard 1A was structurally different to the other yards ... the racial make up of Yard 1A changed significantly during the course of ... inquiries and at the end of 1987 approximated the make up of the total prison population [Annual Report, 1988, p.21].

The Ombudsman discontinued his inquiries. It is interesting to note that the Furnell Royal Commission in 1974 had reported that there was no racial discrimination in the Fremantle Gaol and that the discriminatory practice of 'native parties' had been discontinued since 1965 (1974:377). Furnell cited as authority for this proposition the Royal Commission Report of Judge Jones into 'Discrimination against Aboriginal or part-Aboriginal prisoners in Fremantle Prison' where the Judge reported that from the time of the abandonment of the 'native parties', 'no distinction whatever has been made between Aborigine and non-Aborigine prisoners'.

Furnell (1974: 377-378) went on to report that: 'There is no question whatever that the policy of the administration is to integrate the prison population completely, without regard to colour or race, and the policy is being carried out thoroughly and conscientiously ... as far as conscious, deliberate discrimination against Aborigines in the prison is concerned ... I find that it occurs so infrequently as to be a matter of congratulation of the prison authorities and the policy they have pursued'.

Other positive initiatives from the Ombudsman's investigations include changes to the Police Routine Orders (discussed under Police Complaints) and in the housing area, the publication of a pamphlet on tenant fights and responsibilities.

The limitations to the Ombudsman's powers of investigation and inquiry are discussed in more depth in the Police Complaints Section (5 December 1910).

Chapter 10

ABORIGINES AND THE STATE: MARGINALISATION AND INSTITUTIONALISATION

Institutionalisation by the State is continually referred to in a negative context in relation to Aboriginal people and the colonisation of Australia. The respective State welfare agents by way of previous research have been identified as the most prominent agents responsible for the institutionalisation of Aboriginal people. In many cases the subjugation of Aboriginal people to such institutionalisation has been shown to be to the detriment of the individual, their family and their community. Overall, it has been a process that very few, if any, Aboriginal people escaped and one that prevailed despite various active and passive objections by Aboriginal people at the individual and community level. Throughout history, accounts of Aboriginal people's active or passive resistance toward assimilation have been documented. An example of passive resistance may be drawn from the following advice to the RCIADIC.

> I think there's a big lack of - what the sense of knowing justice; which, you know, which is right and which is wrong. A lot of the youth now have got the opinion that the white man owes them something, and they can sort of

> get away with a lot, too. Quite a few youth get around with that opinion ... Well, I've seen a lot of kids that don't seem to care; they go to court, they don't show any emotion. Somebody might say to them, you're gunna get six months, or you're gunna get this or that, and they just - you know they don't care, they - I think they prefer not to go, to be sent away, or put away, but they've just got this don't care attitude. And of course I really believe that that's something been sort of built up in them - or they've grown up with, seeing it in other people, in their elders [RCIADIC Transcript, Geraldton, 1990].

This statement is indicative of the contemporary consequences of the assimilation, which constituted the entrenched institutionalisation of Aboriginal people that is so observable today. Within the RCIADC's Terms of Reference, a number of persons have been shown to have endured a process of institutionalisation, e.g.: Robert Anderson, who was a resident of Wiluna and Karalundi Missions 1963-1972; Bobby Bates who spent years at Hillston Juvenile Detention Centre, and the Hostel at Esperance; Nita Blankett who spent years at Roelands Mission; Wayne John Dooler who from 9-16 years of age lived at Beagle Bay Mission; Christine Jones who from 5-14 years of age resided at the Church of Christ Mission, Carnarvon; and Kim Polak who lived for years at Mt Margaret Mission and Hostel. Chapter 4 provides full details of these matters.

The following quote makes available some insight into the overall impact of institutionalisation on Aboriginal people.

> It is very difficult - very hard for them, as I see it. They've got to somehow get off the merry-go-round of parents who've been brought up in the same they've been brought up in a sense of not having any direction, ambitions, goals, and not being able to pass on the sorts of things that their kids really need to equip themselves to really look after themselves in this society. That's the overall perception I've got of the problem here and I don't know whether the cell deaths - or the prison deaths are really a manifestation of that or something else [RCIADIC Transcript in confidence, Northern, 1990].

The institutionalisation process continues to nurture negative consequences for Aboriginal people. The view of Brandl, as cited in Chisholm (1983) is relevant here:

> It is the role and rights of parents everywhere to pass on their beliefs, knowledge, customs, language, law ... to their children. In that way the culture of a group lives on and its distinctiveness, too and consequently the pride of the people who own it. The role and the rights of parents and families in this can become endangered when other institutions take over aspects of handing on a heritage.

Throughout the processes of colonisation, the role and fights of Aboriginal parents and families were almost constantly endangered. Missions and government run institutions, supported by the State welfare agency of the day, were the main forums through which aspects of discrimination and assimilation were expressed:

> ... as early ago as 10 years ago, the Department was involved in removing children from Aboriginal families as they thought that that was the right way to go [RCIADIC Transcript, Albany, 1990].

Throughout processes such as these, Aboriginal people were consciously denied

many aspects of their culture. In my Commission's view, many of the problems that pervade Aboriginal society today are a legacy of the assimilation era. A statement in the Aboriginal Children's Research Report 1982 gives credence to this statement:

> Aboriginal society today, though not directly experiencing such injustices, remembers them only too well because they have been passed down through the generations and as such have conditioned a general distrust of authoritative bodies [Aboriginal Children's Report, 1982].

In my view, Aboriginal youth are going through a similar experience, and not reacting out of some vague memory of the historical past. They experience what their parents and relations went through. They know the pain of that experience. This, in part, may be why Aboriginal youth do not seem to care about aspects of non-Aboriginal society.

10. 1 THE MYTH OF DEPENDENCY

In keeping with various other myths being bandied around over the years about Aboriginal people, is that Aboriginal people are welfare dependent. While such a view carries with it a certain amount of accuracy for some sectors of contemporary Aboriginal society, I believe such an analysis needs to be placed into its proper context. The following quotes indicate my meaning here:

> On a personal level I would suggest that the community does not understand at all the problems Aboriginal people face in this and other communities and those assumptions that you were making before - the things you have been told, (that sort of generalisation or allegation that Aboriginal people get heaps but they will not do anything for it). I think reflect that pretty much, that there is no real understanding of the problems and the needs and probably not much thought gone into it either ... it is my opinion also that the wider community just does not have very much idea at all about the Aboriginal culture in general and its inherent traditions and very narrow perceived view of Aboriginal people and from that they get their view of this great amount of money and that they have and their welfare dependence and so on [RCIADIC Transcript, Geraldton, 1990].

> They make - when we attempt to assist individuals with necessities of life, because there is a child protection problem or a juvenile justice problem and the family is poor, then we are accused of assisting the bad people in the community and giving nothing to those in the community who are deserving [RCIADIC Transcript, Northam, 1990].

The essence of welfare dependency emerged from the enactment of the 1905 Aborigines Protection Act which was discussed in Chapter 2. Despite some major legislative and philosophical shifts, the State still appears to keep a considerable number of Aboriginal people marginalised and oppressed. It has been put to my Commission that the Department for Community Services, supported by the State, seems to assume that Aboriginal people make a conscious decision to be welfare dependent. However, the Department is remiss in effecting empowerment because of its present service based approach, which disallows Aboriginal peoples aspirations to deal with root causes. The following illustrates some of my meaning here:

> If we don't assist those people then we're accused of doing nothing. So we get damned if we do and damned if we don't. And the accusation usually comes from, I believe, people who are in positions of authority in country communities. And it usually emanates from local shires or councils [RCIADIC Transcript, Northam, 1990].

Aboriginal people's continued exclusion from processes that empower them to change their social circumstance nurtures the notion of their welfare dependency.

An examination of Aboriginal people's present role in relation to welfare does little to discredit this notion. To the contrary, with regard to material put before my Commission, such an examination reveals what could best be referred to as a co-dependent welfare environment.

10.2 CO-DEPENDENCY AND WELFARE

In a co-dependent environment Aboriginal people become 'scapegoats' in the sense that the system, and in the case of welfare services, the Department for Community Services, promotes them as the principal beneficiaries without actually striving for this realisation.

> Our department, as I said, has been looked at as Native Welfare and that has tended to marginalise the services that we give to Aboriginals and tended to alienate them from the rest of the community. And whilst we thought it was a good idea to help the more disadvantaged, I think we've found from bitter experience that all we tend to do is to perpetuate the disadvantage [RCIADIC Transcript, Albany, 1990].

Legislative reform and social change can only come about when there is a proper rationalisation of service delivery to Aboriginal people. The following quote is informative here:

> Government has had a tradition of being fairly paternalistic, and dependency cycles are easily maintained by Government services rather than broken [RCIADIC Transcript, Roebourne, 1990].

Maintenance of a co-dependent welfare environment negatively impacts on Aboriginal people, as the following quote illustrates:

> The organisation of welfare services, the allocation of resources and the skills needed by professional welfare personnel will all need to take into account present demographic trends, both now and in the next decade. These trends include, the number of unemployed people, the ageing of the population, more homeless young people and the continued breakdown of the nuclear family and other traditional family structures [Carter, 1984: 23].

Disproportionately expanding the welfare strata of society effectively sets the agenda for movement from a selective welfare oriented service toward a universal oriented service which prescribes:

> That there should be an agreed level of income beneath which no-one in the community should have to live and that this minimum income level

> should reflect the standard of living of other members of the community. It should not be merely at 'survival' level [ibid:3].

This movement is further influenced by the need of the State to endear society's members. For example, the Department for Community Services embraced the thrust of the Community Services Review Report by restructuring the Department and engaging in services that co-erced groups and individuals toward maintaining a confidence in the system. The overall objective of the exercise was to destigmatise welfare by developing a smokescreen for welfare oriented programmes in an endeavour to co-opt people to these programmes without appearing threatening, thus:

> We see a role for both Government and non Government services, with responsibility vested in the Government to ensure that these services are provided in a comprehensive and non-stigmatising fashion so that the State can hope to redress some of the major imbalances and inequities that confront a considerable number of our fellow citizens [ibid].

In the financial year 1988-89:

> An estimated $140m was provided by fourteen Government Departments and Authorities including SECWA, Homeswest, Water Authority and Transperth [to] enable people on low incomes to have access to essential Government Services and utilities at reduced personal cost [DCS(1) Annual Report, 1989:88].

This movement toward a universal welfare service requires the Department for Community Services to take a secondary role in the delivery of welfare services, setting the scene for the involvement of community based welfare services. As a secondary service provider, the Department maintains services but remains one stage removed from their administration and implementation. These programmes are put forward as being detached from 'welfare' and as a 'user friendly' service. In the 1988-89 financial year the Department for Community Services funded community based initiatives to the tune of $15,514,611 (DCS(1) Annum Report, 1989:92).

10.3 DEPARTMENT FOR COMMUNITY SERVICES

Aboriginal people have never possessed the bargaining power that some other groups within mainstream society have. However, the Department for Community Services has certain obligations to Aboriginal people both in a contemporary and an historical context. In my view, the Department for Community Services cannot persevere with its traditional welfare service toward Aboriginal people. This is particularly crucial in relation to Aboriginal youth, with whom the Department has a critical role to play. It must opt, instead, for services that are more conducive to a process of empowerment. Access to knowledge, information and resources are but some of the most notable processes for facilitating empowerment. Evidence suggests that many Aboriginal people have limited access to knowledge and information within the confines of the Department for Community Services. The general practice being to relate information and knowledge that fits an individual officer's interpretation of a situation as relayed by the Aboriginal client. To assist in the amelioration of welfare dependence, the Department must assume a role that facilitates Aboriginal identity and self-determination, which will allow Aboriginal

individuals/groups to define their problem and determine the solution.

The Department for Community Services has seven programmes, approximately thirty associated projects and an equal amount of project components. The programme areas are Family and Individual Support, Financial and Material Assistance, Substitute Care Service, Youth Affairs, Community Funding and Development, Child Protection, and Juvenile Justice. Aboriginal people are overrepresented in:

> Financial and Material Assistance - In the 1988/89 Financial Year there were a total of 21 389 recipients of this service of which 5 191 (24.3%) were Aboriginal people [Financial and Assistance Branch Data, 1990].
>
> Juvenile Justice Programmes - 'Of the 421 offenders admitted to secure detention, 67% were Aboriginals' [DCS(1) Annual Report, 1989, p.94]. On a State average Aboriginal participation in Local Offender Programmes is 50.5%. The range of participation is 7% to 95% [See Appendix 'D'].
>
> Substitute Care Service - Of the 838 children in substitute care placements 370 (44.1%) are Aboriginal [DCS(1) Annual Report, 1989; 31 and Child Protection.- Refer Choo's comments p. 16].

By comparison, Aboriginal people do not enjoy the same overrepresentation in Family and Individual Support, Youth Affairs and Community Funding and Development, suggesting that Aboriginal people either do not get informed of the availability of such programmes, or are not actively encouraged to participate in them. To rectify this, in my view, the Department for Community Services must make a concerted effort to extend to Aboriginal people information, knowledge and resources that will enable them to make more informed decisions. The important matter of Aboriginal access to information is also considered in Section 6.12.

Whilst the Department for Community Services has a significant role in redressing the issues associated with Aboriginal people, it is not the only State Agency that has an obligation in this regard. Nor do the above statements imply that it has the major responsibility. That responsibility rests with the Aboriginal Affairs Planning Authority as outlined in Section 13(1)(e) of the Aboriginal Affairs Planning Authority Act 1972 which requires that Authority to:

> provide consultative, planning and advisory services in relation to the economic, social and cultural activities of persons of Aboriginal descent, and advise on the adequacy, implementation and co-ordination of services provided or to be provided from other sources [Aboriginal Affairs Planning Authority Act, 1972].

The implicit factor of Section 13(1)(e) is the onus on the Aboriginal Affairs Planning Authority to be fully conversant with the economic, social and cultural needs of Aboriginal people in Western Australia, and to subsequently engage with relevant government instrumentalities.

The Department for Community Services, however, should not be arbitrary in the services that it extends to Aboriginal people in relation to their Aboriginal needs and aspirations. DCS(1), in not effecting or engaging in a process of empowerment for Aboriginal people through information/knowledge and resources, contravenes Instrument 52, part 111, Article 15(d) of the Declaration of Human Rights which requires signatories to devise means and methods to effect:

> The dissemination of social information, at the national and the international level, to make people aware of changing circumstances in society as a whole, and to educate the consumer [United Nations, 1983: 136].

A generally held belief is that access to information engenders power. In the context of this belief, the Department for Community Services has a crucial role to play in what information it gives Aboriginal individuals/groups. The following case study is indicative of the disadvantaged position that Aboriginal people operate from in their dealings with the Department for Community Services. In this case, if the family had not had access to an advocacy worker, the Department through one of its officers, would have more than likely maintained its initial stance of no assistance. What is illustrated in the following account is the need for direct advocacy, and the discretionary powers that the Department allows its officers to exercise dependent on who and how the request for assistance is presented.

> February 1990: A young girl aged 13 years ran away from home and was taken in by her aunt and uncle. She told them of problems with her stepfather. The aunt and uncle talked to the girl's mother and a mutual agreement was made that the aunt and uncle would foster the girl. It was the first week of the school year and the girl's first year at secondary school. The aunt and uncle sought help from State DCS(1) with money for school uniforms, food and other expenses to help them support the gift until DSS and Austudy arrangements were in place. The aunt and uncle were very poor, being in receipt of Sickness Benefit. DCS(1) refused assistance. The gift missed her first week at school until an advocacy worker pressured DCS(1) into helping the family. The DCS(1) social worker suggested that the gift should attend high school dressed in the old floral shorts, T-shirt and thongs in which she had run away, despite the fact that the high school is known to have a strict uniform rule. Schools such as this victimise children who are not in uniform [RCIADIC Submission, 1990; 6/11/UI].

The perceived challenge for the Department for Community Services throughout the Legislative Review process was to attempt to:

> ... find the balance between the community service and statutory protective mandates of the Department, and between the power needed to effectively fulfil the latter mandate and the protection of the rights of those affected by Departmental action [Lipscombe, 1989:10].

Lipscombe (1989:9) also refers to the fact that: 'In 1984 the Welfare and Community Services Review in Western Australia criticised the then Department's operation of its mandate as being overly focussed on its protective roles in regard to child protection and juvenile justice and failing to implement preventive and community development functions. Under-resourcing, lack of clear policy and an insufficient working relationship with the non-Government sector were identified as the main reasons for this situation'. Furthermore, the ethnocentric framework within which programmes are presently conceived gives impetus to the argument of the cultural alienation of Aboriginal people within the system. This will only be abated when a culturally appropriate framework has been developed and applied to all situations dealing with Aboriginal people.

In developing this framework the system must be mindful of the diversity that exists

within the Aboriginal community and subsequently ensure its incorporation, thereby, enabling it to be flexible enough to encompass all Aboriginal people. Development of an Aboriginal framework has a twofold purpose. One is that it gives Aboriginal people confidence in the system because of the legitimisation of their position, and the other is that it discourages ill-informed practitioners from applying discretion in ascertaining Aboriginality.

10.3.1 Department for Community Services and juvenile justice

From evidence put before my Commission, it needs to be stressed that if the Department for Community Services is serious about countering the issue of juvenile offending, it needs to reconsider its role in light of the juvenile justice process. This is particularly so for Aboriginal children who, in many cases, have very limited access to resources because of their caregiver's low socio-economic and powerless situation. Additionally, the Department for Community Services needs to examine why Aboriginal children are more susceptible to offending behaviour than their non-Aboriginal counterparts. One way to do this effectively, is to properly consider socio-economic and cultural matters. It should also be mindful of its own historical legacy that may not be disregarded by Aboriginal people with whom it has had to interact.

A further factor that warrants examination which has been expressed in research undertaken by my Commission, is that, as noted earlier in Chapter 5, incarceration is failing as a deterrent from offending behaviour for Aboriginal children. A sample of such comments were:

> ... I have seen a wave, every now and again, of when it becomes almost prestigious to want to go to Longmore, and somebody will really want that, and they will refuse to accept any other alternative [RCIADIC Transcript, Carnarvon, April 1990].
>
> See, we have spoken to the children in the past. A lot of them consider - we spoke about the amount of people who would end up in gaol and they personally think it is a big joke, because they can go there; can learn to play the guitar, they can play basketball, et cetera; all these various things they can get when they are in the gaol. So, to a lot of them, concerned, like ... a good thing [RCIADIC Transcript, Roebourne, March 1990].
>
> Jail for the Roebourne community is a way of life. It is accepted with no stigma and Aboriginal people are comfortable visiting here. Jail is not seen as a deterrent by the wide Aboriginal society ... For a white person his lifestyle is his deterrent, but Aboriginal people haven't even got their pride or self-esteem to lose [RCIADIC Meeting, Pilbara, October 1989].
>
> Talking about juveniles placed in maximum security '... you don't put extra pressure on kids when they have enough pressure on them if you don't want them to respond in a negative manner' [RCIADIC Meeting, Pilbara, October 1989].

Incarceration is hardly a deterrent to offending behaviour if one gets indulged more than they would if they had not offended. Material contained in Appendix 8 is also a good indicator that incarceration is failing our youth. This chart shows that after the 5th court appearance the likelihood of continued periods of incarceration

increases, with a high percentage (65%) of Aboriginals graduating to the adult prison system. What the above statements and the trend in the chart suggest is, rather than abating offending behaviour, incarceration may be having a net widening effect. I am not suggesting here that detention centres and prisons should be larger or more spartan than they are now. It seems that a simple but tragic matter of poverty and deprivation at home and in the community, with little hope of improvements being made, means that detention centres might present as the best option.

The other contingency that may account for its lack of relevance as a deterrent is that the present process of incarceration is reminiscent of the assimilation process of bygone eras. As a process its inherent principles are basically consistent with those engendered through the process of assimilation that was mounted against Aboriginal people. Through the process of assimilation Aboriginal inmates were confined in government and mission compounds with the objective of socialising them toward a non-Aboriginal value system. In essence that objective and the implied objective of the present incarceration process is not dissimilar. Through a process of confinement contemporary inmates are still being exposed to alien cultural concepts on the pretext that they will subsequently internalise these and assume a behaviour consistent with such cultural concepts and social expectations.

The slight difference in indulgence in cultural activities is not completely outlawed as was the case in the assimilation process. In fact there are examples of a range of culturally compatible activities being conducted at intermittent intervals within the various institutional facilities. However, generally speaking the incarceration programme appears to be biased toward the dominant culture and its inherent values. Its capacity to achieve identity alienation and cultural and social dislocation for young Aboriginal people, becomes a continuing dilemma throughout the same period for which these individuals will be 'at risk' of being taken into further custodies.

10.3.2 Visibility and invisibility

In Western Australian the poverty of Aboriginal people was observed throughout the research process (see e.g. Chapters 7 and 11). The situation in Kalgoorlie, for instance, where large numbers of Aboriginal people are living in Third World conditions in close proximity to the commercial centre of the town was particularly noticeable. Kalgoorlie by no means is an isolated case but provides a good example of Aboriginal people stricken by poverty. Similar observations may be made in most areas throughout Western Australia where there is a substantial Aboriginal constituency. Aboriginal people's social predicament in these urban and remote settings can sometimes be seen in terms of visibility and invisibility. Visible when they impact on mainstream structures and processes i.e. offending behaviour:

> I know community is a word that's been so abused over the past number of years that it's really a non-word I guess, but when it's used in Carnarvon in this context, it generally means business community and that they are demanding of protection and that they are putting a lot of pressure on shires and magistrates to have an altered situation [RCIADIC Transcript, Carnarvon, 19901.

and invisible when mainstream society impacts on them i.e. their relegation to Third World living conditions on the fringes of these urban centres.

10.3.3 Aboriginal realities

My Concern is that if Aboriginal children are exposed to predicaments such as those described above on a daily basis, then there is the likelihood they will eventually internalise that situation. Through such internalisation they project their future through the reality of the Aboriginal adults around them. The consequence of Aboriginal children's internalisation of the situation is the adoption of an attitude of complacency and indifference as some of the following quotes reveal (the following quotes are extracted from RCIADIC research notes, Kalgoorlie, July 1990):

> Cops get rough with us all the time, they call us names like boong/nigger and other things. They even tell us we're nothing but criminals and they don't treat us right.
>
> This place here don't like Wongis so everyone picks on us.
>
> I've got no plans for the future. I suppose I'll just hang around with this mob, most probably end up in more trouble. I don't know.
>
> We don't know about the future we got nothing planned most probably end up staying here and get into more trouble.

Aboriginal children from country areas are grossly over-represented in secure custody (see table below):

> I'm no doubt you are aware, I think that country youths are disadvantaged here. The arrest rate in a small town like Carnarvon is so very high compared to the metropolitan area and so I think that statistics that say that the offences per population in Carnarvon are so much higher than the metropolitan area are a little overrated [RCIADIC Transcript, Carnarvon, 1990].
>
> ... I do again though think that the Carnarvon youths are disadvantaged by virtue that they're in a small town. As I said before, they are known and the public place incredible pressure upon the magistrate [RCIADIC Transcript, Carnarvon, 1990].

Table 10: Admission to Secure Centres

Location	Aboriginal	Other	Total
Country	207	59	266
Metropolitan	97	87	184
Total	304	146	450

(Source: DCS(1), 1990)

The disparity between Aboriginal and non-Aboriginal court appearances and those that result in incarceration is demonstrated in Appendix 8. To give an indication, in

the Murchison region court appearances by Aboriginal and non-Aboriginal youth was on par. What becomes apparent when comparing the graphs is that if you are Aboriginal and convicted of a charge in the Murchison region you had eight times more chance of being incarcerated than a non-Aboriginal offender.

10.3.4 Department for Community Services obligations

The Departments obligation to uphold in practical terms the principles enshrined in the United Nations Declaration of the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (also known as the Beijing Rules) is, in my Commission's view, critical. The former reiterates the Human Rights Principles focussing on children's immaturity and advocates for the State to assume responsibility because of children's immature disposition. The latter sets guidelines for the State and practitioners in the administration of Juvenile Justice. These guidelines state:

- It is desirable to promote children's welfare in order to minimise the necessity for intervention by the juvenile justice system;
- The rules apply to all juveniles offenders who commit either criminal or status offences;
- a minimum age of criminal responsibility should be set that allows for emotional and psychological maturity;
- the juvenile justice system ought to promote the child's wellbeing and any response to young offenders should be proportionate to the circumstances of the offence and offenders;
- discretion should be provided at all levels of the process so that the most appropriate action can be taken and that checks to prevent the abuse of this power can be provided;
- juvenile offenders have rights to basic procedural safeguards, such as presumption of innocence, notification of charges, to remain silent, to counsel, the present of a parent or guardian, confrontation and cross examination of witnesses and appeal to a higher authority;
- the child's privacy be protected by preventing publication of identifying information about cases;
- parents or guardians be notified within the shortest time possible after a child is apprehended and that release of the child be considered without delay;
- diversion from formal processes be considered wherever appropriate and that this only occur with the child's consent;
- detention awaiting trial be a measure of last *resort* for the shortest time possible, be separate from adults and assistance (social, educational, vocational, psychological, medical, physical) be provided to meet needs a child may have;

- trial proceedings be conducted by a competent authority and in an atmosphere that understands and allows the young offender to participate;

- parents or guardians be entitled to participate in the trial unless excluded by the competent authority because their participation is not in the child's interest;

- properly investigated social reports be provided to the court in serious cases to assist in adjudication;

- in the adjudication and disposition of cases: the principle of proportionality should guide decision; restrictions on personal liberty should be limited to the possible minimum; deprivation of liberty should be avoided unless there is no other appropriate response to the offence; and the wellbeing of the child shall be the guiding factor in the consideration of the case;

- juvenile offenders are not subject to corporal or capital punishment;

- a variety of dispositions be available so as to reserve institutionalisation as a measure of last resort;

- unnecessary delay be avoided;

- records be kept confidential and not used in subsequent proceedings when the offender becomes an adult;

- personnel in the juvenile justice system be trained and reflect the cultural and socioeconomic diversity of children who come into contact with the system;

- institutional treatment is to provide: care, protection, education and vocational skills to assist offenders to assume a socially constructive and productive role in society, and so they are not disadvantaged; all the necessary assistance that children may require because of their age, sex, and personality; separation from adult offenders; special attention to the personal needs of female offenders and to provide them with the services equivalent to male offenders; access by parents or guardians; and adequate academic or vocational training so that juvenile offenders are not disadvantaged;

- frequent and early recourse to conditional release be available; and

- juvenile offenders be supported in reintegrating in the community [Lipscombe 1989:481.

10.3.5 Department for Community Services policy and philosophy

The negative aspects of Aboriginal people's association with welfare are well entrenched and documented. Despite, as noted above, a slight shift in recent

years welfare agents are still perceived by Aboriginal people as an adversary primarily because the Department for Community Services persist with an ethnocentrically-based attitude and service delivery.

The International obligations that the Department for Community Services currently has relate to Family Rights: The Universal Declaration of Human Rights; The International Covenant on Civil and Political Rights; The International Covenant on Economic, and Social and Cultural Rights and Childrens rights: Declaration of the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); International Covenant on Civil and Political Rights; Standard Minimum Rules for the Treatment of Prisoners; International Labour Organisation (Lipscombe, 1989:11, 18).

The Department for Community Services embraces these international obligations by defining its purpose as being to:

> ... contribute to the Western Australian community by promoting and providing welfare services based on the principles of furthering independence, autonomy, social justice and access to opportunity, that assists families, individuals, groups and communities achieve their own wellbeing, and ...
>
> The Department believes it should implement its Charier in a manner that is: responsive to the needs, aspirations and rights of families, individuals and groups; conducive to maintaining the family unit, as appropriate; sensitive to gender and cultural differences; just, humane and empowering.

Lipscombe (1989:9) goes on to observe that services 'should be of high quality, equitable and accessible and the Department accountable in all respects'.

10.3.6 Implementation of philosophies and policies

The realisation of the Department for Community Services philosophies and policies for Aboriginal people is difficult owing to present services, programmes and their associated guidelines and processes, indirectly discriminating against Aboriginal individuals and community groups. The following comment demonstrates my meaning here:

> The Aboriginal Advisory Council has received a number of complaints on this subject [fostering]. Part of the problem lay in the number of Aboriginal people who were in a position to be foster parents, financial considerations being of great importance. It was felt that the Department needed to make a greater effort at this level to ensure that the policy [Aboriginal Child Placement] worked. This may require a review of current subsidy levels, particularly the rate payable to extended family members ... Many Aboriginal people do not fit the criteria for emergency relief. As many live in shared accommodation, they are not eligible for assistance. The problem appears particularly acute in some country areas, such as the North-West, where there is a shortage of accommodation, including crisis or 'shelter' accommodation ... Counter staff were seen to have no understanding of the importance and sensitivity of funerals to Aboriginal people and fail to give full explanation of available benefits and assistance.

> The Department has put considerable effort and resources into prevention programmes in the city and country. These include school based programmes, employment programmes, alcohol and drug abuse programmes, parent skills training, the 'Challenge to Youth' program and law education programmes. But many community respondents reported that young Aboriginal people tended not to utilise these programmes partly because they were inappropriate [Equal Opportunity Commission Report No. 7, 1990:62-64 & 83].

10.3.7 Service based vs needs based approach

The consequence of the Department for Community Services operating within an ethnocentric framework can be considered as discrimination against Aboriginal people. This is particularly so when considered in the context of the Department for Community Services stated philosophies and principles, and its international obligations. Basically, I would suggest that the Department for Community Services needs to adopt a 'needs based' focus in relation to Aboriginal people as opposed to 'service based'. The Equal Opportunity Report also found that whilst the:

> West Australian Council of Social Services (WACOSS) accepted the Department's 'needs based' approach it was somewhat compromised by the lack of accurate and comprehensive data plus the fact that many of the program grants required written submissions and community-based organisations often had problems meeting their requirements. This was particularly so with many Aboriginal organisations in non-metropolitan areas. Assistance with applications was rarely given by Departmental officers (although there were a number of exceptions in the North West). The result was that many groups claimed to be virtually excluded from grants and funding programmes [Equal Opportunity Report No. 7, 1990:65].

It is clear to my Commission, that the Department for Community Services, like all government departments, needs to be mindful of Aboriginal people's predicament and take measures to ensure accommodation of the same in terms of its processes (Bolger [1987] also addresses these issues). Only then will the Department for Community Services have the capacity to respond effectively and in a manner that is appropriate to Aboriginal people.

The Department for Community Services' present bias is toward a service based approach, and as such it impedes positive Aboriginal participation in Departmental processes. Its retention not only handicaps Aboriginal people but is a factor that contributes to the perpetuation of unjust practices against Aboriginal people, which in turn leads to the manifestation of powerlessness.

An effective needs-based approach has major administrative and resource implications, but is absolutely necessary for the philosophies and principles espoused by the Department for Community Services to materialise. Otherwise the institutionalisation process will continue to affect Aboriginal people.

Examples of Aboriginal people's continued institutionalisation is evidenced in the following programme details from the Department for Community Services. Initially, it needs to be observed that 'of the 421 offenders admitted to secure detention,

67% were Aboriginals' (DCS(1) Annual Report, 1989:94).

Table 11: Children in Foster Care ('Substitute Care') as at June 1989, Status by Aboriginality, Western Australia

STATUS	ABORIGINAL	OTHER	TOTAL
Wards	122	264	386
Non-Wards DCS Placed	85	159	244
Non-Wards (private)	163	45	208
TOTAL	370	468	838

(DCS(1) Annual Report, 1989:31).

In relation to Child Protection, Choo citing Thorpe's study of 1989 reveals:

> that in Western Australia nearly a quarter of all child protection cases reported/notified (22.3 per cent) were Aborigines. Of these allegations, 68.2 per cent were found to be substantiated by DCS(1) officers. By comparison only 45.5 per cent of the reports/notifications involving children of non-Aboriginal or unknown ethnic origin were substantiated. Of the 103 Aboriginal children whose abuse was substantiated, 84 (81.5 per cent) were considered to be at risk or neglected, compared with 51 per cent of non-Aboriginal children. Only 9 (8.7 per cent) of the 103 Aboriginal children were sexually abused compared with 25 per cent of the non-Aboriginal children [Choo, 1990:59].

The above statistics lend weight to claims that an institutionalisation process is still being experienced among Aboriginal people. This process has had, and continues to have, many inherent problems.

The scarcity of monetary, material and human resources within the Aboriginal community limits their ability to counter these problems effectively. In many instances the only recourse for Aboriginal people is to supplement their shortfall of resources by accessing resources located within the system that they are attempting to break away from.

10.3.8 Equity, compromise and social regression

It seems that a discrepancy in values can disallow an equitable cultural interface between Aboriginal and non-Aboriginal people. The contrast in values severely hinders Aboriginal people in their quest for equality and justice, by indirectly suppressing their ability to realise their aspirations on an equitable basis. This situation undermines the State's commitment to the Universal Declaration of Human Rights particularly the declaration on 'Social Progress and Development -Articles 1 and 2 which state:

> All peoples and all human beings, without distinction as to race, colour, sex, language, religious, nationality, ethnic origin,
>
> family or social status, or political or other conviction, shall have the right to live in dignity and freedom and to enjoy the fruits of social progress and should on their part, contribute to it.

> Social progress and development shall be founded on respect for the dignity and value of the human person and shall ensure the promotion of human fights and social justice, which requires:
>
> > The immediate and final illumination of all forms of inequality, exploitation of peoples and individuals, colonialism and racism, including Nazism and apartheid, and all other policies and ideologies opposed to the purposes and principles of the United Nations;
> >
> > The recognition and effective implementation of civil and political rights as well as of economic, social and cultural rights without any discrimination [United Nations, 1983: 133/4].

Government's lack of adherence to these principles provokes serious Concern, especially as throughout the research process of my Commission, submissions from Aboriginal people sought acknowledgement of their cultural difference by the system. The following statement sums up some general feelings:

> There is too much European way of life every day and we are leaving our culture behind. We are living a foreign religion and lifestyle and not living the way we were brought up [RCIADIC Meeting, Dampier Peninsula, March 1990].

This statement and others suggest the State's definition of equity dictates a further compromise by Aboriginal people. A compromise that they, by the content of their submissions, were rejecting.

> Aboriginal people have to break free of white mans law to survive. We are still in custody outside jails [RCIADIC Meeting, Kimberley, November 19891.
>
> We have had to try and adjust to their values but have had our own lost - problems have come in because of that. We've had problems ever since the whites arrived [RCIADIC Meeting, Goldfields, November 1989].

The evident deficiency in the State's definition of 'equity' indirectly denies the majority of Aboriginal people access to the bulk of mainstream services and programmes contributing to the detriment already being experienced by Aboriginal people because it effectively denies their human right to:

> live in dignity and freedom and to enjoy the fruits of social progress [United Nations, 1983: 133].

Continued denial surely provides grounds for the development of a prima facie case against the State under the Equal Opportunity/Human Rights Act. Argued from the perspective that failure of the State to redress the perceived detriment harbours inverted racism, therefore breaching the principles enshrined in these two Articles which are, in essence, the State's instruments for pursuing Human Rights Principles. Among other things, denial of access has impacted on Aboriginal people to such an extent that some disturbing trends have become evident among various people and groups:

> People eat drink and sleep - its killing them. White people encourage them

to do it to kill them out. Its not getting better it's getting worse.

You get to know people, get to know their families and see their health going down. You see the kids being looked after by this person or that person. The people can't cope so they drink.

They were trying to put in an Aboriginal football team and were told it was racist to have an Aboriginal team - reminded him of the social change - look around the street and who do you see -Aboriginal people drunk. Aboriginal kids are not playing in teams. They aren't at the clubs because they don't fit in.

They haven't got a home. They are forced to drink [RCIADIC Meeting, Goldfields, November 1989].

10.3.9 Aboriginal concern

Aboriginal people generally put to the RCIADIC that they were very concerned regarding the trend that is developing, especially amongst their children, but often feel powerless because of lack of support and resources to deal with it. The following comments capture my meaning here:

> And you know I can see no future for our kids other than what we've experience, its just the same old lifestyle, eat, sleep, play, gettin' stuck into the booze, you know, drugs, and everything else associated with idle time. There's no direction, we can't give our kids direction, we can't teach 'em these skills, we need facilities where we can teach the kids these skills so that they are able compete out there with their white counterparts [RCIADIC Transcript, Gnowangerup, 1990].

> And we get the same old cat cry, saying, 'Ah, but the parents don't care'. They really do care. But as society is, and their culture, they've got absolutely no identity ... What we need is more mature Aboriginal people that can get on side of these kids - get them self esteemed. And to know how to provide the help to their children, and when they do attempt that, they're frustrated by the attitudes or the lack of co-operation that they encounter [RCIADIC Transcript in confidence, Geraldton, 1990].

10.3.10 Empowerment and the State

It is my view that Aboriginal people need to be more conscientiously and appropriately serviced by the Department for Community Services. The Department must engage in a process of empowerment that reinstates in Aboriginal people a sense of purpose, respect for their rights and allows them to maintain a sense of dignity. This needs to be reflected within all the programmes and services of the Department for Community Services and not just a select few. The Department for Community Services should concentrate on developing: Aboriginal involvement in the development and implementation of policies and programmes; more culturally appropriate programmes; improved access criteria to established programmes; increased numbers of Aboriginal employees; and increased support to the Aboriginal infrastructure in particular areas to enable them to redress the detriment themselves.

In sum, the process of dispossession impacted and continues to impact on Aboriginal people through all facets of their life. The Department for Community Services, in maintaining a service based approach rather than a needs based approach, contributes to Aboriginal people's predicament, becoming part of the problem rather than part of the solution.

Within the last decade a number of internal and external reports have been compiled on the Department for Community Services. The majority of these reports acknowledge the overrepresentation of Aboriginal people in the system particularly in the area of juvenile justice. The Edwards Report The Treatment of Juvenile Offenders' (1982:66) is a classic example:

> The problem of the over-representation of the Aboriginals in court appearances, convictions and institutions is a massive one. The Aboriginal children constitute just over 3% in the 'at risk' age groups, that is the seven to 17 year olds. They are convicted of over 30% of the offences against children in Children's Courts.
>
> Some of the causes of the problem may be identifiable - conflict of cultures, poverty, lack of facilities, deprivation, discrimination. It need hardly be said that there is no easy solution to it, nor is it directly part of my task to seek a solution. But the problem does underlie the issue, and make it, in turn, a very difficult one to find answers to.

Despite such acknowledgement in this and other reports, overrepresentation of Aboriginal people remains constant. The fact that change has not been forthcoming to redress such overrepresentation not only implicates the Department for Community Services but also raises the question of relevance to such references.

Overall, dispossession and its associated processes of industrialisation, and urbanisation has forced more and more Aboriginal people to access welfare resources for sheer survival. Therefore, without firstly redressing past and present unjust practices as they pertain to cultural differences, it would appear to be totally unrealistic for policy makers and programmers to assume Aboriginal people's participation in mainstream programmes. To persevere on such an assumption is a further indictment on the system against Aboriginal people because it infers a lack of acknowledgement of their social dislocation and the historical, social, cultural, economic and political barriers that sustain it. As noted in the Equal Opportunity Review (1990:8):

> Unlike some other State departments, the staff of the DCS(1) are able to exercise much discretionary authority in their approach to the work. This also means that there is scope within their employment to integrate personal philosophies or ideologies into their daily approach.

Finally, in this chapter, a further case study illustrates some of the points made above in relation to Aboriginal powerlessness and the State. The case study illustrates the need to empower Aboriginal individuals and organisations.

10.4 'TAKING YOUR CHILD AWAY ...'

> Although there are procedures which are distinct from one another in most cases, foster care and adoption ... [in] the Aboriginal experience is [such that] their administration is so interwoven that they cannot be separated out. Their disentanglement and more judicious use in respect of their children is one of the major demands of the Aboriginal community ...
>
> The path for many an Aboriginal child was separation from a parent or parents on a reserve (for neglect) and placement in a State home, followed by foster care with whites, and either de facto or de jure adoption by that or another white family. Thirty percent of Aboriginal children were adopted or fostered by whites.
>
> This was not achieved by special, discriminatory laws, nor even perhaps by collective administrative and judicial ill will, for it is likely that those who administered the white law did so with the assurance that they were helping to assimilate these children into the dominant community. The reason for the overwhelming imbalance of Aboriginal children in the foster care/adoption service was that when the letter of the white law was applied to the Aboriginal community the outcome was a foregone conclusion ... Because the advantages offered by acceptance into the dominant society were so great, one suspects the enquiry into the manner of separation between the Aboriginal child and the parent was not carried out as zealously as it could have been.
>
> It is clear that Aboriginal children are grossly over-represented amongst those who have been removed from their families and placed in Government care pending fostering, adoption or more permanent institutionalisation. Reports of Government removal of Aboriginal children from their families abound in every jurisdiction and there is no compensatory evidence of those Aboriginal children being placed hack with Aboriginal families. It seems that to date there has been no generation of Aboriginal children which has been free of the threat of arbitrary removal by the State. And complaints of the pursuit of such an official policy of family break-up persists. Yet this discrimination is not reflected in the numbers of cases which have reached the courts.[Gamble, 1986:246].

Examination of one of the few cases to proceed to court hearing in Western Australia provides a number of insights about the processes described by Helen Gamble. In 1977 the Aboriginal mother of three children was granted custody of those children in the Family Court of Western Australia. The respondent was the father of the children who was himself Aboriginal. The mother had taken this action because the father had removed the children from the place in which they resided.

The history leading up to the 1977 Court heating is as follows. In 1974 the mother had applied for financial assistance when the father had been imprisoned for driving offences. She made two such applications in that year. On the second occasion the children were informally 'in care'. The mother also spent some time in Heathcote that year. The institution 'caring' for the children also applied for financial assistance for them in that year. The three children were returned to their mother in October and November of that year.

Early in 1975 'short term' committal to the care of the Department occurred. It was envisaged the children would return to the home situation when the environment had 'stabilised'. One of the children had been admitted to hospital for 'neglect'. The

three children had appeared in a Children's Court in 1975 on a 'neglect' application which was based upon assertions of parental drinking, fighting, overcrowded home conditions and children's poor health. Shortly after the children were placed in 'care', the parents were evicted from their State Housing Commission home, in spite of representations to the Housing Commission attempting to forestall the eviction because of the death and funeral of a member of the immediate family. Some three months after the eviction, the parents, with their three children 'in care', separated.

The children remained 'in care' throughout 1976. In early 1977 the wardship of all three children was extended and they remained 'in care'. In mid-1977, the mother was approached about the possibility of adopting the youngest child out to a non-Aboriginal family which had had some ongoing dealings with that child. The mother refused to consider that option and was in fact vainly attempting to obtain State Housing Commission housing in an effort to get the children back in her care.

In late 1977 the mother agreed to leave the youngest child in the care of the non-Aboriginal foster family. At almost the same time, she took out custody proceedings against the father of the children as he had removed them from the home. The Department did not know of the Family Court application. So the first court Order in these proceedings was granted to the mother and provided for her to have custody of all three children as against their father.

The next court Order was made in early 1978, and it provided for a non-Aboriginal woman, who had weekend and holiday access to the child, to 'intervene' in proceedings; it 'suspended' the Order in favour of the mother which granted her custody of the youngest child; it provided for the 'intervener' to have the care and control of that child, and restrained the natural parents from removing the child from the intervener’s care. Shortly after that Order, another Order was made granting interim custody to the intervener. The intervener’s application for custody was supported in Affidavit by a social worker who some few months previously, had deposed to the mothers capabilities and supported her against the father.

The immediate effect of this Order was to legally sanction the separation of the three children. The long term impact of the Order was to preclude the mother and father of the child from having any son of meaningful contact with the child. No provision was made for any access. The court proceedings allowed a non-Aboriginal person the status of 'intervener' in respect of a custody matter between two Aboriginal parents. It would seem that no effort was made to Find suitable Aboriginal foster parents.

That Order also flies in the face of the United Nations Declaration of the Rights of the Child (UN 20 November 1959, General Assembly Resolution):

> A child of tender years shall not, save in exceptional circumstances, be separated from his [sic] mother.

The alleged 'exceptional circumstances' in this case were:

(i) the child became upset upon being returned to the home after weekend leave with the intervener;

(ii) there were concerns about the child's father removing the child from 'care'.

It was deemed in the child's 'best interests' to be placed in the custody of the intervener. Further, the issue not addressed was the return of the child to the mother. No thought was given to how this might be effected. No thought was given to the maintenance of contact with the parents. The possible actions of the father justified the destruction of the child's relationship with the mother. An injunction against the father would have been an appropriate course to take. Another question which arguably should have been asked at the time of that Order, with the greatest *respect,* is what made this child different from the two siblings. A possible answer is that the non-Aboriginal intervener had formed an attachment to the child. The other two children remained 'in care' for a number of years but were finally placed in the care of their parents who had reconciled, obtained housing and stopped using alcohol.

In the years between the granting of the Custody Order in favour of the intervener, the child's natural parents attempted to locate the child. Requests to the Department of Child Welfare met with refusal to disclose the child's address. The parents sought legal advice in an effort to re-institute proceedings to gain custody or access to the child. They were concerned about the manner in which they had lost custody and the difficulties they had in getting the right to visit the child.

Requests for access resulted in welfare reports being compiled. The child agreed to see the siblings and also the parents. The intervener then would not agree to the meetings if the natural parents were present, failed to attend at least one arranged meeting, offered access every weekend, organised access for one weekend, advised that the child didn't want any more access after the first weekend and delayed at least one pre-trial hearing because of other arrangements. After a number of counselling sessions, the child declined to attend any further access. At one stage, the child stated that maybe after turning 18 years old, access would be viable.

The final Order of the Court was to the effect that access be provided to the parents as the child requested, the intervener have sole guardianship and custody, and the parents be restrained from removing the child from the care of the intervener.

Some comments provided to my Commission from the parents of the child who was so coldly and wrongly removed from them, express their feelings of devastation and loss:

> We're worried that our daughter won't know her relations ... we used to think there was some kind of laws in this land ... when we were in court, the judge said to us, 'I don't know how you will fit in - between the foster mother and father - there will not be much time... he was talking about our daughter ... We would like to have her home with us, but at the very least we would like to have contact. We're her family. We want her to get to know her relations, to know Aboriginal people ... We won't rest until we get justice done [RCIADIC, research notes, May 1990].

The anguish sustained by Aboriginal people, through loss of their children to State instrumentalities, also occurred when missions and their own brand of institutionalisation intruded on people's lives and their families.

10.5 MISSION POLICIES AND IMPOSITIONS

> ... many of us were placed in the Mission, not that it was our want, we were just placed in a home and then having been belted so much as kids then being ... some of us belted and then put into the bedroom with the door shut after being belted ... And what about our young youth today, feel strongly that that is a severe stress to them being locked up in a cell ... knowing that they are going to not only be there just for a couple of nights, but it is going to be months on end [RCIADIC Transcript, Esperance, 1990:31].

As observed in Chapter 2, since colonisation throughout Western Australia, missionaries instituted systems of social control and education based on dormitories for young people. While the dormitory system sometimes provided basic opportunities for young people to acquire many of the survival skills demanded by the dominant culture, it also had the effect of externalising many of the basic family-based controls relating to parenting and education. It is hardly surprising then that contemporary Aboriginal communities encounter considerable difficulties in developing effective avenues for, and ideologies of, social control under the currently accepted banner of 'self-determination' when the means of internalising this notion, on an individual, family, community and cultural level has been systematically undermined in this State for over a century. In fact it was not until 1963 that extensive reliance on missions ceased to be official Government policy, and there is little doubt that missions and missionaries have had far reaching effects on the lives of many Aboriginal people today, in particular, those who died in custody. Chapter 4 examines this in some detail, and informs that out of the thirty two deaths under consideration by the RCIADIC in this State, at least twelve of those individuals had spent some time at a mission. This form of institutionalisation does not include time spent in the care of 'the state': i.e. under the Department of Native Welfare, Community Welfare or Community Services.

Like so many other matters before me, that of Aboriginal people and missions is complex (Swain and Rose, 1988, explore some of this complexity). That is, there is ample material that shows the devastation mission policies and individual missionaries caused to Aboriginal people, and the separation of children from their natural families (of which mission policies were a part) will never be forgotten or forgiven (see e.g. Tucker, 1985; Haebich, 1989). But there is also, as noted above, circumstances where missionaries provided to Aboriginal people certain skills and accommodation. There also sometimes developed genuine ties of affection and respect between certain missionaries and Aboriginal individuals and families, as the following quote demonstrates:

> It was good while we were working around here in the garden. We used to go out to cut hay, mothers with babies in the cradle, babies round the neck... Br Henry was in charge of making hay. He used to come down with the mower with two mules. We used to erect them and put them in line, another lot that were dry we used to heap them up [Yulugut in Nailon and Huegel, 1990:26].

Overall, however, it cannot be denied that missions have been part of the colonisation process: missions, missionaries and the power vested in them by the State and by their own church hierarchies, have ultimately served to consolidate the dispossession of Aboriginal people and their land (see also Section 6.4.1). In sum, there can be no doubt that the missionary presence provided a means for ensuring colonial domination and, in a variety of forms, that domination continues

into the present.

ECONOMIC DEVELOPMENT AND WORK

> Aborigines do not face the Australian economy with their time fully available for employment or divided simply between 'work' and 'leisure'. Rather they come with their time significantly allocated to Aboriginal purposes and activities. Employment or other involvement in the Australian economy involves a 'trade off between the potential to earn cash and participating in such activities some of which are backed by powerful Aboriginal motivations or traditional sanctions [Coombs et at, 1988].

The comments of Coombs (et al, 1988) enshrine one of the most contentious issues in relation to employment and Aboriginal people. That issue concerns the fact that Aboriginal people, in many contemporary settings, continue to sustain socio-cultural beliefs and practices which sometimes deny their being involved in non-Aboriginal oriented employment projects. Basically, many Aboriginal people give priority to social and cultural demands that provide meaning within their own domain, over and above those demands which may attempt to entice them into a 'work ethic'. Non-Aboriginal people, who are not generally well informed about Aboriginal beliefs and practices, sometimes assume that Aborigines have 'nothing' with which to purposefully fulfil their time. While this may be true in a number of settings, where people are denied access to qualities of life they have previously known and social problems are extensive, in other settings there is little that could be further from the truth. A dilemma exists, nonetheless, which concerns how Aboriginal people can sustain an economic base, in part using their own labour, without losing their own cultural integrity. Throughout the following chapter, matters such as these are considered, as well as some of the processes whereby Aboriginal people, who wish to be part of the wider workforce in a variety of occupations, continue to be marginalised.

11.1 BRIEF HISTORY OF ABORIGINAL LABOUR

> Historically, Aborigines have suffered legislative restrictions and discrimination in every phase of employment, from the kind of work they could lawfully undertake, to wages, accommodation and workers compensation. Unions have offered little or no support to black workers, and employers have been aided by court decisions based on racist stereotypes. Legislation enshrined unconscionable employment practices by government and private employers alike ... 'blood' or 'colour' alone were the criteria by which discrimination at the workface was practised and maintained [McCorquodale, 1985:3].

As observed in earlier chapters and sections, one of the processes of devaluing Aboriginality, was the externalisation of many aspects of social control among Aboriginal people and groups. Sanctions and laws enforcing social propriety and entrenching a commitment to social usefulness, were deliberately undermined. This form of social usefulness could also be referred to as the 'work ethic'. What has become increasingly apparent is that while the labour of Aboriginal men and women provided the means of many pastoral, agricultural and marine industries today, recognition of that labour fell short of any form of economic and social

recompense. As times moved ahead and new political and economic options have been pursued, Aboriginal people's future or participation has been primarily left aside, or marginalised.

11.1.1 From rags and rations, to dole money and inactivity

In Chapter 2, it was stated that the only way the relationship between Aboriginal and non-Aboriginal people, with regard to labour, can be discussed is as that of 'master/servant'. This relationship was one, established during the latter part of the previous century and the early part of this century, where the colonial powers exploited Aboriginal labour for their own purposes of expansion. At the turn of the century, Aborigines were employed as shepherds, stockmen and women, farm hands, divers and domestics. In return for their labour, Aborigines primarily received payment in food and clothing. While some people remained resident on pastoral and agricultural properties, others combined seasonal work for the pastoralists with traditional means of subsistence. They were able to retain access to bush food and medicine, because many of the properties (at that time) remained uncleared.

Given the material considered above, and throughout Chapter 4, what is most striking is that the conditions with regard to Aboriginal people and work are significant in view of those who died in custody. That is, in Chapter 4, when discussing the people whose lives are under direct Consideration by the RCIADIC, it was stated that, 'at the time of their last custody, not one of the deceased had completed their secondary education ... [and] ... only five were employed at the time of their last arrest' (p. 81). It needs to be further stated that two of those who were considered 'employed' were from Community Development Employment Programme (CDEP) communities (see Section 11.1.4 for discussion of CDEP). Additionally, it was noted in Chapter 2, that a Community Based Corrections officer, who gave evidence to my Commission, advised that Aboriginal prisoners, when asked to provide information about their employment history, nearly always said they were 'just a labourer'. He went on to say that the answer suggested to him that they were saying, 'I am just a nobody' (p. 82). Views such as these - 'I am just a nobody' - reflect not only the Aboriginal perspective in relation to non-Aboriginal people and their perceptions when someone is considered 'just a labourer', or unemployed as the case so often is, but comments such as these also deny the fact that Aboriginal people made substantial contributions in the development of this country, often as 'slaves' to their 'masters'. This point is rarely acknowledged by non-Aboriginal people. The following account graphically illustrates my meaning here:

> Now in those days [the 1940s and 1950s], to our experience there was no such thing as money. We didn't see any money at all in the old days. All that the stockmen got as pay was perhaps two shins and two pairs of trousers a year, while they were working. Boots, hat, canvas swag, and a couple of blankets were supplied too. That's about all. No money! The swags would usually last for two or three years. Anyone who owned a swag used to share it with those who didn't ... The government used to give the station owners or managers some son of permit to work blackfellas such as myself and all the others here. The permit gave them the status of a 'protector. It gave them the same authority as the policemen, who were also protectors. If there was any trouble with the blackfellas, then the police used to sort it out. But, because he was the permit holder and as such a protector, the station manager could do

pretty much as he liked [Lawford in Marshall, 1988: 15].

The permit system, also referred to in Chapter 2, was, in so many ways, to continue the unequal aspects of Aboriginal/non-Aboriginal relations and work. This was partly because the system reflected the alliance between the vested interests of the colonisers (e.g. protectors, pastoralists, police) against Aboriginal people. The system also served to establish the 'master/servant' relationship and in so doing set a precedent to disallow future governments to pay Aboriginal people 'a fair day's wage for a fair day's work'. In fact there was not, as noted earlier, any form of equitable legislation in this regard until 1968 and introduction of the Federal Pastoral Industry Award. The permit system was to stay largely in place in this State until the introduction of the Award.

The influx of gold, the development of the wheat industry, railway construction, and the pastoral and marine industries, were all ways whereby the colonial government saw a means of sustaining economic growth, and of providing future employment. While the pastoral areas of Western Australia were traditionally in the northern and eastern parts of the State, it is essential to observe that the south-west should also be considered in this regard. As Haebich (1984) and Hodson (1989) point out, Aboriginal people in the southwest were among those who were granted land to work for themselves. However by 19 14 almost all of their grants had been cancelled. Most of the land occupied by Aboriginal farmers was granted under a special provision first introduced in 1887 (under a piece of legislation termed 'Land Regulations'). However, that land could be resumed at any time by the colonial government. Hodson (1989:79) states that, unlike non-Aboriginal people, the Aboriginal farmers 'had no title against which to borrow the finance needed to carry out the improvements required by the terms of occupancy. Their only option was to hire themselves out as seasonal and contract workers, but since they also had to support their families, they were able to accumulate very little capital'. The outcome of this measure was that without assistance from the 'Aborigines Department' (which was not forthcoming) Aboriginal people were unable to meet the terms of their occupancy and therefore had their blocks resumed by government authorities.

What is apparent from the preceding account are several points which can be clearly put: Aboriginal labour was a mainstay in the development of this State; the exploitation of that labour has never been fully recognised or compensated for;, Aboriginal people were forced into a 'master/servant' relationship by using their own labour while development of their own resources was denied; with the introduction of the Federal Pastoral Industry Award and increased mechanisation into industries where Aboriginal labour had once been a solid contributor, Aboriginal people were cast aside; in the present climate they are denied access to employment owing to issues such as racism, lack of culturally appropriate industries, inadequate training, and ineffective government policies. Today, they are the most unemployed group of people in this country. The following material explores some of the matters further.

11.1.2 Current responsibilities and practices of private and public sector interests

Figures from the 1986 Census indicate that at that time 3,804 Aboriginal people, who were eligible for employment in this State, were unemployed. This figure indicates that around 39% of the Aboriginal population are denied employment,

compared to the State average of 9.4%. While this is a State-wide estimate, in areas where there have been specific studies undertaken, the seriousness of the situation can be more particularly appreciated. For example, in Fitzroy Crossing in 1986 it was found that only 5.7% (51 persons out of 882) of the total potential workforce had regular full-time employment (Arthur, W.S., 1986).

In 1987 the Federal Government launched its Aboriginal Employment Development Policy (AEDP). This policy was aimed at incorporating a series of specific measures and programmes which were theoretically directed toward 'economic independence' for Aboriginal people by the year 2000. These policies were tied into the Department of Employment, Education and Training (DEET) at a Federal level, and the Department of Employment and Training (DET) at a State level. These departments, and the role they play in relation to their ability to empower Aboriginal people, are further referred to throughout this report.

The Aboriginal Employment Action Programme (AEA) is the private sector component of this policy, aimed, according to policy guidelines, at increasing the numbers and status of Aboriginal people employed with national companies, on the basis of equity and merit. The three major industry bodies - the Australian Council of Trade Unions (ACTU), the Business Council of Australia (BCA) and the Confederation of Australian Industry (CAI) were all involved in the development of the programme. Notably, an Aboriginal component was not. The degree to which Aboriginal people have been excluded from the labour market cannot be underestimated.

11.1.2.1 Regional economic development

Of central importance to my discussion in relation to exclusion from the labour market, is the argument that the specific concerns of Aboriginal people cannot be separated from the concerns of regional development (cf. Howitt, 1990; Crough et al, 1989; Howitt et al, 1990). Essentially, I am of the view that Aboriginal participation in regional economic development is fundamental to achieving locally sustainable economies in rural and remote Australia, not an optional extra to be considered as a welfare issue once regional plans are in place. Aboriginal people are an integral component of regional economies. This could be said for this State, and, indeed, for the entire country.

In particular, I am informed in this matter by research findings that have been put before me, as well as research conducted for my Commission, by Dr Richard Howitt (Criminology Research Paper 5, 1990). While many of Dr Howitt's comments directly relate to the issue of Aboriginal people and mining in the Eastern Goldfields region of Western Australia, a number of the points he addresses are relevant to the whole issue of economic development and employment.

Essentially, I wish to put forward four basic issues which affect Aboriginal participation in local economic development: local labour market issues, such as training, employment conditions, skill requirements, itinerancy and so on; racism, particularly the structures of racism which affect Aboriginal participation in economic, political and social activity; education, and the continued failure of a crucial area of government policy to achieve basic goals; the region's narrow economic base, and the virtual exclusion of Aboriginal people from participation in it. Most of these matters are also considered elsewhere in my report (e.g. in

Chapter 12 on Education).

In raising these issues so explicitly I want to argue, in keeping with Howitt (1990) as follows:

1. It is possible to identify the essential structural mechanisms which have disempowered many Aboriginal people and continue to marginalise them from their economic goals.

2. The existing policies and practices of the Aboriginal affairs 'industry' is as much a part of the problem as the policies and practices of private sector employers, and cannot be defended. They are certainly not contributing to ostensible goals such as self-determination and economic independence from welfarism.

3. Arguments for compensation, land rights and special programs are important, but we cannot, nor do we have to rely on policy changes to begin pursuing local changes. It is possible, and essential, for Aboriginal interests themselves to internalise the processes of empowerment and create changes, rather than wait for changes to create justice.

4. Within the existing structures of the mining industry, the range of Aboriginal initiatives and government programs, there are opportunities for local diversification of the region's economic base in ways which encourage participation of Aboriginal interests in the creation of new wealth, and the independent pursuit of Aboriginal goals.

5. Aboriginal economic development strategies do not have to 'isolate themselves from the [diverse] cultural, social, political and personal goals of Aboriginal people. It is essential that the framework used to analyse and act upon local opportunities and constraints recognises that empowerment essentially involves the simultaneous pursuit of all these concerns.

Initially, I turn to local labour market concerns and Aboriginal people. The data presented throughout this report demonstrates that Aboriginal people have been excluded from key sectors of the local labour market.

As Howitt notes (1990:83) it is worth observing that none of the public sector departments involved in Aboriginal employment, development and training were able to provide to him adequate data on the concerns of Aboriginal employment and training. This is certainly reflected in the non-existence of any viable strategies to address priority areas in local labour market reform. Such neglect shows just how isolated from the 'main game' the Aboriginal affairs industry is, and it reflects some ambivalence of Aboriginal affairs policies and practices to the notion of Aboriginal economic issues rather than Aboriginal welfare issues. One could be forced to conclude that the 'Aboriginal industry' might be more interested in reproducing the need for welfare than engaging in empowerment which will reduce welfare concerns to a reasonable component of the portfolio, as it is in the broader society.

In particular the restructuring of the mining workforce, involving a range of processes including multiskilling, decreased unionisation, increased levels of

contract labour and higher levels of female employment, has generally decreased rather than increased the opportunities for direct Aboriginal employment. In this sense, the restructuring has created yet another mechanism by which the current generation of Aboriginal people are being effectively excluded from the workforce. In the wider labour market, the need to equip workers and unemployed people for participation in changing labour markets has been recognised. The introduction of the industry training levy, the processes of award restructuring and various reviews of employment, education and training, have all been at least partly directed at this effort. Where employers' restructuring of workplaces or work practices leads to redundancies, there has generally been a social expectation and even requirement for employers to meet at least some of the costs of retraining. Yet where a broader scale of restructuring, restructuring at the regional and industry scale, intersects with the local production of 'social' redundancies, 'nobody' is responsible. The private sector, while largely cynical of the role of government intervention in the labour market, nevertheless expects that responsibility for dealing with 'social' redundancies, such as experienced by Aboriginal people in the Goldfields, will be accepted by government. The public sector generally abdicates responsibility by pointing to performance indicators and existing caseloads, as if to say, 'Well, what more can we do?'. Many Aboriginal people, used to externalising many crucial aspects of decision-making and social control have found it difficult to effectively take initiatives in the Eastern Goldfields, and have waited for 'someone else' to do something (see also Howitt, 1990:85).

11.1.2.2 Racism and work

Findings contained in the report presented to me by the Aboriginal Issues Unit (1990:21) stress that: 'Racial prejudice by employers, both Government and private, was regarded as the primary cause of Aboriginal unemployment. It was suggested that in country areas many employers were descended from pioneering families and had inherited their racist attitudes. Because of their status in the community they easily influenced newcomers to think the same. Jobs tended to be given to white people either within the community or from elsewhere'.

In keeping with comments such as that made available to me by members of the AIU and through conference material (e.g. RCIADIC Gnowangerup Transcript, 1990; RCIADIC Transcript, Geraldton, 1990), it became apparent that the structures of racism towards Aboriginal people are endemic in Australian society generally (see also Howitt 1990:85). Throughout this report, I have attempted to consider aspects of racism and its ability to disempower Aboriginal people. According to Howitt's (ibid) findings in the workplace, racism has the effect of marginalising and isolating Aboriginal workers from the comaraderie and solidarity of the workplace. Where it is broken down, people begin to feel comfortable and able to perform. Such barriers are also reflected in the wider society, where, as noted earlier, few non-Aboriginal people not working in the 'Aboriginal industry' experience social interaction with Aboriginals on an everyday friendship basis. It is often the case that itinerant workers have had little previous direct experience with Aboriginal people, and that long-term residents have views coloured by negative experiences. It is this sort of nexus that needs to be broken. The community structures within Aboriginal and non-Aboriginal groups need to develop opportunities to address these concerns. Again, one is drawn back to the centrality of education and the failures of existing policies in the current structures to meet the needs of Aboriginal people, and to the practicalities of the processes of challenging them.

11.1.2.3 Education and work

Education is not limited to the opportunities given to school children. It is recognised that continuing education of both Aboriginal and non-Aboriginal people is central to addressing marginalisation. On the one hand, the need for strategically relevant programmes of skills development aimed at improving Aboriginal direct and indirect employment outcomes, throughout the economy, is needed. To overcome the legacy of previous decades of racism, neglect, inappropriate policies, and entrenched patterns of inequity, Aboriginal people need opportunities to access a range of skills, knowledge, values and understandings. This concern should not be restricted to the specific skills of particular occupations, but should address the broader issues of employment such as self-confidence and management skills. However, equipping Aboriginal people with the required skills to participate will not, on its own, achieve equality.

11.1.2.4 An economic base

It is clear that Aboriginal people do not have available to them a sound economic base: this is denied through dispossession; lack of compensation in relation to land, labour, royalties, children; denial of access to employment opportunities; and cultural and regional marginalisation and exclusion. Material contained in Chapters 6 and 7 also informs this point. The vulnerability of Aboriginal people who are without any form of equity, specifically affects those interests whose future is tied into particular regions. To date, according to research provided to me by Howitt (1990:88), few proposals to diversify the local economic base have incorporated local Aboriginal groups in the planning and development process. It is, therefore, essential to highlight some of the suggestions of Aboriginal groups themselves for developing a diversified base for Aboriginal participation in local economic development.

11.1.2.5 Aboriginal ideas for work

One set of suggestions involves use of secure land tenure over pastoral areas as a base for training and production in the pastoral sector. In some cases, this has also been linked to development of alcohol rehabilitation facilities and a broader educational alternative for young Aboriginal people. This approach to economic development integrates not only financial concerns, but also concerns of health, education, cultural maintenance, and development of an independent capital base.

Another set of suggestions involves development of services to mining, including contracting for small scale earthworks, land rehabilitation and labouring, etc. The opportunities related to development of seed collection, small scale rehabilitation earthworks and general service of the industry's rehabilitation needs has been identified in this report as a major area for developing Aboriginal economic development. It has been suggested here that development of a number of locally based enterprises in mining centres (such as Port Hedland, the East Kimberley, Kalgoorlie, Leonora), in association with a resource agency based technical service group, is worthy of detailed consideration as an area for immediate action.

A further set of suggestions involves development of a range of specifically

Aboriginal industries, including emu farming, value-added production in arts and crafts, including integrated production of sandalwood artifacts, and a broadly-defined cultural industry, including linking these activities to the tourist industry. In the Goldfields region, the Kurrawang Emu Farm represents the most advanced of these proposals, and is clearly moving towards a successful, independent operation. As noted earlier, there is a need for consideration to be given to support for specific economic development programmes in the arts and crafts and tourism area, including artists in residence in settlements wishing to develop this area, and provision of requisite infrastrucuture and facilities.

Aboriginal involvement in a range of retailing, small scale manufacturing and other small businesses would service not only the Aboriginal population, but would have the effect of bringing some of the wealth circulating in the wider community into the Aboriginal sphere. In the case of Leonora Aboriginal Movement, the Leonora Supermarket, purchased from funds provided under the Harbour Lights Agreement, represents a significant move in this direction, although earlier problems with management, and the need to incorporate training for Aboriginal employment at all levels in the operation remain to be addressed in that case (cf. Howitt, 1990:89).

A range of opportunities, involving for example Aboriginal management of nature reserves and national parks, rangelands rehabilitation, and decentralised settlement of Aboriginal lands as a base for cultural production, education and land management, have only just begun to emerge for consideration. This again raises the importance of government action to address the concerns of Aboriginal people to secure recognition of their claims for land and compensation.

Perhaps a rethink of the 'trial and error' philosophy is needed. This would need support from all levels of Government. That is, in any economic area, there is going to be failed ventures. Mining companies tend to accept that one out of every thousand exploration bids fails to produce a mine. The public sector needs to reflect on why and how the mining industry takes that risk. A thoughtful approach to this level of innovation, may have consequences for unemployment budgets that entail DSS entitlements and CDEP (see 11.1.4). Any further reviews by the Department of Education and Training (DET), and the Department of Employment, Education and Training (DEET) should, in my Commission's view, give these matters serious consideration.

11.1.2.6 A case study: Fitting the Eastern Goldfields into a broader context

Howitt's (1990) work makes available a detailed study in relation to the issues mentioned above. I provide further material from his findings, and suggest that matters for people from the Goldfields could be extrapolated to Aboriginal people elsewhere in this State. The following material should be read in conjunction with Chapter 15 on mining, and the matter of mining should be seen as a feature peculiar to the region.

Howitt's report provides the first broad review of the relationship between Aboriginal and mining interests in the Eastern Goldfields. It has revealed a complex and difficult situation. Unlike other areas where this relationship has been examined in detail, the Eastern Goldfields is not characterised by a small number of relatively large and recent mines affecting a relatively small number of Aboriginal communities. Instead, the region has a continuing tradition of mining

stretching back almost one hundred years, with many mines and mining areas having gone through several cycles of development. Not only is the mining sector characterised by a great diversity, but so is the Aboriginal population. Local Aboriginal interests include groups committed to the maintenance of traditional Law, strong Christian fundamentalist groups, groups with links to mining, pastoralism and other industrial activity, and many others. This diversity parallels the breadth of Aboriginal experience across the entire continent. Recognition of this diversity is fundamental to any equitable strategies for pursuing Aboriginal economic development in the region.

To date, the interests of some groups within the Aboriginal sector have been marginalised because they have not been well-represented within the existing Aboriginal politics. This is changing, but the rigidity of existing structures, and the resistance of vested interests creates barriers to successfully empowering such groups towards economic autonomy. While the Eastern Goldfields is unique in terms of the specifics of the relationship between Aboriginal and mining interests, it holds many valuable insights relevant to a broader context of Aboriginal economic development.

11.1.2.7 Economic development and compensation

What is of concern to my Commission is that the processes of dipossession continue to be effectively renewed with each generation. Various chapters throughout my report reinforce this view (see e.g. Chapters 4 and 10). The failure of the Western Australian Parliament, in 1984, to provide legislative recognition in relation to secure land tenure for Aboriginal people, as well as the ongoing consequences of colonisation and the need for compensation, means that each new generation of Aboriginal people inherits the foundations of continuing exclusion. In the last twenty years, for example, the continuation of this process has been calculated to have denied Aboriginal people in the Eastern Goldfields access to capital for economic development in the order of $78.3 million Howitt, 1990). In this sense the process of colonisation has been entrenched in Western Australia as an ongoing mechanism for Aboriginal marginalisation.

An issue in which the Eastern Goldfields holds lessons of considerable importance to the wider context, is in recognising the diversity of Aboriginal goals and interests. The nature and reasons for this diversity in the Eastern Goldfields has been emphasised partly because it is an issue which has immense practical implications in terms of developing realistic local economic development strategies, but it is one which has been virtually excluded from the policy context by the acceptance of naively idealised notions of Aboriginality. Chapter 6 considers this matter in some detail. Failure to accommodate the diversity of Aboriginal experience and aspirations has also, I believe, been fundamental in the transformation of Aboriginal economic development issues, economic justice issues and regional political and cultural issues into welfare issues by large pans of Australian society. Part of that transformation could be provided through the support of the union movement.

11.1.3 Union interests

Australian Unions have gained their current structures, policies and status through a number of socio-political, historical and economic events. (One of the most

important of these was the Depression of 100 years ago and, particularly after Federation in 1901, where a system was established which saw the evolution of compulsory conciliation and arbitration. The fact that the system focussed on employment, workers conditions and wages meant one thing as far as the Aboriginal population was concerned: that they have been primarily left outside the Union process in Australia.

There was some potential alteration to this in 1968, following the introduction of the Federal Pastoral Industry Award (see Chapter 2) where Aboriginal people who had previously functioned as a convenient pool of reserve labour that pastoralists, graziers, and agriculturalists could draw on as economic and seasonal conditions required, were deployed from station properties. Massive destabilisation of the Aboriginal people occurred and the resultant marginalisation of Aboriginal labour as paid workers. This was contributed to by the result of technological and structural changes at local, regional and national levels.

However Union involvement has not been entirely missing, for instance the first Aboriginal strike in Western Australia in 1947 (see e.g. McLeod, 1987; Smart, 1959). In more recent times, several unions came out in support of Aboriginal people during the Noonkanbah drama in 1980 (Berndt, 1982:233-253; Vincent, 1983:327-338; Hawke and Gallagher, 1989).

At present, there is minimal Aboriginal participation in the Union movement. Realistically speaking, given the low employment levels of Aboriginal people in this State and elsewhere, that is not surprising. However, unions can sometimes be large and powerful institutions, vested with recognition by governments and the legal system. Their potential involvement in striving to achieve improved material conditions and equity, may be one way for Aboriginal people, in conjunction with relevant local Aboriginal organisations, to provide a base for improved conditions and political empowerment.

An example of the struggle to obtain union coverage for Aboriginal workers, is the attempt by the Federated Miscellaneous Workers Union (FMWU) to obtain coverage for the employees of non-Government Aboriginal agencies. In 1984 the Union applied, after consultation with Aboriginal groups, to the Industrial Relations Commission (Application 1079) to alter its rules to enable coverage of all workers employed by non-Government Aboriginal organisations. The rationale behind this was to enable ready union coverage of all workers in those settings. There was an awareness of the difficult circumstances, and less than ideal conditions, which many employees found themselves in due to the poor funding the organisations were forced to accepted from the funding agencies. The Union recognised the unique characteristics of community based Aboriginal organisations, and felt it was important to have uniform coverage within an organisation rather than have the competitive forces of rival unions trying for coverage within the one organisation.

The FMWU already had some involvement with Aboriginal employees via their coverage of Aboriginal Health Worker's (AHWs) employed by the Community and Child Health Services, and enrolled nurses under a separate award, at the time of this application. Consequently, the Union had some understanding of the issues faced by Aboriginal people in the workforce and, combined with a commitment to social justice principles, wished to be participants in the process of developing improved conditions for those employed in community based organisations.

The application to the Industrial Commission was opposed by several unions including the Federated Clerks Union, the Hospital Salaried Officers Association,

the Association of Drafting, Supervisory and Technical Employees and the Royal Australian Nursing Federation. The Commission found that the objections were of substance and rejected the application for coverage. The FMWU lodged an appeal to the Industrial Appeals Court in 1985 (Appeal No. 6), which was disallowed. Eventually the Aboriginal Medical Services Employees' Award was accepted by the Commission and came into effect from 8 February 1988. This award gave the FMWU coverage for Field Officers, Environmental Health Workers, Aboriginal Health Workers (with a five level career structure), Enrolled Nurses, Gardeners, Cooks, Domestics, Drivers, Storepersons, Alcohol Rehabilitation Assistants, and Alcohol Rehabilitation Supervisors.

Other workers in the AHSs, such as reception and administration staff, are not covered by the award and no other union has actively sought to represent the interests of these workers. The interest in them expressed by other unions during the initial application for coverage was more a territorial dispute between rival unions rather than a dispute centred round the interests of the employees. These employees still have no effective representation.

The other awards covered by the FMWU that are of relevance to employees of community based organisations, include the HACC Award, various child care industry awards, and the Aged and Disabled Persons Hostels Award, 1987. In the government sector, the FMWU covers: Aboriginal Health Workers employed by the Health Department who are covered by the Health Workers -Community and Child Health Services Award, 1989; awards for enrolled nurses, teacher aides and Aboriginal teacher aides.

This discussion should not be seen from just an historical perspective. It is an on-going issue. As discussed later in the section on health, the FMWU is continuing to ensure that Western Australian employers provide Aboriginal Health Workers with appropriate conditions and career paths as part of the award restructuring process currently being negotiated. On 6 July 1990 the Australian Industrial Relations Commission endorsed a new award, the Pitjantjatjara Council Incorporated and Associated Organisations Interim Award 1990. This is a joint FMWU/Municipal Officers Association award and 'is designed to force the Aboriginal and Torres Strait Islanders Commission (ATSIC) to release funds based on the first Structural Efficiency Principle increase' (B. Daley, Assistant General Secretary, Federal Council, FMWU, covering letter to the Award, 26 July 1990).

The International Labour Organisation (ILO), in response to its concern about the exploitation of indigenous workers, adopted the Convention Concerning Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries of 1957 (No. 107). This incorporated a strong assimilationist position and consequently was the subject of growing opposition which eventually lent to it being revised and the adoption by the ILO of Convention Concerning Indigenous and Tribal Peoples (No. 169), in June 1989. It should be noted that the dissatisfaction with the ILO 107 led, in 1982, to the United Nations setting up the Working Group on Indigenous Peoples (WGIP) under the United Nations Human Rights Commission. The WGIP is drafting a declaration of the rights of indigenous and tribal peoples and takes representations from indigenous peoples/nations. This contrasts with the ILO which only has representation from employers, unions and the ILO. Understandably, there is dissatisfaction that indigenous people did not have direct representation in this process.

In order for the convention to be applicable in Australia it has to be ratified by the Australian Federal Government. This process may take many years, though the

convention must be tabled in Federal Parliament by December 1990. Ratification entails both State and Federal approval but does not require direct consultation and ratification by Aboriginal people. Some of the difficulties with ILO 169, as a revision of ILO 107, include: (1) its failure to remove assimilation completely from the convention; (2) it concerns indigenous people but does not convey them rights; (3) and rights that are referred to are collective and not individual; (4) it fails to address the concerns of Aboriginal people regarding self-determination, cultural integrity, land rights and discrimination.

In the next section I consider the Community Development Employment Programme. This programme is a matter that was raised with me at a number of conferences, primarily in the northern and eastern pans of the State. The programme was also the focus of extensive research within my Commission.

11.1.4 Community Development Employment Programme

As noted throughout this Chapter, the matter of employment continues to be a complex and contentious one. Given that the Community Development Employment Programme (CDEP) affects so many Aboriginal people in this State, and it falls within the parameters of being both complex and contentious, in the following section I consider both the positive and negative aspects of this programme. Initially, I turn to a discussion of some of the concerns my Commission has had put before it in the way the programme is implemented and administered. At the end of this Section, I consider how the programme could be more productively applied to Aboriginal communities in particular settings.

The primary policy mechanism for achieving equity according to documentation produced through ATSIC is Aboriginal Employment Development Policy (AEDP). In discrete communities the programme mechanism is Community Development Employment Programme (CDEP). In Western Australian there are 49 communities on CDEP, involving at least 4,000 Aboriginal people (ATSIC response to RCIADIC Question 15). The reality of this programme is that Aboriginal people are required to work for their unemployment entitlements. It is also worth noting here that people on CDEP do not show up in employment figures regularly released by the Commonwealth Employment Service as 'unemployed'. Rather, they show up as 'employed' thus serving to mask the serious nature of Aboriginal unemployment.

The basis of CDEP is the use of unemployment entitlements as wages for the purpose of 'developing' a community. The aggregate of entitlements in any given CDEP community is the total wage pool. There is an additional 20% oncost factor for administration and equipment. However that 20% is not supposed to be used as a wages top up. The crucial factor here, is that if the hourly rate of pay is based on award rates and some people are able or inclined to work more hours than the equivalent of their unemployment entitlement, then there will be a shortfall, or someone will receive less than their basic entitlement. It is with this concept that the unemployment entitlement suddenly becomes a wage, and the confusion regarding this scheme starts. CDEP cannot provide a full week's 'wage' for anyone on a community without depriving someone else of their entitlement. The reason for this is that a community receives only the sum of the total unemployment entitlement for the number of eligible people living in the community. There are 'on cost support' monies, however these are only to be used for administrative expenses and the purchase of equipment.

The following commentary is based on the ATSIC Manual for Community Development Employment Programme and Aboriginal Enterprise Incentive Scheme (AEIS) March 1990. The Manual is not well numbered, therefore references are not always available and numbers vary.

Policy objectives

The objective of CDEP is to undertake community development activities where there are no alternative employment prospects. If Aboriginal communities were treated in the same manner as rural Australian towns, they would receive Grants Commission funding based on equitable formulas, to provide essential services for community operation. These would cover Municipal Utilities, Sport and Recreation, Social Welfare Services and Administration, and the people providing these services would be paid award wages. The reality is that this municipal type funding is termed for Aboriginal communities in West Australia -'Community Infrastructure Funding' which is allocated by ATSIC.

There is a statement in Appendix 11 on p.62 of the Manual that reads: 'CDEP communities should be able to provide normal local government services and have sufficient award positions funded for these, without needing to rely on CDEP funding ...'. This is not a reality for many communities, and like a number of hard realities for Aboriginal communities it is often by-passed in the consciousness of policy makers by saying that it 'should' occur.

The stated goals of CDEP

(i) Ongoing employment: This raises the question of how 'employment' is defined. To most Australians it means a thirty seven hour week for Award wages, doing constructive and useful work.

(ii) Improvement of communities' social, cultural and economic life: Specific planning for this improvement requires people being aware of their options, resources and rights.

(iii) Cater for specific interest groups: It is difficult to assess the extent to which this occurs successfully. In a recent project evaluation form, the only comment in relation to the project catering for women's issues was 'although funds may not be allocated to specific women's projects, women are the direct beneficiaries of the project through wage payments'. Much therefore depends on the primary motivation of participants and administrators. If the prime purpose of the scheme is to pretend to provide people with wages instead of individual unemployment entitlement cheques, then it is not an issue. However, if the scheme is run according to a carefully devised development plan then the individual and special interest projects are of considerable importance. In the Evaluation forms thus far sighted by this Commission there is no substantial indication of specific interest groups' particular advancement.

(iv) Assist overall development goals: If communities had overall plans and goals then the above would be acceptable. However, the reality is that few do so according to the CDEP Review of Funding and Administration (Table 1, 1990).

(v) Participate in community management, administration and decision making: This aspect requires the comprehensive training component that appears to be totally lacking (Project Evaluation forms Port Hedland, Kalgoorlie).

(vi) Development of skills towards commercially viable enterprises: To achieve this requires again a training component, and a responsiveness to initiatives as well as level of empathy, vision and practicality on the part of government officials and Community Advisors.

The training component is usually funded by DEET. How DEET and ATSIC and Aboriginal people in the community interact, is crucial to the effective running of CDEP.

Strategies

'CDEP is to be utilised where there are adequate infrastructure and skills for project management.' This first premise for the operation of CDEP already poses an almost impossible stricture on its operation. There are few CDEP communities in Western Australia whose members have all the necessary skills for the administration of their own finances, essential services and employment operations. Most communities are comprised of people for whom English is a second language. They are dependent either on unskilled or on non-Aboriginal administrators. The latter are often of good will and intention, but not always adequately qualified or skilled.

The employment of these administrators is designated as the Council's responsibility and often the procedures for employment are carried out inconsistently. References are often not checked and judgements made on superficial contact or because someone is considered 'a good bloke'. Very few councillors have had any real training in staff selection or interview skills, and there is no recognised or even incidental career structure in community administration. The reality of working conditions in communities is often not apparent or explained to applicants for such jobs.

There is also a substantial variation between the salaries and conditions for the non-Aboriginal workers in a community and the locals on CDEP. The average daily rate for administrators, teachers and health workers is in the vicinity of $100 a day, whereas on CDEP the average weekly rate is $100.

There is little cohesion or compatability of administrative systems or sharing of resources and experience between communities or organisations except by occasional chance personal encounters. A prime example of this is the introduction of computer systems to Resource Agencies and organisations. ATSIC have IBM based systems. In one region of the State two of the primary resource agencies in the area have installed computers based respectively on UNIX and MACINTOSH. This means that data cannot be shared or accessed without expert operators. This sort of issue is crucial for communities in remote areas who have limited resources.

Owing to the lack of administrative skills, and in many communities a dearth of people who have little more than primary level standard of literacy, it is not always possible for community council members to adequately supervise employees,

because they are not aware of (i) the rules in relation to finance, and (ii) the options in terms of management and accounting structures. Therefore, although councils are formed, the reality is that the administrators continue to hold the power because they understand the 'system'. A significant example of this situation was presented to my Kalgoorlie conference in relation to the employment processes for a community in that region:

> CDEP monies are divided into two sections; money, and the other is money for employment. The paid jobs vary. Most of them have very little impact upon the community. They involve driving a tractor around the community. There are dangers and generalization because in fact that doesn't happen in all communities but it certainly happens in most. In terms of decision-making I attended Ngaanatjarra Council meeting where the administrator of the council put before the council the CVs of two people for a particular job and that job was a community nurse with special responsibility. Now he said that there had been a number of people applied for the job, however he had selected the CVs of two people. One was a nurse called Sister*** who had worked in the communities and everybody knew. And the second was a nurse from Victoria. The community made the decision to employ the nurse they knew. The field officer who was with me at the time thought that was very strange because he had been speaking to Sister *** two or three weeks beforehand and she had told him that she had been employed by the council. Now this may be a cynical view but it is my view that effectively the council selected two ends of the spectrum. The Aboriginal people made a choice but the choice they made was based on very limited information. Now I don't suggest that there is any sort of conspiracy there but I believe that is the way the council is operated [RCIADIC Transcript in confidence, 1990:105 -107].

When there is mismanagement on the part of the administration it is blamed on the Council's lack of ability to supervise. It is then the Council's lack of skill which is acknowledged. However, it appears that little is being done by the responsible funding bodies to increase the Council's awareness of their rights and responsibilities. A very clear example of this lack of accountability, supervision and inconsistent administration is the allocation of $85,000 in the 1988-89 budget to the *** Community. The money was allocated under the Aboriginal organisations training scheme. This money was specifically allocated for the education and training of Council Members in the five major communities near *** The money was designated in the 1988 financial year, an advertisement was placed in newspapers by the administrator of *** Community in March 1990, calling for expressions of interest from consultants to do Community Development Plans for the five places. Consultants from Perth, who were expected to prepare their own terms of reference, were appointed in July 1990. The original purpose of the funds i.e. the education of Councillors appears to be sometimes forgotten or put aside. Discussion with Council members and individuals in these communities reveals that few people appear to have any idea why the consultants are there and what they are actually doing. This situation therefore raises questions which have been difficult to find adequate answers for, such as: (i) who is supervising the work of the consultants; (ii) will further monies be allocated for the education of Council members when this was the original purpose of this allocation; (iii) what will be the use of any plans drawn up by the consultants if the council and community members are not aware of what they are doing; (iv) if the money is wasted, who is responsible; (v) who bears the consequences of any mismanagement; (vi) what is ATSIC or DEET'S role after the allocation of these training monies to monitor their expenditure.

The issue of individual income security does not appear to be a consideration in the operation of this scheme. It would also seem to be presumed by the policy makers that Aboriginal people have no need of a constant secure income. This may be because policy makers have some inaccurate notion of kinship systems

that will operate to ensure everyone is treated equally. Kinship systems as noted earlier, are often reciprocal therefore support must be returned in some way. Additionally, it is usually essential to have access to motor transport w go fishing or hunting to supplement resources, and hard currency is required for the use of motor vehicles.

As indicated above there is some confusion regarding this Scheme because the funds being used are unemployment entitlements. The first premise in operating a CDEP should be that the individuals concerned are fully aware that they are giving up their right to their unemployment entitlement. There are obvious communication and clarification problems that require better explanations of the Scheme. The lack of individual contact is aptly illustrated by an examination of the 'Participant Schedules'. One such schedule from a major Kimberley Community an hour's drive from a major town, has 145 participants. In the Date of Birth column there are eleven people listed as being born in 1900. Is it possible that eleven ninety year old people are out working for unemployment entitlements? And why are they not on a pension?

Further, seventy nine participants have birthdays on the first of July or the first of January. Thirty three of these have the year of birth after 1970 (Participant Schedule DSS, July 1990). This would appear to indicate that even those born in the last twenty years have not had their births registered, or if they have there is difficulty accessing the correct information. The continuation of the colonial practice of assigning birthdays to the first of January or July has overtones of racehorses or breeding stock. If birthdates are not correctly established how are people able to access their entitlements in terms of benefits for children, and aged pensions. Unless the individual participants are fully cognisant of the realities of the scheme, it does not have a rational and equitable foundation.

Project instructions

The first sentence in this section states project instructions are deliberately flexible, to allow communities and groups to operate CDEP projects in a manner best suited to their needs and aspirations. This 'flexibility' is a misleading term as it allows for ad hoc methods of operation, but restricts the use of the funds in a true developmental sense (see comments in the section on Project Activities). It does not appear possible to complement CDEP funds with funding from other sources (e.g. enterprises and other Government programmes to provide a full wage for more workers).

The content of the Manual appears confused in this regard concerning whether the funds are a 'wage' or a 'benefit'. If the funds were proper wages money, the scheme would allow for a combination of funds either from other government agencies or from the proceeds of commercial activities. (If this occurred people would be entitled to earn a full week's pay. or at least the equivalent of award wages.) However because they are considered wages then the restraints of receiving benefits are imposed. The prime example of this is the confusion over

CDEP participants eligibility to receive Family Allowance Supplement (FAS). FAS is an income supplement for low income earners. If CDEP is to be considered as a wage there is no question about the recipients being entitled to the FAS supplement. This does not however appear to be a widely utilised subsidy in Western Australian CDEP communities. The 1989 Review of CDEP shows that from a survey of Participant Schedules and DSS computer records for twelve of the 49 communities on CDEP in this State, there are 253 married couples. Of these, 189 are receiving Family Allowance but only 75 are receiving FAS. It would therefore appear that the take up of FAS is one of the 'flexible' aspects of the scheme that is dependant on the knowledge and initiative of local ATSIC officers or community administrators for utilisation. On a percentage basis across the country, Western Australia has the lowest take up rate - 45% for the Family Allowance Supplement.

The next set of points in the Project Instructions (p.4) is that the Community Council or funded organisation is responsible for:

> (a) Selecting Work Activities:
>
> Selection of work activities cannot occur if a community is not conversant with a variety of possible options. If people are not aware that in mainstream society, rubbish collection, social and recreation services are funded through other channels. If the options in terms of at least subsistence if not commercial production of foodstuffs, are not explored and considered then people are not in a position to plan, utilise existing resources and make informed decisions.
>
> (b) Developing Policy On Wages Structure:
>
> Wages policies and structures are matters that non-Aboriginal Australians take for granted, they are a facet of daily life. The union movement is an everyday part of life for sectors of mainstream society. As noted earlier, this is not so for most Aboriginal communities. They have come from a 'station work for rations' system, or 'mission handout' background. As observed earlier when award wages were introduced into the cattle industry, Aboriginal people were forcibly moved off the stations they had helped to build. Newspapers, television and even radio are innovations. Most people would only see a newspaper in passing when they come into town. They are therefore, not informed about news of strikes, pay claims, wage rises and conciliation and arbitration procedures. The adage that 'knowledge is power' is particularly apt when applied to the current situation of Aboriginal people in isolated communities. Their access to knowledge of how the 'system' works is extremely limited and often appears to have no relation to the reality of life on a community.
>
> (c) Planning and administering work activities and keeping appropriate records; and (d) Maintaining an accurate schedule of participants and keeping the Regional Office informed of changes.

The next part of the Programme Instructions state that 'Officers and communities must make every effort to ensure that CDEP does not provide a means by which Governments, departments or agencies reduce or fail to provide funds or services for which they are responsible'. This historical statement cannot possibly be enforced because people are not always aware of their rights or how the system works, and they are not in a position to claim or take a stand with funding agencies

or government agencies. General evidence of this is found in an examination of funding on a regional basis throughout the State. Where there is a high uptake of CDEP funding the Community Infrastructure (CI) funding decreases substantially. Conversely where there is little CDEP uptake the CI funds appear to be greater (refer Chapter 7). Again this relates to the lack of equity and formulas in the provision of services to communities and the lack of information services. There follows in this same section a virtual repeat of a statement from the strategic goals relating to the Regional Office of ATSIC, ensuring that communities seeking CDEP funding have the 'administrative and supervisory infrastructure and skills to manage CDEP projects'.

The Annual Reviews thus far sighted by this Commission present a discouraging picture of their usefulness. In the P3 review form of one community the reporting officer comments:

> *** has been on CDEP since its inception (5 years) but has yet to really run it efficiently. There is still much work to be done in areas of: basic understanding of CDEP by Council and participants alike ...

In Section 8(b) of the same P3 form, when reporting on the quality of administrative and supervisory resources, one of the problems which was identified during the previous year (a problem still in existence) was the 'lack of individual time sheets and pay sheets'. These sheets, often determined by the Chairman and another Council member, sometimes revealed that various people were 'forgotten'. It is unlikely that non-Aboriginal people or organisations would tolerate this situation.

Another observation that is repeated several times in the same P3 form is that there was no funding or input from DEET in terms of training for that twelve month (1988-89) period. In section 9 of this same report the writer states that DEET 'will be approached' to fund a mobile trainer. The sentence implies that there is no security in terms of a positive response from DEET. The point to be emphasised again is that although this community has been on the CDEP for five years it is deemed still not to have a good basic understanding of the scheme. If the resources for training are not being provided, there does not appear to be much chance of an improvement in the situation.

Operational guidelines

The programme description prefacing this section states '... Because a CDEP creates employment, it has the effect of removing eligibility for unemployment benefits'. Therefore if an individual on a community or CDEP does not want to participate in the scheme, but does require income maintenance in the form of an unemployment entitlement, it is necessary for that person to go and live elsewhere. Reasons for not wanting to participate in the scheme are not necessarily, in fact very rarely, related to a persons inclination to work; indeed the more industrially sophisticated a person is, the less likely he/she would be to accept the inequitable and insecure conditions of CDEP.

An examination of participant schedules reveals that the weekly amounts paid are invariably less than the basic entitlement. As noted earlier there is the problem in some places of no time sheets and people being 'forgotten'. In some areas there is not enough work and the allocation of work can depend on an individual's

relationship with the supervisor. In some places there are people employed on full wages to do a specific job and others are expected to perform the same tasks for CDEP 'wages'. This situation appears to occur frequently in schools and clinics. It is in this area that people's level of ignorance in relation to industrial matters is apparent. However industrial action as a solution on the part of an Aboriginal community has no muscle. Who is really going to care if a group of Aboriginal CDEP workers go on strike?

Programme guidelines

The introduction again stresses the 'flexibility' of the Scheme, and the emphasis on community participation and decision making. It does not take cognisance of people's lack of understanding of their options. It is stated that the CDEP scheme does not alter an individual's right to apply for and, where entitled, receive unemployment benefits (p.6). The key word here is 'where entitled', given that on the previous page (p.5), it states: ... Because a CDEP creates employment, it has the effect of removing eligibility for unemployment benefits. Therefore if individuals are unhappy with the operation of the scheme and do not have the political power or facility with the English language to express their concerns, they have to leave their home and live elsewhere or simply put up with the situation.

As noted earlier, in Western Australia there are 49 communities on CDEP. Twenty seven of these have participant numbers between one and six hundred people. The 1989 review of CDEP found that only two of the forty nine communities had completed a community plan. These two communities have participant rates respectively of 17 and 27. For the community with the participant rate of 17, 1989 was their first year on CDEP. For the other it was their second year of participation. Six communities indicated they were in the process of 'planning' a 'Community Plan'. In the other thirty four communities there was no reference to such a plan. Thirteen of the communities where there was no plan have been on CDEP for more than five years. Seven of these communities have been on CDEP for more than nine years.

On page 8 of the Manual, under 'project activities', there is a reference to CDEP resources being used to assist with income generating activities providing that 'profits created... are only used ... to top up the wages of the activities of CDEP employees or as payments to increase incentive'. This is the only reference in the document to the possibility of 'topping up' wages, even though it would appear to be the most practical way of developing projects that would, in the long term, ensure social justice, provide industrial equity, contribute to the development of a stable economic base and provide a just and appropriate incentive for people to work.

The last part of the Programme Activities section indicates that the primary responsibility for Aboriginal and Torres Strait Islander enterprises rests with ATSIC and DEET. These two government departments appear to have significant control of primary Aboriginal funding. Effective coordination of the various programmes and development activities should not therefore be too difficult to achieve.

The last paragraph indicates that when a 'work programme' is designed it should fit into the immediate and long term goals of the 'Community Development plan'. As mentioned above, only two very small communities out of forty five in Western Australia have Community Development Plans.

The next section deals with pay rates, where it is observed that work must be paid at award rates or equivalent. It does not mention the number of hours to be worked. Generally speaking the minimum adult hourly rate is in the vicinity of $8 per hour. The current base benefit rate is $141.40 per week. Therefore if there is to be any equity of income in a community, people would only be required to work for seventeen hours a week or three hours a day. This is however a generous estimate because of the significant numbers of participants under the age of twenty one and seventeen. For these age groups the base level of benefit decreases rapidly. It is here again that the 'flexibility' of the scheme comes to the fore in generating confusion. Whilst the manual says that work should he paid at an award rate, an officer of DSS indicated that the converse was the practice, viz, that people are paid at their age and status entitlement rate.

The Participant schedules sighted by this Commission, show that a married couple at 3 July 1990 were entitled to $247.40 per week. A single person over twenty one was entitled to $161.11 per week. Twenty one year olds were entitled to $137 per week. Nineteen/twenty year old participants were entitled to $112.15 and seventeen year olds to $64.60. If work is paid for at an hourly rate, and the rates are set according to age, then for a twenty hour week, a seventeen year old would he paid $3.23 per hour and a married man $12.37 per hour. If award wages are paid equally across age groups a married man with dependants would have to work four times as many hours as the single seventeen year to attain his basic unemployment entitlement. If more hours are worked by individuals whose entitlements are less, then some people are receiving considerably less than their entitlement under unemployment entitlements. In order to attempt to clarify this situation the Department of Social Security in Broome was approached. The response is detailed as follows:

> [a] married man is paid at the married roans rate i.e. higher hourly rate. If the wife does work her husband is stir paid at the married rate and her earnings are extra. Ques: how does that work out in terms of equity for other workers given the total pool of money is the aggregate of entitlements-isn't someone likely to miss out? Resp: all live in extended family, no one is really depriving anyone else, it's up to the bookkeeper to see everyone is treated fairly [Broome DSS officer, 25 July 1990].

The view that Aboriginal people live in an extended family, and thus should all support each other despite the inappropriateness of government policies and administrations is difficult to comprehend. A some what different picture was presented by Mrs H.E. Thomas in Kalgoorlie:

> You see a lot of them over there at Nanny Goat Hill, most of them wouldn't get any income because a lot of them have been on that - what do you call it? The CDP or something - out at Coonana. Then when they come into town here they sort of hang around but they're still sort of on the roll out there. They can't get unemployment here until they have notified Coonana that they're finished; they don't want to be out there any more. Then they can apply for unemployment. Because of the waiting time at Social Security - going in there waiting, standing in a queue and that they get bored very quickly and they want that attention straight away, to do their business and get out. So a lot of them don't do that and a lot of them out there will be walking around with no money in their pocket just depending on the ones that do get an income. And the feed they get - they go in and rob the Kentucky Fried bins, that's where they get their supper from

[RCIADIC O'Dea Commission Transcript, Kalgoorlie, 1990:185].

In part (c) of the manual (p. 10), the development of clear policies in relation to employment practices is advocated. Here there is the first reference to 'income maintenance'. The term is mentioned again on p. 11 in a sentence describing a community's obligations in terms of payment. Comments such as these are worthy of substantial assessment in the context of social justice, the purpose of the DSS and the concept of income maintenance available to the wider society.

The ultra 'flexible' regulations detailed in this manual provide and, in effect, often encourage mechanisms to deprive Aboriginal people of the subsistence level of income made available to all Australians who are unable to find employment. An Aboriginal field officer summarises the situation:

> 'the CDEP. Now, that's the Community Development Employment Programme and it's a good idea to make Aboriginal people work, but it's slave labour. These people are working picking up rubbish and, you know, they're sick and tired of picking up rubbish. They've got to do something constructive. Now, the thing is, to keep them in their communities, it's got to be consented to be there. As far as I'm aware, you've got Aboriginal people working out there for their dole money. Now, as far as I'm aware of that CDEP, every quarter the amount of people that live out in that community, all their dole money is sent out from the start of the quarter and the number of the people that are there - that's the amount of dole money they get there. Now, these people are working for it, and if they don't work they miss a day or a week - they don't get paid at all or they get $40 sit down money, which means, you know, they're either starving which creates the problem of: let's go and live in Kalgoorlie - Nanny Goat Hill - and let's go and sit down and get the dole cheque and we don't have to work picking up rubbish [RCIADIC Transcript, Kalgoorlie, June 1990:557].

A significant point to be aware of is that the use of this programme reduces unemployment figures dramatically. In addition, the combined total of unemployment entitlement moneys appears to be a substantial sum. The Government does in fact claim that CDEP monies are part of the Aboriginal Affairs budget. In Western Australia for the financial year 1988-89, $63,657,825 was spent on Aboriginal Affairs.

In addition to the above, on p. 11 of the manual it is noted that if an individual participant chooses not to accept the work offered, or to work only a reduced amount. then the community is only obliged to pay the individual according to the actual work done, plus any income maintenance payment. Additionally, a significant sub-section of section 2 is ATSIC Monitoring (p. 13), where the terms of reference for annual reviews and project evaluations are listed. In one part it inquires whether CDEP is being used as a substitute by government agencies and employment institutions, in order to avoid their various funding and other responsibilities. This is a difficult aspect for ATSIC to assess, given that they are the primary funding body to Aboriginal communities. This situation in itself may be inappropriate. However there does not appear to he any 'court of appeal' or mechanism for communities to tam to in order to access adequate funding to bring their standard of living into accord with Social Justice Principles. Communities do not have access to secure and constant sources of municipal funding, and the very minimum of health and education services are provided by the State in most places. Power, water and housing, in many instances, are funded by the Commonwealth. Community support services and municipal and recreation

services and utilities are increasingly left to CDEP funded projects. Further, on p. 13 of the Manual it is stated that corrective action will be taken in respect of 'any criticisms and recommendations made'. In an earlier review, a Pilbara CDEP community lists problems which were identified in the previous year, and which were still in existence, as:

> ... no starting time or place identified ... lack of individual time sheets and pay sheets (the Chairman and another Council determine who has worked and thus who gets paid) - this causes some problems when they forget people; - there are many who are getting paid for not working. This then is a disincentive to those who are working - the Council are trying to rectify this with the role 'no work - no pay' but until point 2 is adhered to this will never work 100%; - lack of any identified work teams -those that do work usually work as individuals; and - lack of any supervisors except the Chairman - this puts stress on both the Chairman and the workers.

The above list of problems are severe from several perspectives. In general, the terms of reference provide a comprehensive list of factors to be considered in the evaluation of CDEP. However, such an evaluation can only be carded out by individuals who take the task seriously, and attempt to come to terms with some of the hard realities of the situation.

Aboriginal and Torres Strait Islander Commission responsibilities

The summary of Aboriginal and Torres Strait Islander Commission (ATSIC) responsibilities is contained in seven short points.

(a) Advice to communities on the operation of the scheme.

(b) Monitoring of participant information.

(c) Arranging timely release of funds.

(d) Liaison with DSS and AEDP agencies.

(e) Review of each CDEP.

(f) Acquittance of grants.

(g) Maintenance of the CDEP computer system including updated unemployment benefit rates.

The various issues discussed so far, raise serious questions about the quality of (a) 'advice' given to the participating communities. It is this advice and its quality on which the operation of CDEP hinges. The lack of basic understanding of the scheme and poor quality administrative support has also been noted several times. These issues relate specifically to (b) and (d). The AEDP agencies referred to in (d) are DEET and the AAPA. We have been unable to find specific evidence that there is ongoing systematic coordination with these agencies. In one region the review forms indicate that DEET had no involvement at all over the twelve month period. Fundamental issues have to be raised two years in succession. The review process (e), evidence of which is contained in the P3 forms sighted by this Commission, does not appear to have any specific usefulness. If the advice given

to people is not adequate, then in my Commission's view, the consequence is a serious miscarriage of justice against both individuals and communities. There needs to be mechanisms put into place whereby Aboriginal people can seek redress.

Provision of services and CDEP

The provision of services in some Aboriginal communities is supplemented by the use of labour via the use of CDEP funds. In one northern Aboriginal community the Health Department of Western Australia (HDWA) provides the health services. This consists of a full time nurse and 1.5 Aboriginal Health Workers (AHWs). There are an additional 4 AHWs employed under CDEP. There conditions of employment are very different depending on the job classification and the employer. The nurses are paid an availability allowance (the equivalent of 25% of their salary) plus an on-call allowance. The AHWs employed by the Health Department of Western Australia do not receive an on-call allowance nor an availability allowance nor does the Department provide for relief for when the Health Workers are on leave. Even when that leave is extended due to accumulated leave and taking leave with out pay. The AHWs employed under CDEP are paid $7.68 per hour and regularly work up to 30 hours a week. The Health Department, until very recently, insisted that any training provided to the CDEP AHWs be paid for by the community. After some determined and prolonged advocacy, the Department has agreed to allow this community's CDEP health workers access to on the job, and in-service style training available to the Health Department of Western Australia AHWs. This is on the basis that the health workers have first option at attendance, but there will be no cost to the community.

It should be noted that the same community has 3 CDEP Environmental Health Workers who do not have supervision, assistance or training from the HDWA nurse. To quote the nurse, 'We concentrate on the health side of things!' (RCIADIC Transcript in confidence, 1990).

Summary of CDEP

It is clear from the above that Aboriginal and Tones Strait Islanders am the only individuals in Australia currently working for unemployment entitlements. It is also clear that Aboriginal town communities do not enjoy the same standard of municipal services as are available to members of the wider community. Nor do they have the security of funding in maintaining the existing minimum of services. In addition, there is confusion in the guidelines created by considering CDEP funds as wages for some purposes, and as a benefit for others, and there is little evidence of adequate planning or monitoring of the Scheme. Additionally, owing to the lack of administrative expertise in most Aboriginal community councils, including those whose members may have English as a first language, power over the finances of various communities is often in the hands of outside administrators. In my Commission's view, it is not always possible for community council members to properly supervise employees because they are not aware of the rules in relation to finance and the options in terms of management and accounting structures.

While putting forward certain criticisms of CDEP which have come before my Commission, however, it is important as noted earlier, to also be aware that in

certain circumstances CDEP can be of value. For instance, as noted by Altman (1990) and Coombs (1990), wisely used CDEP has the capacity to 'place resources within the control of the communities themselves for the support of activities chosen by them' (eg: support for traditional ties to the land; income support for the production of art and craft; local transport services) (correspondence from Coombs to RCIADIC, 15 August 1990). Further, as clearly put in a recent report from Northern Australian Development Unit (NADU) (1990:9):

> CDEP is clearly not the final chapter. The discussions with communities raised three key issues ... [these are]: the nature of work and training offered under CDEP; the equity of income distribution; and administrative arrangements ... While many people felt that CDEP had been an improvement on employment entitlements, it is clear that aspirations have been rising and there is a frustration at the 'sameness' of work under CDEP ... and the fact that working did not give them any noticeable increase in standard of living ... the central point is to provide reassurance to communities that CDEP as it now stands is not seen as the final step and to continue with efforts to link work with community development goals.

Bearing the above in mind, it is interesting to note, too, that ATSIC are currently undertaking research in relation to the 'social and economic impact of CDEP on Aboriginal communities' (see Weekend Australian Newspaper, 15 September 1990).

Essentially, while nothing can alter the fact that a large proportion of the adult Aborigines in this State are currently being required to work for unemployment entitlements, there may be significant ways in which CDEP can meet the real interests and aspirations of Aboriginal people The critical challenge is how best that might occur in a framework which encompasses the philosophy of self-determination and economic development and opportunity. It is clear that Aboriginal people are not in control of this Scheme, nor does it appear to allow for their intervention in the modification of its objectives as it meshes with the AEDP. For that matter, the officers who implement the policy seem to have had more determination over outcomes, policy change and modification than the Aboriginal people whose lives are directly influenced by this Scheme.

Education, also a critical matter in relation to economic development and work, is the issue to which I now turn.

LIMITED ACCESS TO EDUCATION

There is probably nothing in the history of this country which has promised and denied so much to Aboriginal people than the education system. No other institution has made more attempts to assimilate, socialise and continue the process of colonisation. As Christie (1988:18)notes:

> White education is in some way the essence of the invasive aspects of our culture.

At the same time no other institution has issued so many reports or made so many recommendations. People have been consulted, research projects initiated and Aboriginal people have said many times what they want, but despite the many

proposals and suggestions over a number of years, it appears little has been heard and much is still to be done.

Schooling, which is not necessarily the same as education, is a particularly important and powerful socialising agent for non-Aboriginal society. It is the normative way for introducing a child into myths, values, customs, philosophy and history of western culture, ie. into its own very specific world view. Aboriginal people, who traditionally never had 'schools', as they never had 'hospitals' or 'churches', have their own education system. Aboriginal children were educated in the 'school' of their relations. They learned about their world and that of their ancestors in the context of daily living. People learned as they lived and they learned in order to live: there was no separate department or compartment for 'school'.

Not only do Aboriginal and non-Aboriginal people sometimes educate their children and adults differently, but their ways of teaching and learning can also be culturally different. One perspective is that an Aboriginal world view is essentially interactional while that of the Western world is transactional. Aboriginal people are more concerned with relating to the world, non-Aboriginal people in changing the world. Another interpretation is that westem culture is specifically oriented towards industrial technology and the economy of the capitalist system while Aboriginal culture is aimed at the reinforcing of unity and harmony within relationships. Some educators argue that both cultures are incompatible in the domains of education (eg: Sayers, 1988; Christie, 1985; Harris, 1980, 1982, 1988, 1989).

From the perspective of Aboriginal people, education has served to explain and justify aspects of western law. The definition of crime itself, laws, criminal behaviour, restitution, correction, rehabilitation and punishment are all reinforced in the schooling process. Apart from legal issues this is the way in which history has been taught. It has been clearly shown that school curricula have influenced the stereotypes which non-Aboriginal people today have of Aboriginal people (cf. Morrison, Chaney, Sherwood and Jackson, 1982).

One of the non-Aboriginal assumptions about education is that schooling and education are synonomous. However much leaming is done outside of school and perhaps at times not much learning is done inside school. Hence when people talk of 'finishing school' they often think they are completing their leaming as well. A further assumption about education is that it is considered 'child business'. Adults work, drink and play football but children go to school to learn. This is being overcome with the provision of more adult education but it creates a problem for non-Aboriginal people in believing that learning can occur outside a building (e.g. health outside a hospital or religion outside a church).

It is not surprising that for many Aboriginal people school, and hence education, is seen as 'white-fella' business. In 1986 the Census showed that in Western Australia 'only 75 of Aboriginal respondents had post-school qualifications compared with 32% of the total population', and this being with a group of people of whom more than 60% were under 25 (Education Planning, 1990).

As a system aimed at giving people knowledge, and hence the ability to have choices and power over their lives, education has failed the Aboriginal people of this State. Something which was denied the people for years later became an imposed obligation. Significantly, Aboriginal people were then blamed for not participating in a system which was foreign to them, which threatened to assimilate them, over which they had no control nor which was seriously prepared to adapt

according to their needs. Despite all these difficulties, Aboriginal people have attempted over recent years to shape education into something of value for themselves: setting up independent schools, enclaves within tertiary institutions and courses particularly adapted to Aboriginal needs as well as seeking a stronger say in educational decision making. It is quite clear from RCIADIC meetings and conferences that many non-Aboriginal people do not know how to improve the delivery of an education service to Aboriginal people. However it is equally clear that some Aboriginal people do have very specific ideas and proposals about how things can be improved.

What has become clear from my Commission's meetings and conferences is that the issue and implications of education for Aboriginal people requires serious consideration, both by Aboriginal and non-Aboriginal people. Many Aboriginal people have spoken about their desire for their children to learn traditional skills and those necessary for living in non-Aboriginal society. However many are also not aware of how education has changed in the past twenty years, of the valuable initiatives in some areas, the choices they can make or the various options available for their own education.

12.1 HISTORICAL PERSPECTIVE

As the western Australian Aboriginal Education Consultative Group (WAAECG) Report (1987) noted very little has been published about the history of education as it affects Aboriginal people in Western Australia (WAAECG, 1987:8). Not only are many people unaware of how the policies and treatment of the past affect Aboriginal people today, but also how Aboriginal people now see education affecting themselves. As indicated elsewhere in the report, since colonisation in 1829 the policies affecting Aboriginal people have caused dislocation and destabilisation and have failed to address real needs and aspirations. Education is no exception.

For many years Aboriginal people were not considered capable of receiving education and for some period of time were actually excluded from attending government schools (WAAECG, 1987:9; RCIADIC Transcript, Kalgoorlie, 1990). Then they were only allowed to be educated up to grade 3 level (RCIADIC Transcript, Kalgoorlie, 1990). It was not until 1949 that Aboriginal children were first generally allowed into the schools of Western Australia (WAAECG, 1987:8) and in the 1960s it was largely at missions that Aboriginal people received any education.

Some important dates regarding education are:

> 1905 The 'Aboriginal Act' gave the responsibility of educating Aboriginal children to the 'Aborigines' department.
>
> 1911 Two systems of education existed. One centralised for non-Aborigines and the other without direction and relevancy operated for Aborigines.
>
> 1919 The Education Department was firmly committed to the policy: 'if non-Aboriginal parents objected to admission of Aboriginal students, then Aboriginal students must be excluded.'

1932 A Conference of affiliated Parents and Citizens Associations in Perth moved that the regulation 85 of the Education Act should apply throughout the State. The Education Department supported the resolution and the right of the Minister to expel Aboriginal children whose presence might be considered injurious to the health, welfare and morality of other children.'

1940 Aboriginal children were admitted to Government schools but only if they met the required standards of health and hygiene. The consideration that Aboriginal children were only educable to the 3-5 levels were influenced by the belief that as a race they were dying out.

1945 The Teacher's Union at their annual conference moved for special schools with trained teachers for Aboriginal children and also the introduction of a special curriculum.

1950s The time when attempts were made to assimilate the Aboriginal person totally into white society [O'Brien, 1989].

In the 1960s education was seen by members of various interest groups as offering some hope to Aboriginal children who were presented with a mixture of the 'civilizing' virtues of non-Aboriginal values and customs with Christianity. They were taken into homes, hostels or dormitories where they would spend the majority of their child and adolescent years. Here they were taught the basic '3Rs' with girls then being directed into domestic work and boys into rural employment. No formal education was offered to Aboriginal adults, and Aboriginal children were not considered capable of higher academic achievements. Dormitories continued in some parts of the State into the early 1970s.

In the history of this State, schools have been used for a variety of reasons as Government and churches considered best, The legacy is that many Aboriginal children experience and continue to experience school negatively. The phenomena of children 'opting out', truanting or leaving school at an early age provide a sense of 'failure' and a felt inadequacy to change the environment which people are facing. This has the effect of both lowering their self esteem and also preventing them from being able to deal with the pressures and values of mainstream white society.

Within the past decade there have been a number of both State and Federal reports concerned with Aboriginal Education. The House of Representatives Report (1985) indicated that Aboriginal education was characterised by:

- lower levels of access;
- lower levels of achievement;
- lower retention rates, particularly at secondary school; and
- often inadequate or inappropriate curricula' [Aboriginal Education, 1985: 21].

This was followed by the WAAECG Report, 'The Aboriginal Voice in Education' (1987), the first report to offer a comprehensive Aboriginal perspective on education in Western Australia.

In October 1989 the Commonwealth launched the National Aboriginal and Torres Strait Islander Education Policy (AEP), a policy in response to the Hughes Report, The Report of the Aboriginal Education Policy Task Force, 1988. In February 1990 there was also published by DEET a discussion paper 'A Fair Chance For All', on the issue of National and Institutional Planning for Equity in Higher Education. The Commonwealth AEP Policy had four main purposes:

(1) to ensure Aboriginal involvement in educational decision making;

(2) to provide equality of access for Aboriginal people to education services;

(3) to raise the rates of Aboriginal participation in education to those for all Australians;

(4) to achieve equitable and appropriate educational outcomes for Aboriginal people.

The significance of this national policy is that it is 'the first policy formally endorsed by any National Government ... because it responds to the call of the Aboriginal Education Policy Task Force for a concerted national effort' (Barlow, 1989), although we have yet to see whether it will be any different from the policies of the 1960s. The principal words in this new national policy, as also contained in the DEET discussion paper, are involvement and equitable. Aboriginal people are to be involved more 'in educational decision making' to ensure 'equitable and appropriate educational outcomes' (AEP, 1989). The policy seeks more involvement of Aboriginal people in the education system, not necessarily by offering more independence, authority or power over educational issues (such as education policy, curriculum, employment of teachers etc.) but by being more 'involved' in decision making. The equitable outcome, such as retention rates and access to schools, will be that which non Aboriginal people achieve. Hence Aboriginal education will, at least as defined by outcome, be no different from non Aboriginal education. And non-Aboriginal people will continue to control and define such outcomes.

One view of this National Policy, which has been put to this Commission, is that education, under the guise of achieving equality for Aboriginal people, ultimately seeks assimilation. Hence Aboriginal people are being offered what appears an equitable solution but ultimately not an equal one (Coombs, 1990). As Barlow (1989:13) points out 'Aboriginal and Islander people have made it very clear that they do not necessarily seek the same outcomes from education as do, say, the upper middle class white Anglo-Australians in Toorak or Potts Point - though they may'.

Hence my Commission has difficulties in reconciling this National Educational Policy with the aspirations of Aboriginal people and their expressed education needs. Obviously improvement in the outcome of Aboriginal people in the education system is urgently needed. Resources available to Aboriginal people are also urgently needed to attain these outcomes. That the final criterion of this outcome be what non-Aboriginal people are achieving is at least questionable and assimilationist, although this report recognises that for some Aboriginal people that will be what they want.

Finally there is the Equal Opportunity Commission Report, Second Review of the

Provision of Public Education in Western Australia (1990), following on its first Report in 1987. It revealed that the education situation in Western Australia requires urgent action. It highlighted:

> a considerable level of frustration with 'empty promises' ... the lack of perceptible action ... no tangible results [see also: McConnochie, 1982; Sherwood, 1982; Fitzgerald, 1984; WAAECG, 1987; Equal Opportunity Commission, 1990].

12.2 ISSUES FROM DEATHS IN CUSTODY

Whether education is referred to in its more restricted meaning, as being related to schooling, or in its larger meaning, of being related to learning as a positive influence in a person's life, education is largely absent from the life stories of those who died in custody. Rather than providing a means of being socialised into either Aboriginal or non-Aboriginal society, education seems to have been more of a 'de-socialising' experience (cf. Capp, 1988).

A number of those who died in custody spent their earlier lives in the care of people other than their family, in institutions, hostels and missions, and generally suffered the experience of being dislocated from their family and community at an early age. For example Robert Anderson spent his early years in the dormitory at Wiluna Mission, and was then removed from his family for some years to board at Karalundi mission school: he left school at the age of fifteen. Bobby Bates was taken from his mother at thirteen and put into Hillston Hostel. Nita Blankett was placed by her mother at the age of five to live at Roelands Mission. Albert Dougal was removed from his parents and taken to Beagle Bay at the age of nine. Paul Farmer went to Tambellup Mission at the age of ten. Mission education was one to two hours per day and the education department was critical about him learning traditional ways. He was given an exception when he failed to attend school. Christine Jones was taken from her parents at the age of two and brought up at the Church of Christ Mission at Carnarvon: no education was provided. At the age of eleven months Wongi was admitted into the care of the department and later to the Church of Christ Mission at Norseman, where he attended school. Benjamin Morrison was educated at New Norcia Catholic Mission from the age of five until twelve. Steven Michael was committed into the care of the Child Welfare Department at the age of one and admitted to Marribank Mission. Kim Polak came from Mount Margaret Mission and spent much of his early life in hostels.

Schooling does not appear to have been a significant, valuable or lengthy experience. Stanley Brown was illiterate and worked at De Grey Station from the age of nine until thirty two. Daryl Garlett was educated at the local State school but left to work as a farm labourer. Bernard McGrath attended North Kalgoorlie Primary School where he truanted, was suspended twice and seen by school authorities to have behavioural problems'. Corporal punishment was regularly administered but had no effect. Jimmy Njanji neither spoke nor understood English. Robert Walker, had problems at school at the age of 14 because of his involvement in Aboriginal issues, such as the Tent Embassy (see e.g. Langton, 1983, for pictorial comment on the Tent Embassy) and land rights.

Whatever schooling those who died in custody may have had, most of it was associated with institutionalisation. Several were brought up in dormitories on missions where there were great variations in the amount and quality of education

offered. For some, schooling was interrupted because of family movements, parental separations or inability of parents to care for them. In a number of cases the person was offending at an early age and was taken into institutional care. Very few achieved high levels at school and even fewer would seem to have found education as something which could help their lives. For most of those who died in custody, if not all, education was not an experience which provided them much confidence, hope or belief in themselves or a future with meaning.

12.3 RETENTION RATES

Retention rates, that is the rates by which Aboriginal people participate in the various educational processes, are but one way of examining how Aboriginal people are being affected by the present education system. However one of the difficulties in establishing clear retention rates for Aboriginal children in Western Australian schools is that the figures upon which such estimates are based are not reliable. For example, in 1986, there was a significant discrepancy in the recorded numbers of Aboriginal students in Western Australian secondary schools. Statistics given by the Schools and those with Abstudy differed by 11%. The difference between Schools and ABS statistics was 38% (Educational Planning, 1990). However in that year the lowest rates of Aboriginal students participating in the schooling processes were in the Northern Territory and Western Australia, with Western Australia demonstrating the lowest rate of all states in the 16-17 year age group.

Table 12: State and Territory Differences in Aboriginal Participation Rates in School and TAFE, 1986

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	AUS
SCHOOL									
5-9Years	89.1	84.5	79.4	82.7	76.4	87.8	71.8	94.2	80.9
10-15	84.5	82.8	84.8	82.5	80.2	90.6	78.4	91.5	83.1
16-17	27.9	33.2	31.8	23.7	17.1	18.2	23.2	35.4	26.3
TAFE									
16-17	6.7	6.2	2.2	8.0	4.8	16.8	1.8	6.3	4.8
18-20	6.2	6.6	2.3	6.5	2.8	6.6	2.1	10.1	4.0
21-24	3.8	3.0	1.3	4.0	3.0	3.8	1.1	8.5	2.6

Australian Bureau of Statistics, 1986 Census of Population and Housing, Quoted in the Report of the Aboriginal Education Policy Task Force, 1988.

There also do not seem to be detailed figures which indicate how many Aboriginal children are not at school or who miss early years or substantial periods of schooling. It has been said that nationally one in eight Aboriginal children aged 5 to 9 years do not go to school or pre-school (quoted in Walton, 1990:3). In the Northern Territory it has been estimated that in the homelands, up to 80% of children are without access to schooling (ibid:4) and while there are less outstations or homelands in Western Australia, it would be reasonable to expect that there are a significant number of Aboriginal students of compulsory age in Western Australia who do not have access to schooling. Educational work being done by Dr Nugget Coombs and Helen McCann with the Pitjantjatjara people indicates that in Central Australia:

> there were at least 88 children aged between 3 & 16 years who had no

> access to school programmes in the place of preferred living by their families [Submission to RCIADIC from H.C. Coombs, 1990].

In Western Australia the general participation rate of-Aboriginal students in secondary education is lower than in primary schooling:

> According to data from the 1986 census, the education participation of Aboriginal children in Western Australia aged 5-9 years is only 87 per cent, and the participation of Aboriginal children aged 10 to 15 years is only 81 per cent. This compares with education participation rates of and close to 100 per cent for non-Aboriginal children in these age groups [quoted in Ministry of Education response to RCIADIC questions, 1990].

What is clear also is that the retention rates of Aboriginal students in western Australia to Year 12 have been extremely low for many years, even when compared with Aboriginal retention rates in other states. In 1979 not only was the Western Australian percentage of those who had reached Grade 12 the lowest of all states, 5.8% (only the Northern Territory being lower with 3.9%), but most states with the exception of Victoria, showed increases over the following five years, 1979-84. Queensland, South Australia and the Northern Territory showed almost 100% increases over that five year period whereas the Western Australian rate actually decreased from 5.8% to 5.4% (WAAECG, 1987).

State Ministry figures, pointing to the retention rates in Western Australian government schools, indicate a growth in retention rates from 2.8% in 1982 to 9.9% in 1989 (figures provided by the Ministry to the RCIADIC, 1990). Other figures, a combination of both government and non-government schools, reveal a growth from 9.9% in 1986 to 10.7% in 1989 with the addition of non-Government schools apparently increasing the percentage of those reaching Grade 12 (figures provided by the Ministry to the RCIADIC, 1990). Whichever group of statistics one takes, the retention rate of Aboriginal students to Grade 12 in Western Australia, while gradually increasing over the past decade, is still extremely low, particularly if one compares it with the non Aboriginal retention rate in 1989 of 56.4% (figures provided by the Ministry to the RCIADIC, 1990). It is also significant to note that in Queensland in 1989 45% of students on Abstudy continued into Year 12, compared with a Queensland statewide figure of 64% (AITAP, 1990). In 1979 the retention rate of Aboriginal students in Grade 12 in Queensland had been 11.4% (WAAECG, 1987). Queensland, which had a rate in 1979 approximately twice that of Western Australia, ten years later has a rate approximately four times.

The retention rates of Nyoongah students from the south of Western Australia showed that, for the Southern Region in 1989, the retention rates for Aboriginal students was just over 10%, compared with non-Aboriginal students of 40-50% (Katijin, 1989). In 1988 only 13 students throughout the southwest reached Year 12, in some schools the retention rate was 0% (TAFE, Great Southern Regional College, 1989). The difference between Aboriginal and non-Aboriginal retention rates was especially noticeable for the later school years. In the Southern area only four Aboriginal students had passed Year 12 in the past seven years (Fighting for Rights, 1990:19).

In 1990 a Report to the Australian Research Council examined the 'participation, retention and achievement of Aboriginal students in secondary mathematics'. (Malone et at, 1990). Of a group of 9000 examinees in 1988 who sat the Tertiary Entrance Examination in mathematics in Western Australia only 19 were Aboriginal students (ibid). The findings of this report were:

(a) high absentee rates among many Aboriginal students that severely hampers continuity of conceptual development in daily lessons. Extended family contacts provide social havens and sanction absence from school.

(b) Eurocentric (western or European) school policies which ignore Aboriginal children's needs for bicultural education. For example, non-observance of National Aboriginal Week.

(c) classroom teaching that socially isolates and 'batch pocesses' Aboriginal students with little regard for their ndividual abilities, learning needs and future aspirations,and which fails to recognise that social influences have a major influence on students learning.

(d) unduly critical teacher attitudes that tend to blame the Aboriginal child for failing to respond to standard teaching approaches.

(e) a 'cultural-communications' barrier between the school and home that prevents a well informed, cooperative approach to resolving student behavioural problems.

(f) a poorly resourced unit curriculum, in Western Australia, especially for non-academic classes, that results in teachers using learning materials that are unsuitable for many Aboriginal children [Malone et at, 1990].

12.4 ABORIGINAL PERSPECTIVES

In 1979 Stephen Albert, the first Chairman of the National Aboriginal Education Committee, said that the role of Aboriginal people in education had changed during the 1970s from consultation to involvement and was moving towards one of responsibility (Hughes and Wilmott, 1982). The evidence which was put before this Commission indicates that even the stage of consultation had not been reached in many places.

Aboriginal people are, and have been for many years, unhappy about the education system. They do not believe it meets their needs, they want to be consulted about it and have some control over its delivery to their children. As one Aboriginal person said: 'For many Aboriginal people, the education system does not fit. It was designed for European people' (RCIADIC Submission, Kerr, 1990).

Resistance by Aboriginal people to non-Aboriginal education or schooling has often been interpreted by non-Aboriginal people as a lack of interest by Aboriginal people in their children's welfare, as being 'lazy' or 'uncaring'. However Aboriginal people have been consistently clear as to what they want and need from education (Beazley, 1984; WAAECG, 1987; Thies, 1987; Equal Opportunity Commission, 1990). However, as one Government department admired, Aboriginal people have not had access to the power or control over the education which has been affecting them:

> although they believe in the value of Education, they don't know bow to influence it, or where to go to find out about it [Submission to RCIADIC

> from Department of Education, Employment and Training, 1990].

The 1985 and 1987 Report: 'The Aboriginal Voice in Education' involved consultation with Aboriginal people in Western Australia on a larger scale than ever attempted before. This report is currently the most authoritative and accurate report on Aboriginal Education in Western Australia. The report concluded:

> The picture is not bright ... We believe that the word 'crisis' is not too strong to describe the present situation [WAAECG: 13].

The WAAECG study of 1987 found that:

> Nearly all Aboriginal adults express[ed] a strong desire for their children to succeed in school. On the other hand, Aboriginal people are neither willing nor able to discard their culture and language. On the contrary, they desire a situation wherein their Aboriginality is recognised, accepted and valued by mainstream society, its schools and other institutions [WAAECG: Appendix].

It would seem that despite the recommendations which have been made for many years there has been a failure by Commonwealth and State Governments and of Catholic Education to adequately respond to the aspirations and needs of Aboriginal people.

Most Aboriginal people are clear what they want from the education system. They are insistent that their children need to be taught the 'Aboriginal way', with their communities having their own schools, their own teachers and own curriculum. They see it as necessary for teaching their children the important things about Aboriginal life. They also see the value of non-Aboriginal education in helping to overcome the intimidation they experience in dealing with people who speak English, in being able to understand western law and answer back to police, in standing up for their rights (RCIADIC Meetings, Roebourne, 11 October; Yamatji Ngura, 30 November; Eastern Goldfields, 5 December 1989; Fremantle, 27 January; Beagle Bay, 14 March; Djarindjin, 15 March; One Ann Point, 16 March 1990).

Aboriginal adults are often conscious of the difficulties associated with being able to say and get what they want from schools. And Aboriginal students talk of the importance of being supported in school by their parents (RCIADIC Transcript, Geraldton, April 1990:469).

In 1987 the WAAECG (1987: 14) saw itself as 'providing the leading advisory role in implementing the package of policies recommended'. Today its role needs to be strengthened and expanded, so that Aboriginal people through regional committees can take more than an advisory role in setting the directions of Aboriginal education in this State. The WAAECG needs to be able to negotiate with educational authorities the priorities and principles which Aboriginal people wish to set for the future.

12.5 NON-ABORIGINAL PERSPECTIVES

In the past non-Aboriginal people have not acknowledged that they have much to learn from Aboriginal people. Nor have they seen that where there are problems

with Aboriginal children in schools that it is the non-Aboriginal education system which needs examination. Christie (1988) observes:

> The major stumbling block for meaningful development has been the reluctance of white educators to critically examine the invasive assumptions of formal education, and their refusal to acknowledge that they can learn anything important from Aboriginal people, their refusal to pay more than lip service to the aim of leaming to speak and understand Aboriginal languages, and their assumption that learning about aspects of Aboriginal culture, tradition, nature, commitment, power etc. is just a fringe interest to be pursued in one's spare time. Quite simply, most white educators cannot commit themselves to the idea that they have anything really meaningful to learn from Aboriginal people.

Throughout the investigation and research of the RCIADIC non-Aboriginal people stated that the education which is presently being offered to Aboriginal people needs to be changed and improved. They spoke of the vast problems in the present education system; of it 'failing' them, of being 'wrong', unable to cope with their needs, being 'irrelevant', like a 'conveyor belt' which provides a final unhealthy and hopeless situation (RCIADIC Meetings, Port Hedland, 10 October;, Laverton, 4 December; Eastern Goldfields, 7 December, Leonora, 8 December, Kalgoorlie, 8 December 1989).

Many non-Aboriginal people, parents, teachers and principals have commented about issues which relate to the failure of education to assist Aboriginal children: the poor health, hygiene, nutrition and hearing difficulties of some children, lack of resources for study at home, a lack of support or interest in the school by parents, and a lack of contact between the school and parents, mixed messages from home and at school. These factors are compounded by an often irregular attendance at school or a mobility between schools by students. Alcohol use in the home also affects children's ability to learn (Submissions to RCIADIC from East Carnvaron Primary School, Carnarvon Education Support Centre, Rangeway Primary School, O'Connell, Stella Maris College, 1990; RCIADIC Transcript, Geraldton, April 1990:466).

A number of non-Aboriginal people commented about the inability, inadequacy and even an unwillingness by themselves and their schools to understand or deal with present-day Aboriginal culture. In particular there was a recognition that schools and teachers are ill-equipped in being able to communicate with Aboriginal parents and in dealing with the experience of racism in a school. Cases were mentioned of schools where 'we don't see too many of the Aboriginal parents' but nothing was organised to try and change the situation (RCIADIC Transcript, Geraldton, April 1990:474).

It was also alleged in a submission to my Commission that Teachers frequently have lower levels of expectation of Aboriginal students and students perform accordingly' (Submission to RCIADIC from East Carnarvon Primary School, 1990). Aboriginal students often find themselves battling from an early age with self esteem as they suffer the racism of fellow students or teachers. Not only can anti-social behaviour develop when children have experienced being a 'failure' at school, but a person who is unsuccessful at school can take from school a sense of failure for life (RCIADIC Submissions from East Carnarvon Primary School, Carnarvon Education Support Centre, Collins, Skillshare, Rangeway Primary School, O'Connell, Kalgoorlie District Education Office, Pires, Department of Education, Employment and Training, 1990). Group and family support is

particularly important at an early age if children are not to lose interest, and be able to cope with living in another culture with its many accompanying problems (RCIADIC Submission from Stella Maris College, 1990; RCIADIC Transcript Geraldton, 1990:401).

The difficulties which underly the serious and significant differences between the Aboriginal view of education and how the non-Aboriginal education system largely operates, has been summarised as thus:

> Timetabling and curriculum planning have established in white education a tradition that learning should be drawn out, homogenized, consistent, and long term with all the rhythms and responsiveness ironed out. We have almost got our educational planning to the stage where we can take a five year old and tell what s/he will be studying and when, every school term for the next fifteen years. To Aboriginal people, that is like imprisonment [Christie, 1988:13].

However non-Aboriginals also often tend to perceive that many Aboriginal people are both interested and concerned about education. This is revealed in the following comment:

> When the hostel was running it was because the parents wanted their children educated. They lost interest in education when they saw it as detrimental to their well being and their life style. It was the desire of the Parents that their children follow in their footsteps [RCIADIC research notes, 1990].

However the gulf between the perceptions and expectations of education between Aboriginal and non-Aboriginal people remains significant. It is also quite obvious that in many ways the non-Aboriginal community is largely confused and unsure as to what to do to enable education to become a more positive and more helpful experience for Aboriginal children.

12.6 BICULTURAL EDUCATION

There have been a number of suggestions over recent years to promote the ways in which Aboriginal people can maintain their own culture and ways of learning as well as also learning the skills of the western culture. It has been described variously as two-way learning, bilingual or bicultural education. Aboriginal people want their children to develop the skills which numeracy and literacy offer, and which enable a community to also have control over the direction of the lives of its members. They also want their children taught Aboriginal values, history and culture of their people (Harris, 1989; WAAECG, 1987).

In the opinion of the western Australian State School Teachers Union:

> Aboriginal parents want the education system to develop their children to their full potential in all areas, as well as giving them a sound basic groundwork to be successful in the increasingly technological world of today while maintaining their own Aboriginality [State School Teacher's Union Submission].

Consultation with Aboriginal people in the Kimberley about this revealed they:

> want to see a system which will achieve and maintain a 'way through' for young people ... a system of education which will enable each person to be educated to as high a level as she or he desires and is capable of, in order to be a productive person in the community. They want to develop a system of education which caters for diversity with diversity [Thies, 1987:85].

In 1987 the WAAECG recommended: 'the first step towards achieving a fundamental re-orientation of schools would he the adoption of a Bicultural Education Policy'. This policy:

> means that teachers of Aboriginal students will adopt appropriate curriculum and teaching methods. It suggests changes to programmes in all schools, whether they have Aboriginal students or not. Schools will consult their local Aboriginal communities and come to regard them as important primary resources. It implies changes of attitudes and values by teachers and education authorities ... [WAAECG Appendix: 2].

Bicultural, bilingual, and two way learning are all different ways of describing the right of Aboriginal education to self-determination in regard to education. In some places it will take the form of separate 'domains' for Aboriginal and non--Aboriginal areas of learning. In other places there will he less clear distinctions. The important element is that Aboriginal people have the right to choose the form of education they wish, and to also have the various options of education available to them.

What has been made clear is a determination by Aboriginal people 'not to lose' the next generation of children as many of the last were 'lost' ... the dangers for the young today of 'falling down in between' the two cultures, ill-equipped to cope in either' (Thies, 1987: 91). Bicultural education is a means of ensuring that western education is not provided at the expense of one's culture and identity but as a support.

12.7 ABORIGINAL EDUCATORS

The role of Aboriginal people in education is critical. The increased use of Aboriginal Teacher Aides, Aboriginal Education Workers (AEWs), Aboriginal Teacher or Teaching Assistants, Aboriginal Education Community Development Officers (AECDOs) and Aboriginal Home-School Liaison Officers, in the past decade has made an important contribution towards Aboriginal involvement in education.

AEWs can be crucial links of communication between teachers, the principal, the child and the family. Truancy and discipline problems can be overcome (RCIADIC Transcript, Esperance, April 1990:16). It was only in 1985 that AEWs were first employed in Senior High Schools and by 1988 there was a total of 135 AEWs employed in government schools. In 1989 they were upgraded to AECDOs which then provided a career structure for AEWs (Ministry of Education, 1990).

However, while important, the focus on the employment of AEWs and AECDOs can blur the need for more Aboriginal people to take greater areas of responsibility in schools, to be involved in guiding education policy and for having more Aboriginal teachers. As it was expressed at one Conference:

> We've tended to employ aides and not really gone beyond that [RCIADIC Transcript, Kalgoorlie, 1990:213].

In my Commission's view, there is an urgent need to go beyond the present situation where too many Aboriginal people are employed in schools as gardeners, cleaners or assistants of various sorts. Their skills and contributions to that of education are often undervalued and need to be recognised and developed. It is important that more Aboriginal adult educators, counsellors and liaison persons in schools become accountable to the local Aboriginal community who, through the establishment of local committees, have more authority and are more involved in local policy making for Aboriginal students (see also AIU 'Fighting for Rights', 1990:20-21).

The policy within the State Ministry is to increase the numbers of:

> educational administrators, teachers, curriculum advisers, teacher assistants, home-school liaison officers and other education workers ... [Ministry of Education, 1990].

but the problem is not simply one of gaining more people, but in keeping people within the education systems. In 1979 there were 14 qualified Aboriginal teachers in Western Australia. A decade later there were approximately 95, with 20 teachers graduating between 1987 and 1989. Apart from the problem of the numbers falling far short of a targeted 1,000 qualified teachers nationally by 1990 (143 teachers for Western Australia) (cf. Wilmot the evidence is also that many qualified Aboriginal teachers are not choosing teaching as a career. For example, in 1990 there appear to be only 53 qualified Aboriginal teachers working within the various education systems in the State (Educational Planning, 1990).

It has been agreed for many years that Aboriginal people prefer to be trained on site rather than have to live elsewhere for a lengthy period of study. In 1975 it was recommended that courses for teacher aides be conducted with a combined on-site training with short residential courses at Pundulmurra (Report on Education in the Kimberleys, 1975). In 1984 the Beazley Report recommended more flexible forms of training for Aboriginal teachers with 'some training opportunities being available in country centres' (1984:328). In 1988 the Ministry initiated a programme whereby AEWs could undertake teacher training by studying part-time. This would take 51/2 years to complete but it would he as part of their work, which would be reduced to half-time. This programme, similar to the Remote Area Teacher Education (RATE) Programme in the Northern Territory, is only offered to 20 people every year.

It has been suggested for a number of years that school boards be instituted in all schools with large numbers of Aboriginal students. My Commission was advised that State Ministry policy is:

> to expand the support network and establishment of school-based decision-making groups in all schools and, wherever possible, to ensure that Aboriginal parents are represented on these bodies at a level that is commensurate with Aboriginal enrolments in each school [Ministry of Education, 1990:9].

However a large number of school boards or committees which do exist today are only used when principals decide when consultation is to he used. Rarely are they

involved in the more serious levels of policy making, teacher appointment or curriculum development. Too often they respond only to the decisions which principals have already made. An exception would seem to be Aboriginal Independent Schools who:

> seek to maintain their Aboriginal ownership, while increasing Aboriginal decision-making capabilities with respect to education policy [Ministry of Education, 1990:9].

As one Aboriginal person said of being on an education advisory committee:

> I get the feeling that really ... when you are put in those advisory roles, consultant roles, that you are really just token blacks ... And that has been my feeling for a number of years [RCIADIC Transcript, Broome, 1990:542].

From research findings put before me, it seems that it is not simply a matter of involving more Aboriginal people in schools. Aboriginal people must have some control and influence over the curriculum and the whole philosophy within a school rather than being accountable to a Department in Perth or Canberra it would be preferable for particular Aboriginal people to be part of a local committee which sets policies for Aboriginal education in that particular area.

12.8 EDUCATIONAL DISCIPLINE

The evidence from our conferences, and the many submissions given to this Commission, lead me to the conclusion that for many Aboriginal students schools are 'stressful institutions'. This can especially he so where a student has non-Aboriginal people as teachers and principals, a non-Aboriginal curriculum and discipline, when one changes school and finds different programmes and no Aboriginal friends, and in general finds no Aboriginal role models to emulate (Capp, 1988). The reinforcing of non-Aboriginal values through school discipline can increase tension within the child. Breaking school rules, and subsequently being sent home, has become for many children the only ways in which some can break out of the conflict of pressures they experience between school and home (AIU, Fighting for Rights, 1990: 19).

Many reasons were offered to explain why a child might truant from school: not being able to hear or understand what a teacher was saying, not understanding the subject, being homesick, ill or not being able to keep up with other children (RCIADIC, Transcripts, Esperance, April 1990:15). It was also put to me that:

> After a while they just give up and then the absenteeism starts and from that it is just a downhill run [RCIADIC Transcripts, Esperance, April 1990:80-81].

Truancy was also mentioned by Aboriginal people as the result where suspension and expulsion practices appeared to be aimed at Aboriginal students, particularly low achievers (AIU, Fighting For Rights, 1990: 19).

The health of Aboriginal children at school affects more than their ability to learn. It may influence the way they are treated by people unaware or ignorant of the causes of their behaviour. Take the high number of Aboriginal children with hearing difficulties such as COM (Chronic Otitis Media), a middle ear infection. A

submission in the Northern Territory Commission has said:

> There are approximately 7500 Aboriginal school children enrolled at about 80 Aboriginal schools in the Northern Territory and in every classroom, in each school, it is estimated that 25% to 50% of children have a hearing loss, caused by COM (Chronic Otitis Media) in one or both ears. This means that up to half the children in any classroom cannot hear their teacher properly [Submission to RCIADIC from Quinn, 1990].

Three elements associated with COM are: pain, a difficulty in processing information and hence in being able to become part of a class or learning environment. A further complication is that COM is intermittent and hence a child may have it, lose it and gain it at a later stage. Hence for teachers there is both their ability to perceive COM and accurately interpret behaviour associated with it. Preliminary research by staff of the Broome Catholic Education Office (CEO) suggests that the percentage of Aboriginal children with COM in the Kimberley region is very similar to that in the Northern Territory.

Quinn's (1990) submission goes on to suggest:

> A mild or moderate hearing loss in early childhood interferes with the language acquisition process and to the process of personality formation. Language deficits and personality problems possibly might project from the pre-school years into school settings, accounting in part for academic problems, slow learner labels, social and academic ostracism, juvenile delinquency, school drop out, street gang involvement, drug abuse and eventually adult criminal behaviour.

It is important that teachers learn to recognise health problems, such as COM, and behaviour associated with it. Their own role in assisting children to cope with such difficulties is most important. One submission to this Commission recounted the story where a young Aboriginal man was being interviewed by the police over a serious offence. The man was extremely deaf and, despite being innocent of the charge, gained the impression from the police that he was to be charged. He ran away, was eventually found after an extensive search in another community some hundred kilometres away and only after much anxiety experienced by himself and his community (it was feared he might harm himself as he had shown a tendency to harm himself when very upset). It was both the person's inability to hear and the police inability to communicate which led to a potentially very dangerous situation (Submission to RCIADIC, Marchant, 1990).

It was also pointed out how inappropriate discipline can set children along the track which leads to imprisonment: 'Kids are turned off school for many reasons but one being the discipline procedure. 'Shame', humiliation and degradation by the present system just leads to turning off from school. It appears that the procedures currently in place are setting the kids up for the penal system' (Submission: Skillshare, 1990). (See also submissions: East Carnarvon Primary School.)

Parents can be criticised and blamed if their children do not attend school and school authorities often bring in police where children are truanting. Aboriginal police aides are sometimes given this invidious task (RCIADIC Transcripts, Roebourne, February 1990:175; Geraldton, 1990:268; Carnarvon, 1990:14).

There have been occasions when police have come into a school, their behaviour being both insensitive and inappropriate. One case was mentioned of the police

who arrested a school employee during 'smoko' time for an offence which had been committed the previous year. The arrest was in view of the students and staff (Submission, CEO, Geraldton, 1990).

In terms of expulsion from Western Australian schools between 1985 and 1989, 29 out of 133 were Aboriginal students; from 1987 onwards 25 out of 67 were Aboriginal students, an increase over five years of 15% (Equal Opportunity Commission Report, 1990:vii). The fact that the number of Aboriginal expulsions has increased 15% between 1985 and 1989 is of concern. Of greater concern is the perception of the report of the Equal Opportunity Commission that 'counselling and punishment procedures were being 'short-circuited' (Equal Opportunity Commission, 1990:vii). It would seem that those involved in a person's behaviour in school are not communicating with parents as soon as it is desirable or necessary.

Aboriginal parents spoke of their own difficulties with discipline and punishment as a result of their own history:

> And I know for a fact too that a lot of our ex-mission children refuse to smack our own kids for what happened to us as we were little... I can't bring myself to flog them [my own children] like I was belted [RCIADIC Transcript, Esperance, 1990:43]. And ... Nor is it easy to overcome what parents themselves experienced as education [RCIADIC Transcripts, Esperance, 1990:82].

Often schools communicate their difficulties with a particular child by sending parents a letter, ignorant that there are parents who have difficulty with reading or understanding what the teacher or school is saying (O'Brien, 1989). People associated with schools acknowledged the difficulties of imposing discipline on Aboriginal students. They referred to the devastating effects which discipline often has on Aboriginal children because it is in conflict with the different 'child rearing practices' between Aboriginal and non Aboriginal people (submission to RCIADIC from Rangeway Primary School, 1990). Stories have been given to this Commission of the use of isolation, suspension, and food deprivation as ways in which Aboriginal students are disciplined and punished. Not only did a number of people see that there were:

> different child upbringing practices' at work but that certain school methods of punishment or discipline probably did more harm than good [Submissions to RCIADIC from Skillshare, Ryan, Willaway, 1990].

One teacher explained how decisions about discipline were made:

> We have to impose a discipline system that is required by the majority of the students - or required by the majority of the parents [RCIADIC Transcript, Kalgoorlie, 1990:223].

The Ministry has introduced a programme for introduction into schools in 1989, Managing Student Behaviour:

> to ensure that proper standards of discipline are maintained ... The programme was developed in response to schools' perceived needs for more effective management of some disruptive students. Allied to this were issues relating to teachers' working conditions, accountability of schools and the phasing out of corporal punishment ... The programme

> encourages students to take responsibility for their own behaviour and is backed up by the use of 'time out' rooms [Ministry, 1990].

The use of a 'time-out' room was not perceived by some parents as helpful:

> the time out room is a really small room, it is like a little cell and it's freezing cold there and the kids sit in it all day [RCIADIC Transcript, Esperance, April 1990: 19].

This programme, carried out by at least one school apparently isolates 'problem' children in a place called 'the cottage' for some days. One parent responded to such discipline by saying: 'I do not want my children sent to "the cottage" as disciplinary action. "The cottage" is similar to a gaol. What does this claustrophobic atmosphere do to rectify behaviour other than instil fear of being enclosed. Surely an alternative to "the cottage" could be sought' (Herb Wimbus to the Principal, 10 April 1990). A further submission to my Commission also referred to 'the cottage' as a reminder of 'the "sweat boxes" used in the Japanese prisoner of war camps' (Submission to RCIADIC from Skillshare, 1990). My understanding is that the 'cottage' has closed down since this submission was provided to this Commission.

While there has been some improvement in facilities for children with learning and/or emotional difficulties there remains the need for parents to be counselled before problems become acute. For many years Aboriginal children were put into special classes and separated from non-Aboriginal children. When students are put into special classes today Aboriginal people can still remember the stigma of such a move (O'Brien, 1989). Too often teachers can explain away a child's behaviour as simply a consequence of one's family or community living. Teachers need professional help in diagnosing children's difficulties at an early age, being able to discuss them with the parents and being able to seek assistance for the children concerned. Without sensitivity and understanding in this area school inevitably can become a form of alienation or 'prison' for both Aboriginal parents and children. The use of discipline and related forms of punishment are valuable only if children experience them as helpful. And in these areas schools need to be communicating better and receiving much greater input from Aboriginal parents.

12.9 CURRICULUM CONTENT AND TEACHER TRAINING

In the course of this Commission it became obvious that there is a widespread lack of information about the history and culture of Aboriginal people in this State. Not only were people largely uninformed about Aboriginal life in the area where they were living, but the attitudes and impressions they had were often poorly informed. For example in one area people did not seem to know much about its early history and that local Aboriginal people had been massacred:

> Knowledge of this massacre known as the Flying foam massacre [sic], is limited to a very few people. It is definitely a chapter of history that is deleted from several local history books [Submission to RCIADIC, Billing, 1990].

Rarely, is history presented from an Aboriginal perspective so that non-Aboriginal people can see a valid and alternative way to see history. As one Aboriginal description of history explains:

> Basically our view of history is not a movement away from the present towards a distant future. History stays in the place where it has been made. It says and becomes the foundation of the present and the future [Marika-Mununggiritji et at, 1990].

'Much of the information which exists about Aboriginals in Australian schools is often stereotyped, inadequate, anachronistic and even racist' (Aboriginal Education, 1985: 172). In addition Aboriginal children often stayed away from school when the teacher said they were going to do Aboriginal studies: 'They were worried about being stigmatised as dirty or lazy or of low intellect' (O'Brien, 1989). This deficiency in education is directly linked to what has been lacking in school curricula (O'Brien, 1989). Despite recommendations in favour of Aboriginal studies programmes education authorities have still to implement Aboriginal studies courses for all students in western Australian schools -'developments in this area are generally at an early stage' (Ministry of Education, 1990). The Beazley Report believed:

> that Aboriginal Studies should form a stronger and more integrated component in the curriculum of all schools [and recommended the development of]Aboriginal studies materials for the pre-primary-to-Year 12 curriculum [1984:329].

The House of Representatives Report recommended:

> State and Territory departments of education, in conjunction with their Aboriginal Education Consultative Groups, develop guidelines on the teaching of Aboriginal studies in their schools. These guidelines should include a contemporary perspective of
> Aboriginal society [1985:175].

There is currently a Ministry of Education proposal to introduce Aboriginal Studies Units into all schools within the coming triennium. The role of principals and teachers in introducing such a curriculum into a school is most important, especially in the attitudes they display towards what will be offered. 'The success of Aboriginal studies depends largely on the attitude of the school principal and the staff (Aboriginal Education, 1985: 174).

In a survey of teachers in Western Australia in 1989 the vast majority of teachers (90%) supported the introduction of Aboriginal Education units; 93% said that they should be available for all students and 92% said they should be available for all schools. However only just over half, 59%, said that such studies should be compulsory (Gray and Pratt, 1989).

There have been a number of occasions when Aboriginal people expressed dissatisfaction with teachers. Probably the most serious was a feeling that non-Aboriginal teachers do not seriously 'push' Aboriginal students as hard as non-Aborigines. There is evidence that 'the standard of performance of Aboriginal and Islander children in schools will depend largely on the attitudes and expectations of teachers' (Coutts, 1988). Students are easily identified as low achievers with teachers finding it difficult to understand their behaviour and too readily judge what they perceive from their own ethnocentric base.

Reports into Aboriginal education have been clear for some years about the importance of teacher training including training in Aboriginal culture and history and orientation programmes for new teachers of Aboriginal students. The Beazley

Report of 1984 recommended: 'that all teacher education pre-service courses include components of Aboriginal education and Aboriginal studies' (1984:330). This was followed by the House of Representatives Report in 1985 which said:

> all teachers should be adequately prepared by pre-service training to appreciate the special needs of Aboriginal students. This should include general background in Aboriginal culture, the history of Aboriginal people and their place in modern Australian society. This presentation should aim to ensure that future teachers are trained to function sensitively and knowledgeably in cross-cultural situations [1985:194].

The WAAECG Report (1987) also recommended that it be:

> a high priority that all student teachers be required to complete a full semester Aboriginal studies/Aboriginal education unit. This unit should be separate and distinct from multicultural studies or any other entity or discipline. In order to inform and sensitise trainee teachers about Aboriginal history, culture and contemporary issues, the emphasis of the unit should be Aboriginal studies [p. 19, Appendix].

What is of concern is the lack of support for these recommendations. In the teacher survey referred to earlier, conducted among teachers in some Western Australian schools in 1989, 93% believed that while non-Aboriginal students do not know enough about traditional and contemporary Aboriginal life, less than half 47% said that it should be compulsory for teachers 'to attend and pass an Aboriginal Education Unit as part of their teacher training course' (Gray and Pratt, 1989).

What is also of concern is the high turnover of teachers of Aboriginal students, especially those in remote areas. For example in the Kimberley in 1990 there was a turnover of teachers in the Catholic Education system of about one in three (Principal, personal communication); in Broome there was a turnover of teachers at the District High School for the years 1985-1989 of between 21-34% each year (The Broome Study, 1989:19).

The initiative of the Catholic Education System to offer annual in service training of new teachers to Aboriginal communities and their exploring of incentives for appropriate teachers to continue teaching after some years is to be encouraged. However there are other teachers who have been teaching Aboriginal children for too long and in the minds of some Aboriginal people: 'senior staff were left too long in the one school. If their attitude happened to be poor, then Aboriginal students were particularly disadvantaged' (AIU, Fighting for Rights, 1990:19).

Teachers must become accountable to local Aboriginal parents. A trial period for teachers in remote areas would be of benefit to both teacher and the community. A contract for a teaching period would also give the local community of parents a greater sense of responsibility for their children's education (Capp, 1988).

12.10 LANGUAGE

For many years Aboriginal people were prohibited from speaking their own languages; they were forced to speak English while in school and sometimes punished if they spoke their own language (O'Brien, 1989). This can continue today where Aboriginal people are told to speak only 'good english' and where the

language they do speak, especially Kriol, is considered as an inferior language (Hudson, 1984).

Kriol, the language many Aboriginal children are born into and which has become the language of a number of Aboriginal communities in the north of Western Australia, is a dialect of the creole spoken in the Northern Territory and parts of Queensland. The language is now written and there is some support for recognising it as a valid Aboriginal language (Hudson, 1984).

In the Northern Territory it has been found that where children have learned in a bi-lingual environment they have achieved more educationally than children from the same community whose only learning experience has been in English (Aboriginal Education, 1985:109; Beazley Report, 1984:326). Apart from helping to provide a good cognitive base for learning a second language learning to read and write in the language one is born with provides much for a person's confidence and self esteem (Hudson, 1984).

As noted earlier, my Commission has been informed by the Beazley Commission which in 1984 recommended:

> the encouragement of bilingual education, by offering Aboriginal languages in schools, by using Aboriginal languages as a teaching medium in conjunction with English and by teaching English as a second language to students whose first language is Aboriginal or a Kriol [1984:328].

The WAAECG recommended the setting up of Aboriginal Language Resource Centres in 1987 (WAAECG, 1987:8). However it was only in 1989 that western Australian State Education policy acknowledged that English was a second language for a number of Aboriginal students (Whisson, 1990).

The Ministry of Education began a project, in cooperation with the Catholic Education Office, to teach Aboriginal languages in primary schools which have a high proportion of Aboriginal students. This programme is a small but significant step towards the recognition of Aboriginal culture and identity in the schooling process. However there are many advantages in making Aboriginal languages available to all Western Australian students. Not only does it support the cultural identity and integrity of Aboriginal students but it also enables non-Aboriginal people to perceive the world in a quite different but enriching cultural way (cf. Watson& Chambers, 1989).

12.11 INDEPENDENT SCHOOLS

It is significant that of all the Aboriginal Independent schools which exist in Australia the majority are in Western Australia, with the largest concentration within the Fitzroy Crossing area. In 1990 there are nine independent schools at Strelley; Noonkanbah; Millajidee; Warrimabah; Ngoongah Aboriginal Community School; Christian Aboriginal Parent-Directed School Coolgardie (CAPS); Yiyili Community School; Wangkatjungka Community School. Pungurr, in the Pilbara Region was established in 1988. These schools have arisen out of an Aboriginal desire to have a more community controlled school.

As schools they are distinct in that they attempt to have more Aboriginal control

and curriculum, qualities which have been lacking in Aboriginal education in Western Australia. When examining the independent schools in Western Australia the Beazley Report spoke of:

> obvious benefits, which included higher student attendance rates, improved self-esteem and greater relevance. There was evidence of a greater number of Aboriginal groups and communities seeking to have their own schools. The factors underlying this trend are varied, but include disenchantment with European forms of education, fear of cultural destruction, irrelevance and family disintegration. These problems often manifest themselves in poor attendance of Aboriginal children, with attendance rates declining markedly in recent years [1984:327].

The right of such schools to exist and be supported has been clearly established in Australia. Parents with religious convictions have had the right to set up their own schools (Aboriginal Education, 1985:137). The Government, through the Department of Aboriginal Affairs, has supported such initiatives for Aboriginal independent schools by claiming 'that Aboriginals have the same right as other citizens to establish their own independent schools and to create and adopt educational programmes so that they accord with their cultural values and chosen lifestyles' (Quoted in Aboriginal Education, 1985:139).

That Aboriginal parents and communities might seek to establish their own independent schools is an initiative to be encouraged. That Aboriginal people seek and are given greater responsibility for the educational needs of their children is consistent with the major thrust of my Commission's report. It is also consistent with the recommendations of the House of Representatives Report in 1985 which said: 'as expressions of Aboriginal self-determination and Aboriginal community control, Aboriginal independent schools should be encouraged' (Aboriginal Education, 1985: 143).

One of the difficulties associated with establishing such schools is often one of finance. Independent Aboriginal schools do not have the economic base or political power to support their own schools, as do other independent schools. They are far more dependent upon government finance and resources and much more vulnerable to the forces of non-Aboriginal people. The difficulties which the Aboriginal people on the Carnarvon Reserve encountered in 1977 in trying to address the educational needs of their children has been documented elsewhere (e.g. Saggers and Gray, 1988). In attempting to resolve a number of important issues, such as truancy, the relationship between education and their culture and the purpose of education, the community discovered a multitude of forces which operated overtly and covertly to prevent establishing their own independent school (ibid).

It is important that funding and expertise be made available to support and develop independent schools. Communities seeking to explore new possibilities need to be supported and encouraged but also offered the range of options which are available. With the increase of movement of Aboriginal communities to outstations it is becoming even more critical that Aboriginal people be able to choose the education they want for their children and for themselves. As the Beazley Report was 'encouraged' to see the gradual development of 'outstation schools' it noted that 'it wishes to encourage this trend, for it is based on the strength of the group in Aboriginal life' (1984:327).

Independent schools are important resources for Aboriginal communities. They

enable Aboriginal people to experience more fully self-determination and responsibility for their education needs (Beazley Report, 1984:327). In presenting a report on their Community school to the AIATSIS Conference in July 1990 the Yirrkala Community School Action Group said:

> We are now able to make all decisions, plan, evaluate, raise important issues and make recommendations for our school - the way we want it to be [Marika-Mununggiritj et al, 1990].

With control over their own schools Aboriginal people can set the direction they wish to take in regard to their own learning and training. They are also important resources for the non-Aboriginal community as they offer an alternative to the meaning of learning and being educated in Australia.

12.12 FUNDING

Institutions or colleges which predominantly teach Aboriginal children or adults complained of the problems they faced with funding. The Early Intervention Education Programme (Roebourne), the Roebourne Education Centre, Nulungu College (Broome), Pundulmurra (South Hedland) have all experienced financial difficulties in recent years. For example, Pundulmurra has 82% of the 2.5% of Aboriginal people in TAFE yet it receives a budget of less than $1 million compared with $9.5 million for Hedland College and Karratha College. It trains 300-350 Aboriginals students from various areas in the north of the State in a year compared with the handful at either of those colleges (RCIADIC Transcript, Roebourne, February 1990:670). As a college, Pundulmurra is geared towards the needs of Aboriginal students and has been successful despite its funding limitations (RCIADIC Transcripts, Geraldton, April 1990:395).

While the proposed changes to the AEP funding will provide more security from Federal funding in future years, as provided on a triennium basis, it is particularly important that institutions providing appropriate educational care for Aboriginal students are supported. Hence there is a need to establish Aboriginal Boards or Committees who can oversee and monitor the standards of education being offered.

A number of informants spoke to my Commission about difficulties experienced with Abstudy, in particular the time it took for people to be approved or paid. They spoke about 'children refusing to attend school because they had no uniform or books' (submission from Department for Community Services, 1990). Stories were told of DEET approving children to go to school but not paying the school for more than six months; of parents being paid money which was supposed to go to a boarding school and then the school being billed for outstanding costs; of children being approved to go to a school by one local DEET office and another DEET office not paying for their board (submission from Nulungu College, 1990). Not only were people forced to wait extensive periods of time for payment but, without an avenue for appeal within the Department, they were dependent upon bureaucratic decisions.

Research has also shown that Abstudy provided less than unemployment money and, as a result, was not an incentive for men and others who are supporting a family:

> After their Abstudy and whatever other subsidies are given by the Commonwealth Government after the living allowance - the living component is taken out of that allowance there's only $15 a fortnight left for these kids to spend. If they stayed in Geraldton they would be far better off, they'd have a lot more money ... the majority would be dropping in the region of probably $30 a week [RCIADIC Transcript, Geraldton, 1990:3971.

The Commonwealth Government has established the Aboriginal Student Support and Parent Awareness Programme (ASSPA), to replace the parental meetings and school student excursion elements of Abstudy from the beginning of 1990. The purpose of this programme is to increase student participation by developing parent involvement and decision making. Funds which were linked previously to Abstudy are now transferred to ASSPA with the purpose of providing 'financial assistance for a variety of activities which will enhance educational opportunities for, and increase participation and attendance of, Aboriginal and Torres Strait Islander school students' (Student Support and Parent Awareness (SSPA) Programme, 1990:5). This development appears to have been met with parent support and involvement. It is a significant, but small, development in bringing parents into planning and decision making within a school. However it is important that consultation with Aboriginal parents about education needs and priorities goes beyond the area of government school grants to that of school policy itself. The programme also says that 'travel costs for committee members to attend ASSPA meetings cannot be paid out of SSAP funds' (ibid:6). It is most important that committee members receive both financial and personal support to be able to carry out their functions on a regular basis and that decisions made through SSPA be considered as an essential part of broader educational policy in a school.

12.13 TERTIARY EDUCATION

Some Aboriginal students find it difficult moving from school to the work place. Factors such as a shortage of jobs, employer expectations, fellow workers' attitudes, a lack of academic and skill support for those doing apprenticeships are often present in the work field. There are other pressures such as peer group pressures, lack of family support, family obligations and ceremonies. These factors together place enormous stresses upon young Aboriginal people seeking employment after leaving school (Nulungu 1982, Submission: Department of Employment and Training, 1990).

In the view of my Commission, there is a need for courses to be provided which meet the expressed needs of Aboriginal people:

> If you go there with a course that they've asked for and you do it carefully and in a professional way with tremendous care and you put people in there with hearts who care about the people, who make an effort, a few will drift away, then they'll drift back again [RCIADIC Transcript, Kalgoorlie, 1990:208].

The Queensland Aboriginal and Islander Tertiary Aspirations Programme (AITAP) which aims to 'identify and assist Aboriginal and Islander students who have the potential to achieve the standard to pursue tertiary education, particularly in universities' (AITAP, 1990:4). Of the 17 who graduated from Year 12 in 1989, 14 went on to further tertiary studies.

There are colleges and institutions where Aboriginal students do better than others. While TAFE is set up for mature age students they, and other tertiary colleges, often attract younger people who have left school and who am attracted by the less restrictive environment, being with their own people and being in a course specifically designed for Aboriginal people. These are places where them are other Aboriginal students, Aboriginal tutors and lecturers and where the teaching is adapted to meet the needs of Aboriginal students (submission from Kalgoorlie College, 1990).

Access courses (e.g. TAFE's Aboriginal Access Programme), enclaves and bridging courses are proving valuable for Aboriginal students who wish to develop their skills or who wish to go further in education or employment (RCIADIC Transcript, Esperance, 1990:21). In these cases it is apparent that there are a large number of Aboriginal students who are seeking further education but who wish it to be in an environment which recognises and respects their Aboriginality. Outreach courses are also proving more popular as too are some pre-apprenticeship courses (cf. submissions from Pundulmurra, Kalgoorlie College, Department of Employment and Training, 1990).

There is much to be said for regional colleges which can adapt and meet the educational needs of Aboriginal people in local areas (RCIADIC Transcript, Kalgoorlie, June 1990:206). It is well established that Aboriginal people are reluctant and find it difficult to leave their families and communities to undertake study in another location (Fitzgerald, 1984; RCIADIC Transcript, Geraldton, April 1990:397). Tertiary colleges could contract through regional colleges to run courses. These colleges then contract with local communities (RCIADIC Transcript, Kalgoorlie, 1990:214).

In relation to employment in a local area tertiary colleges need not only offer training courses for young people who might wish to work in the pastoral, mining or tourist industries but actively seek from such industries a commitment of employment after such training.

In this State too, the Centre for Aboriginal Studies at Curtin University of Technology, is providing a number of courses that are especially relevant to Aboriginal people's access to tertiary education. These courses include a 'bridging course' whereby students are provided with a year's study that assists there to go from secondary to tertiary scholarship. Another course is one that provides people in communities with the opportunity to undertake a 'Community Development Course'. The aim of this course is to provide people with skills that are of benefit at a community level, while not detracting from aspects of their Aboriginality.

12.14 CATHOLIC EDUCATION

Of all private and public education systems within Australia it would be expected that the Catholic Education system would be one which understands the desire often expressed by Aboriginal people for their own education system. The Catholic Education system has endeavoured more so in some regions than others for more than 100 years to maintain an independent schooling system.

The Catholic Education System offers a resource in terms of Aboriginal communities and Aboriginal education. For example, in the Kimberley region there

are 13 Catholic schools (another to be started in 1991) with 1,455 primary and secondary students. There was also the appointment of the first Aboriginal female principal in Western Australia which occurred at Clontarf Aboriginal College in Perth in 1990. The Catholic Education Office (CEO) offers a system, with religious content, supposedly different from that of the State system. In terms of appreciation of Aboriginal culture and Aboriginal involvement in their schools the Catholic school system at times appears more innovative and positive about Aboriginal culture than often found in the State system.

One difficulty which the CEO presents is that while it is often appreciated by Aboriginal people for the services and dedication it offers (many schools began with few resources and in physically difficult conditions) it possesses no different mechanism from Government schools for enabling Aboriginal people to experience that the schools actually belong to the community. In this way Catholic schools are not unlike Government schools. Principals and teachers are accountable to people outside the Aboriginal community. A further difficulty of the Catholic system is that, like the Government school system, it can build an enclave within an Aboriginal community. Not only does the school report to outside 'authorities' but if they do work through the community it is often through the community adviser or project officer (cf. Capp, 1988).

In many cases the Church has sought to have its own land within Aboriginal communities with classrooms, library, and staff housing, forming a separate physical reality within the community. New buildings are imported and erected and rarely, if ever, are local Aboriginal people involved. As well, the maintenance of such buildings is often in the care of outside non-Aboriginal people. Not only are local Aboriginal people denied opportunities for work and maintenance, but also training to take up such work and maintenance. As a result 'education' becomes even more alien and non-Aboriginal. This obviously raises the question as to the purpose of education in such a community where there is a divorce between the spoken aims of education and what work people might realistically do when they leave school. It is important, as one report has already indicated:

> Education must be related to community development as perceived by the communities themselves [Aboriginal Education, 1985:202].

The CEO needs to consider ways in which Aboriginal people can experience and believe they have some power and control over the education which they are offered. If schools do have parent or community boards they are simply advisory or in many cases token. The Catholic Education System, being part of the Catholic Church, has become part of mission history. As missions provided resources and resource people to communities, they also provided institutions which assumed power over Aboriginal people and so can the CEO system. It is important that the CEO consider its method of handing over control of its schools to Aboriginal people and becoming more accountable to there.

12.15 SUMMARY OF EDUCATION

From findings put before the RCIADIC, 'education' has become so narrowly defined and experienced in the history of this country that few non-Aboriginal people appreciate what they can learn from Aboriginal people, what Aboriginal people can teach there, and what education Aboriginal people themselves have been doing for thousands of years.

The intentions of the Prime Minister to educate the Australian people about the benefits of a treaty or some form of reconciliation with Aboriginal people (West Australian, 3 February 1990) indicate again the importance of the need for true two-way education for all Australian people. Aboriginal people themselves have to take some initiative in this area, and not simply wait for school authorities to do things in a way that will satisfy there.

As a system, education is failing non-Aboriginal people as well as Aboriginal

people:

> The education system has a lot to answer for in relation to relevant curriculum and studies to areas of Aboriginal culture and heritage. A lot of white people see Aboriginal culture and Aboriginal people as being something totally irrelevant in contemporary times and that Aboriginal people are seen as
>
> walking museums. There isn't a valid education system for Aboriginal people and there needs to be a developed, an appropriate one to ensure that they can enter into the non-Aboriginal society on their own terms [RCIADIC Meetings, Leonora, 4 December, Kalgoorlie, 7 December 1989).

All aspects of the media, school curricula and general community attitudes reflect the heritage of racist thinking about Aboriginal people. With a more assertive attitude towards educational curricula and programmes, community attitudes will improve and this in rum will have an effect upon the Aboriginal community.

Funding and resource support is required for those colleges which are attempting to meet the educational needs of Aboriginal students especially as outreach education is important and very expensive. Long term strategies such as the Strategic Plan for Aboriginal Education of the Great Southern Regional College of TAFE need to be encouraged (RCIADIC Transcript, Kalgoorlie, June 1990:220). The proposal for Aboriginal Education Cultural Centres in western Australia (see submission to RCIADIC from Kerr, 1990) needs to be combined with proposals for an Aboriginal university and that of other Aboriginal tertiary institutions.

Within the past decade there have been many reports concerning Aboriginal education in Western Australia, various recommendations have been made. Some repeat the recommendations of previous reports. However the result is that few such recommendations have been fully implemented. As the WAAECG concluded:

> Furthermore, our research suggests that putting bandaids on the worst wounds is not the road to follow. Rather a co-ordinated and holistic approach needs to be taken ... further action orientated research is essential if we are to effect major improvements to the achievement rates of Aboriginal students in western Australia [1987:13].

The emphasis on bicultural education needs to be established as policy for Aboriginal education in all schools. 'Two way' learning can easily become 'one way' learning: two cultures at work but learning only going one way. For proper two way learning non-Aboriginal people, especially, have to allow separate educational areas to exist, one where non-Aboriginal learning occurs, but another where Aboriginal people control the learning that occurs.

The challenge upon all involved in the education process is to develop both a curriculum and a schooling process which dignifies and empowers Aboriginal people. Because of the history of education in this State, all students in Western Australian schools should be offered a unit of Aboriginal history and culture as part of their studies in both primary and secondary school. All teachers likewise should take a course in Aboriginal culture and history as part of their training. And professional people, such as police, prison officers, government and health workers, whose work brings there into contact with Aboriginal people, should also be introduced to Aboriginal life and culture as part of their initial training. In-service training should then be regularly offered in local communities involving Aboriginal people. Essentially what is needed is an approach to education which transcends the parameters of non-Aboriginal society and which allows both Aboriginal people a place for their own teaching and learning in Australian Society, and non-Aborigines the opportunity to learn about and appreciate Aboriginal history and culture. Non-Aborigines should no longer be denied this opportunity.

HOUSING

> ... the site that they [the local Aboriginal people] selected [for the Village] was not the site they got today ... you have got families living in - you have got 15 people living in one house down there, no wonder you going to have your problems - juvenile problems, the drinking problems, your unemployment problems, you know, your wear and tear and damages and houses ... when it becomes wear and tear it becomes the responsibility of one - of that one particular tenant and naturally that tenant is going to -cannot coping - is going to turn to alcoholism, or whatever [RCIADIC Transcript, Roebourne, 1990:41].

The submission of the western Australian AIU (1990), presented to my Commission under the title 'Fighting for Rights' sums up one of the major concerns of Aboriginal people in this State:

> Participants were unanimous in nominating housing as the major issue for Aboriginal people. Statistics were supplied, but these were not exhaustive, and much more research is needed. The areas of planning, decision making, evaluation, allocation of resources, and Aboriginal involvement in decision making were all examined as were the roles of appropriate authorities. Overcrowding, over-concentration of Aboriginal families in certain areas, and racism were among the matters discussed [1990:231.

The provision and maintenance of housing to Aboriginal people in this State, in urban, rural and remote settings, together with the realities of matters to do with racism, a shortfall in housing supplies, appropriate architectural designs, overcrowding, kin obligations, and adverse effects of contemporary Aboriginal social life, means that housing is a significant and often contentious issue.

Before considering some of the evidence which has come before my Commission, the following provides an overview concerning housing policies in western Australia.

13.1 HISTORY OF HOUSING POLICIES AND ABORIGINAL PEOPLE IN

WESTERN AUSTRALIA

The real beginning of any sort of housing policy for Aboriginal people in Western Australia, is to be found in the immediate post war years. The overwhelming majority of Aborigines at this time lived away from the main towns and cities, most residing on missions, government settlements, agricultural properties and pastoral stations. In the south-west, an increasing proportion lived on unofficial reserves, often sited near rubbish tips, which were to be found on the outskirts of many small country towns. Smaller numbers lived in metropolitan areas, discouraged from the central city by a curfew which remained in force until 1954 (Biskup, 1973:256; Howard, 1981:22). But in the wake of various post-war developments, attitudes toward Aborigines were starting to change, and within these changes came the first official recognition of Aboriginal housing needs. Aboriginal experience as soldiers, and the change their presence brought to some areas, also highlighted the need for a better deal.

The seeds of the changing approach were in the assimilationist thinking that had started to emerge as an alternative to the prevailing emphasis on exclusion and segregation. The change was further encouraged by increasing official and public concerns at the squalor and poor hygiene of Aboriginal camps such as those located in the metropolitan area, Moora, Kellerberrin and Narrogin (see, for example, Haynes 1972:69). The poverty of these camps was underlined in a submission to the Western Australian Aboriginal Land Inquiry (the 'Seaman Inquiry'), by the Southern Aboriginal Corporation (1983:5-6) which noted that many such camps, and reserves upon which they were situated, were either on or near rubbish dumps and gravel quarries.

Consistent with assimilationist thinking, the 1950s saw the gradual appearance of a programme of 'transitional' housing. This involved, as a first step, the formalisation of the unofficial areas set aside for Aborigines on the outskirts of towns, so that areas became designated reserves. Following this came government provisions of rudimentary housing and ablution facilities, which were meant to assist Aborigines in making the transition to 'civilised' life. Little was said about how long the supposed transition would take, or whether it was expected to eventually result in Aborigines living side by side with non-Aborigines throughout the State.

These transitional houses were standardised from a prototype into three models each corresponding to a different level of 'sophistication'. Ideally Aborigines were to be moved up through each level as they adjusted to its use. It seems to have been thought that Aborigines could be systematically 'processed' through these three designs and, if they failed to live up to official expectations, they could be relegated to a prior level. Level 1 houses were steel framed, with iron walls and an open fire place and no ablution facilities; level 2 houses were somewhat beret provided, the design including four rooms and indoor ablution facilities; level 3 houses were a further step toward the European conventional model being complete with electricity, although still only galvanised walls.

During the 1950s and early 1960s, the policy of transitional housing became entrenched Government policy. It became increasingly apparent, however, that this policy was not achieving its stated objectives. A later survey conducted by the House of Representatives Standing Committee on Aboriginal Housing (1975:221) documented the failure of the policy and speculated that it had not been successful primarily due to the lack of experience by Aboriginal people who had

not lived in such houses before. The inference seems to be that Aborigines had failed in the exercise of being able to live like 'civilised Europeans'. Makin (1970:151) in his study of Perth's Aborigines in the 1960s, also noted that the Department of Native Welfare could see no easy solution to the problem of overcrowding, 'because it considers those concerned are too backward for more conventional housing'. It does not seem to have occurred to the authorities that the failure might have had something to do with Aborigines not being involved in the decisions to do with housing design, location and administration. There seems little doubt that the houses themselves were inadequate in design, extremely unpleasant to live in, and unsuited to Australia's climatic extremes. This is well illustrated by the use of unlined galvanised walls, which were totally unsuited to either hot or cold weather conditions. The logical sequence to a programme of transitional housing was the provision of conventional houses within the residential areas of the main population centres. 'Town housing', as it was called, was increasingly stressed particularly for 'urbanised' Aborigines, eventually displacing the transitional programme altogether. The houses were managed for Aboriginal residents by the Department of Native Welfare until 1972 when control of the houses transferred to the State Housing Commission (SHC) (which became known as Homeswest in 1984).

The town housing project was not considered a success. Again according to the survey conducted by the House of Representatives Standing Committee on Aboriginal Housing (1975:221), the programme failed because of lack of Aboriginal readiness to make the transition from reserve to town, Shire opposition to Aboriginal housing, and significantly lack of adequate funding from the Federal Government

Overall, the amount of town housing provided in the 1960s was low, great enough perhaps to increase expectation, but too limited for the numbers looking for dwellings. Under the administration of the Department of Native Welfare, with its limited budget and its timidity in the face of non-Aboriginal opposition/opinion, there was little prospect of the situation changing. According to Heppell (1979:13) the conventional houses provided in western Australia by 1971 (329 in all) were sufficient to house only about 5% of the State's Aboriginal population.

A significant change came in 1971 with the abolition of the Department of Native Welfare and the transfer of housing responsibilities to the State Housing Commission. This was followed in late 1972 with the election of the Whitlam Labor Government at the Federal level, with its commitment to Aboriginal 'self-determination' and vastly increased resources to Aboriginal affairs. Aboriginal housing became a priority of the new Government, its aim being to see that 'all Aborigines should be housed in conventional houses to the same standard as that of the European community' (House of Representatives Standing Committee on Aboriginal Housing, 1975:221).

Later came a number of initiatives on the State level. One was the strengthening of the Homemaker Service, a community-based welfare service funded by the Department for Community Welfare (DCW) which had been established in 1968. Homemakers were employed on a part-time basis to assist Aboriginal families in areas such as home-management, child-care and social adjustment (DCW Guide to Services, 1981:7). This initiative was followed in 1978 with the establishment of the Aboriginal Housing Board (AHB), under the auspices of the State Housing Commission. The AHB was meant to play both an advisory role to government and to administer the existing stock of Aboriginal housing. The AHB however was not given any real power and there is little evidence to suggest it has had any

influence on SHC/Homeswest policy. For instance, according to Gevers (1983:6), against the advice of AHB, the Commission allocated 75% of the Federal Assistance Aboriginal Housing Grant to village programmes in the north-west of the state in 1982-83. This left approximately $600,000 from the total allocation of $7,000,000 for rental housing construction in the rest of western Australia.

The shift in philosophy implied by the talk of 'self-determination' and the commitment to Aboriginal equality in the area of housing, were not matched by official practice. For its part, Homeswest continues to operate in terms of assimilationist ideas. One manifestation of this is the approach colloquially referred to as the 'salt and pepper' or 'social mix' policy. This policy authorises

the 'sprinkling' of Aboriginal families throughout the metropolitan area. Southwest Aboriginal, Ken Colbung, an early critic of this approach, described the logic behind the 'salt and pepper' or 'social mix' policy:

> The white people come along and say, 'look, we want to put you into our society, but we are not going to take you as one big group because you might bash us up so we will put you here, one you there, and another there, here and all around' ... The white people were mad ... [Colbung, 1975:29].

Within the 'salt and pepper' policy, the Commission said it expected Aborigines to:

> ... maintain an accepted standard of domestic hygiene, social behaviour and credit worthiness, and to these ends assistance will be given by the officers of the Commission with the co-operation of the Department for Community Welfare, the Community Health Service and the Homemaker Service [House of Representatives Standing Committee on Aboriginal Housing, 1975:223].

Again, a response from Ken Colbung:

> Sure you say 'we put there in good houses and they don't even know how to look after them. If you had been living for years on the rubbish tips and nothing else you wouldn't know how to look after a house either ... [1974:29].

The State Housing Commission soon adopted, and Homeswest continues to follow the so called 'saturation point' policy, which involves a limit established by housing authorities on the number of families of Aboriginal descent who can be accommodated in particular areas. Once the 'saturation point' is reached, further Aboriginal people cannot be housed in that area. This means that even though a house may be vacant, and an Aboriginal family in need of a home, it will remain vacant or be allocated to a non-Aboriginal family regardless of time spent on waiting lists.

13.2 ABORIGINAL HOUSING NEEDS

The number of houses provided by public housing authorities has also proved to be far short of Aboriginal requirements, despite the large increase in funds allotted in the 1970s. Various estimates have been made of the size of the shortfall. For

example in 1977 Henderson (1979:452) calculated that the housing backlog for the State as a whole was 3,000 units. She further indicated that the rate of new construction and acquisition was not keeping pace with the rate of new family formation (225~250 families per year). Perhaps indicating that some progress had been made, the Aboriginal Affairs Planning Authority reported a backlog of 2,500 units in 1981 (AAPA Annual Report, 1981:3). Gevers (1983:6) reported two years later that:

> there are currently 905 Aboriginal families listed with the SHC for rental accommodation. If these families are only allowed access to the SHC ... they will experience lengthy waits before being housed ... families deemed to be in 'emergent' need of housing must wait at least 15 months for housing whereas other families (placed on a wait turn basis) must wait up to five years.

In response to a request from my Commission, Homeswest provided the following

details regarding *current* 'Aboriginal Rental Applicants'.

Table 13: Aboriginal Rental Application, Western Australia, 1990

BRANCH OFFICE	TOTAL
Mirrabooka Region	207
Fremantle Region	81
Cannington Region	113
Albany Region	52
Bunbury Region	77
Merredin Region	132
Geraldton Region	186
North West Region	358
STATE TOTAL	1206

(Source: Homeswest, Perth, 31 May 1990.)

Given that, as observed earlier, Aboriginal people constitute only 2.7% of the population in this state, the backlog of 1,206 units is alarming. What is even more alarming, is that evidence gathered by my Commission, demonstrated that the figures collected by Homeswest may not always reflect the reality. For instance, in Kalgoorlie I heard that:

> there are 80-90 people homeless who are living at Nannygoat Hill [RCIADIC Transcript, Kalgoorlie, June 1990:553].

And in Carnarvon, it was reported that 'there is a 12 month waiting list' (RCIADIC Transcript, Carnarvon, 1990:178). A further example is that in Northam, there were 21 Aboriginal families currently listed for housing. One of these was for a large family needing a five bedroom home (RCIADIC Transcript, Northam, 1990:201-203).

Some of the major concerns put before me in relation to housing were homelessness and waiting to be accommodated. Significantly most of those who died in custody were described as 'homeless'. Overall, two of the major concerns expressed throughout various meetings and conferences were racism and powerlessness. As an example of this view, in Carnarvon, Homeswest

representatives stated:

> I do have a tendency to speak down to people, but it is not just the black community in Carnarvon [RCIADIC Transcript, Carnarvon, 1990: 1751.
>
> A lot of vandalism goes on after people leave the property [RCIADIC Transcript, Carnarvon, 1990:1771.

Views such as these are, unfortunately, common place. (See also Equal Opportunity Commission Report on 'The State Housing Commission', yet to be released by State Government, which provides detailed discussion concerning matters raised here). What makes these views especially alarming is that they have the direct and indirect capacity to affect Aboriginal people's approach to housing authorities. Given that, as noted elsewhere, Aboriginal people primarily have to exist on some form of DSS entitlement they are, as a consequence, only in the position of seeking access to accommodation through government instrumentalities. Difficulties associated with access, and manifestations of powerlessness, are reflected in the following accounts:

- People living in the Geraldton hostel are often people who have been put out of Homeswest housing [RCIADIC Transcript, Geraldton, 1990:492].
- they have to pay off rent arrears and repairs to the last place before they can get another one [RCIADIC Transcript, Geraldton, 1990:492].
- Some of the 'fringe dwellers' in Kalgoorlie have been living there since 1972 [RCIADIC Transcript, Kalgoorlie, 1990:72].
- People's priorities are everything except paying the rent, and it's like, 'well I had to buy food this week', or 'gotta buy my kids some clothes', or 'school costs' [RCIADIC Transcript, Carnarvon, 1990:460].

The judgements formed by the housing officer do two things: (i) reveal attitudes toward Aboriginal people who are struggling to survive, and (ii) reveal the Aboriginal struggle.

The Aboriginal struggle to survive is also manifest in what can be cited as forms of resistance. The following points demonstrate my meaning here:

> I have never struck such anti-feeling towards me as white personnel... it all happens on pension day ... I myself have been subjected to well, not physical abuse, but in a car trying to get at me ... [we have] instructions not to go near, [the] village on pension day [RCIADIC Transcript, Carnarvon, 1990: 174-175].

According to an AHB official, there are some improvements in relation to housing in the goldfields regions. Given that this region is one where the material conditions of Aboriginal people struck me as among some of the worst I have ever witnessed, the following comment is, perhaps, somewhat misleading and symptomatic of where policies and practice differ:

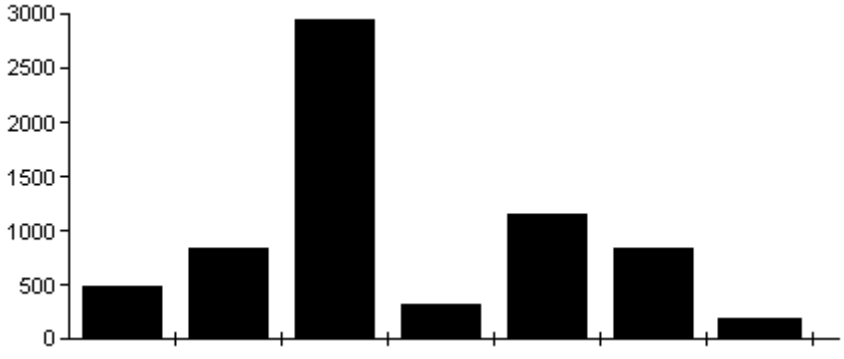
> In Kalgoorlie I seem to be very pleased with the way things are going with Aboriginal housing at present because we have a programme where we are constantly building houses with building programme for each year. We also have other aspects that we are very pleased with in the form of funds made available for the relining of the older type houses where they are tin-lined. [There] maybe one or two white people that are occupying Aboriginal Housing Board homes. That is where perhaps we have not had any applications for the houses at that time and there has been an overflow of white people so we have housed there [RCIADIC Transcript, Kalgoorlie, 1990:149-151].

Of interest also is that 38% of public housing in Kalgoorlie is occupied by Aboriginal people, as the following table indicates:

	Aboriginal	**Non-Aboriginal**
Coolgardie	28	13
Leonora	35	42
Menzies	5	3
Kalgoorlie/Boulder	76	850

With regard to Aboriginal housing in the State, the following graph, compiled from ABS data, reveals bow peoples housing needs are distributed:

Graph 5: Aboriginal housing, Western Australia, 1986



Overall, there continues to be an obvious and urgent need to address the housing requirements of Aboriginal people in this State. While there are signs that there are measures in place to consider the views and experiences of Aboriginal people, such as the establishment of an independent Appeals Tribunal to hear complaints against Homeswest by tenants, and Aboriginal people are now being involved in the construction and design of housing in some areas (see response to RCIADIC questions to Homeswest, 6 and 7 July 1990), there still exist major discrepancies between Government policy and practice with regard to Aboriginal people and their housing demands.

Complaints about housing from Aboriginal people in this State are not rare, nor are they new, and again we find an area that has been well researched and

documented, but where Government has failed to act.

The sorts of concerns reflected throughout my report which impinge on matters to do with housing, can also be found in the following reports and publications: Equal Opportunity Report on the State Housing Commission (1990, yet to be released); AIU Submission to RCIADIC (1990); AAPA Inquiry into services to remote Aboriginal Communities (1990); Equal Opportunity Commission into Essential Services to remote Aboriginal Communities (1990); Submission to my Commission from Brewer Street Rights and Advocacy Service (May 1990). These are just a few of the most recent documents that have been produced on this crucial matter.

THE STRUGGLE FOR HEALTH

At the outset, it is essential to recognise that traditional and contemporary aspects of Aboriginal health care can often be contrasted in both practice and philosophy to present day western medicine.

Traditionally, health care was embedded in beliefs and practices about life and death, and relationships to kin. Health care was not viewed separately from other aspects of Aboriginal life, and knowledge about health was generalised, except for the particular role played by traditional healers, or 'mabarn', and certain rituals performed by women and men when occasion called for collective care. From a non-Aboriginal perspective, the essential difference in health care perceptions and remedies, lies with the cause of illness. This is because Aboriginal people broadly believed, and in many areas continue to believe, that mortality and morbidity are brought about by influences largely outside their own control. These are sometimes referred to as 'supernatural' forces, and Aboriginal people, within particular language groups, have their own terminologies to describe these 'supernatural' forces. Overall, preserving health and curing illness were, and are in many instances, important features of Aboriginal life. The combination of health being viewed as a shared, public and collective responsibility for all members of a group, becomes manifest in beliefs and practices that range from performing a certain ritual, to the collection and use of bush food and medicine to engender wellbeing. This approach differs markedly from western medicine with its emphasis on an impersonal, technological and disease-specific approach. Some of these complex matters and the need to appreciate Aboriginal perspectives of health care, combined with the lack of appropriate delivery care and resources, and the marginalised material conditions still experienced by many Aboriginal people in this State in relation to health, are reflected throughout the following material.

Health is a crucial factor in the present day quality of life of Aboriginal people. More importantly the quality of life of Aboriginal people is the crucial factor in determining the health of the Aboriginal community. If we consider the people who come within the Terms of Reference of the Commission, it is immediately obvious that ill-health is a common link. In this section the broader perspectives of health and the Aboriginal community are considered. It is intended to discuss the deaths in custody in relation to the poor health status within the Aboriginal community, and the consequent high incidence of Aboriginal deaths outside custody so that a clear connection can he made between there. Establishing the deaths in this context is essential if the structural determinants of ill-health, and hence premature death, are to he addressed. These include the socio-cultural, political and economic factors which determine the lack or denial of access to services, material resources, and empowerment.

At the time of colonisation the health of Aboriginal people was high when compared with that of the British colonisers (National Aboriginal Health Strategy, 1989; Swan, 1988; Kamien, 1980). This is in stark contrast to the current health status within the Aboriginal community which has been described as worse than any other world population for whom records exist (Health Targets and Implementation Health For All Committee, 1988:2).

It is appropriate to consider what definition of health is being used, as there is some diversity within the Aboriginal community regarding what is the appropriate definition of health for their community or group. The World Health Organisation (WHO) defines health as not just the absence of disease but a state of complete physical, mental and social well being. The National Aboriginal Health Strategy (NAHS) 1989, discusses the concept of health used by Aboriginal people and concludes that an appropriate definition of health is:

> Not just the physical well-being of the individual but the social, emotional, and cultural well-being of the whole community. This is a whole-of-life view and it also includes the cyclical concept of life-death-life [p.x].

The NAHS Working Party (NAHSWP) document goes on to comment, when examining primary health care, that Aboriginal people should exercise self-determination, and hence responsibility, 'with respect and regard for all'. They contrast this with the specific agency style approach adopted by the wider community and the way this has led to 'a pre-occupation with diseases and organisations rather than with the underlying, often non-medical, causes of ill health' (p.xi). This definition of health and approach to service provision is in accord with the direction of the WHO over recent years with the Alma Ata Declaration of 1977, the Ottawa Charter for Health Promotion (1986) and the conference on Healthy Public Policy held in Adelaide (1988). Though some governments and service providers are starting to use these broader definitions of health to guide their approach to health care issues, the majority of health care is still provided in the context of the curative/medical model of health.

14.1 HISTORICAL PERSPECTIVE

The current poor health status within the Aboriginal community can largely be attributed to the extreme poverty and social and cultural deprivation resulting from the oppression and dispossession which has occurred in western Australia since 1829. The failure of the non-Aboriginals to allow Aboriginal people to continue maintenance of their own life style; the exposure to new introduced diseases; the disruption of communities by forced relocation (Bassett-Scarfe, RCIADIC Transcript, Albany, May 1990; Haebich, 1988:67,85,113,208-211); and of family groups by the forced removal of children, resulted in marked changes in health. This was compounded by the denial of access to basic requirements for a healthy life namely: sustainable income, shelter, education, basic resources (clean water, food) and services such as health care and waste disposal (Swan, 1988). What is so often forgotten or overlooked in terms of Aboriginal health is the importance of land for spiritual as well as material welfare. If Aboriginal people did require health care there was no guarantee that they would receive it, owing to the absence of health services near there, the inability to pay for services, and the reluctance to treat Aboriginal people. Haebich (1988:143-144) records the increasing denial of access to hospital facilities from 1911 on with some hospitals providing only tent

accommodation, some providing 'out patient' services only, and some requiring seriously ill Aboriginal people to be accommodated in the local gaol. This led to the development of poorly resourced health care facilities solely for the Aboriginal community. By 1935 there were only three local hospitals which Aboriginal people had sure access to in Western Australia: Wyndham, Broome and the leprosarium at Derby (Haebich, 1988; Saggers and Gray, 1990).

Despite government's early attempts at imposing assimilation policies on the Aboriginal community as early as 1939, it was not until 1951 that this was accepted as official government policy. With the substitution of assimilation for segregation, access to health services was more at the 'whim' (or prejudice) of the provider or institution. In the 1960s it was not uncommon for Aboriginal people to wait in separate segregated waiting rooms before seeing the doctor, or to be refused service (Saggers and Gray, 1990). Even in the 1980s there were stories of Aboriginal people in the south-west having to wait in separate areas if they wished to see the local doctor. In some isolated country towns, up until 1990, Aboriginal people were required to travel some 75kms to the next town in order to see a doctor (RCIADIC Transcript, Gnowangerup, May 1990). People living in remote communities today are still reliant on fortnightly visits provided by the Royal Flying Doctor Service (RFDS) (RCIADIC Transcript, Kalgoorlie, 1990).

In 1973 the Commonwealth Department of Health and the Department of Aboriginal Affairs (DAA) proposed a National Plan for Aboriginal Health which aimed to remove the inequities in health between the Aboriginal community and the wider community by 1983. Despite this and the recommendations of the House of Representatives Standing Committee on Aboriginal Affairs, prioritising strategies to address some of the health inequalities, communities and groups still do not have access to clean water, let alone other basic services important to ensure health is maintained (NAHSWP 1989, Lord St camp, RCIADIC Transcript, Kalgoorlie, 1990).

14.2 CURRENT HEALTH STATUS

There has been a significant improvement in some of the markers used to measure health status. However, infant mortality is still up to three times that of the wider community, life expectancy at birth remains twenty years less than that of the wider community (the average age at death of the people whom the Royal Commission is primarily investigating in Western Australia is 32.5 years), death rates are up to four times greater and the incidence of nearly every disease is greater than in the wider community (NAHS, 1989; Health Department of western Australia, 1990).

Information supplied by the Health Department of western Australia includes the view that Aboriginal health has not improved during the 1980s. However, an indication of the inaccuracies in the current state of Aboriginal health statistics, can be seen in the variation of the information supplied to the Commission by Health Department of Western Australia regarding the incidence of suicide in the Aboriginal community. On 20 March 1990, the Health Department of Western Australia's Director of Epidemiology wrote to the Commission stating that eleven Aboriginal people had committed suicide in the period 1983-1988. The Department's later response to specific questions in July 1990, included the statement that there had been twenty-one suicides in the Kimberley alone during the 1980s. It is significant to note that seventeen of these suicides occurred before

1988, and eight after 1988.

A recent report by the National Health and Medical Research Council (NHMRC) states that the rate of tuberculosis in some Aboriginal and Torres Strait Islander communities is up to 20 to 50 times the rate of the wider population (The Age Newspaper, 12 July 1990:6). Some health problems may not be immediately obvious but have a significant impact on the person affected. Recently the State Wide Ear Health Advisory Committee (SWEHAC) conducted a survey of ear problems in two Aboriginal communities. They found that 45% of children and 36% of adults in Wiluna, and 40% of children and 45% of adults in La Grange, had significant ear health problems (perforation or hearing loss) in at least one ear (SWEHAC, 1989). The consequences of hearing loss and access to education are obvious.

It is important to observe that the data collected to date does not address the issue of well-being as a marker for ill-health. Current data collection is oriented around defined diseases, and tends to be based on health service/client contact. Consequently, it has limitations as far as accuracy is concerned. The readily available data regarding health status consists of hospital separation (discharge) data, death certificates, data from other health agency/client contact or occasionally from population surveys. The latter give the most accurate information but are expensive and time consuming and are usually performed in small 'representative' sample populations and then extrapolated, rather than in the whole population, which can often prove to be unreliable (see e.g. Streatfield, 1990).

Hospital or other health agency/client contact data only provides information on the client population that they actually have contact with and depends on what the health care worker records. These tend to result in underestimations of illness patterns due to the failure of the providers to access all those in need within a community and also because only the major health problems dealt with at the time of contact are usually recorded. Death certificates again underestimate the true ill-health patterns in the population, as they usually only include the major health problems suffered by a person around the time of death, at best, or an inaccurate cause of death at worst. There are also problems with the date that death certificates are actually lodged and recorded. There can be up to a 20% error in the date of registration of a death compared with the actual date of death. For example in a current mortality survey being conducted in western Australia one death, which occurred in 1984, was not registered until 1989.

Another difficulty with Aboriginal health statistics is who defines a person's Aboriginality. With both health agency/client contact data and death certificates, this person is usually the health care worker, and is often based on skin colour rather than the person's own identification as Aboriginal. A significant point is that Aboriginality has only been recorded on death certificates since 1983.

In keeping with the definition of health used by the NAHSWP, it is appropriate to monitor health outcomes in a manner consistent with that definition. Namely, it is inappropriate to say there is less of a certain disease or group of diseases and hence conclude that health is improving if the social or cultural well-being of the community is deteriorating and not being monitored, or commented on.

There is substantial evidence in the lives of Aboriginal people to support the correlation between socio-economic status and health status. The difficulties of trying to maintain one's health, when the basic necessities of life are not readily accessible, and are often denied, has been a recurrent theme in the community

consultations conducted by the Commission. Issues such as poverty, overcrowding, unemployment, lack of access to mainstream services, as well as poor resourcing of existing Aboriginal and some mainstream services were frequently raised.

The Black Report (1980) concludes that unequal health status can only be understood in relation to social factors such as poverty and poor working conditions. This report supports the notion that just the provision of services and the removal of the economic constraints on access to health care, via the free National Health Service, is not enough to remove the inequities in health. Whilst there continues to be a relative deprivation there will continue to be inequalities in health. McMichael (1987) comments on the same trends existing in Australia, with social factors being the strongest determinants of health. His analysis of Australian mortality figures shows a consistent correlation between poverty and almost all cause of death categories. When considering morbidity (illness) figures, poor health again correlates with social class. In particular there is a very strong connection between unemployment and mental health. Employment does more than merely provide the material resources for existence. It also impacts on self-esteem and social identity. Consequently unemployment may cause anxiety, depression, loss of self-esteem and increased suicide rates. It has been shown that even short term unemployment can have long term negative impacts on health, let alone the effects of chronic unemployment which is common in the Aboriginal community.

The issues concerning denial of employment should be clear from the earlier section. However figures from 'Health for all Australians' (1988), show that 53% of the Aboriginal community in Australia are dependent on income from the Department of Social Security (DSS), compared with only 11% of the non-Aboriginal community. Of the people who are central to this Commission, those who died in custody in Western Australia, most were in receipt of some form of income from DSS. The preceding discussion should not be interpreted in a simplistic manner. The provision of employment alone, as with the provision of health services alone, will not address the poor health status and must always be considered in that context. Any consideration of employment opportunities for Aboriginal people needs to include, what is appropriate employment in an Aboriginal context. The ability to be able to meet ones social and cultural obligations must be accommodated.

There has been much comment recently about the increasing incidence of 'lifestyle' diseases within the Aboriginal community. These include such things as cardiovascular disease, diabetes (up to eight times more common in the Aboriginal community) and high blood pressure (more than twice as common).

There has not been sufficient comment as to the reasons for this increase. It is important to place this change in health patterns in terms of increasing social inequalities. Then an understanding of the structural economic determinants of this are more readily recognised. Otherwise it is too easy for commentators to blame the victims of these changing health patterns and ignore the unequal power relations which exist between Aboriginal and non-Aboriginal society.

14.3 SERVICE DELIVERY

Many Aboriginal people don't feel that they can access mainstream

> services and indeed they've been made to feel that way [RCIADIC Transcript, Albany, 1990:291].
>
> Nyoongars tend not to approach hospitals unless they are very sick. There is a psychological distance, which is as great in its effect as the geographical distance experienced by Aborigines in the north of the State [Wilkes in Choo, 1990:64].

Community based, community controlled Aboriginal Health Services (AHSs) have largely developed in response to the inequality in health status of Aboriginal people, when compared with the rest of the Australian population, and the inequity in access to mainstream services.

In 1971 the first community controlled Aboriginal Health Service commenced operation in Redfern, Sydney. In Western Australia the Perth Aboriginal Medical Service was the first and commenced operations in East Perth in 1973. Currently there are 64 AHSs funded via the Aboriginal and Tortes Strait Islander Commission (ATSIC) (formerly Department of Aboriginal Affairs (DAA)). The overriding role of these Services is to provide broad-based culturally appropriate services which enable the local community to be in control of the Service. AHSs attempt to approach health care issues at the curative, educative and preventative level as well as advocating for social change. It was the conclusion of the NAHSWP that the variation in political and philosophical approaches to health between the Federal and State governments and the Aboriginal communities had led to the uneven development and promotion of programmes in Aboriginal health and well-being. Consequently there have developed inequalities in access to community based services depending on where people live. It has also led to the ongoing battle the AHSs engage in for continued or increased funding to meet their perceived needs.

The demands made by DAA for AHSs to justify ongoing funding by performance indicators which relate to changes in disease patterns and numbers of client-service contacts, rather than in community development terms, means that there is a continuing ideological division between the service providers and the principal funding body. The recent history of the AHS in Roebourne reflects this. The need for appropriate and acceptable health services for the Roebourne Aboriginal community was accepted by DAA when they agreed to fund the Marwankarra Health Service from 1983. However, as a result of a review, the Marwankarra Health Service had its funding cut in 1989 by DAA who told there which staff to sack and what services they could no longer provide, including ceasing to fund the doctor's salary. The staff positions following the sackings were not filled in order to make savings to cover the budget over run. They now have to rely on Medicare rebates for the doctor's position which is staffed for six hours a week by a doctor from Wickham, some 30 kms away. They have had to cut back on maintenance for vehicles (all five of which are 5 years old and can not be replaced, due to DAA's refusal to fund capital costs). DAA also split the funding into a health centre and an alcohol centre without informing the Service (E. Tierney, Mawarnkarra Health Service, RCIADIC Transcript, Roebourne, 1990:313-16). DAA's justification for ceasing the funding for the doctor's salary, following the review, included that the position represented duplication of existing mainstream services (RCIADIC Transcript, Roebourne, 1990:409).

A further example of the failure of funding bodies to understand the broader issues involved in the value of community controlled services is the comment at the RCIADIC Roebourne conference, by an ATSIC employee, that the community

should try to encourage the Health Department of western Australia to get its doctor to work in with the AHS more (RCIADIC Transcript, 1990:428-9). It should be noted that mainstream services do not usually equal community controlled services in their ability to empower workers or consumers, nor in their ability to provide an appropriate service which is flexible and more readily responsive to community demand. It would seem more appropriate that if the funding body has difficulty with the way a community organisation utilises its funds, they should provide support to enable a community to initiate more appropriate utilisation, or fund the agency adequately so that the community's needs may be more readily met. This would be consistent with the WHO's philosophy on appropriate methods for effective primary health care service delivery. Another difficulty AHSs have is the time it can take to convince funding bodies of the need for their service. For example, the Geraldton Regional Aboriginal Medical Service (GRAMS) operated for two years with voluntary workers before funding was approved (RCIADIC Transcript, Geraldton, 1990:21). The staff from AHSs commented on the need for additional resources so that they could more adequately service their communities. Discussion provided in the next Section (14.4) regarding NAHS funding needs to be considered in light of these comments.

The difficulty in obtaining adequate resources to operate community based health services is not restricted to Aboriginal groups, as highlighted by the battle of the Multi-Cultural Women's Health Centre in Fremantle. It took three and a half years of voluntary work before they received any funding (for one full time worker, a half time receptionist and a nurse for three days a week). They have been lobbying for some time to get funding for an Aboriginal worker with no success (RCIADIC Transcript, 1990:208-10).

The Aboriginal Health Services incorporate Aboriginal belief systems and concepts of health and illness into their style of operation, and hence achieve a much greater degree of success in acceptance by members of the Aboriginal community with whom they work. They aim to be multipurpose resource centres, with health rather than medicine as the focus, which are community controlled via participation of the local community. They tend to approach health in a broad perspective and in community development terms (RCIADIC Transcript, Carnarvon, 1990). Some of the benefits are: a service which is acceptable and accessible to the community it serves; the holistic approach to health which means more of a person's issues are dealt with, rather than just the presenting complaint; some prevention of overt or covert racism by staff; prevention of unethical behaviour;, a social and cultural awareness of the people they serve; avoidance of inaccurate diagnoses due to erroneous presumptions about ways of living; provision of cultural support to its community; having as a priority the raising of the community's health status; provision of education, employment and training to the Aboriginal community; flexibility to accommodate changing needs (RCIADIC Transcript, Roebourne, 1990:313; RCIADIC Transcript, Carnarvon, 1990:369).

Some simple examples of how AHSs remove some of the barriers to access to health services are: not using an appointment system for most of their services; employing a majority of Aboriginal staff; and not charging clients or, if they are required to as part of their funding requirement, bulkbilling for all their clients. Most AHSs use and respect traditional Aboriginal health practices. There is a great variation between the individual AHSs depending on the community which runs it. One of the advantages of having local community based services is that they can provide services in a manner which is desired by the community, and hence they are more likely to be utilised by there. However one of the biggest restrictions on the type of services offered by AHSs is what the funding agency will fund. For

example, the inability of the Marwankarra AHS to employ a doctor; the ten year battle by the Perth Aboriginal Medical Service (PAMS) to obtain funding for a dental clinic despite the precedent in some AHSs in other states; and the difficulty experienced by most Services obtaining funds to employ sufficient Aboriginal Health Workers (AHWs) to meet the communities' needs. Some AHSs in western Australia call themselves Medical rather than Health Services. This could be interpreted to reflect the style of service provided i.e. more of a medical model style vs the broader approach favoured by those who use a broad definition of health. However it seems to be an historical artefact which individual health services have not seen as a priority to change. It is important to be aware of the role that doctors and other non-Aboriginal staff play in the AHSs. In some services the doctor/s exert their influence and tend to control the direction of the service and its interaction with the community. This power may be given to, or assumed by, the non-Aboriginal professionals in AHSs. O'Connor (1988) comments on this occurring with the Wiluna AHS. During the Commission's Broome conference the following comments were made:

> Our medical director said that the job was getting too big for the individual services so we should have a body that would administrate the secretarial and all the financial side of the AMSs for looking after money and writing letters and submissions and this sort of thing [RCIADIC Transcript, Broome, 1990:13]; And, we usually get our directions from the medical director which is our leading light [RCIADIC Transcript, Broome, 1990:14].

This may be acceptable if the doctor is using a social model of health. However if a more narrow approach is being followed (such as the medical model) then the most likely consequence is the community being less able to maintain control of the direction of the service. Certainly at the least there is a reinforcement of the powerlessness within the service and the community and the much greater chance of developing conflicts between the doctor and the AHS administration. It is vital for the community to maintain effective power within the AHS. This is one of the tenets of the reorientation of health services as outlined in the Ottawa Charter for Health Promotion, the WHO Health For All programme and the NAHSWP report.

There are also criticisms of the Aboriginal Health Services within the State. Some of these arise from basic ideological conflicts with the notion of the need for so called 'separate' services for the Aboriginal community. The word 'duplication' was frequently used by critics of the AHSs. The reality is, as stated in the transcripts of the Carnarvon Conference, if mainstream services were meeting Aboriginal health needs, then why is the health status of Aboriginal people so poor and why do all AHSs report the inability to meet the demand placed on their services? Another issue is, if mainstream services meet the needs of the wider community so well, why do so many non-Aboriginal people utilise the services of AHSs, in particular, Broome Regional Aboriginal Medical Service (BRAMS) and GRAMS (RCIADIC Transcripts, Broome and Geraldton, 1990). Certainly the AHSs need to acknowledge that there is room for improvement in the quality of the service they provide. The absence of 'in-service' style training; the absence of orientation programmes for new staff (especially for non-Aboriginal staff); the inability to meet community demands due to insufficient resourcing; the need to ensure that clients have ready access to health care workers of the sex of their choosing; and the occasional refusal to comply with clients' requests regarding medico-legal matters, are some of the issues mentioned during the Commission's consultation process (RCIADIC Broome, Geraldton, Roebourne and Perth Transcripts, 1990).

The use of AHSs by non-Aboriginal people can create a potential problem of

Aboriginal people having to compete with non-Aboriginal people for service at an AHS. Despite the claims of ATSIC (1989), there are still significant numbers in the Aboriginal community in western Australia who do not have ready access to a community controlled health service (e.g. the south-west, central desert, Fitzroy Crossing, Wiluna). Considering the poverty that exists in these areas it is unrealistic to expect people in need of health care to travel any distance to available health care (see e.g. Toussaint, 1989:30-35, regarding socio-economic indicators for Fitzroy Crossing). It is also against the Alma Ata Declaration (1978) which states that for primary health services to be effective, they should not only be affordable, appropriate and acceptable, but also accessible, as well as having community input.

The need for a National Aboriginal Community Controlled Health organisation as stated in the NAHS and supported by the Aboriginal Health Development Group Report is an important structural step to enable AHSs to support each other, share information, prioritise needs and directions. This will need to be resourced as it would have a separate role to the proposed Council of Aboriginal Health (CAH) and Office of Aboriginal Health (OAH). Similarly, there is a need for the State community controlled Aboriginal health services organisations to be adequately resourced. The consequent support, information sharing and identification of priority need and directions would not be fulfilled by the proposed State Triparite Forum. The role of the forum should be broader and be more involved in promoting and resolving issues related to intersectoral co-operation (NAHS, p.40).

14.4 ABORIGINAL HEALTH WORKERS AND EMPLOYMENT

There are two Aboriginal Health Worker Education schemes in the State. One is run by the Health Department of western Australia (HDWA) and the other is run by the AHSs in the state. They follow different ideologies and educational processes. The Health Department of Western Australia scheme is an in-service style education programme for people employed as AHWs. The Aboriginal Health Worker Education Programmes (AHWEPs) run by the AHSs tend to be more oriented around skills and information sharing, to increase the level of health awareness and, in some cases, advocacy skills, in the Aboriginal community. The lack of resources in the AHSs, and in the Aboriginal community in general, means that a lot of the graduates from the AHS AHWEPs tend not to be employed in the AHSs nor in the Aboriginal community. However many do go on to employment or further study following successful completion of their courses (personal communication between Joan Winch and Liz Gray, Perth Aboriginal Medical Service, 1989).

The Health Department of Western Australia employs AHWs throughout the State. However, there are only 84 in the State, some of whom are part-time. The career structure for AHWs employed by the Health Department is extremely limited. They are covered by a separate award (Health Workers - Community and Child Health Services Award, 1980) and may be employed as an AHW, an AHW Special or a Regional Aboriginal Health Liaison Officer (RAHLO). There are only 7 RAHLO positions in the State. They have no real supervisory role, just a liaising one with the AHWs in their region (The AHW Review, 1986).

AHWs employed by AHSs are covered by a different Award (Aboriginal Medical Services Employees' Award (Award No. A.26 of 1987)) which provides for seven different levels of employment: 'Field Officer', 'Environmental Health Worker',

'Conditionally Registered Health Worker', 'A Fully Certificated Health Worker', 'A Fully Certificated Health Worker -Medication Certificate Grade 1', 'A Fully Certificated Health Worker -Medication Certificate Grade 2' and 'Regional Health Co-ordinator'. The wages for these jobs are incremented at five levels from year one to year eight and this represents an income range from $361.80 to $662.00 per week. These wages are the minimum under the award and do not include district allowance, outpost availability allowance nor a supervisory allowance, all of which are included under the Award.

The Federated Miscellaneous Workers' Union of Australia (western Australian Branch) is the union responsible for the workers covered by both awards. In the past the AHSs have Adopted a rather loose approach to both employing people at certain levels under the Award and ensuring that people are able to progress along the career path available to their employees. Currently negotiations are being conducted under the second stage of the award restructuring process to ensure that there will be a commitment by the respective employers to enable workers to proceed along the career path laid out in the Award. The creation of a career path under the Community and Child Health Services Award is the aim of the union (M. Nolan, Organiser, FMWU).

In considering the relative merits of the State AHW scheme vs the community controlled AHW programmes, the different selection criteria for acceptance and selection must be considered. The community controlled programme tends to accept people who are nominated by their community and accept people with a wide range of educational experience. They also concentrate on advocacy skills as well as health education and service provision skills. This reflects their understanding and commitment to the broader aspects of health. In comparison the State programme has higher entrance requirements regarding educational experience and there is little consultation with the local community re acceptability of the AHW. In many centres there are only young women employed as AHWs which has meant that some of the needs of men in the community are not well served by the health worker. Similarly, in other areas where there is a male health worker employed, women's needs are not necessarily met by the AHW. Nathan and Japanangka (1983:185) raise the same issue of the perceived need by communities to have access to AHWs of both sexes. Again the WHO Alma Ata Declaration must be considered. For a primary health service to be effective it must be acceptable, affordable, appropriate and accessible, as well as have community input.

The current situation regarding AHW education is another example of the inability of state and community based programmes to reach mutual agreement. The Centre for Aboriginal Studies at Curtin University, with the support and co-operation of the Aboriginal Health Services has developed and had accredited an Aboriginal Health Programme. The Centre has not been able to obtain the resources to fund it and hence cannot run it (RCIADIC Transcript, Perth, 1990:151,162; RCIADIC Transcript, Carnarvon, 1990:380). The support from the AHSs is based on the level of Aboriginal control within the Centre and the links it has with Curtin University, which will enable Aboriginal people to have greater access to tertiary level education. The HDWA's preferred option is that TAFE should provide AHW training (RCIADIC Transcript, Perth, 1990:317). The view of the Aboriginal Health Policy Review Team is that there should not be a debate about who provides the education, rather there should be accreditation of the courses which meet the required standard of education, and Aboriginal people should decide which course they prefer to enrol in. This debate is another example of the power of the State to determine what is 'right' for Aboriginal people and

hence, potentially, disempower access to a preferred option.

In February 1990 the Health Department of Western Australia released a report on the Aboriginal Environmental Health Programme with particular reference to future directions for the employment of Aboriginal Environmental Health Workers (AEHWs). This contained some recommendations encouraging delineation of who is responsible for establishing the infrastructure necessary: a patronising statement regarding educating the community management and the AEHW on the operation and safe use of 'hygiene, cooking, beating, cooling and water supply systems' (p.i); and recommendations regarding the education, location, payment and career structure for AEHWs.

The report states that the single most important limiting factor in the inability of the Aboriginal environmental health programme to achieve its goals in some communities has been the inability of the communities to pay the AEHWs a living wage (p.4). Perhaps more relevant is the Department's lack of understanding of the true causes of the poor environmental health Aboriginal people are confronted with. This is demonstrated in the introduction of the report which includes the following:

> Many Aboriginal people have not yet been taught the necessary skills and understandings to maintain a healthy dwelling or community settlement. Nor have many been able to acquire the necessary attitudes and beliefs that motivate people to make their homes and communities healthy places in which to live. Their parents did not have these skills, attitudes, and beliefs and so could not pass there on [p. 1].

The issue of appropriate education and awareness of health care workers who interact with Aboriginal people is crucial for the delivery of health services and increases the likelihood of positive outcomes from interaction between the people and the health care provider. As Toussaint (1989) has observed, the failure of the health care system to meet the needs of Aboriginal people, primarily rests with its cultural inappropriateness and inability to be sensitive to the *socio-economic* constraints which daily impinge on Aboriginal people. Community controlled health services address some of the issues related to this. However, as noted earlier, the failure to ensure non-Aboriginal workers receive appropriate education and orientation prior to commencing work with the AHSs, or any other health care service, requires urgent action.

It is essential to ensure that each interaction between Aboriginal people and health care services, is as free of paternalism and personal agendas as possible. This is encapsulated in the WHO's Ottawa Charter on Health Promotion which states that health services need to be reoriented toward the needs of the community, be provided in a manner which fosters empowerment within the community, as well as becoming accountable to the communities they serve. This reorientation needs to occur so that the services provided are determined by the community and not the providers. Such a reorientation would enable greater effectiveness and acceptability of the health care service.

14.5 ABORIGINAL HEALTH AND THE FEDERAL GOVERNMENT

> Federal Government after Federal Government has been more concerned about its political relationship with states and territory rather than justice for

Aboriginal people, and their moral rights [NAHS 1989:30].

It was observed earlier that following the 1967 Referendum the Federal Government has had the power to intervene in the states in the area of Aboriginal health. Since the early 1970s the Federal Government has been providing financial resources to the States and territories to community controlled organisations. Currently this is via grants from ATSIC and the Department of Community Services and Health (DCSH) to State Government departments (either for direct health activities or for health related services such as housing, water, waste disposal, power), to community controlled organisations, and via Medicare directly to providers if they bulkbill, or to the consumer if not. Since 1984-85 there has been a decrease in the amount of money granted directly by DAA/ATSIC to the states for specifically Aboriginal health service provision. The HDWA received approximately $10 million which has progressively decreased down to $2.4 million in 1989-90 and zero in 1990-91 (RCIADIC Transcripts, Health Department of Western Australia response to questions, 1990). The money no longer provided direct to the Health Department was supposed to be redirected to community based services or health-related infrastructure. Only a small proportion was reallocated to Aboriginal community controlled organisations.

The 1988-89 Annual Report of DAA states that its objectives in health are:

> To raise the standard of Aboriginal and Torres Strait Islander health to that of the Australian community generally.
>
> To ensure that Aboriginal and Torres Strait Islander women's needs are reflected in, and that they have equitable access to, programmes as clients, staff and decision makers [p.84].

It goes on to say that the Department's strategy to achieve these objectives is to promote:

- Aboriginal and Torres Strait Islander participation in the identification of health needs and of services;

- Aboriginal and Torres Strait Islander access to, and acceptance of normal community health services;

  satisfactory environmental conditions, especially safe and adequate water supplies and waste disposal in Aboriginal and Tortes Strait Islander communities; and

  the establishment, where the community desires, of community controlled health services that emphasise -Aboriginal and Torres Strait Islander responsibility for, and -involvement in, the improvement of their own health [p. 85].

These objectives and strategies seem sound on the surface but lack the basic understanding of the economic inequalities that have led to the current state of Aboriginal health. Consultation and enabling community control are laudable, however the realities of implementation portrays a different picture.

The commitment of $49 million over 1989-90 and 1990-91 under the Priority Communities Development Strategy to 'address the total infrastructure needs in targeted communities in some of the most disadvantaged areas' (p.85), implies

imposition not consultation. Especially as $15.9 million was designated for Thursday Island alone and the NAHSWP stated that in 1988 DAA estimated that $112 million was required, just to provide adequate water supplies and waste disposal to communities. The Aboriginal Health Development Group's (AHDG) estimate for the amount needed, in November 1989, to address the current shortfall in basic essential services (e.g. adequate housing and infrastructure needs) within the Aboriginal community was $2.5 billion (AHDG, 1989:26). Another example comes from the 1988-89 Annual Report of the Department of Aboriginal Affairs:

> As part of developing a national approach to Aboriginal and Torres Strait Islander health needs, in 1988-89 the Government announced that $13.5m would be spent over two years on special Aboriginal and Torres Strait Islander initiatives. The original allocation was for $6m in 1988-89 and $7.5m in 1989-90. This has been altered in order to meet the interim recommendations of the Royal Commission into Aboriginal Deaths in Custody. The figures are now $4.3m in 1988-89 and $9.2m in 1989-90 [p.86].

Though the total amount is the same there is no detailed explanation as to why the change in allocation. The need to consider power relations re-occurs here: the question of who decides which services are provided, where, when and by whom needs to be answered because, on the face of it, Aboriginal people seem to have very little.

From the discussion above, and my Commission's research and investigation process, it is obvious that many Aboriginal communities in the State still have poor/unsafe/minimal water supplies. Indeed this is not just an issue relevant to remote areas. It also applies in 'suburban' Perth. The Lord Street camp in Lockridge did not have basic services (water and electricity) connected to the new 'accommodation', provided at the site in mid-1990 by the State Government. Within a week of the transportable unit being located on site a person died in a fire thought to have started from a candle used for lighting ('Police Probe Fatal Blaze', The West Australian Newspaper, 23 May 1990).

The Equal Opportunity Commission in Western Australia released a report in July 1990, commenting on the discrimination by various organisations in the provision of essential services to Aboriginal communities, citing that this could be exacerbating the health problems experienced within the Aboriginal community. The report mentioned the State Energy Commission of Western Australia (SECWA), the Health Department, the Water Authority, Local Government, and the Main Roads Department. The Human Rights and Equal Opportunity Commission is currently conducting a national survey of the current water resources available to Aboriginal groups and the needs which have yet to be met. The results of this will be available toward the end of 1990.

In December 1987 the Commonwealth, State and Territory Ministers for Aboriginal Affairs and Health responded to the lack of an agreed national Aboriginal health strategy by establishing the National Aboriginal Health Strategy Working Party. The terms of reference included:

- Report on Commonwealth/State and community funding arrangements, including financing of primary health care services and social health programmes in Aboriginal communities.

- Develop strategies to achieve improvements in the short and long term, taking into account specific health problems, health service provision, administrative and funding arrangements, Aboriginal participation, research and data collection, and ongoing monitoring.

- Develop strategies to maximise the involvement of Aboriginal people in their own health care. Consider intersectoral co-ordination including Commonwealth, State, local and health service agency responsibilities.

- Develop a mechanism to monitor progress towards achieving targets, taking into account performance indicators developed as part of the policy.

In preparing the report the working party undertook an extensive consultation with Aboriginal communities and groups throughout Australia and recommended a detailed strategy to address Aboriginal health issues in Australia. Some of the recommendations included strategies to ensure co-ordination of and community input into policy determination, implementation and evaluation; an emphasis on the need to address the structural causes of ill-health within the Aboriginal community; mechanisms to ensure Aboriginal service delivery is appropriate, adequately resourced and preferably provided by community controlled organisations; and some specific recommendations regarding approaches to specific health problems.

The Federal Government's response to the Report of the NAHSWP, at the March 1989 meeting of the Commonwealth, State and Territory Minsters of Health and Aboriginal Affairs, was to empower the AHDG to advise on structural arrangements for dealing with matters raised in the report; prioritise the areas for early action; develop funding guidelines; and to report by November 1989.

There are several points of concern with the establishment and recommendations of the Development Group. The membership of the AHDG was comprised mainly by senior officials of Government departments (from the Department of Community Services and Health, DAA and each of the states/territories) with only one Aboriginal community representative. This is in direct conflict with WHO ideology, regarding community input and control in effective health care systems, and the whole thrust of the NAHS Report. The stated recognition of the 'community disquiet' (AHDG, 1989: 14) at this situation, and the supposed consideration taken of any comments and suggestions from the community representatives during the preparation of the AHDG Report, is far from satisfactory. Its Report contained only 21 recommendations compared with the much more detailed recommendations contained in the NAHS Report. The AHDG recognises that it:

> in no way is presenting a comprehensive plan of action to implement the NAHS [p. 14].

It was thought more appropriate for the proposed Council of Aboriginal Health (CAH) to address that task. Eight draft resolutions were presented to the Brisbane Joint Ministers Forum in June 1990 and incorporated all of the AHDGs recommendations, some for immediate implementation (Recommendations 1,2, 14,18,19,21) and referred others for either the proposed CAH (Recommendation 13), ATSIC (Recommendations 3,4,6 (modified),7) or the State/Territory Tripartite Forums (Recommendations 7,8,9,10,11,12,15,16,17,20) to address.

The proposed structure of the CAH with a majority of Aboriginal members (17 out of 29) is an important issue. The resolution at the Brisbane meeting only stated that the Aboriginal representatives should come from each of the ATSIC zones. The Aboriginal Advisory Group's view that they should come from Aboriginal community controlled organisations with a health service delivery function needs addressing. Also the representation of the Department of Community Services and Health, ATSIC, Department of Employment Education and Training, State and Territory governments does not incorporate a mechanism to ensure that co-operation by other departments or groups (e.g. Defence, Mining, Industry, Immigration, Environment, Pastoral Industry) via an intersectoral approach will occur. If an overall social health model was adopted by governments then it would be easier to ensure this cooperation if particular groups or departments were reluctant to assume responsibility for the health consequences of their actions.

The proposed State/Territory Tripartite Forums provide a mechanism to ensure that consultation, cooperation and co-ordination occurs at a State/Territory level and that a true intersectoral approach to the issues occurs. The suggested role of the Forums to oversee the implementation of the Strategy, ensure intersectoral collaboration regarding policy and impact, and to complement the role of the CAH, is accepted and essential. However, as implied by the Aboriginal Advisory Group (AAG), the failure to state the proposed composition of these forums, except to say that it should include Federal, State/Territory and Aboriginal representation, could lead to inequity in representation of Aboriginal groups between states. It is essential that, like the CAH, the forums provide the opportunity for major Aboriginal representation, and again that representation should be from community controlled organisations involved in health service delivery, so that the communities' health needs are fully recognised. The importance of Local Government in service delivery, or the lack of service delivery, needs to be addressed, and inclusion of there in the 'Tripartite forum' may be a mechanism to ensure this occurs.

The need for adequate resourcing of existing AHSs and the establishment of new, community controlled Aboriginal Health Services as highlighted in the NAHS, the AHDG report, and the resolutions of the Brisbane meeting, should be implemented as a matter of urgency. This is a key issue, as it is not only the provision of health services that needs to be addressed, but the provision of adequately resourced, accessible and appropriate health services (WHO, 1978; Atkinson and Gray, 1990). Indeed the Western Australian Aboriginal Health Policy Review Team is of the opinion that inadequate resourcing is a significant cause of wastage of funds. The modification of the AHDG Recommendation 6 from consultation with existing AHSs concerning their immediate needs, to consultation with the Tripartite Forums, seems to be a filtering mechanism to enable the decision of relative needs to be imposed, which may result in some AHSs not being adequately resourced. The cost of $14 million for 1990-91 and $5 million 1991-92 and thereafter implies that the need is there, and recognises that any delay tactics must be viewed with scepticism. The AAG notes that it was not the intention of the NAHS that the Tripartite Forums vet community initiatives, rather they should be promoting and resolving issues related to intersectoral cooperation (NAHS, p.40).

The stated intention to enable greater community input into developing and implementing appropriate strategies to address the ill-health problems in Aboriginal communities, seems at odds with the apparent reluctance to consult directly with the community based organisations who have an intimate understanding of the needs. It could be assumed that this is a paternalistic attempt by decision makers to ensure that some control is kept in the decision making process.

The proposal to establish an Office of Aboriginal Health (OAH) within ATSIC is a recommendation of the NAHSWP (p.39), which included the condition that it be appropriately resourced, and include health expertise, and that it be created by amending the ATSIC Act (1989). The decision not to follow the NAHS recommendation that there be an amendment to the ATSIC Act 1989 to include this, means that the continuity of the OAH rests with the ATSIC Commissioners and with the Government of the flay. This is rather tenuous and could lead to health no longer being a priority, depending on political vagaries. The question of who determines what is appropriate resourcing or health expertise is not addressed by the resolutions.

There has been a delay in the implementation of the recommendation of both the NAHS (p.206) and recommendations from the RCIADIC Interim Report (p.31), that a national task force be set up to address the broad issues related to alcohol use, and how to address those issues in both the long and short term. The reason for this cited in recommendation 13 of the AHDG, restated in the Resolutions of the Brisbane Meeting, is to await the presentation of this report of my Commission. No definite reasons for the delay in implementation of this recommendation have been forthcoming.

The recommendations of the AHDG regarding data collection and research are a somewhat diluted version of the NAHS recommendations. The NAHS emphasises a broad approach to monitoring and evaluation. The argument for qualitative information and not just quantitative data is strong. The importance of appropriate information collection is stressed (e.g. DAA tried to impose 'Performance Indicators' on AHSs, which were thought to place excessive demands on the Services, and not provide useful information for improving the service delivered). As the NAHS definition of health incorporates well-being, equity and social justice, so should any mechanism which monitors the quality and outcomes of a service. The simple monitoring of disease incidence only provides part of the story. Unfortunately the resolutions adopted at the Brisbane Forum, opt for the simplistic approach of health statistics only and ignore the wider issues mentioned above. The proposal is to provide more resources to the Australian Institute of Health (AIH) to enable there to fulfil this role.

The research and data collection recommendations contained in the Resolutions adopted at the Brisbane Joint Ministers meeting again represent a watering down of the original NAHS intention. The NHMRC recommendation indicates an intention to give Aboriginal health research a higher priority, however they do not address the issues of ethical approval for research to proceed; consultation with communities prior to, during and after the research; consent; participation of the community in the research; social, gender and cultural issues; ownership of the product of the research; and exploitation of the communities' resources, all of which are addressed in the NAHS Report. The NHMRC proposes to 'earmark a sum of money for Aboriginal health research'. The NAHS recommendation is more equitable, with a fixed proportion of NHMRC research funds being committed to Aboriginal health research plus a certain amount to be given to Community Controlled Aboriginal Health Services to participate in research.

Overall the resolutions as put to the Joint Ministers Forum represent a progressive step in the Aboriginal health arena but they fail to uniformly address the issues of equity and consultation as outlined above. The inconsistencies could be a reflection of the entrenched positions of some of the players in the area such as health statisticians, researchers and bureaucrats. There is still some way to go before community input into policy formulation, implementation and monitoring, as

espoused by the WHO in its policies on effective primary health care, can be said to be a reality in Aboriginal health.

A review of the Objects of the ATSIC Act 1989 (Section 3) shows that the Act recognises the dispossession that Aboriginal people have suffered, and that the present position of Aboriginal people in Australia is one of disadvantage. The Act refers to furthering the economic, social and cultural development of Aboriginal and Torres Strait Islanders (Section 3). However, despite the Federal Government's Social Justice Strategy, neither social justice nor health service provision or strategy is addressed as a topic in the Act. Considering that the Department of Aboriginal Affairs has had sole responsibility for funding Aboriginal health initiatives, except for Medicare payments, since 1984, this would seem to be a major deficiency in the legislation.

Section 18(1) allows for loans or grants for 'the purpose of furthering the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders'. This is the only Section which enables on-going funding to AHSs, though there are provisions under Section 14 and Section 15 for granting of property or funds for the acquisition of property to Aboriginal or Torres Strait Islander corporations. As noted earlier, the NAHSWP recommended that the ATSIC Act be amended to include an Office of Aboriginal Health (p.39). The current wording of Section 18 of the Act allows for ATSIC to determine, in its judgement, what is appropriate for furthering 'social, economic or cultural development'. If health is not perceived to be fundamental to this development then, in my Commission's view, the continuation of the past under-resourcing of Aboriginal Health initiatives is possible.

The views put by the Department of Community Services and Health to this Commission, at the July Heads of Government Department meetings, provide an excellent example of the disparity between the perceptions of Government Departments of the level of service provided by them and the reality experienced by Aboriginal people. The DCSH is involved in a wide range of activities which have a potential impact on Aboriginal people, including: hostel care for those who are 'elderly' or disabled; Home and Community Care (funding only, scheme is managed by the State); research funding (Research and Development Grants Advisory Committee (RADGAC) and the AIH); housing via the Joint State Commonwealth Housing Agreement and the Supported Accommodation Assistance Plan; hearing services via the National Acoustic Laboratory; emergency relief grants; provision of Commonwealth Medical Officers (now the Australian Government Medical Service) who conduct medical examinations for the Department of Social Security to help determine 'benefit' eligibility; and child care ($15 million to western Australia of which $1.9 million is allocated for Aboriginal child care).

Despite the Departments relatively small direct client contact, most of its work is through funding other agencies. They are attempting to address the issue of lack of understanding amongst their workers by developing some courses in Aboriginal cultural awareness for non-Aboriginal employees; increasing the number of Aboriginal employees; running workshops to develop better mechanisms for community consultation (three to date); and trying to broaden workers' perspectives so that an entire community's needs are recognised rather than being specifically focussed on single issues. The impression the DCSH representatives portrayed to the Commission was that, in general, the services they were providing met the needs of most of the Aboriginal community in Western Australia. Their example that the five new hostels in Roebourne, Turkey Creek, Fitzroy Crossing, Broome and Wyndham, meant that the north of the State was well covered for

hostel style accommodation for the aged, revealed a considerable divergence from the reality.

Finally, a recent media release from current ATSIC Chairperson advised that:

> unfortunately the 1990-91 Federal Budget does not allow any funds for the implementation of the National Aboriginal Health Services [O'Donoghue, Challenge for ATSIC, 22 August 1990].

As noted earlier, these sorts of delays and obstructions in relation to Aboriginal health can be considered with some scepticism and concern by Aboriginal people. If there are other policy alternatives or options, I was not aware of there.

14.6 ABORIGINAL HEALTH AND THE STATE GOVERNMENT

In May 1990 the Health Department of Western Australia released its first strategic plan coveting 1989-1990. This 315 page document defines the purpose of the Health Department of western Australia as being:

> To protect, promote and restore health, and to provide care for the sick and disabled through the delivery of high-quality health care and efficient health services to the people of Western Australia [HDWA Report, 1990:3].

These objectives espouse the promotion of health and the prevention and treatment of ill health, the provision of obstetric services, rehabilitation for those who are disabled, and to provide continuing care for those with chronic ill health or disability. The principles for achieving the stated objectives include equity of access to services; highest quality service; understanding and responsiveness to community needs; consultation with the 'public' re policy and programmes; co-operation with other agencies in planning, maintaining and improving services; and support of education of health care providers.

The Commissioner of Health's inaugural address quotes the WHO definition of health as:

> Not just the absence of disease but a state of complete physical, mental and social well being [Extract included in HDWA, A Plan For Health, 1990:10].

The Commissioner goes on to recognise the important role that other sectors play in the determination of health within the community. However, he then proceeds to justify the limiting of the Health Department's role to the reduction of disease because it is easy to measure the changes in incidence and hence monitor programme effectiveness; 'positive health is, by contrast, a concept the measurement of which has proved elusive' (ibid).

In my Commission's view, it is difficult to understand why the opportunity to set the agenda in health in Western Australia by strongly adopting the social model of health and making it a much larger underlying premise of the strategic plan was not taken. This reinforces the conclusions of the NAHSWP that the common assumption in the non-Aboriginal community is that health 'is the domain of the specific agencies established to provide care' (p.x). For example the GP, the specialist, the Health Department or the hospital are the main places people should access health care and they are 'expected to do what was required to make

people healthy' (p.x). This has led sectors of government instrumentalities to have 'a pre-occupation with diseases and organisations rather than the underlying non-medical causes of ill-health' (NAHS, p.xi).

Though Aboriginal health status is well recognised as being the worst of any sector of the community, the Health Department of Western Australia appears not to address it as the priority issue that others in the community consider it to be. The response of the Cabinet Aboriginal Affairs Sub-Committee to the release of the report of the NAHSWP and a Health Department of Western Australia submission to the SubCommittee that 'Aboriginal health was under control' was to establish yet another review of Aboriginal health (Dennis Gray, Evidence to the Commission, 18 July 1990). The Western Australian Aboriginal Health Policy Review is currently being conducted by David Atkinson and Dennis Gray. It is significant that this review was prompted by the government rather than the Health Department of Western Australia. Considering the great emphasis placed on co-ordination of services and approaches in the NAHS, 1989 and the increased emphasis on community consultation, participation and intersectoral approaches by the Health Department of Western Australia in its Strategic Plan, it is hard not to interpret the Department's attitude as a lack of resolve to appropriately address the Aboriginal health inequalities in Western Australia.

In the Health Department of Western Australia Strategic Plan Aboriginal health seems to be far from a priority. Some attempt at raising the profile of Aboriginal health has been made by establishing the Aboriginal Health Policy Unit in January 1990. However, rather than this unit reporting direct to the Commissioner or the Minister, it is placed under the Assistant Commissioner of Policy and Planning. There has been considerable discussion about the size of the unit (four people) and the people appointed to the positions. In the programme classification Aboriginal health initiatives appear last in three of the four programmes.

The role of the Aboriginal Health Policy Unit is: To develop strategies and to develop policies that are State wide and also provide plans of delivery for appropriate and accessible and acceptable health programmes for Aboriginal people across the diversity of cultures that exist within this state'. Programme 401 and programme corporate services 1108 of 'A Plan For Health' are referred to as specific examples of HDWA Aboriginal health programmes. The aim is to have greater Aboriginal employment in the department; greater community consultation; greater communication between the Health Department and Aboriginal Health Services and other agencies involved in health care delivery in the Aboriginal community; improve service delivery via better co-ordination of Health Department of Western Australia activities; greater support for the environmental health worker programme; and encourage the *acceptance* of Aboriginal medical students via special entry provisions into the University of Western Australia; looking at Aboriginal youth health needs and services; and commitment to the tripartite forums which flow from the June Joint Ministers Forum (RCIADIC Transcript, Perth, 1990:304-7). These aims sound impressive but the realities of policy and ideals versus the implementation and attitudes of those who actually have contact with Aboriginal people in the community is quite different. The possibility of a small policy unit to influence attitudes in the whole of a large bureaucracy is remote (Atkinson and Gray, Evidence to the RCIADIC, 1990). On making these remarks, I realise this may be a long term strategy that has yet to really prove its value.

The Commissioner of Health acknowledged that in the past the attitude of departmental staff towards Aboriginal people had been less than ideal but that it had improved considerably recently. The consultation process undertaken by the

Commission revealed a less than satisfactory situation. Indeed the Regional Director of the Geraldton Mid-West Region refused to allow Community and Child Health Service staff to attend the regional conferences in Carnarvon and Geraldton. At the Conferences a number of comments made by Departmental staff revealed some significant misconceptions regarding Aboriginal people and frequently a victim blaming attitude. For example:

1. The perception, of the hospital Administrator, that there is no need for an Aboriginal Liaison Officer (ALO) at Albany Regional Hospital due to the small number of Aboriginal people who have contact with the hospital as either inpatients or in the outpatient clinics. Yet the issue had been raised to the Administrator of ARH in a phone call from Minister Pam Buchanan's office a few days earlier in which it was stated there was a perception in the local Aboriginal community of being poorly treated at the hospital [Transcript, Albany, May 1990:119].

2. A Community Health Nurse in commenting on hygiene being a problem within the Aboriginal community stated: 'We do an ongoing education programme in Aboriginal families - washing hands after the toilet, washing hands before preparing food - this kind of thing ... the programmes we run here are just really on a one to one basis which we feel is the best way of getting things across'. Later she admitted to be talking about 3 or 4 families out of a population of about 500 [RCIADIC Albany Transcript, 1990:121-122]. This is an example of 'describe one and colour there all' and the single issue approach alluded to earlier. The orientation for the rest of the Aboriginal community who were not members of these particular families was not stated. Where is the combined educative, preventive, curative and empowering process recognised as being the most effective?

3 those three families would be the focus of three-quarters of Government agency funds in this area [L. Bassett-Scarfe, RCIADIC Albany Transcript, 1990:137].

4. Some Departmental staff acknowledged that band-aid care is inadequate in addressing the causes of ill-health but lacked an understanding of those causes. 'We do not address the really deep psychological reasons for why the situation is as it is' [Community Health nurse, Transcript, Roebourne, 1990:267].

5. A lot of there are not even intelligent enough to look at health the way we look at health ... [Senior regional employee, HDWA. Comment to The Western Australian Aboriginal Health Policy Review Team about Aboriginal people].

Some of the non-Aboriginal health care workers attitudes reflect the lack of understanding in the wider community. Comments made during the regional conferences included:

> The Aborigines occupies a privileged position in his relationship to law and order [RCIADIC Transcript, Geraldton, 1990:110].

> In response to a question about the lack of self esteem: 'The fundamental

> difficulty lies in the understanding of the social background say, of Aboriginal people. I can't imagine that thousands of years living under a certain social system, if I can use a ... apply to it, that the genes that have been generated, the tendencies, the attitudes, the traditions and everything else that go with Aboriginal living are embedded and ingrained to such a degree that you're not going to breed this thing out of people in a matter of a generation or two [RCIADIC Transcript, Geraldton, 1990:113].
>
> They're alcoholics in the main, the fringe dwelling Aborigines ... [RCIADIC Transcript, Kalgoorlie, 1990:28].
>
> Native Welfare mentality's still stuck in their gluey minds [RCIADIC Transcript, Perth, 1990:287].

The failure of educators and employers to recognise the importance of providing adequate learning opportunities to enable health care workers to develop an understanding of Aboriginal culture, and the reality of the situation many Aboriginal people are in, is another key factor. For example the Health Department of Western Australia orientation programme for newly appointed Community Health Nurses is a 105 hour course which includes a 4.3% allocation for 'Aboriginal culture'. Aboriginal lifestyle is referred to in the general health issues and forms 6% of the total programme. This orientation programme occurs once a year so it may be between one to eleven months since the Community Health Nurse commenced work with the Department.

The University of Western Australia Medical Faculty was approached by the Commission regarding its teaching in the area of Aboriginal health to ensure that socio-cultural factors are addressed adequately by its graduates. The rather global response was that 'Clinicians ... always take into account the socio-cultural and economic situation of all patients be they aboriginal [sic] or caucasian. This is part of the general training in medicine' (correspondence from Faculty of Medicine, University of western Australia, to RCIADIC, dated 4 July 1990). This conflicts with the reality conveyed by Aboriginal people during the term of the Commission. The formal teaching in Aboriginal health in 1990 in the whole medical course consisted of one lecture to the third year medical students. Further ad hoc learning may occur during the rural attachment in the sixth year and the two opportunities which exist for students to write an essay, from a range of topics one of which is related to Aboriginal health, during the first and sixth years of the course. In fact teaching in Aboriginal health has actually decreased in the past two years according to some commentators (Copeman, 1990). One hopeful step is that the Medical Faculty at UWA is planning to admit three Aboriginal students in 1991 with less rigorous entrance qualifications and funding permitting.

The 1989-90 Health budget in Western Australia was, according to a departmental spokesperson, approximately $1.2 billion with around $100 million being spent on services to Aboriginal people. It needs to be recorded here, however, that that amount of money is not specified for Aboriginal health. It also needs to be recorded that the figure provided to this Commission appears to be somewhat exaggerated. The style of accounting used by the HDWA means that there has been no mechanism to ensure that the Federal funds provided in the past were spent on Aboriginal health. The rationale used was that they spent much more than they were given so that would be sufficient accountability for utilisation of those funds. Currently the Department is trying to change to a programme planning, budgeting, and management system which will allow for easier documentation of the way money is spent, and hence accountability will improve

(RCIADIC Perth Transcripts, July 1990).

The western Australian Aboriginal Health Policy Review Team is strongly of the opinion that the Health Department of Western Australia should remove itself from the area of health service delivery and provide adequate resources to community controlled Aboriginal organisations to enable there to provide the health service delivery required in their own communities. Their reasons include:

1. The belief that some of the antagonism that exists between AHSs and Health Department workers arises from a perceived competition in the area of service delivery and hence territoriality and jealousy develops. If the HDWA was no longer involved in service delivery then that antagonism would lose its momentum. Then the HDWA could assume a more effective role as a support base for those community based organisations.

2. The community controlled organisations could provide a more effective service as outlined earlier in the discussion about the WHOs view of the necessary requirements for effective primary health care structures.

3. It would enable greater accountability of resource utilisation.

A further reason which emerged from the community consultation undertaken is co-dependency of the Department and the client community. The view that Community Health has fostered a dependency on its services within the community it served was raised several times (RCIADIC Transcript, Albany, 1990:122). This is certainly an issue which needs addressing, particularly concerning the self interest of the Department in maintaining its client base. It was also noted that Community Health has tended to assume responsibility for people's health, rather than participate in an empowering process to enable Aboriginal people to be in control of their own health. This has changed, according to some, over the past six months and now greater emphasis is being placed by Community and Child Health Service (CCHS) staff to decrease the tendency to assume responsibility for people's health. No details of how this is happening were provided (RCIADIC Transcript, Roebourne, 1990:260).

14.7 MENTAL HEALTH

> It is the Aboriginal contention that the current situation of their people is the product of European colonialism and racism, not of some theoretical prehistoric social, technological or psychological retardedness [Allen, 1988:84, quoted in Taking Control, 1990:34].

It is well recognised that mental health is a significant factor amongst sectors of Aboriginal society. In 1979 the National Aboriginal Mental Health Association was formed and issued a Declaration of Mental Health which stated:

> We declare that the mental health problems in Aboriginal society are at least as common and as serious as in any other society in Australia.
>
> We declare that Aboriginal society does not enjoy the services for the relief and care of mental illness enjoyed by other groups.

> We hold that psychiatric services planned to assist people of European descent are not suited to relieve the distress of Aboriginal people.
>
> We express the need to develop, with all urgency, Aboriginal services to meet the needs of Aboriginal people suffering from mental distress.
>
> We maintain that these services should be conducted by and for Aboriginal people, with proper links with other health services.
>
> We recognise that services are provided for Aboriginal problems of the body, but that mental health problems go overlooked and ignored.
>
> We pledge ourselves to the National Aboriginal Mental Health movement, designed to promote professional and vocational development in this field [The Aboriginal Health Worker, 1980:4].

The reasons for the degree of mental ill-health among Aboriginal people are related to the legal, social and cultural dislocation that has occurred since colonisation. Swan (1988) quotes the results of a survey conducted by the Victorian Aboriginal Health Service (VAHS) in 1987 which found that of those surveyed:

> 65% had been separated from a parent during childhood (cf. 29% in the wider population);
>
> 47% had been separated from both parents (cf. 7%); 21% had lived in an
>
> institution during childhood.

That the impact of such cultural genocide has been devastating is well documented throughout this report. The reasons for this disruption to families was enshrined in the 1905-63 legislation under the ethnocentric policies of the time. Though this policy has officially been revoked as has the legislation, Aboriginal families can still be separated owing to a lack of material resources.

At the 1990 annual conference of the Royal Australian and New Zealand College of Psychiatrists, a paper was presented which strongly linked poverty with mental health consequences (Western Australian Newspaper, 17 May 1990). As noted earlier McMichael (1987) has also commented on this. It is a continuing reinforcing cycle of oppression/poverty/ill-health/dispossession. As Swan (1988:32) notes, the State, via the institutionalisation of the Aboriginal community, has created a 'soul-destroying dependency' which needs to be addressed. This has resulted from the multitude of losses that the Aboriginal community has experienced, and continues to experience, since colonisation. Indeed she comments that 'many have seen their brothers and sisters labelled as mentally ill (and hospitalised and incarcerated as a result) when they know the problem to be a social and political one. The diagnoses are always 'white' non-Aboriginal ones, and the solutions are seen as another form of oppression' (ibid:33), namely, medication, hospitalisation and incarceration.

The solutions for maintaining good mental health lie in access to material resources and conditions and in the following principles:

- high self esteem and confidence;
- freedom to communicate needs and feelings; ·
- ability to love and be loved;
- sense of belonging to family and community; ·
- the ability to cope with stress;
- ability to relate, create and assert oneself;
- options for change which help develop a problem-solving approach;
- comfort with your environment; and
- believing in something (family, community, culture, religion) [ibid:356].

It is also essential that Aboriginal society is not perceived as a homogenous culture. There are many different language groups, a fact which needs to be appreciated by those in policy, planning and service delivery roles in all areas not just in mental health. A cross-cultural education institution, as well as incorporating cross-cultural approaches in existing institutions, would help this process of recognition.

There is a need for appropriate mental health education and training for both health care workers, and the general community. This should be aimed at developing the appropriate skills and understanding required to enable effective work among Aboriginal people. It should also be aimed at attempting to understand some of the stresses Aboriginal people endure. This need is highlighted when some of the material, both evidence and submissions, before my Commission is examined.

It should be noted that there is currently only one Aboriginal person employed by Mental Health Services in Western Australia, Richard Wilkes. He is employed as a welfare officer at the Multi-Cultural Psychiatric Centre. It is his view that many country localities, towns and isolated communities, tend to use Graylands Mental Hospital in Perth as a place to send their 'problem people rather than take the trouble to look after them' (R. Wilkes, 1989:5). He goes on to comment that there are significant mental health problems amongst Aboriginal people, and that most of these stem from the 'culture being swallowed by the system and the cultural collision in living a different lifestyle than they are used to' (ibid:6). In order to address the Aboriginal mental health needs in the State, be sees the need for several small regional centres which could respond to local needs and cater for the diversity of Aboriginal people living in Western Australia. The centres should be run by local Aboriginal groups, similar to the Aboriginal Health Services. These centres should be properly resourced and staffed. Such considered resourcing would help avoid the alienation and cultural collision caused by being 'tossed into the European settings that we have now' (ibid:7).

An examination of the statements and evidence presented to the Commission in relation to the death of Paul Farmer provide a useful insight into the availability of psychiatric services in the State, psychiatric practitioners understanding, or lack of,

of Aboriginal culture and the cross-cultural conflicts they experience. Dr G. Smith, Director of Psychiatric Services, Health Department of Western Australia, confirms that there are no specific psychiatric services available for Aboriginal prisoners and that the services available to anyone 'in custody are limited' (W/5/59, p. 1). The only psychiatric services available outside Perth are in the Kimberley (Derby), Geraldton (part-time) and Bunbury (private) plus visiting specialists are available periodically in Albany, Kalgoorlie, Port Hedland and Karratha.

It should be noted that the presence of a psychiatrist does not guarantee the availability of full psychiatric care, nor appropriate care as will become obvious later. The demand for psychiatric services versus the relative scarcity of service providers means that all of the residents of western Australia are poorly provided for, those in country regions particularly. Dr Smith goes further: 'Aboriginal people in both country and metropolitan areas do have special needs which are poorly met by current services. It would be fair to say that the psychiatric needs of the Aboriginal population are basically little understood at present' (W/5/59, p.4).

An example of this lack of understanding is provided by Dr P. Skerritt in his commentary on the psychiatric care provided to Paul Farmer (W/5/48). He acknowledges the presence of 'phenomenon' (hearing the death bird and seeing faces of dead relatives) which had a 'cultural bias' and the expression of these were 'shaped by cultural factors' (p. 1). He then proceeds to place a western psychiatric interpretation on the presence of these 'phenomenon', in association with the perceived lowered mood of Mr Farmer when he had contact with the psychiatrists. His interpretation differs from the treating practitioners, but he still manages to find a psychiatric label to apply. Namely, 'psychotic depression' rather than 'schizo-affective disorder' {p.2). His justification for the psychiatric disorder theory rather than an entirely culturally based belief, is that the 'phenomenon' resolved upon the commencement of anti-psychotic medication, Thioridazine. On a superficial level this may seem logically consistent. A more accurate interpretation and course of action would be to look at the reaction of Mr Farmer to the situation he was faced with, and try to develop a mechanism to address those important cultural elements in his overall management. This may incorporate some psychiatric tools but would, more importantly, also incorporate appropriate cultural responses to Mr *Farmer's* situation.

I believe it is important to establish here that I do not, for one second, pretend to be an expert in psychiatry, nor would I find it easy to rely upon what such experts say. My point here is simply to highlight the need for knowledge of cultural beliefs when dealing with Aboriginal people. In fact the whole matter of professional assistance in relation to Aboriginal people is of grave concern to my Commission. While it is sometimes necessary to rely on the advice and services of practitioners, such as those cited above, no matter how well intentioned that advice and service may be, unless they are informed from a perspective which takes into account Aboriginal socio-cultural beliefs and practices, the task of interpreting what they say is made that much more difficult. My comments do not only refer to the psychiatric profession, as information throughout this report refers to a number of instances where misinformation regarding Aboriginal social life can generate misunderstandings of various degrees and influences (see e.g. Chapters 5 and 12). Some of the complexities and dilemmas of cross-cultural interpreting are highlighted in the following example. They are considered more from an ideal perspective, rather than from my having to make judgements based upon the advice of the psychiatrists involved in the particular case.

The example concerns the view given by Dr Lister in response to Dr Skerritt's

comments about Paul Farmer. 'I doubt he was developing a significant depressive disorder as he successfully lived in the bush for 7 months without any known suicide attempts' (RCIADIC report on Paul Farmer, W/5/47, p.4). This comment refers to a period of time following Farmer's escape from Graylands Hospital. An alternative explanation could be that he was no longer confined in prison or a psychiatric hospital.

Another example, is the assumption of Paul Farmer's low intelligence by the psychiatrist Dr Stubley, quoted in the submission for the family. It contrasts with the reality of his participation in TAFE courses on psychology, high speed diesel engines, animal husbandry and other assessments of his above average intelligence, as detailed in the submission. Other reports, submissions and evidence presented to the Commission reflect the picture portrayed above. Namely, a persistent lack of understanding, on the part of psychiatrists, when confronted with the mental health problems suffered by Aboriginal people.

Hunters (1988) interpretation is that the increase in the rate of suicide amongst Aboriginal people in the Kimberley reflects the rapidity of change over the past twenty years, plus an inability to achieve access to the potential political and economic means that are constantly being portrayed via many channels, including the media. What is of relevance in this context too is the fact that the rates of suicide of males in the non-Aboriginal community have increased markedly as well (Kosky, 1990; Reser, 1989).

In relation to Hunter's work, his recurrent use of the terms 'partial descent' and 'full descent' throughout various publications is, in my Commission's view, unfortunate and in marked contrast with Aboriginal peoples way of expressing Aboriginality (see e.g. Chapter 6). Additionally, to explain the high levels of Aboriginal suicide in the Kimberley region, Hunter (1988, 1989) appears to concentrate on establishing alcohol and the label 'alcoholic' as seemingly the important issue. Comprehensive and detailed analyses of the causes of alcoholism, as well as describing the symptoms, should never be under-estimated.

As observed earlier, psychiatrists are not the only authors to offer simplistic analyses of the causes and solutions to the poverty faced by Aboriginal people. Sullivan, Gracey and Vernon (1987:336), in an article on the cost of food and nutrition in remote areas, propose the introduction of food vouchers to address the issue of undernutrition and poverty within the Kimberley region. This sort of paternalism is of great concern to my Commission, as it extends to suggesting this would ensure that at least some 'welfare payments' were not spent on 'nutritionally unsound and/or unnecessarily expensive items or non-essential, and non-food purchases'.

Another psychiatric informant to the RCIADIC (in confidence) raised the issue of family background as a factor regarding deaths in custody in terms of parenting and 'chaotic family backgrounds'. This informant claimed that the receipt of Social Security entitlements by many Aboriginal people places there in a 'highly advantaged' position in society in contrast to the well accepted notion of Aboriginal people occupying the most disadvantaged position. These basic misconceptions from psychiatric influences in this State are cause for great concern if these attitudes are translated into their clinical and advisory work (RCIADIC Transcript, 1990:241-243).

The above views highlight the need for greater involvement of Aboriginal people in the field of mental health in order to diminish the dangers of superiority and

perpetration of cultural oppression which has influenced the relationship between Aboriginal and non-Aboriginal people since colonisation (see e.g. Langton in Radford et al, 1990:13-16).

Lorimer's (1990) work contains a useful analysis of psychiatric evidence and submissions made to the RCIADIC. Her paper addresses the issues of the definition of normal and abnormal behaviour in Aboriginal communities, and the assumptions made in the psychiatric opinion under consideration. The bulk of the material presented by Lorimer stresses that some opinions are misinformed and judgemental, and reflect an ignorance of Aboriginal reality on the part of the psychiatrists. Lorimer offers a perspective to enable the readers to conclude that these 'authoritative' statements presented to the Commission, need to be considered from a different perspective.

While it appears that the psychiatric profession is aware of some of its shortcomings and via its representative body, the Royal Australian and New Zealand College of Psychiatrists (RANZCP) is trying to address this, it is worth looking in a little more detail and making some comparisons. The Social and Cultural Section of the western Australian branch of the RANZCP has produced a draft position paper on psychiatric services for Aboriginal people. It contains a mixture of awareness of the issue and the perpetuation of misinformation and cultural stereotypes. It includes a statement recognising the tendency in Western Australia for Aboriginal people to be diagnosed as having major psychiatric disorders, such as affective illnesses and schizophrenia, 'with fewer symptoms being noted and taken into consideration' (RANZCP, 1990:1). (See also Mowry (n.d.) for further discussion.) This view acknowledges the non-Aboriginal orientation of psychiatric services in Australia, and the lack of culturally appropriate services, few workers with the necessary skills and no particular policies regarding appropriate diagnosis and management of Aboriginal people with mental health problems. In contrast, is the inclusion of the less informed statement about Aboriginal people: 'they appear to suffer the ravages of alcohol misuse more rapidly than Caucasians' (p. 1).

An example of the relative ease of diagnosis with less symptoms being identified can be found in an unpublished paper by Mowry (n.d.) as mentioned above. Dr Mowry compared the symptoms presented against the diagnostic criteria for schizophrenia in twelve Aboriginal and twelve non-Aboriginal clients discharged from Graylands Mental Hospital in 1983 with the diagnosis of schizophrenia. He found that none of the Aboriginal clients satisfied all of the diagnostic criteria, whereas eight of the non-Aboriginal clients did.

There is passing reference in the RANZCP document to liaison with traditional healers in order to decrease the alienation and mistrust felt by Aboriginal people when confronted by the psychiatric system. Of more relevance would be an increased determined reorientation of the services so that Aboriginal people have input in the planning, implementation and monitoring of there. There needs to be a move away from the small changes to make it look like change is happening, but still maintaining the power base in the hands of western psychiatry as evidenced by the desire to be more involved in the teaching and administration as outlined above.

14.8 'TOO MANY WORRIES': SELF-INFLICTED HARM

Of the 32 deaths under consideration by the Commission in western Australia 9 have been by alleged suicide, or self-inflicted harm. Of those, only four were considered intentional acts by the Coroner. Commissioner O'Dea was later to conclude that he was unable to say conclusively that one of those four had actually sought to take their own life.

A significant number of the deaths have been within three hours of coming into custody. The submission by Spencer (G/14/S) comments on the role of alcohol and depressant effects as well as the consequences of withdrawal. This has been covered in Chapter 19 on alcohol. Both he, Smith (1989), Lister (1989) and Skerritt (1989), are of the view that isolation is the least favoured course of action for someone who is suicidal or affected by alcohol. Spencer goes so far as to say that any one affected by excessive alcohol locked in a small cell for a few minutes is at risk of developing an acute withdrawal state and hence being at risk of suicide.

An understanding of the current extent of suicide as a means of death in the Aboriginal population in western Australia is difficult due to the lack of accurate information regarding its incidence, as stated earlier. Suicide is reported as the second most common cause of death in the prison system in Western Australia, after heart disease, according to Mr E. Stevens (Assistant Superintendent, Albany Regional Prison, in the report into the death of Paul Farmer). The rapid increase in the incidence of suicide in recent times is not only happening in the young Aboriginal male population but is also occurring to a significant extent in the wider community (Kosky, 1990; Reser, 1989; Radford et al, 1990). Low self esteem, lack of opportunities, and lack of resources are strong negative factors impacting on Aboriginal people, and especially contributing to the higher rate of suicide in young Aboriginal males.

In contemporary terms, suicide is seen as an intentional response to inescapable and unbearable circumstances. These circumstances often, but not always, occur in association with a significant loss, be that cultural, spiritual, material or personal, and often all four. There is difficulty in reaching valid conclusions about the true causes of suicide in Aboriginal communities due to divergence of ideology used by researchers and the failure to separate fact from judgement and supposition. To quote Radford et al (1990:34):

> Many research 'conclusions' with their 'authoritative' style and context, have, in effect, transformed that which has often comprised little more than speculation, into 'findings' for the world to behold.

The debate is turning so that the view of Aboriginal society as the primitive 'sick' society is diminishing, and a greater awareness that the wider society has been the controlling force, and hence major contributor, to the consequent disadvantage and stresses which exist in Aboriginal communities, is growing.

The level of self-harm in the custodial setting reflects the level of harm which occurs out of custody. According to Wilson (1982) it reflects the stress experienced by Aboriginal people and stems from low self esteem and a sense of futility. Radford (1990:3) chooses to describe this as the outcome of a 'failure to adapt to and live in harmony with the new and constant setting of urban life, initiated and sustained by the dominant European cultures'. The authors go on to say that this 'mal-adaption' results from 'persisting and pervading poverty and powerlessness, itself a result of disregard and, to some extent, exploitation' (ibid).

Suicide should be considered as part of a range of self-harming actions. It tends to

receive more attention because of the finality of its outcome and because it is somewhat easier to obtain statistics to reflect its frequency compared with the frequency of self-inflicted harm.

14.9 SELF-INFLICTED HARM AND THE MEDIA: 'COPYCAT SYNDROME'

In their submission to the RCIADIC, the western Australian Prison Officers Union of Workers put forward a theory that some of the deaths of Aboriginal people in custody in this State that were presumed to have been suicides, can be associated with media reporting of other such deaths. This theory, for which there are some related research findings, has been dubbed the 'copycat syndrome', and asserts that some Aboriginal people in custody are influenced by the media reporting of the presumed suicide of others, precipitating their own decision to kill themselves. In short, that they 'copy' the action of fellow Aboriginal suicides Mason, 1990:133).

The Prison Officers' Union submission (1990:9) asserts that studies by Hunter 'and the experience of the Royal Commission itself show that these suicides occur in a 'cluster', that is, can be grouped together in a short space of time. In support of this theory the submission also notes that media clippings about the death of Edward Cameron in Geraldton in July 1988 were found in the possession of Graham Walley, who was found hanged in Greenough Prison a short time later. It is also contended that there is a possible link between both of these deaths and prominent media coverage of the RCIADIC inquiry into the death of Charles Michael at Barton's Mill.

The submission asks the RCIADIC to recommend that the media 'wholly refrain from reporting the deaths by suicide of prisoners' as a means of countering the alleged syndrome. However, it also appears to suggest that simply by not stating the dead prisoner's name and race, and not specifying presumed suicide is sufficient to achieve this. There is some reference to the notion that the 'public interest' is served by the media reporting of such deaths, but that the above 'protocols' if adopted, would not 'subjugate' that interest.

While none of the available research conclusively demonstrates that media coverage of Aboriginal deaths in custody can be seen as the cause of these deaths, there is sufficient evidence of an association between media coverage and suicide by youth in general to warrant some consideration of the Prison Officers' Union assertion.

A survey of previous research by Mason (1990) showed that the majority of studies support the existence of an association between media reporting of suicide, and an increase in actual suicide rates by youth. Mason examines some of the arguments against the the 'imitation effect' of the media reporting of suicide, including an hypothesis that copycat suicides are merely precipitated by reporting and would have been committed in any case. Statistical analysis of suicide trends following suicide publicity have tended to refute this hypothesis. Another opposing argument is that copy cat suicides merely imitate the method of suicide publicised, having already resolved to kill themselves.

Another area that requires consideration is that if it is to be accepted that media reporting of suicide does create a copycat or imitative effect, then perhaps the style of the original reporting, as opposed to the mere reporting itself, is a factor that can either decrease or increase the likelihood of imitation. Mason notes that

news reports of suicides are 'often criticised for being sensational with graphic disclosure of the details and method of death', and that suicide can be portrayed in the media as a 'romantic, heroic and alluring or normal act'. Equally, the impression that suicide is the sole 'rational solution' to problems can be implied in media reports.

Research in western Australia has suggested that there is an association between youth suicide and increased media coverage of suicides. Silburn (1990) examined youth suicides and media coverage of suicides in Western Australia from August 1987 to December 1988. It was noted that from the years 1986 to 1988 a substantial increase in the overall youth suicide rate occurred, from 10.4 per 100,000 to 17.9 per 100,000. Within this, it was found that youth suicide by hanging in 1988 was 200 per cent higher than the preceding seven years.

Most significantly, Silburn found that the increasing rates of hanging as a method of suicide by youth from 1986 to 1988 was preceded by an increase in the frequency of media reports specifically mentioning hanging. Of a total of 166 reports of suicide in The West Australian newspaper for this period, 96 mentioned death by hanging and 53 made reference to the Royal Commission into Aboriginal Deaths In Custody.

Silburn concluded that although there was evidence to suggest an association between the increased media coverage and an increase in youth suicide during 1988, the number of Aboriginal youth suicides (3) was too small to 'permit any meaningful conclusion to be drawn' about that specific group. Silburn did conclude that an increase in Aboriginal youth suicide in 1988 suggested that a clustering effect was operating.

Equally, Hunter, whose research the Prison Officers' Union cite in support of their assertion that presumed suicides by Aboriginal people in custody in Western Australia are precipitated by media coverage, stops short of conclusively stating such an association. As well as noting the previous international research supporting this theory, Hunter (1989) points out that indeed a clustering of custodial suicides seem apparent in both Queensland and western Australia:

> Is there any evidence of clustering among the Aboriginal suicides in custody? The initial major media coverage followed the suicides of two Aborigines in Yarrabah in December 1986. In the following six months, four more hangings occurred in police custody in Queensland. For 1987, seven (53%) of 13 Aboriginal hangings in custody in Australia occurred in that State. In 1988, Western Australia became the focus of media attention, as a result of both having the largest number of deaths in custody, and the attempt by the Police Officers Union to halt the Muirhead Royal Commission. From January 1980 until November 1987 only three Aboriginal hangings in custody (one being in June 1987) had occurred in Western Australia; however, in the following year there were four more [Hunter, 1989:218].

Hunter (1989:222-223) does not offer any direct evidence of a cause and effect relationship between the media and the clusters of suicides by time and region, and he places more importance on a need to consider and take action on alcohol use, and some of the 'social foundations' of ill-health.

Indeed, as the Prison Officers' Union points out, newspaper clippings of reports of Aboriginal deaths in custody and related Aboriginal rights issues were found in

Graham Walley's possession, in fact, they totalled nearly fifty in number. The

clippings mainly concern the protests and political controversy surrounding the death of Edward Cameron, but others relate to wider issues of racism and the struggle for justice for Aboriginal people. While the Union might consider these significant factors in Walley's suicide, it could be equally suggested, by the choice and quantity of news clippings, that Walley had or was developing a higher level of political consciousness concerning the position of Aboriginal people, and had learned to collect and draw upon media texts as part of a useful information-knowledge base. Viewed as such it is virtually impossible to separate out media reporting from the whole web of inter-connected social and political issues that bear upon both Walley's imprisonment and ultimately his death.

Having said this does not completely exonerate the media from any responsibility for the way deaths in custody are treated in reports. The emphasis Mason placed on the style of reporting of suicide, its often sensational and romantic character, could be a significant consideration in relation to some of the Aboriginal deaths in custody in western Australia. For example, the death of Edward Cameron in Geraldton Police Lockup on 8 July 1988 was followed by dramatic media coverage, not only of the suspicions and allegations surrounding the circumstances of his presumed suicide by hanging, but the protests and disorder that accompanied his funeral in Geraldton. Some months later two further deaths, presumed to be suicide by hanging, occurred, one at nearby Greenough Regional Prison (Graham Walley, 23 October 1988) and again at Geraldton Police Lockup (Wongi 31 December 1988). In the thirteen months prior to Cameron's death, three Aboriginal people died, presumed suicide by hanging, in western Australian police cells (Stanley Brown, Broome, 27 June 1987; Bernard McGrath, Kalgoorlie, 15 November 1987; and Ben Morrison, Fremantle, 6 April 1988). These earlier deaths, like those that followed, were surrounded not only by their own attendant media reporting but also by the wider national coverage of the issue of Aboriginal deaths in custody which had reached high levels of public prominence by the time of the commencement of the RCIADIC in mid 1987.

If it is to be accepted that media generated publicity surrounding Aboriginal deaths in custody influenced the decision of others to take their own lives, then we must also consider both the personal circumstances of those who died and the prevailing political context in which the deaths took place. To isolate the media as a primary cause of the deaths is to overlook the environmental factors that predisposed certain people to die in particular ways in State custody. After all, the mere reporting of Aboriginal deaths in custody, while possibly impacting on the overall suicide rate, does not cause mass suicide by Aboriginal or non-Aboriginal people, either in or out of custody.

Essentially, if the assertion that the 'copycat suicide' is an act of despair and severe depression, as a last resort escape from an unbearable existence, then it is doubtful that the media reporting of such suicides can be conclusively stated to precipitate others. Taking the example of the three deaths in the Geraldton region in 1988, the ability of local Aboriginal social networks to communicate such tragedies to a large number of Aboriginal people within the region, irrespective of media reports, must be taken into account. Equally, the distressing effect of these on the Aboriginal community, and to the point, others who are potentially suicidal when in custody under certain conditions, again irrespective of media reporting, is perhaps a significant factor. In other words, perhaps the salient point about the 'cluster' of three deaths in the Geraldton region is not so much that they were prominently reported in the media, but that they all occurred in the same locality. It

is necessary to consider whether local social environmental factors in the Geraldton/Murchison region could have led to a higher potential for suicide by young Aboriginal men in custody.

If, alternatively, the above 'copycat' suicide 'cluster' relies on an assumption that these young Aboriginal men committed suicide in custody as an act of revenge or resistance against their perceived oppressors, in other words, of 'martyrdom', then it follows that a powerful argument can be made that the more media

publicity, the greater the martyr effect as the success of the effect depends upon its intended impact on public opinion.

Finally, there is a problem in that, in a sense, the theory of the 'copycat syndrome' assumes something extraordinary in the possibility that human beings, under any conditions, behave in similar ways, and that the actions of one influences the actions of others. It individualises suicide in custody and suggests its cause in the simple copying of one individual's action by another, denying perhaps the far more important underlying social issues that may have given rise to all the deaths.

THE IMPACT OF MINING: 'ALL WE GET IS THE DUST'

Social impact and social change processes related to mining and Aboriginal interests reflect the complex interaction of local, regional and State wide issues. In sum, the effect of the mining industry on Aboriginal people cannot be separated from the effects of changing Government policies and social changes internal to Aboriginal people themselves. With all these factors in mind, the RCIADIC commissioned Dr Richard Howitt to undertake field research in the Eastern Goldfields region of Western Australia. The results of that research are contained in RCIADIC Broome, Research Paper 5, August 1990. The Goldfields was identified partly because of the high incarceration rates in the area, as well as the number of deaths in custody. What follows is drawn from some of Dr Howitt's findings, as well as other material that has been provided to my Commission. It is important to observe here that while these findings primarily refer to the goldfields, a great deal of the discussion can be extrapolated to the rest of the State and, indeed, to other parts of the country.

The situation for Aboriginal people in the goldfields is complicated by the complex history of the region regarding claims and interests in, and control over, specific lands, reserves, resources and issues. Several cases are dealt with in more detail in RCIADIC Broome, Research Paper 5, but the general issue is that competing interests have been produced during different periods of occupation. The 'traditional' totemic landscape, in which control over, and responsibility for, specific areas was self-contained within Aboriginal societies, has had superimposed upon it various non-Aboriginal patterns of land tenure (pastoral leases, mining tenements, local government boundaries, state boundaries, electoral boundaries, administrative districts and so on). There has also been a development of various historical associations between Aboriginal groups and particular areas not only through Aboriginal tradition, but, as noted in earlier sections (e.g. Chapter 2), through government policies which have often served to re-locate Aboriginal people into different areas where they have also developed ties of association.

One of the fundamental issues is the extent to which Aboriginal individuals and groups, empowered in the present policy context, can be considered

'representative' of broader Aboriginal interests. This issue also arises in the case of the mining industry, where industry lobby groups such as the Chamber of Mines of Western Australia and the Australian Mining Industry Council have sought to present the vested interests of the mining industry in general, and the private interests of individual corporations, as representative of the 'national' interest. In the following section, the local implications of this issue are considered, and discussions concerning empowerment of currently marginalised people explored.

15.1 VESTED INTERESTS: THE MINING LOBBY

The mining industry is made up of a large number of individual companies. In a market economy, while some of these companies may operate together in joint ventures or other arrangements, and some may have common shareholders, managers or owners, they are fundamentally in competition with each other. The industry lobby groups, such as the Chamber of Mines and the Australian Mining Industry Council, therefore seek to represent a range of often conflicting specific corporate interests. The political strategy of the mining lobby has generally been to present itself not as representing a narrow vested interest, but as representing the best interests of all Australians.

In its presentations and submissions to various inquiries concerning Aboriginal land rights, for example, the mining lobby has sought to protect its vested interest by presenting its concerns in terms of the national good. For example, The Chamber of Mines of western Australia (CMWA) submitted to the western Australian Aboriginal Land Inquiry that:

> The ownership of all minerals must ... rest with the Crown which must ensure equality of access thereto for the betterment of the entire community.
>
> The Mining Industry believes that the natural resources of the State must be accessible to the entire community if the community is to maintain an acceptable standard of living and be able to provide social services for all its members.
>
> ... [and] strongly advocates the continued principle of Crown ownership of minerals so as to enable the natural wealth of the State to be available to the benefit of the entire community [CMWA, 1983:1-2].

The Australian Mining Industry Council (AMIC), in its submission to the same inquiry, sought to establish the importance of the mining industry to the welfare of every Australian with the claim that:

> The mining industry's ... contribution to Gross National Product ... accounted for more than 28 per cent of the basic wealth production in 1980/81 [AMIC, 1983:8].

Such a contribution is indeed fundamental to the health of the national economy, but what this argument fails to acknowledge is that it is not the production of wealth, but its distribution which determines the extent to which a nation's citizens benefit from the production of wealth inside its national borders. AMIC, however, goes as far as to suggest that:

> In the common good ... reasonable restraints should ... be imposed on Aboriginal landowners in relation to the wider community's need to maintain access to those community-owned resources [AMIC, 1983:18].

What the industry lobby's arguments systematically refuse to acknowledge is that it may also be in the national interest to address the outstanding claims of Aboriginal people resulting from the compulsory acquisition of all their property as a result of colonial conquest and occupation. In fact, in direct contradiction of the facts of history in the Eastern Goldfields, the CMWA goes as far as to say the following:

> the history of dispossession and dispersion (with which the Mining Industry had little or no involvement) will be reflected in ways not immediately obvious to or realised by non-Aboriginals [CMWA, 1983:28].

As discussed in detail in RCIADIC Broome, Research Paper 5, the industry was one of the primary vehicles of dispossession and occupation in the Eastern Goldfields, and has continued to act largely as an antagonist of Aboriginal interests on many occasions even in recent history. Through such submissions, and reinforced in advertising campaigns such as that launched in 1984 by the CMWA (see e.g. Libby, 1989), the industry lobby has attempted not only to establish their vested interest as fundamental to the 'betterment of the entire community' and even the nation's ability to 'provide social services for all members of our society', but has also sought to establish a popular perception of antagonism between the just and equitable settlement of outstanding Aboriginal claims and the national interest.

In discussing the industry's role in regional development, the mining lobby has similarly attempted to develop a popular perception of the automatic transfer of wealth from mining activity to the common good. For example:

> The Mining Industry also strongly submits that adequate recognition must be given to the positive social, cultural and economic benefits that flow to local communities, both Aboriginal and non-Aboriginal, in regions where mining operations are established.
>
> These benefits include, amongst others, better medical, communication, transport and education facilities as well as greater access to food, fuel and other supplies in remote areas [CMWA, 1983:32].

The question of distribution of the benefits to the Eastern Goldfields communities from mining is raised in RCIADIC Broome, Research Paper 5. The point to be made here is that the conventional mechanisms for the distribution of wealth in Australia, have generally proved inadequate in meeting the needs of remote communities. In this sense, the nation has still not come to terms with the 'tyranny of distance', nor found an appropriate policy framework to address '1ocational disadvantage'. In the case of remote Aboriginal communities, the mechanisms to ensure benefits flow to the community have been flawed by racism, paternalism and an inability to design and implement appropriate policies.

The principal benefit identified by the industry lobby has generally been direct employment:

> The mining industry is one of the few which has the potential to provide employment for Aborigines in remote areas ...

> Where employment opportunities are sought (by Aboriginals), however, the industry is aware of the need for special efforts on the part of mining companies to accommodate their working procedures in order to allow for Aboriginal cultural differences. It is also recognised that the industry has an important role to play in the fields of education and training to enable those Aborigines, who so elect, to become involved in the wider Australian community [AMIC, 1983:3-4].

Again, the issues of direct employment and specialised industry training are detailed in RCIADIC Broome, Research Paper 5, but the point which needs to be particularly raised here is that the experience of many Aboriginal people in the Eastern Goldfields, and elsewhere in Western Australia, has been that prospects for direct employment in the mining industry have continued to be poor, despite the intentions of various company and Government policies (see also Arthur 1986 for discussion on this matter in the Kimberley region of Western Australia).

In criticising the industry's submissions and political activity, it is important not to suggest that they should not act to protect their position of entrenched vested interest and privilege. However, it is equally important to unmask some of the means by which the mining lobby's self interest is disguised as a representative regional or national interest. The development of genuinely effective policies, and in the case of this Commission. genuinely effective recommendations for action, depends upon identifying and challenging the mechanisms by which Aboriginal people are disempowered and marginalised. The purpose is not one of political point scoring, but one of genuine social and ethical imperatives. Given that the research detailed in RCIADIC Broome, Research Paper 5 has revealed the lack of mechanisms to ensure adequate transfers of wealth and flows of benefits to Aboriginal or non-Aboriginal interests in the Eastern Goldfields generally, it is essential that the Commission is not swayed from tackling the core issues by the misguided arguments of self-serving vested interests.

15.2 ABORIGINAL INTERESTS

'The mining lobby by no means has a monopoly on misguided arguments or self-serving vested interest. Starry-eyed idealism and what the mining lobby typically calls 'do-gooders' have no place in the Commission's crucial role in providing a framework for action to address the underlying issues involved in the deaths in custody issue. The failure of existing policies to overcome the social processes which have dispossessed and marginalised many Aboriginal people is clearly part of the problem to be addressed. In evidence put before the Commission by Howitt (1990) it would appear that many Aboriginal people and mining company representatives state that they share common ground in their criticism of many aspects of the Aboriginal 'industry'.

There are two aspects of this question to be addressed. The first is that of the largely non-Aboriginal sector which derives a direct benefit from the existence and reproduction of disempowered Aboriginal groups, either in the form of jobs (e.g. public servants in specialist Aboriginal affairs positions, consultants, etc) or other benefits (e.g. church and other missionary groups). While it is not intended to denigrate the dedicated and worthwhile contribution of many of the individuals involved, it is essential to raise some serious questions about vested interests and structural problems involved in this area, and the failure of the 'industry' to put in place mechanisms to overcome there.

The second aspect of the question, is the difficult one of Aboriginal vested interests. Clearly, some Aboriginal people have been able to 'do quite well' out of the existing system, and have no interest in genuinely challenging the broader issues of social justice. It is widely accepted that conflicts of interest in Aboriginal affairs are tolerated and ignored which would not be accepted in other areas. Community advisors, public servants, anthropologists and other workers in the Aboriginal affairs sector come in for considerable criticism from the mining sector. One recent commentator, for example, gave the following advice to mining companies dealing with Aboriginal communities to stay with the following rules:

> 2) Find out who the traditional owners are by persistent enquiry of community members, double checking all the time. When they are identified DEAL DIRECTLY WITH there AVOID ANTHROPOLOGISTS - they dance to a different drummer ...
>
> 8) Have the negotiator constantly liaise with State Government bureaucrats and politicians. In the author's experience they are mostly pragmatic, level headed and even handed. Try and avoid Federal Government officials like the plague ...
>
> 9) Do whatever is feasible to by-pass the community advisers. Use there but don't fall into the trap of dealing with there because they speak English ... [White, 1990:5].

Some of the structural problems in this area include the practice of placing the least experienced, least qualified public servant (police, teachers, nurses) in some of the most difficult and demanding positions in the State and then 'promoting there out', if they survive. Howitt (1989) argues that locally incorporated bodies have been established by DAA in ways which guarantee their failure, because they bring together mutually antagonistic Aboriginal interests into a single corporate structure. There seems to exist an element within the Aboriginal sector of the public service which actively and deliberately pursues the continued disempowerment of Aboriginal people in order to protect and promote their own employment interests (see also Chapter 11).

Similarly, there is a group of Aboriginal people within the system who have become symbols of a representative Aboriginality, who are consulted about everything from sacred sites to the distribution of jobs, money and infrastructure. While it is not intended to suggest impropriety of any particular person or persons in the Eastern Goldfields, it is important to make the general point that many of the most influential positions in Aboriginal organisations carry considerable power, and people occupying there have a responsibility to carry out their duties 'without fear or favour'. To do less is to overlook a crucial underlying issue, and is a betrayal of the straggle for survival and advancement that Aboriginal groups have waged against awesome odds for many many years. In my Commission's view, a means of challenging vested Aboriginal interests is also fundamental to the task.

15.3 THE VICTIMS

Many Aboriginal people whose personal, cultural, social and economic needs are not addressed in the current setting have no way of representing their interests to the wider community. It is they whose exclusion has produced marginalisation, and

who are unable to articulate their needs and aspirations. In many ways, it is their concerns that are the focus of the practical outcomes of this Commission.

There have been several Royal Commissions and other inquiries which have recommended appropriate legislative, policy, guidelines and practices in Western Australia, including the Warburton Ranges inquiries, the Laverton Royal Commission and the Aboriginal Land Inquiry. None have fully addressed the actual mechanisms and processes of disempowerment. What is necessary is a practical agenda, and practical process of empowerment and participation which reach these people. In my view, anything less will reinforce the processes which produced this Royal Commission in the first place.

15.4 POLICIES, PRACTICES AND CONSEQUENCES

In seeking to address practicalities, and address there in the context of opportunities and constraints for Aboriginal economic development in the mining sector, three basic areas of opportunity seem to exist: direct employment: indirect employment and enterprise development; and negotiated arrangements between Aboriginal landowners and mining interests, based on land rights. In each area, existing policies and implementation guidelines create unnecessary barriers to equitable results for Aboriginal people. The attempts by the mining industry to respond to these issues in the current policy context have also generally produced disappointing (and disempowering) results. It is, perhaps, worth beginning with the setting of the Laverton Royal Commission in 1975-76 (see also Chapter 2 for comment regarding this Commission).

The Report of that Commission noted:

> In about 1962 the Aboriginal population of Laverton was approximately 400 including those residing at the mission at Mt Margaret ... while the white population was approximately 55. As a result of the recent mining development, the white population has increased to approximately 1200, while the Aboriginal population has remained static.
>
> The present layout of Laverton has largely been influenced by decisions that the town site of Laverton itself should be redeveloped rather than a new mining town at Windarra, and that Aboriginal and white communities should be integrated in the new town. In late 1974, the white population of Laverton consisted largely of mine employees and their families, few of whom had had extensive experience in isolated centres in Australia or much contact with the Aboriginal inhabitants ...
>
> The evidence suggests that the rapid development of Laverton left many of the Aborigines confused and in varying degrees disappointed that the rate of improvement in their conditions did not match that of the town development [Laverton Royal Commission, 1976:4,5].

That Commission's observations raise a serious issue which affects the relationship between Aboriginal and mining interests throughout the Goldfields, and indeed, around Australia, and that is the issue of the timing of project development

The currently prevailing circumstances of poor profitability in the gold sector and

generally 'difficult' economic circumstances for companies in the region (see Table 14), ensures that they will continue to argue that the need to generate profitable growth from any local opportunity is absolutely paramount in the context of their own corporate priorities. According to Howitt (1990) this will tend to reduce the opportunities for direct employment growth in the short term for Aboriginal people without experience.

Table 14: Retrenchments and redundancies in the Eastern Goldfields Mining Sector, announced July-August, 1990

COMPANY	JOBS LOST
Kalgoorlie Consol Gold Mines	199
AUR Ltd	64
Central Norseman Gold	150
Vatbrook Mining (WMC Kambalda)	35
TOTAL	448

Cited in Howitt (1990) Kalgoorlie Miner, various dates, 1990.

In hindsight, it can be seen that the 'windows of opportunity' for nickel projects such as Agnew and Windarra, were quite narrow, and profitable development did depend on rapid progress. In this context integration of Aboriginal and corporate priorities was probably impossible at the time. The imposition of the company's solution of introducing a large, mainly non-Aboriginal workforce into a previously predominantly Aboriginal community inevitably led to local juxtaposition of social anomalies which contributed to the Skull Creek incident investigated by the Laverton Royal Commission.

In the case of Laverton, where the initial 'discovery' of the Mt Windarra nickel deposit was made by an Aboriginal prospector, Aboriginal people continue to be resentful that there was no avenue for securing some direct benefit from the project for their communities. The use of such projects to secure a stable position within an expanded local private sector economy requires a substantially different approach to planning and development. The saying that 'time is money' is a fundamental tenet of capitalism, and the use of a 10-15 year time frame for project development to incorporate Aboriginal education and training is simply not rational within the constraints of the corporate sector. Yet this is an important aspect of the agenda being raised by Aboriginal groups around Australia. Without a coherent and consistent strategy directed at this sort of empowerment of local Aboriginal people, government policies are failing to address the key issues in securing a more equitable outcome for the long term processes of economic development.

Since the mid-1970s there have been a number of attempts to address the structures of inequality through legislation and policy formulation. Most recently, and perhaps most relevantly here is the major Federal initiative in Aboriginal employment, education, training and enterprise development, including the Aboriginal Employment Development Policy (AEDP). As noted earlier in Chapter 11, the AEDP, developed in response to the Miller Report (1986), established a range of programmes and funding avenues aimed at overcoming welfare dependence. Development of local Aboriginal enterprises was encouraged, with substantial funds committed to both private and community enterprise development. As with all such policies, implementation guidelines control the distribution and application of funds under these Programmes. These guidelines are developed and reviewed by senior Federal public servants, and, except in the hands of dedicated, determined and skilled local staff, generally fail to address the

particular concerns of local people and groups. The general feeling is that people and their proposals should fit the guidelines rather than the other way around. As one Aboriginal man put it:

> It's always the guidelines that get us... I decided to do something for myself based here, clearing gridlines and drillpads and so on ... Although I had both a bulldozer and a grader lined up and I knew the machines and knew I could keep there going [I was] ... required to get three quotes ... [and] to do a five day business course. My motivation was to get something going that related to the main industry in town, which is exactly what DAA and ADC haven't got going. I wanted to help young Aboriginal kids learn the skills ... to help there get jobs in the industry. When the mines close, the whitefellers move on to greener pastures. Aboriginal people are not the itinerant ones. They need to get jobs locally. I had contracts lined up that would have just about paid back the money I wanted to borrow ... (but the government departments) never really checked it all out properly. And then it just got too big [Richard Howitt, Fieldnotes Book, 7:72-75].

According to advice provided to me by Dr Howitt, this man's request for a loan to purchase second hand equipment for a small scale project was unsuccessful because he was unable to provide the 20% equity required under programme guidelines for private loans, and because competitive quotes were required, the non-warranted second-hand equipment he had lined up was not considered appropriate, again under the guidelines. As an alternative, it was proposed that a much larger loan to an incorporated community organisation be funded.

When discussing the above situation with ATSIC regional office staff, the problems created by locally inappropriate guidelines restricting support to local initiative was acknowledged:

> Rules, regulations and guidelines were all made in Canberra, and although that's changing, we are not sure of how the amendments to the ATSIC arrangements will affect the process of decentralisation. Guidelines are supposed to apply to all sons of proposals, but we face problems because ATSIC staff numbers have been cut and the workload increased ... Even the dollars that have been around (under various funding programmes) haven't reached the Goldfields [ATSIC Regional Office staff interview, 25 July 1990, Richard Howitt, Fieldnotes Book, 8:23-26].

Clearly, the incentives for well-motivated, well-qualified Aboriginal people to set up initiatives such as that proposed above are limited. As many people recognise, they are better off on the dole than trying to fit into these guidelines.

Another example of people being disempowered by inappropriate guidelines, this time at the community organisation level, can be found in the experience of the Eastern Goldfields Aboriginal Resource Agency (EGARA) in the building industry:

> ... in the building game, EGARA built houses at Leonora and other places using Aboriginal workers, but the bureaucracy increasingly said that we had to win competitive tenders against large contractors from Perth who could come in and do jobs quickly and cheaply, but leave no skills or other benefits behind. The bureaucracy seems intent on catching us out with technicalities. They say they want to create employment, but the reality is just not there. They offer us $100,000 to create jobs, but then tie our

> hands, our legs and heads up and put on a blindfold and say 'Yes - you can do what you want with the money'. The ATSIC guidelines always put in a catch about how you can spend the money. When we put in a tender it isn't really possible for us to include the social and cultural objectives as part of the tender, because that's outside what's being tendered for, but because that is also what we are on about, it makes it impossible for us to come in as the lowest tenderers [Manager, EGARA interview, 6 July 1990, Richard Howitt, Fieldnotes Book, 6:43-44].

While appropriate monitoring of funds, training and support for Aboriginal people and review structures are essential to ensure that policy goals are being met locally, the fate of EGARA's building business, which had accumulated substantial assets and expertise as well as supplying a large number of houses in communities in the Eastern Goldfields, demonstrates the continuing importance of patronage and the maintenance of Aboriginal people's 'client' status in successfully negotiating 'the guidelines'. As one insider observed to Dr Howitt:

> ... Problems really started to emerge when relations between EGARA and DAA began to deteriorate. This coincided with the division between DAA, which had up to 15 regional managers in the last eight years, and sometimes only one person in the office, and ADC - the split between the social and the economic... We became alienated from DAA who threatened to stop funding us, but never did ... At the time of the ADC review we had accumulated assets worth half a million dollars. To do this we were breaking the rules, but this was in a period when breaking the rules was the accepted, and expected, way of doing things.
>
> EGARA was strangled by ADC when they demanded that all housing projects go out to public tender with no preference to Aboriginal tenderers ... Our biggest problem was that we had a DAA that was thoroughly frustrated because it had no idea of what was going on. EGARA was extraordinarily successful. Our wages bill was about half a million dollars a year, and every employee was gainfully employed. We picked up Kalgoorlie Glass for only $6,000 ... [and it] has grown to be the largest non-metropolitan glass company in the state. One could be forgiven [for having] a cynical view of the bureaucracy and for thinking that they put the screws on EGARA because we were successful ... EGARA became a pain in the neck to a long tradition of handling and directing everything in Perth [Richard Howitt, Fieldnotes Book, 6:55-58].

The same set of problems, the problems of overburdened staff, inappropriate guidelines, lack of support and back-up, restrictive and selective application of review procedures and the problems of patronage and power, broking is repeated in every sphere of social and economic endeavour affecting Aboriginal people. In education, health, employment, enterprise development, and other areas, policies seem destined to constrain rather than support Aboriginal initiatives.

Of particular importance is the continued and widespread practice of sending young, inexperienced and unconfident professionals into some of the most difficult and demanding positions in their vocations (teaching, nursing, policing, community advising, etc), and failing to support, train or develop there. The impact on and bum out rate of potentially valuable staff is immense. But more important is the effect on the communities involved. As noted in Chapter 7, basic services taken for granted by most citizens in metropolitan Australia become problematic.

In the case of health services, there appear to be a number of specific and serious issues to be addressed in the Eastern Goldfields. There are certainly unresolved concerns about environmental health issues for many Aboriginal people. There has been a concerted campaign to address environmental dust arising directly from mining operations in the region, but there is no research or data to allow any reasonable assessment of the health consequences of prolonged exposure to environmental dust and other pollutants including sulphur dioxide. and small amounts of heavy metals including arsenic released from the ores, and cyanide from the processing of gold. There has been a small amount of work done on occupational exposures, but Aboriginal people, particularly fringe dwellers face an entirely different regime of environmental exposure.

Similarly in education, the existing structures have created significant barriers to the achievement of equitable and culturally relevant outcomes for Aboriginal people. As has been the case throughout Australia, education professionals have failed to develop and deliver appropriate policies and practices to the Aboriginal students of the Eastern Goldfields. Education, at all levels, is fundamental to the process of engaging in the necessary social transformation. The failure of the mainstream to meet even the basic educational goals of Aboriginal children and their parents, and the restriction of the alternatives available to Aboriginal parents to CAPS, the Christian Aboriginal Parent-controlled School at Coolgardie, which emphasises Christian education, has the potential to reinforce certain processes in yet another generation.

When health and education are undermined, poverty, alienation and marginalisation, the processes of exclusion from the mainstream economy, and the mechanisms of local disempowerment continue and reproduce the co-dependence of communities and bureaucracies, without ever challenging the structures which entrench the problems. In my view, Aboriginalising bureaucracies will not address the problems, because professional competence, adequate resources and appropriate service delivery structures cannot be created simply because Aboriginal people are put into positions. Further, pouring money into flawed policy frameworks and community organisations which reflect bureaucratic rather than internal community priorities, will not provide empowerment.

15.5 GETTING THE SCALE RIGHT: LOCAL EMPOWERMENT

RCIADIC Broome, Research Paper 5 documents the nature and mechanisms of Aboriginal marginalisation in the Eastern Goldfields. It also identifies potential avenues for challenging these mechanisms and pursuing alternative outcomes. The specific focus is on the relationship between Aborigines and the mining industry, and the opportunities and constraints on Aborigines securing a more equitable participation in the mining industry, as part of a broader strategy for more equitable participation in, and benefit from, the regional economy.

Therefore, in the view of my Commission, it is important to shape an agenda for change at the local scale, rather than pursuing the big ideas' in isolation from the local contexts in which they must ultimately be applied. Local economic strategies cannot afford to be limited by parochialism, lest we simply reproduce locally tolerated injustices which disguise the underlying concerns of this inquiry. It is crucial that we pursue the development of processes which allow a range of local Aboriginal interests to participate at all geographical scales in meaningful and accountable ways. Just as it is necessary for mining companies to set in train

processes which facilitate local production of minerals and participation in wider forums for profitable operations, Aboriginal economic processes cannot be constrained by local parameters.

It is apparent from the above discussion, that in a State which is as rich in minerals such as Western Australia, there is a great deal to be done in relation to setting things on a more equitable basis in relation to Aboriginal people and their rights and aspirations in relation to involvement in, and negotiation about, mining. This is especially critical in areas with which Aboriginal people have ties of a socio-economic, cultural and historical kind. The same can be said for tourism, as tourism is another area where it is crucial that Aboriginal interests are recognised and sustained in meaningful and accountable ways.

TOURISM ENCROACHING ON ABORIGINAL PEOPLE, ABORIGINAL LAND

There is little doubt that tourism in Western Australia is on the increase. There is also little doubt that that increase has had a massive impact on Aboriginal people, particularly in northern parts of Western Australia. That impact is continuing to gain momentum. In 1989 Federal Government reported that the greatest growth industry was Tourism. Reasons for that increase were cited as:

(i) The increasing attractiveness of Western Australia as an international tourist destination owing to the comparative devaluation of the Australian dollar, and increasing awareness of 'remote' areas such as those defined through the Australian film industry and various sporting events;

(ii) The sealing of the Great Northern Highway between Fitzroy Crossing and Halls Creek in 1986, which was the last stretch of the Highway to be completed, and which enabled movement within the area and greater access for local and eastern states visitors;

(iii) State and Federal encouragement of tourism as a means of earning foreign exchange and development, and reducing dependence on agricultural and mineral products which are subject to global conditions.

This sort of touristic increase has massive implications for Aboriginal people, because of the intrusion of non-Aboriginal people into country which was, until recently, areas with which non-Aboriginal people held little interest (e.g. 'Bungle Bungles', the Dampier Land Peninsula). Somewhat ironically, however, the tourist industry is one area where there may be employment for Aboriginal people: e.g. the sale of artefacts, or as rangers in National Parks (see e.g. Williams, N. East Kimberley Working Paper No. 34 and Senior 1985). Significantly a survey conducted by the Australia Council in 1989/1990 found that tourists spent $30 million per year on Aboriginal art and artefacts. While it is not within the scope of my investigations, it is necessary for there to be some analysis done concerning what proportion of this amount was distributed back to the Aboriginal people who had crafted particular paintings and items (see also Section 6.13 Aboriginality in the context of art and craft).

16.1 CONTEMPORARY RESPONSES TO TOURISM

What is, however, significant with regard to contemporary Aboriginal responses to tourism, must be seen in the context of how they are shaped by previous contact with non-Aboriginal people. While history shows that such contact has often found brutal expression, the situation with regard to some matters is showing signs of change. One such change is the involvement of Aboriginal people in National Parks. The AIU submission (1990:51) informs me in this regard, that at a recent conference held in the State's Pilbara region at Millstream on 6-8 August 1990, and attended by representatives from Aboriginal organisations and government bodies (e.g. ATSIC and Conservation and Land Management (CALM)) throughout Western Australia, where the following matters were raised and recommended: joint management between representative Aboriginal people and the relevant State agency; Aboriginal people to be involved in management plans; land within national parks to be set aside for excisions for Aboriginal people; Aboriginal people to have access to national parks for hunting, fishing and the collection of material for cultural purposes; Aboriginal people to be in control of information concerning their cultural heritage; Aboriginal people to be given preference with regard to employment opportunities (e.g. administrators and rangers); Aboriginal people to be involved in lease-back arrangements, and the rental fee to be paid to the appropriate Aboriginal group; payment to enter the park should be paid for by tourists; Aboriginal people should retain access to particular areas for ceremonial purposes; the relevant Aboriginal custodians to be in charge of site protection and access; there is to be no mining in national parks, or near local Aboriginal communities; and training and development enterprises should be encouraged in relation to Aboriginal people and national parks.

Despite my attempts to obtain a copy of rite minutes of the Millstream meeting through AAPA, I was unable to do .so. I have, however, been informed by the AIU submission (1990) as noted above. As observed by Aboriginal participants at the meeting, 'The land is the basis of our Aboriginal culture. It is the history and the basis of our identity. The land, the sites, the areas, hunting and food gathering is the basis of our teaming and the development of our children ...The Government through CALM has taken this away from us and has broken this structure which gives Aboriginal people their identity, self-esteem, pride, responsibility and future for our children' (ibid:54).

Since that promising meeting at Millstream, however, I have been made aware that the State Government has decided to permit mining in three big national parks in Western Australia (West Australian Newspaper, 28 September 1990), and that Aboriginal groups from Rudall River and elsewhere are protesting over this decision (ibid).

I have not been able to pursue a response from State Government as to the fate of the matters raised in the AIU submission. However, in my view, the principles of joint management are working well in the Northern Territory (in relation to land held in agreements with the Commonwealth, State and Territory). In sum, joint management of national parks is just one of the ways to address some of the significant matters in relation to land that were discussed earlier in Chapter 6, and matters of Aboriginal equity that have been raised throughout my report.

16.2 MUSEUMS, TOURISM AND THE REPRESENTATION OF ABORIGINAL PEOPLE

As noted elsewhere, in 1984 the Federal Government commissioned Australian National Opinion Polls (ANOP) to research community attitudes toward Aboriginal people and issues. ANOP's report delivered in January 1985, entitled Land Rights, Winning Middle Australia painted a bleak picture of a nation with scant understanding of the position of its indigenous citizens. The report presented evidence that the views and understanding of average non-Aboriginal Australians about Aboriginal affairs issues were characterised by the following:

- no widespread understanding of the special significance of the land and 'only a rudimentary knowledge of sacred sites [p. 17];
- a lack of sympathy for Aboriginal people and lack of appreciation of their social problems [p. 17];
- no depth of understanding of Aboriginal culture [p. 18];
- 'real' Aboriginal people 'ere considered to be those full-bloods living a traditional tribal lifestyle [p. 13];
- 'positive' views about Aboriginal people that do exist largely 'stem from the traditional stereotype of the noble savage' [p. 19];
- alcohol abuse is seen as the main problem confronting Aboriginal people before other perceived problems such as chronic unemployment, poor education and lack of self-respect [p. 16];
- Aboriginal people are perceived as a 'privileged group' and as 'suffering from a hand-out mentality' [p. 14];
- a rejection of 'any historical right to land as prior owners/occupiers' and 'compensation deriving from guilt over white settlement and subsequent mistreatment' [p.22].

Museums, heritage sites and tourism attractions are key places at which history and culture are represented, and as such they are powerful educational institutions that help to shape the world view and ideology of those who visit there. Bennett (1986) outlined how museums evolved historically from collections of curios held by the wealthy and for private viewing only in the late middle ages into large educational institutions designed specifically for mass public patronage by the middle of the 19th century. This shift from private to public coincided with changes in the structure of society whereby the maintenance of order came to rely on citizens regulating themselves through belonging to a democratic public rather than ruled over by monarchies or dictatorship. Thus the museum came to be seen as a means of educating the masses to both behave in an ordered manner as well as instruct there in the achievements of the imperial power, in areas such as industry, science and the domination of other nations and peoples. Clifford (1988:21) contends that 'collecting and display' are 'crucial processes of Western identity formation':

> The value of exotic objects was their ability to testify to the concrete reality of an earlier stage of human culture, a common past confirming Europe's

triumphant present ...

It seems clear that the limiting of museum displays to traditional artifacts expresses not only an avoidance of the history and politics of colonialism, but also power relations and cultural domination.

16.3 HERITAGE SITES AND TOURIST INFORMATION

Interconnected with museums are heritage sites and tourist literature and promotional information, which also play a significant role in producing knowledge about Aboriginal people and issues. Such knowledge is produced even when Aboriginal people are not referred to, or rather, the non-reference to Aboriginal issues, their exclusion from messages about history and colonial 'settlement' is a central problem.

For example Greenough pioneer hamlet near Geraldton and Cossack townsite near Roebourne are in the process of, or have already, been restored to an image of their past in order to present messages about the origins of European Australia, and to celebrate and commemorate British colonisafion. Yet these sites contain little or no information about the relationship of these former communities with the Aboriginal people on whose land they were built, and who were displaced because of there. They have become monuments to colonies of the collective imagination. Pleasant places peopled by upstanding, hardworking pioneers. The real dark underside of colonial expansion, incarceration, terror and death for indigenous people has been effaced (Mickler, 1990:88).

At least in respect of Cossack, that town played a direct and decisive part in the dispossession, incarceration and enslavement (in the early pearling industry) of Aboriginal people in that region. Yet the visitor to the restoration project today is presented with little or no information about this.

Tourist information and literature about places like Cossack and Roebourne basically extend the practice of museums in failing to include the implications of colonisation in their otherwise extremely detailed information about these towns and their environments. For instance the Western Australian Tourism Commission (WATC) brochure 'Area Guide: Roebourne and Districts' (WATC, 1989) presents the reader with copious facts and figures about the geology, climate, flora and fauna, industry, recreation, and historic buildings and colonial milestones about the region, but nothing (save for one reference to Aboriginal rock-art) about the existence of Aboriginal people, their past, or contemporary affairs. In my Commission's view, this is an extraordinary position to take considering that approximately 1,500 Aboriginal people live in Roebourne alone, or 85 per cent of the town's population. For all intents and purposes Roebourne is an Aboriginal community constructed for the public by tourism, as primarily a site of colonial heritage and architecture.

If European Australia is generally uninformed and unsympathetic toward Aboriginal aspirations, then it is in large measure due to the colonialist perspectives of history which continue to pervade. While the demands of tourists and touristic enterprises can take precedence over local needs and aspirations, the rights of access to essential services in relation to Aboriginal people as indigenous citizens of this country require urgent attention. This matter is examined in the following chapter.

ESSENTIAL SERVICES

The issue of essential services is one which impinges most directly on Commonwealth/State/Local government relations and responsibilities, which is examined in Chapter 14, some comment needs to be made here in order to further stress the circumstances under which Aboriginal people are so readily marginalised.

17.1 DENIAL OF ACCESS TO SERVICES

Most Aboriginal initiatives in western Australia since the early 1970s, have been funded by the Commonwealth. However, the State clearly has a responsibility to provide essential services to its Aboriginal citizens. The Aboriginal Affairs Planning Authority (AAPA) has not had the funding nor the authority necessary to make available essential services to Aboriginal people on communities, or to enforce its statutory responsibilities. Additionally, as noted elsewhere in this report, notably in the chapters on health, housing and the economy, other State agencies have largely avoided meeting their obligations to Aboriginal people. The development of the Aboriginal and Torres Strait Islander Commission (ATSIC) in March 1990, represents a body which is potentially able to develop a reappraisal of Commonwealth/State/Local government approaches and responsibilities.

In relation to essential services, I are primarily discussing matters such as the development and maintenance of access roads to Aboriginal communities (see e.g. Fletcher 1989, Lawrence 1990), municipal services, access to water (e.g. bores, tanks), power, housing construction and maintenance, and accessible transport facilities. In most of these matters, from evidence put before my Commission, I have found that Aboriginal people experience discrimination with regard to these services, services which most people in Australia today take for granted, a point highlighted by the following quote from the Equal Opportunity Commission's recent report on Essential Service Delivery to Aboriginal Communities in Western Australia:

> In carrying out this review, there was potential for identification of both direct and indirect discrimination in the practices and policies of agencies delivering services to Aboriginal communities. The research has identified both [1990:5].

The report content goes on to demonstrate that this discrimination largely occurs as a result of: a lack of coordination between State and Commonwealth agencies; a lack of formal authority for the AAPA; and a lack of legal subdivision status in Aboriginal housing estates disallowing Aboriginal people to be treated as 'credible individual consumer units' (cf. Equal Opportunity Report on Essential Services, 1990:22; Inquiry into service and resource provision to remote Aboriginal communities in Western Australia, 1990).

It is not my aim in this Section to go over issues that have been raised and detailed throughout my report on this crucial matter as noted above. I wish, however, to commend and support the findings of the Equal Opportunity Commission's 1990 report, as well as the findings of the report prepared by Alexander and Associates (1990) for the Aboriginal Affairs Planning Authority. Both these reports, as well as numerous others explored through the Human Rights Commission, reveal that it is not through a lack of well documented research and thoughtful recommendations

that Aboriginal people continue to be denied access to essential services.

The following section on the 'taxi economy', describes an issue which is not so well documented in the above-mentioned reports, but it is one which was brought before my Commission on a number of occasions. The following Section describes two things. The first demonstrates how Aboriginal people are discriminated against when they do not have ready access to transport facilities, and hence become reliant on local taxi operators and services. The second demonstrates one of the issues that was raised earlier in Chapter 7 on the Aboriginal Economy. This issue concerns how Aboriginal people can contribute an economic base into a particular area (in this instance, through the extensive use of taxis), yet be marginalised from that economy when their own income is so readily diverted away from their resources into the pockets of others. (The report of Crough, Howitt and Pritchard [1989] in relation to Alice Springs is of particular interest in this regard.)

17.2 THE 'TAXI ECONOMY'

The first region in which the issue of taxis was raised with my Commission was Roebourne, then subsequently in Carnarvon and other rural areas. Where ever there were transport difficulties the taxi companies were in evidence. Taxi companies, in areas where the issue was raised, were invited by letter to attend Royal Commission conferences but failed to do so.

In Roebourne there is no public transport and I was informed that:

> if they want to travel they travel by taxi [RCIADIC Transcript, Roebourne, 1990: 15].

The assertion was made that where two or three people use a taxi they are all charged the same price for the trip. People use the taxis to get from the 'village' to the town or the 'village' to the Regional Prison. A non-Aboriginal participant at the Roebourne Conference said:

> If we white people were getting in that taxi, they would charge us one fare for the ride and each person would put in for that ride [RCIADIC Transcript, Roebourne, 1990: 15].

It is notoriously difficult for Aboriginal people to speak out about the taxi situation as the taxi drivers allegedly control the pensions and:

> the money goes to there and they lend money ... [RCIADIC Transcript, Roebourne, 1990:15].

A person who formerly drove a taxi cab told my Commission that taxis would not put the meter on; the driven charged everyone who travelled in the cab with the fare; some people had a 'book up' system with the cabs. The same witness stated:

> By the time they get their cheque from Social Security whether it be sole parent or a single person money - they go to pay their bill they find that they do not have any money because they still owe this guy more money ... they are still in that system where they have got to book up again to him until the next time they get money and the next time they get money, they do not have any money because they have still got them in that system.

> And it is on and on and on. And I used to work for him so I know [RCIADIC Transcript, Roebourne, 1990: 17].

Others who gave evidence to this Commission advised they had heard similar stories. One witness stated:

> it was suggested that not only did [taxi driven] go to the local liquor outlets and get the booze for there, they are also taking their pension cheques and changing there for the rides here and there - and at the end of pension week - or at the beginning of pension week - they front up to the post office with there, and as the guy gets his cheque, he said, right you owe me, you know, so much of that pension cheque [RCIADIC Transcript, Roebourne, 1990:24].

Some general criticisms which were made were that:

(1) people were overcharged;

(2) people were charged multiple fares when a number of people travelled together,

(3) meters were not used;

(4) people did not know whether they were being charged a fair rate;

(5) people did not know how they were being charged;

(6) a number of people do not have the literacy skills to check the figures;

(7) there was no evidence that people were shown any accounts or that they understood there;

(8) people were not assertive enough to challenge the assertions of the taxi drivers;

(9) people were dependent upon the taxi drivers and consequently did not wish to alienate there.

It would seem that police officers are not acting as 'authorised officers' as they are entitled to do under the Transport (Country Taxi-Car) Regulations 1982 (Section 4 definitional Section; Section 40 Power's of 'authorised officers'). Efforts to involve the Aboriginal community in action to deal with the problem have been unsuccessful. It seems that people are loath to come forward and give evidence as they allegedly fear that a total withdrawal of services will result.

Community Health Nurses have tried in one town to get the community motivated about the need to address the taxi issue. Their efforts have been unsuccessful as the following account reveals:

> We actually went down to the park early one morning, before the people got drunk and individually went to the people and explained what we were trying to do, and read out to there what the piece of paper said for those who could not read, and explained that, you know the police need this - need you to say something if you want something done. And to not be

> scared, and you know, explained that they would not be victimised or anything. And then we felt, well we have done what we can and waited for the people then ... we do not know how to motivate the people. Perhaps we are going about it in the wrong way' [RCIADIC Transcript, Roebourne, 1990:275].

Community Health personnel indicated that they see the issue as a social and economic problem which directly impacts upon health. If the pension money is being used to pay taxi fare it is not being spent on food and other resources. In another region, when the issue of 'free money' (i.e. Social Security entitlements) to Aboriginal people was raised one person commented:

> not free money, easy. money - where I notice that a lot of free money has been coming from taxi drivers and I know for a fact that various numbers of taxi drivers do hold certain individuals bank books and they've got access to their money at all times -especially pension weeks ... they control the money [RCIADIC Transcript, Carnarvon, 1990].

This concern was reiterated by others at that same conference. One participant said:

> seems to be a very poor situation where the taxi drivers have got hold of these peoples cheques - pension cheques or bank books or whatever they have now - and they just go in and get money and what they do with it, I don't know whether they buy there booze. Mostly I think they buy 'era booze, but that's a very bad situation [ibid].

there had reportedly been some tightening up of the situation in that area so that cheques were not given anymore and the money was paid into a bank account. People were reportedly signing withdrawal forms for undeclared amounts.

It was asserted that the arrangements with taxi drivers were 'common knowledge' and that taxi drivers 'started charging fairly hectic percentages for the loan of that money' (RCIADIC Transcript, Carnarvon, 1990:131), and that 'taxis and booze would represent a fair proportion of [Aboriginal] income' (RCIADIC Transcript, Carnarvon, 1990:131).

One Shire Councillor made the point that he was hopeful the taxi drivers would attend a Conference and put their of point of view as:

> in their defence they provide a service. If they weren't providing that service ... what would occur in regards to transportation [RCIADIC Transcript, Carnarvon, 1990: 143].

One participant told my Commission that Mungullah Village in Carnarvon had tried to put a stop to taxis being able to bring alcohol into the community:

> but the bureaucracy seemed to be able to just not let that happen ... they tried hard to say: look, we want to try and stop the alcohol coming to our Village. But they couldn't control it [RCIADIC Transcript, Carnarvon, 1990: 160].

One Aboriginal participant at the Mary River Bush meeting commented:

> ... they don't know how to stop there bringing the grog. Spoke to the policeman but nothing can happen ... [RCIADIC Transcript, Mary River, 1990:79].

The Acting Director General of Transport and the Chairman of the Taxi Control board met with this Royal Commission to discuss transport and associated matters. At that meeting, they indicated that they would seek to address some of my Commission's concerns.

The Department of Transport has administered country taxis since 1981-82 before which time country taxis were administered by the Police Department. However, as such, the taxi industry is a 'free wheeling owner occupied' industry (RCIADIC Transcript, Perth, 1990:686). The Department undertakes six patrols per year through the State. These field trips are used to address complaints and assess the standard of service which latter includes presentation of the car, the driver and his/her response to demand. Meters have been fitted to all cabs and in Port Hedland a Departmental Officer went around to explain the use of meters to people (RCIADIC Transcript, Perth, 1990:688).

Government officers have informed me that there was only the 'odd complaint' about overcharging and that in many cases it was difficult to get the evidence necessary to take action (ibid).

In one area where, my Commission was barraged with complaints about a particular taxi driver, the Department advised that:

> we tend to watch that ... fairly closely. And we're not aware of any specific complaints that we haven't dealt with [RCIADIC Transcript, Perth, 1990:688].

The diversion of pension cheques to pay for taxi services seems regarded as an intractable problem as the following reveals:

> WITNESS: One of the things that we identified fairly quickly was this question of where the pension cheques were going and the fact that too many people were actually booking up their taxi fares and the pension cheque was virtually disappearing against taxi fares and other matters as well. And it's been a long standing practice in some of these areas for the taxi driver to provide an all-embracing service: collecting the groceries and other things as well as providing the fare.
>
> THE COMMISSIONER: The grog from the bottle department or where ever it might be?
>
> WITNESS: Yes, yes, cigarettes and the like, yes.
>
> THE COMMISSIONER: Yes.
>
> WITNESS: ...we were trying to get the taxi drivers to pull back on the question of credit and to try to encourage the users to pay for their fares up from. But we were told repeatedly that really it's the right of the user to choose. All we could do was try to ensure the taxi driver had in place a reasonable book system that recorded all the charges ... in [one area] we enforced it quite vigorously for a while until the operator became educated to it ...there's been claims made that pension cheques are going into post

> office boxes ... We've never been able to identify a case where a taxi operator is abusing the person's pension cheque by whatever means, whether it be through a post-box number or whether it he through a bank account or what [RCIADIC Transcript, Perth, 1990:690].

It is interesting to observe that this issue is regarded as being 'outside' the control of the Department

The Acting Director General raised the issue of whether legislation should be enacted to prevent the taking of credit by taxi-operators however, communities in Port Hedland did not want that action taken (RCIADIC Transcript, 1990:691). The Department of Transport also advised that it has never been able to substantiate allegations about passengers all being charged the same fare (RCIADIC Transcript, 1990:691). Additionally, it is not an offence under the Act to carry alcohol, but Departmental officers indicated that:

> we've always supported the communities who have tried to keep their area dry, and we've called on the taxi industry and we've called on the police department to help us as much as they can to ensure the taxi industry does not get involved in trying to walk around these rules [RCIADIC Transcript, Perth, 1990:695].

Such efforts have met with conspicuous failure so far as Aboriginal participants to the conference of this Royal Commission are concerned. The Department also advised that there was an over supply of taxi cabs in some areas. One such area was Carnarvon.

> ... it was difficult for us to establish why so many cabs were issued in the first place. But it is evident to us that there is an over supply now there has been since we've been administering the country taxis [RCIADIC Transcript, Perth, 1990:698].

The issue of licences previously would have been effected by the Police Department. The Department of Transport was unable to give this Royal Commission any idea of the criteria for issue of licences when same was controlled by the Police Department except to say that they thought:

> they relied very heavily on the local authorities ... [RCIADIC Transcript, Carnarvon, 1990:6981.

In sum, it is apparent that in areas where Aboriginal people are dependent on modes of transport, other than those which they can provide themselves, that dependency is exploited, and Aboriginal people are socially and economically marginalised while others (in this instance, certain taxi drivers) seek to gain.

REINFORCEMENT OF MARGINALISATION THROUGH THE PRESS

The electronic and print media plays a critical role in how Aboriginal people are presented to members of the wider society. The following material addresses this issue in detail. Initially, some background to inform the present.

18.1 SHIFTS IN PRESS TREATMENT OF ABORIGINAL ISSUES 1960 TO 1990

Research conducted by RCIADIC staff indicates that the way the media in Western Australia treats Aboriginal issues has changed considerably since 1960. Broadly speaking, the change is one from a form reflecting a benevolent (on the surface) paternalism throughout the 1960s and early 1970s toward a representation of Aboriginal people as a threat or challenge to public order and State or National prosperity beginning in the late 1970s and increasingly in intensity through the 1980s.

Reports concerning Aboriginal people in The West Australian and the Daily News in the early 1960s were typically short and infrequent (i.e. not appearing on a daily basis), from 4 to 7 paragraphs, referred to 'natives', and dealt with concerns, sometimes seriously stressed, about the health and welfare of people on reserves, Government funding, alcohol problems and some criminal matters. Typically these articles quote non-Aboriginal sources and authorities such as Native Welfare Department officials, politicians, mission and reserve administrators, doctors and clergymen. Only very rarely were Aboriginal people quoted, that is they were 'spoken for' in matters that concerned there. Photographs occasionally complemented articles, usually depicting Aboriginal people being assisted by non-Aboriginal people in some manner. They characteristically conveyed assimilationist themes such as the acquiring of western industrial skills, social values, behaviours and lifestyles. Aboriginal culture was contextualised as exemplary of a primitive stage in the 'history of man', interpreted as 'witchcraft' and occasionally being of mild aesthetic interest to non-Aboriginal readers in terms of exotic art and craft. Aboriginal land issues are not on the news agenda in this period. The relatively sympathetic treatment contained in the considerable coverage of anti-colonial and independence movements in Africa and American Negro civil rights is not transposed on to Aboriginal affairs. The coverage overall indicates an assumed general lack of interest in Aboriginal affairs by the readers of these papers, and very much conveys an impression that although Aboriginal welfare is of some concern, State and church systems of regulation, surveillance and paternal care are firmly in place. Feature articles are very rate.

By 1965-68 issues such as equal pay for Aboriginal pastoral workers and equality of services for Aboriginal people are appearing at least once a week. There is an apparent shift occurring that reflects a realisation, though still essentially assimilationist, that non-Aboriginal attitudes toward racial and cultural difference need changing (if assimilation is to be successful). Stories begin to treat issues of racial equality and report Aboriginal concerns to maintain their culture and identity. Generally, non-Aboriginal people continue to be quoted as authoritative sources. In the period 1965 to 1970 media reports begin to reflect issues associated with the diminishing of the rigid reserve and mission system whereby Aboriginal people are moving more and more into towns and suburban settings, requiring State housing, welfare payments and mainstream employment. 'Integration' themes begin to supersede the formal assimilationist perspective. Feature articles are still very rare.

By 1970, the Aboriginal rights movement has begun to attract coverage in terms of protest marches. Although paternalistic and assimilationist themes and images are still dominant, issues of Aboriginal cultural rights, economic and social deprivation and racial prejudice are increasingly on the news agenda, and appear to coincide with the late 1960s rise in civil rights and anti-war movements. Feature articles are infrequent and editorial comment not yet expressive of opposition or anxiety toward Aboriginal demands. Reports of the crisis of Aboriginal life in towns and

suburban settings appear in this period, including brawls and public disorder involving police intervention. Clearly, the increasing movement of Aboriginal people off the reserves and into State housing in the southwest, and off the pastoral stations and into country towns in the north has brought closer contact with non-Aboriginal people and is changing community relations and attitudes. Throughout the 1970s this trend increases with reports shifting away from 'benevolent' paternalism toward two main themes that combine to contextualise the 'Aboriginal problem' as a growing imposition on non-Aboriginal life. Aspirations for land, cultural rights and social equality, and increasingly visible crime and disorder associated with marginal and deprived existences become the primary themes. Reports on Aboriginal issues appeared more frequently and covered a broader range of issues including housing, education, art, employment, and relations with police. Aboriginal people are more frequently quoted and spokespersons emerged from what was previously an amorphous entity called 'natives'.

1979-80 marked a watershed in news agendas about Aboriginal issues in western Australia, primarily because of the Noonkanbah dispute. From here on, the question of Aboriginal rights is no longer one to which simple paternalistic or assimilationist reasoning can be applied. The 'Aboriginal problem' is now contextualised as directly impacting on the State's economic future. National Aboriginal funding and policy issues became a key part of the news agenda, punctuated by intense and sustained treatment of events such as the protests at the Brisbane Commonwealth Games, the World Council of Churches visit and increasing demonstrations in support of land rights.

With the election of the Labor governments in 1983, the issue of Aboriginal land rights became a major media preoccupation from 1983 to 1986, and was followed by similar attention paid to Aboriginal deaths in custody. However, the 1980s also produced a media explosion in treatment of Aboriginal cultural issues, focussing on art and craft, dance, theatre, film and 'Dreamtime' mythology. To a certain extent the conditions for this were created by a combination of the rising visibility and cultural assertiveness of Aboriginal people coupled with the enormous transformation of Australian public culture to forms of multi-cultural expression in the 1980s.

In a number of ways, media treatment of Aboriginal people in the 1980s was characterised by contradiction, whereas in the early 1960s such treatment was uniformly paternal and colonial. In the past decade a media consumer has been able to read a highly paternalistic or even racially derogatory and sensationalised report in the rooming newspaper while viewing a sensitive and politically radical television documentary in the evening which exposes the injustice of colonisation and presents Aboriginal perspectives on strategies for achieving social justice. In fact, a major newspaper can on the one hand maintain an atmosphere of public hysteria over alleged Aboriginal juvenile crime without any reference to wider underlying historic and social issues and in the next week run feature article on precisely the latter. The effect of this is not, however, to cancel out the negative imaging of Aboriginal people. Research made available to the RCIADIC has shown that it is the negative imagery of the so-called 'hard news' reports appearing in the main front sections of newspapers and early parts of the electronic media news bulletins that are most lasting in the memories of non-Aboriginal people, rather than the relative in-depth and sympathetic feature material that less frequently appears.

In my view, by the mid-1980s, incidents of crime and disorder involving Aboriginal

people had become extremely 'newsworthy' warranting sensational treatment, almost as though the perceived political and economic threat of Aboriginal land rights had enabled a corresponding media agenda presenting Aboriginal people as a threat to law and order. From 1985 to 1989 the combination of the accumulated failures of governments to fulfil expectations of major reform and the socio-economic difficulties of marginalised country towns, exploded into protests in Mt Magnet, Nullagine, Kellerberrin, Geraldton, Halls Creek, and Cue, with echoes in Perth suburbs. These events seemed to have dramatically escalated the news value of any incident involving Aboriginal people such that a few car thefts and assaults in 1990 can be splashed across front pages as a major 'crime wave' or uncontrolled 'gang terror'.

1988 marked another perceptible shift in media treatment. Statements by then Premier Dowding made after the July 'riot' in Geraldton to the effect that Aboriginal people themselves were to blame for their predicament, that Aboriginal leaders had to come up with 'solutions' (this came after years of struggle by Aboriginal leaders and organisations to achieve recognition of their demands) punctuated a newly articulated attitude that government had done all it could do. This symbolic washing of the hands by the government suited its failure to fulfil promises made to Aboriginal people in exchange for their electoral support in February 1983. From here on, Aboriginal juvenile crime and delinquency could be more easily couched in terms of both the failure of Aboriginal parents, leaders and the laxity of court penalties rather than a responsibility of society to address underlying issues.

Another characteristic of the 1980s shift in the public debate, is that, whereas two decades previously State dependency, institutionalisation and regulation were strongly endorsed as the appropriate means of dealing with Aboriginal people, the perception that this is still occurring is now seen as the cause of Aboriginal problems. While the destructive effect of past policy is rarely criticised or pointed to as having led to the contemporary crisis of Aboriginal life, continued government funding, special laws to protect Aboriginal cultural interests and make some land available, and quasi-independent political structures (NAG, ALS, ATSIC, Land Councils, etc) are often presented as undesirable State interventions which set Aboriginal people apart from the rest of society and treat there in a privileged manner.

Broadly speaking then, the shift in media representation of Aboriginal people from 1960 to 1990 is one from an image of unfortunate 'stone age' people for which non-Aboriginal Australia had an obligation to help 'assimilate' into western culture, to a contradictory one comprising dominant images of Aboriginal people as a threat to law and order and political and economic stability.

In light of the above, it needs to be understood that there is probably no other distinct cultural group so spoken about, observed, filmed, photographed, recorded, or interpreted in western Australia as Aboriginal people. Since 1829, they have been the objects of European gazes. Explorers, ethnographers, Native Welfare Officers, writers, artists, film makers, and of course, the news media have all inscribed their visions of Aboriginal people into their various artistic, scientific and official means of communication.

From the very beginnings of non-Aboriginal Australia, through the periods of dispossession, and imprisonment, the media has mainly been owned by the same groups of people who served to gain most from the colonisation of Australia. This is not to say that the media has never taken up the cause of Aboriginal people, but this has generally been at times and places and under circumstances convenient

for, and at the discretion of, those who control it. Green (1981) notes that a Nyoongah leader, Yagan, 'became a legend through a series of articles' in the Perth Gazette in 1832-33 written by a relatively sympathetic, or perhaps apologetic colonist (Green, 1981:82). The Perth Gazelle and the Swan River Guardian in the mid-1830s served as public forums for bitter disputes between colonists over the appropriate way to treat Aboriginal people (Green, 1981:86-87), which is perhaps not unlike the debates on Aboriginal funding, land rights, and welfare witnessed in todays news media.

In sum, as noted above, the media has historically served the interests of the colonising nation. At least in terms of the social make-up of the majority of media ownership and management, little has changed since the beginning of the colony. Along with other institutions that have grown up with the colony over more than one and a half centuries - the police force, prisons, courts, government welfare and so on, the media encounters Aboriginal people from a position of far greater social powers, and one of these is the power to present its image of Aboriginal people to the rest of the community, a process over which those being portrayed have no control or equivalent means of communication. As Jennett (1983:28) comments:

> Media images of and messages about Australian Aborigines are constructed by non-Aborigines operating within the dominant Anglo-European cultural framework for consumption principally by those who share this framework. The reasons for this are located within the history of colonisation of Aborigines by Anglo-Europeans, whose powerful members retain cultural hegemony in Australian society; because they own the means of production, distribution and exchange they also control the dissemination of information about and images of minority groups. Nowhere has this been so all encompassing as in the case of the Aboriginal national minority.

18.2 MANUFACTURE OF NEWS

The term 'manufacture of news' entails a recognition that the news media is an industry much like any other. Its business is to produce something of value to a society of consumers. 'News' is still largely regarded as the reporting of events that take place in the world, events that have their own intrinsic meanings independent of how they are represented in the news media. The role of news producers such as journalists and editors is seen as presenting this already existing meaning of events fully and accurately, using tradecraft codes such as 'balance', 'impartiality' and 'objectivity'.

Perhaps the most convincing evidence of the power of the media to influence public opinions about Aboriginal issues was to be found here in Western Australia in 1984-85 surrounding the Western Australian government's Aboriginal Land Inquiry and proposed land rights legislation (see Chapter 6 for details concerning the Aboriginal Land Inquiry). The western Australian Chamber of Mines, the Australian Mining Industry Council and opposition political parties waged a sustained high-profile campaign in the press and electronic media alleging numerous dire consequences for the well-being of Western Australians if Aboriginal lands rights were granted. The Chamber of Mines commissioned a particularly controversial television advert depicting the hands of a black-skinned person building a brick wall across a map of the State. Another political party-sponsored television advert portrayed happy white children bushwalking,

who turn despondent after coming across a notice warning to keep off Aboriginal land. This highly emotive and divisive campaign was credited by some to have turned an apprehensive or ambivalent public into hardened opposition to Aboriginal rights and aspirations in relation to land. Findings from the ANOP (1985:36) clearly indicate what occurred:

> The results of our research so far have indicated quite clearly that substantial attitude change (against land rights) has occurred in Western Australia purely because of the Chamber of Mines campaign and the associated misinformation peddlers that such a campaign unearths.

18.3 MEDIA AND KNOWLEDGE ABOUT ABORIGINAL PEOPLE

Many Aboriginal and non-Aboriginal people, journalists, Aboriginal affairs workers, officials and others identified the media, particularly the news media, as a major source of knowledge and information about Aboriginal people, and a major influence on public opinion and attitudes (RCIADIC Transcript, Perth, 1990). A widely held belief was that negative stories and images about Aboriginal people in the news media, that is ones which involved criminal offences, civil disturbances and alcohol use, reinforce existing negative views. This was seen as contributing to ignorance about, and prejudice toward, Aboriginal people in general, and providing fuel for hard-core racist ideas and activities. Others pointed to what they saw as the broader role of the media in reproducing ways of making sense of the world at large from an ethnocentric perspective. Few talked about the internalisation of the negative stereotyping by Aboriginal people themselves.

Research conducted for my Commission (RCIADIC Broome. Research Paper 2) indicates that many Western Australians obtain much of their understanding of Aboriginal people and issues from images and information provided by the media, and specifically news and current affairs programmes and articles. Findings from the study showed that 48 per cent of a sample of Perth suburban dwellers say they obtain information about Aboriginal issues from the media, while 37 per cent obtained most of their knowledge about these issues from the media (Trigger and Waddell, 1990:3). This is not to overlook that other sources of information about Aborigines, such as peer group, parents, direct contact, literature and school, combine to create certain knowledges and assumptions about things Aboriginal in the consciousness of non-Aboriginal Western Australians. However, as influential as these other sources may be, it is the media which has been identified as the single most influential source for people living in the State capital, where the majority of the population reside both Aboriginal and non-Aboriginal. It is therefore important to examine how the media is treating Aboriginal issues, what sort of knowledge it is imparting to consumers. Most of the research findings made available to the RCIADIC concerned newspaper treatment of Aboriginal issues.

18.4 FREQUENCY OF ABORIGINAL NEWS ITEMS

Newspapers in western Australia in the 1980s contained an over-representation of items dealing with Aboriginal issues compared with other ethnic group issues. There was about 10 times as much coverage of Aboriginal items, as there was of many of the other ethnic groups. There were also substantially greater numbers of editorials and adjacent topical cartoons concerning Aboriginal people than the other groups (RCIADIC Transcript, Perth, May 1990, evidence of Dr David

Trigger). Over-representation is not necessarily detrimental to the image of Aboriginal people in itself, for instance, it could be seen as redressing a lack of information circulating in other public spheres. However, the content of these items is cause for serious concern as the RCIADIC heard a considerable amount of opinion about the perceived 'positive' or 'negative' images of Aboriginal people in the news media. Most of this opinion, and certainly that of the majority of Aboriginal people from around the State in urban and remote settings, was that the news reports and articles about Aboriginal issues in western Australian media were overwhelmingly 'negative' in content, that is, they tended to depict Aboriginal people in situations concerning crime, civil disturbance, alcohol use, anti-social behaviour or at the centre of political debates over alleged funding wastages or so-called 'special treatment' by social services (RCIADIC Transcript, Kalgoorlie, 1990).

Research findings made available to the RCIADIC regarding the content of newspapers in Western Australia certainly confirmed the above views, that items about Aboriginal people were mostly negative in content (RCIADIC Transcript, Perth, 1990). In fact, a survey of the The West Australian for the years 1984 and 1988, found that over twice as many items dealing with Aboriginal issues presented 'negative content' as compared with 'positive content'. This disproportionate negative treatment of Aboriginal issues was also clear in the rural papers, that was most striking for the Kalgoorlie Miner, which presented negative Aboriginal items nearly seven times the proportion of positive items, and also in the Kimberley Echo - where the negative items were nearly four times the proportion of positive coverage (Trigger, 1990).

Similarly in the rural papers, an extremely high proportion of items about ethnic issues which concerned alcohol, almost exclusively concerned Aboriginal people. A further aspect of this research identifies the representation of conflict between a particular ethnic group and the wider society, particularly when compared with the proportion of items that present co-operation between that group and the wider society. Overall rural papers were more than 23 times as likely to present conflict between Aboriginal people and others than it is to present co-operation between Aboriginal people and others. Many of these stories once again concern criminal matters. Other common themes which indicated conflict between Aboriginal people and the wider society were political issues such as Aboriginal land rights (Trigger and Waddell, 1990). The effect that this predominantly negative presentation of Aboriginal people might have in shaping the views and attitudes of the general community is an issue of great concern by many Aboriginal people who spoke to the RCIADIC throughout the State. The Chairperson of the western Australian Aboriginal Media Association told the RCIADIC:

> The power of the media in terms of presenting information about Aboriginal people very much tends to reinforce the general negativity that the broader community has about Aboriginal people and the whole nature of Aboriginal affairs [RCIADIC, Transcript, Perth, 1990].

The majority of Perth suburban dwellers remember negative stories as the last stories they saw in the media about Aboriginal people; according to survey findings 75% of a sample responded that the last thing they read in the newspaper, heard on the radio or watched on the television concerning Aborigines was a crime or violence item. Only 15.2% mentioned a positive portrayal as the last thing they remembered about Aboriginal people in the media (Trigger and Waddell, 1990:13).

The research also suggested that items dealing with crime/violence are likely to

displace other positive portrayals of Aboriginal people which may be presented in the media. The effect of this on views of Aboriginal people was also commented on by Dr Trigger at one of my conferences:

> Those that remembered crime/violence from the media disproportionately responded that 'most Aborigines strongly dislike white people ... [this] 'trend suggests a relationship between media consumption and an attitude arguably quite critical in the reproduction of poor race relations [RCIADIC Transcript, Perth, 1990].

Other comment the RCIADIC received on the treatment of Aboriginal people by the media concerned the way which peoples such as Aborigines tended to be represented as existing outside the realms of the community which the media addresses in its news stories. A form of symbolic apartheid operates with the result that media consumers are presented with an Australia divided into simply 'we' and 'there' with 'we' being normal, stable, rational and peaceful and 'there' being abnormal, chaotic, irrational and threatening. This was seen as a habitual and largely unconscious practice within the news media, a part of the 'routine common sense' of devising a news story. A senior lecturer in communication and cultural studies at Murdoch University, Dr J. Hartley, told the RCIADIC:

> Aborigines who are stereotyped as outsiders or as tribal cannot be seen as citizens with rights. More often they are treated as subjects of welfare, or in connection with crime stories. Groups like Aborigines who are routinely covered in news stories where the emphasis is on welfare or correction, are rarely asked to speak for themselves. As outsiders with a 'they' identity, they are newsworthy for their economic, security or welfare impact on 'our' community. So routine has the strategy of inclusion and exclusion become, that it is now natural, a part of common sense. One serious result is that it's hard for an Aboriginal spokesperson or eyewitness, or a story told from an Aboriginal perspective, to be seen as true. In other words, truth is not an absolute value in the news media; it is, as it were, what 'we' know to be true[RCIADIC, Transcript, Perth, 1990].

John Watson, a Walmajarri/Nygina speaker from the Kimberley region, explained the way the defence of sacred land at Noonkanbah in 1980 was covered showed that media represented the interests of non-Aboriginal people:

> A lot of Aboriginal people and a lot of our European supporters got chucked in gaol, when the police got there people and put there in gaol and the other media hasn't told the truth. This is our time (to present the truth to the RCIADIC). I'm putting forward to Commissioner Dodson today that should your commission into the media people, that we should have equal rights, that in our country the Aboriginal people speak for their rights that hasn't been put through to the media and through the newspapers. I mean, if they don't tell the truth - they are there only for their own purpose, the European people and the white people here in our country [RCIADIC, Transcript, Mary River, 1990].

A survey of western Australian newspapers for the years 1984 and 1988 showed that expressions of opposition to Aboriginal land fights significantly out-numbered expressions of support. In The West Australian, for those two years, 222 items containing opposition to Aboriginal lands rights appeared compared with 183 items containing expressions of support. The figures for the country press are far more dramatic with 119 oppositional expressions as against 53 supportive (Trigger and

Waddell, 1990:7). Similarly, the results of the crisis of Aboriginal life such as high crime rates, youth delinquency, alcohol use and civil disturbances are apt to be seen as outside the responsibility of 'our' community and unconnected with 'our' history and hence' 'their problem'. Thus misguided views that Aboriginal people are solely to blame for their situation, tend to be reinforced.

18.5 MEDIA VISIONS OF CRIME AND DISORDER

Perhaps the most controversial area of media coverage of issues involving Aboriginal people are those which also concern matters of crime, violence and civil disturbances. Aboriginal people in western Australia have submitted to the RCIADIC that the news media sensationalise incidents involving Aborigines, that they reflect mainly the views of the police, courts and others, that they often distort events, neglect to obtain Aboriginal comments, are highly selective in the choice of facts to present as relevant to their stories, and unfairly highlight Aboriginality in criminal issues (RCIADIC, Transcripts, Perth, 30 May 1990). The media on the other hand usually respond to such accusations by defending the professional integrity of journalistic staff, by citing the 'public's right to know' about who is committing serious crimes and unrest.

Undoubtedly, for news producers, crime and violence form an essential part of the daily staple of dramatic events, which are seen to make the news exciting and saleable to consumers and to be things the public is interested in knowing all about. However, Aboriginal people rightly object to being used as the fodder for 'a good read'. As research noted earlier has shown, the news frequently contains material about criminal matters that involve Aborigines. This ranges from coverage of juvenile delinquency, alcohol related violence, thefts and assaults to bigger, more sensational events such as riots and disorder. These latter provided dramatic spectacles for media's news hungry gaze at Mt Magnet in 1983, Mullewa in 1985 and Geraldton to name just a few (see Appendix 9).

There is a particularly controversial example of this kind of media treatment that occurred during the term of this inquiry. It bears examination in detail. On 28 February 1990 The West Australian newspaper carried a page one lead story with the headline 'Aboriginal gangs terrorise suburbs' by Helen Winterton, in thick type across the page (see Appendix 10). This edition of the paper was promoted at most of Perth's suburban news agencies and along city's major streets, with bill-board posters consisting of the words 'Aboriginal gangs terrorise suburbs' in thick type. The article reported on alleged Aboriginal child and juvenile crime in the Bayswater-Maylands area.

On 2 March 1990, ABC Radio journalist Mr Doug Spencer and 45 other journalists wrote to the Editor of The West Australian to complain about the 'gangs' story and the way other Aboriginal issues had been treated by the paper in the preceding 4 or 5 days. The journalists deplored the 'sensationalism, patronising attitudes and outright racism' evident in some of the reporting. The letter states:

> The story proper contained no hard news link to any event or alleged event of the preceding 24 hours. The 'suburbs' turned out to be just three adjoining ones. Nobody identified as Aboriginal was quoted on the front page. The story reported allegations by police officers, and hoteliers and their staff. Their was just one allegation detailed which involved a serious attack on a suburbanite in a street. Otherwise the article comprised

> general remarks by police officers and more specific allegations by persons involved in selling liquor. Alleged crimes at liquor outlets do not amount to terrorise[d] suburbs.

Inquiries to the police in the Bayswater area revealed that the alleged Aboriginal gang terror amounted to the theft of a cash register from the Ashfield Tavern, by three Aboriginal youths who had subsequently been arrested by police from another station, the assault on a young woman and her male partner at the Bayswater railway station by Aboriginal youths, and a brawl at the Maylands Tavern which involved Aboriginal and non-Aboriginal adult drinkers. These incidents were seen to be isolated from each other.

The crime figures from the Bayswater Police Station support these claims. For instance, in February 1990, at the height of the alleged Aboriginal 'gang terror' not a single charge was laid against an Aboriginal juvenile while 3 non-Aboriginal juveniles were arrested for offences including break and enter, and stealing. No Aboriginal juveniles had been sent before the Children's Court Panel or taken into any form of custody. In the same month 5 Aboriginal and 17 non-Aboriginal adults had been arrested.

Police at neighbouring Maylands presented a very similar picture. A police officer who had been stationed at Maylands a year by the time of the article described the most serious of the incidents involving Aboriginal people as 'isolated' and stated that the police had more trouble with 'white street kids' than Aboriginal youths. The officer said there had been 'a bit of a problem in February' from one Aboriginal family, who had since left the area:

> This thing certainly did not deserve this sort of headline. Maylands certainly does not have the problem some people think it has. we don't get really serious offences here. Ninety per cent of complaints relate to NPPs (No Particular Persons) and most people eventually charged are white. We have a high rate of petty crime, stealing, but the majority of those involved are white. Aboriginal crime has remained pretty standard for the past 18 months with no rise in incidents [RCIADIC research notes, 19 July 1990].

The officer strongly refuted claims that 'racial tensions were rising' and that the 'situation was getting out of control' in Maylands.

> The only people we've been arresting for multiple house break-ins are white people such as drug addicts and street kids. If they [reporters] had looked at the Maylands figures [police arrest book] they would prove that. We've never had a call from the Western Australian.

The officer's reaction when first reading the 'Aboriginal gangs' story:

> I thought ... you've got to be joking! They're [The West Australian] in it for a headline.

The Maylands police records, like those at Bayswater, simply do not support the 28 February headline. In February 1990 only 7 Aboriginal people were arrested, 5 adults and 2 juveniles out of a total of 35 arrests. In the previous month, January, 5 Aboriginal adults were arrested and one Aboriginal juvenile within a total of 27 arrests.

At meetings with Aboriginal people in Bunbury, Katanning, Gnowangerup, Wagin and Albany in March the Aboriginal Issues Unit (AIU) was informed that this article was used by a local radio 'talk-back' presenter to solicit a flood of misguided and prejudiced calls from listeners. A similar exercise was carried out by a well known Perth radio 'talk-back' identity. Aboriginal people spoken to in these towns, as well as in the Perth area told members of the AIU the headline and story were distressing to there and had seriously misinformed the non-Aboriginal community. It was felt that the already negative community attitudes toward Aboriginal people in this State were made worse by the story and the billboards advertising it.

It is my Commission's belief that no reasonable case can be made for justifying such a headline, with its connotations of civil emergency and race riots, on the basis of both the 'facts' offered in the accompanying article, and information relating to the circumstances of the writing of the article. In the view of my Commission, to claim that gangs of Aborigines have terrorised suburbs in the past, have done so since the appearance of this article, or will do so in the future does not detract from the fundamental untruth of this headline and article at the time they appeared.

Differences in the way non-Aboriginal and Aboriginal youth delinquency are treated by Perth press can be observed when comparing the front page construction of the 'Aboriginal gangs' story with a later story about non-Aboriginal gang terror. On 15 June 1990 The West Australian ran a page 3 story entitled 'Gang turns train trip into terror' about a 'wild gang of 50 youths' who 'took over' a suburban commuter train and 'terrorised its occupants with spray cans and abusive language'. The youths apparently threatened to 'bash an off duty police officer who had tried to step in' and 'threatened to throw off anyone who interfered'. This page 3 single column story, without a bold headline, no photographs or interviews with terrorised passengers and Westrail employees (see Appendix 11) is markedly subdued compared with the 'Aboriginal gangs' story of 28 February 1990.

Newspapers in Western Australia can and do, on occasion, publish lengthy feature articles on aspects of Aboriginal affairs. The amount of feature articles on Aboriginal issues in The West Australian has observably increased over the past few months, and these are found mainly in the Big Weekend supplement. For instance, in three consecutive Saturday editions The West Australian contained features on Aboriginal issues; Big Weekend of Saturday, 2 June there were two features on Aboriginal issues, 'Black world, white words', a review of a book by Mudrooroo Narogin, and Testimonial to the 'real' Mr Neville', a review of a book on A.O. Neville, the 'Protector of Aborigines' from the 1910s to 1930s. The 9 June edition contained another more lengthy review of the same book, with large photographs, and a page 59 feature on 'A race to map ancient tribes of Australia'. The 18 June edition of Big Weekend continued this trend with a major feature on Nyoongah author Graeme Dixon 'Jail a catalyst for Literary Success' and another full page article on the success of Aboriginal art at an exhibition in Venice 'Art Among the Gondolas and the Glitterati, Australia makes an original impact'.

Without commenting on the choice or treatment of those topics, it would appear that efforts had been made by the editorial staff of the paper to include substantial in-depth material on Aboriginal affairs, and this in itself is praiseworthy.

18.6 COUNTRY NEWSPAPERS AND ABORIGINAL PEOPLE

The treatment of Aboriginal issues in the country press exhibited the same problems as city based newspapers, that is:

- a tendency to sensationalise crime and civil disturbances involving Aboriginal people. A strong emphasis on reporting court proceedings, in which the Aboriginality of offenders tends to be made known unnecessarily;

- a reliance on police sources for much of their stories, and a general failure to canvass Aboriginal opinion or cross-check police accounts of incidents;

- a failure to include Aboriginal people within the community of readers that is addressed by the paper. That is, Aboriginal people tend to be treated as outside the normal business of mainstream society, which is perceived as Anglo-Saxon, and represented mainly when perceived as presenting a challenge or threat to that society;

- a tendency to reproduce colonial and race stereotypes about Aboriginal people both by invoking Eurocentric notions of savagery, timelessness and primitivism and by superficially treating Aboriginal social problems so as to leave readers with the impression that they are caused by something innate to Aboriginal people themselves, this includes ...;

- a failure to background readers in the historical and social issues which, stemming from the fact of colonisation, mean that superficial or 'common sense' ways of trying to understand Aboriginal affairs are inadequate.

The influence of the media on relations between Aboriginal people and non-Aboriginal people in country areas of Western Australia has been a focus of recent research. The Human Rights Commission National Inquiry Into Racist Violence received two submissions in 1990 that identified the crucial role of the media in reinforcing negative attitudes about Aboriginal people, and heightening fear and tensions in country towns.

The Pilbara study, focussing on the towns of Port Hedland and Roebourne presented evidence by Aboriginal people of alleged acts of violence and brutality against there by police officers during the 1980s. It also examined the tensions that arose in the town following an increase in the number of Aboriginal people moving in from outlying areas in the late 1980s:

> In May 1988 tension within the town came to a head at a dramatic public meeting of about 500 people. The local newspaper, the North West Telegraph, announced the issues in a dramatic front page story headlined, 'Headland Crime Wave Shock: Vigilantes Threat To Hit Back'. The story told of reports of the existence of a vigilante group which was ready to patrol the streets armed with baseball bats to combat alleged vandalism and car thefts. The prime suspects in the public mind were Aboriginal juveniles [Gallagher, 1990: 21.

A Geraldton study found the media, both local and the Perth daily papers to have had a similar role in contributing to racial tension and discrimination in that town.

Geraldton has featured prominently within the general coverage of race relations in western Australia over the past few years. The deaths of three Aboriginal people in police and prison custody in 1988 and that of a Maori man who was part of the Aboriginal community in 1986 have, as noted by Allbrook and Cattalini (1990:15), contributed to deteriorating community relations. The funeral of one of these, Edward Cameron, on 25 July 1988 was followed by a riot in the town's main street, allegedly provoked by the racist jeers of a publican, which attracted nationwide media coverage (see Appendix 12).

The researchers found widespread criticism of the way in which the media emphasised and dramatised criminal and civil disturbances that involved Aboriginal people:

> Recently, the race relations situation in Geraldton has received close scrutiny from the 'Geraldton Guardian' and the 'Daily News'. All respondents [people surveyed by the researchers]
>
> were of the opinion that the level of biased, negative journalism in the 'Geraldton Guardian' and the 'Daily News' had led to racial stereotyping of Aboriginal people as drunken, unruly criminals. Opportunities to promote the positive contribution of Aboriginals to the Geraldton community had been neglected [ibid:17].

It was also found that television news coverage of Aboriginal issues in Geraldton was criticised for maintaining an image of crisis by repeatedly using file footage of the riot of 25 July 1988 to illustrate unrelated stories.

The following approach to Aboriginal issues is fortunately not representative of the majority of the country press in Western Australia:

> Wages now [are] pretty good but the hours are long and hard. It [is] difficult to get the natives on the job now because of the amount of morons who were employed by the taxpayer to go around and tell the natives that the world owed there a living ... [Editorial Kimberley Echo, 2 August 1984].

It does however provide a representative sample of the editorial line of what was, for many years, until recently, the only regional newspaper for the whole of the Kimberley. The Kimberley Echo has been the subject of considerable criticism regarding its treatment of Aboriginal issues throughout out the 1980s. In 1982 the ABC TV current affairs programme Nationwide examined the fortnightly paper and the impact it was having on race relations in Kununurra (Stafford, 1988:140). In 1988 Ansett Airlines of Western Australia refused to continue providing passengers with copies of the paper (Stafford, 1988:146).

Aboriginal people were very critical of the paper's habit of highlighting reports of court appearances which named offenders and detailed offences. One, an Aboriginal radio journalist, said this practice had a 'very negative impact in a small community where everyone knows everyone else' [Wayne Binder, Aboriginal Broadcasters Conference, Cockatoo Springs 28 June 1990].

Stafford (1988: 143) found that:

> While this practice may not be unique to Kununurra it could well be argued that, considering the number of occasions on which Aboriginal defendants comprise 100 per cent of any one court sitting, the publication of such

'facts' does little to reduce tension or reduce already firmly entrenched beliefs about the innate criminality of Aborigines.

As has been mentioned before, isolating the effects of this kind of treatment of Aboriginal people on the attitudes of the general community is difficult. Like in many outback areas of Western Australia, attitudes toward Aboriginal people in many ways still reflect the economic relations of the past where Aboriginal people were forced to provide cheap and, at one stage, virtual slave labour for non-Aboriginals, mainly on the pastoral stations.

Clearly, The Kimberley Echo is the product of a view of Aboriginal people that is profoundly colonialistic. Part of this view is that Aboriginal people are outside the community of readers addressed by this paper (Appendix 13 provides just one example of this). The fundamental economic reality of the commercial media industry, appears to be that regardless of stated defences of freedom of expression, to serving the whole community, to reporting the news without fear or favour, the requirement to make a profit is likely to be the over-riding consideration of the proprietors.

Proprietors of regional newspapers need to seriously consider editorial policies that will include Aboriginal people within the community of readers and as a result, their perceived marketplace. This means more thoughtful and sensitive treatment of Aboriginal affairs, coverage of Aboriginal issues and events as though they are an important part of community rather than of marginal interest, and including Aboriginal views within the category of 'public opinion' rather than assuming the public to be non-Aboriginal.

18.7 RADIO AND 'TALK-BACK'

Of great concern to Aboriginal people is the way issues concerning there are handled during public access programmes on radio, which are commonly referred to as 'talk-back' programmes. 'Talk-back' programmes are heard mainly in the morning on commercial, public and ABC radio stations. During the 1980s they became high-rating programmes, their popular appeal based on permitting ordinary people to comment publicly on controversial news and issues of the day. The daily discussion topics of these programmes are drawn together by the 'host' who usually follows up social and political issues that have circulated prominently within the rest of the media in the previous days.

A comparative analysis of two different radio talk-back programmes in Perth conducted by anthropologists at the University of Western Australia revealed how the radio presenter's style can profoundly influence the outcome of discussion on Aboriginal issues (Taylor et al, 1990). The study examined segments of programmes presented on ABC 6WF and commercial radio station 6KY dealing with Aboriginal land rights, at the height of the land rights debate in Western Australia in 1984. It showed that the ABC presenter's style was characterised by leading callers to think through their arguments, avoidance of promoting his own points of view, reservation in providing positive or negative feedback to callers, the challenging or ignoring of mis-informative comments. On the other hand, the 6KY presenter made frequent use of colloquialisms and cliches, for example 'I'm no expert but ...', 'we're all in this together', 'what's good for the goose is good for the gander', 'thin end of the wedge', 'stop the rot', 'the chooks are coming home to roost', all phrases designed to invoke home-spun 'common-sense' attitudes toward

the issue, and emotionally incorporate listeners into an imaginary community of like-minded 'battlers'. The 6KY presenter also tended to promote his own views and opinions, and implicitly endorse or promote callers negative generalisations, opinion and stereotypes about Aboriginal people, a list of which is worth quoting in full:

- Aborigines get too many hand-outs.
- Aborigines get more than the whites. Land rights are just one more handout
- Aborigines are like spoilt children. Aborigines don't use the land.
- Drinking rights are to blame.
- Aborigines drink their money.
- Aborigines were immigrants like the rest of us and thus don't deserve land rights.
- Equal opportunity - equal treatment.
- We are not responsible for the past.
- We don't owe there anything.
- Aboriginal families are like leeches and drain away each others resources.
- Real Aborigines - full-bloods.
- Full bloods are gentle people/part Aboriginals are grizzlers.
- Part Aborigines have bad blood and are whingers and stirrers.
- Do gooders are to blame, Aborigines are being manipulated by communists.
- Aborigines are problems and Aborigines have problems.
- The answer to the problem is to round there up and variations on this theme [Taylor et al, 1990].

Significantly, it was found that the 6KY presenter tended to treat Aboriginal callers with sarcasm while the ABC presenter used such opportunities to gain more information for the benefit of listeners. The study showed that in spite of claims by commercial radio talk-back presenters that their aggressive and provocative styles reflect their fervent quest to 'keep the public informed', it was unquestionably the reasoned, inquiring, even-handed approach of the ABC presenter that achieved an informed debate for the benefit of listeners.

The long-standing anger of the Aboriginal community in Perth over one particular talk-back host came to a head in April 1990. Commenting on the deaths of three children who died in a car crash during a high speed police chase, on 5 April 1990,

the commentator said during a preview of his programme:

> Well I say good riddance to bad rubbish. That's three less car thieves. I think, they're dead and I think that's good [Transcripted from audio-tape held by the RCIADIC].

A meeting of over 100 Aboriginal people at the western Australian Aboriginal Media Association (WAAMA) on 6 April 1990 called on the Australian Broadcasting Tribunal (ABT) to suspend the commentator from broadcasting and to carry out an inquiry into the comments. In a formal letter of complaint to the Tribunal, endorsed with 85 signatures, WAAMA's Director, wrote:

> These comments have distressed and outraged a great many Aboriginal and non-Aboriginal people in our community. Some have commented that it is the worst breach of journalistic ethics ever, not to mention the callous absence of common decency.
>
> Apart from the enormous pain these sort of statements cause family and friends of the children that died, they also have the effect of inciting racial hatred given that people in Perth were becoming aware that those who died were Aboriginal. The reference to people as 'bad rubbish' is strikingly similar to language used by racists to describe the ethnic minorities that are the objects of their hatred, for example the Nazis called the Jews 'vermin'.

The ABT received a total of 11 complaints over the same comments. The commentator claims he did not know those killed were Aborigines when he made the comments, and that Aborigines were out to 'gag' him (The West Australian, 30 May 1990, p.15). Indeed, the WAAMA Director has not hidden the intention to have the commentator removed from the airwaves. An Aboriginal woman also conveyed the outrage and anguish of the Aboriginal community at these comments when she told my Commission:

> ... one of the concerns that I did have as a result of the police-journalists link is the issue of the recent car chase that led to the death of three Aboriginal youths.
>
> One of those young people that died is the child of my husband's cousin. And the family was, like the rest of the Aboriginal community - were very concerned about the statements made in the media as to reference to the deceased being considered as bad rubbish. I attended a meeting at an Aboriginal organisation to discuss the issue of the media comments on the comments -sorry, I'm just very - I'm very angry because I've known that kid for so long and also as a part of my family network that those sons of comments are being made about a human life. And I know that the rest of the Aboriginal community themselves are also very angry about it. And something definitely needs to he done in terms of those particular comments ... [RCIADIC Transcript, Perth, 1990].

In the view of my Commission, it would be unfair, however, to radio journalists not to refer to the relatively good work some of there do. More sensitive and thoughtful treatment of Aboriginal issues is evidenced in some radio talk-back programmes on ABC Radio, which, together with other locally produced radio programmes such as Drive Time, also reflect the ABC's lesser concern with ratings-boosting sensationalism than intelligent and informative broadcasting. Public Radio stations

generally are also observed to have an approach that avoids the cheap harvesting of public prejudices about Aborigines, and some include regular programmes produced by Aboriginal people themselves (see e.g. Section 6.6 where 'Aboriginal media' is discussed).

18.8 IDENTIFICATION OF ABORIGINALITY

An issue or recurring concern is the practice, in many sections of the media, of identifying the race or cultural-ethnic background of alleged criminal offenders. Journalists and editors have been known to justify this practice on the grounds that publicly identifying the race of persons wanted by police will assist in their apprehending. Indeed, police statements to the media will invariably state the race of sought-after offenders for precisely this reason. There are, however, at least two major incongruities between the stated reasons for this practice and the circumstances in which it is often employed.

Firstly, this Commission has seen a number of examples of crime reports in which the Aboriginality of sought after offenders is stated. However, more often Aboriginality is the only descriptive attribute stated, and appears to take the place of things such as height, build, clothing, hair colour, etc. which are otherwise commonly used. It is difficult to understand how the mere stating of Aboriginality is sufficient to describe wanted offenders, as if the belief that alleged offenders are Aboriginal is all the person who may have information to give to the police needs to know. The general effect of this however, is to make Aboriginality synonymous with certain kinds of criminal behaviour.

The second problem is that my Commission has also seen a number of media reports, mainly from newspapers, where the Aboriginality of alleged offenders is stated even though they had already been arrested (Appendix 14 makes available several examples). These reports are, in my Commission's view, open to charges of gratuitous identification of race, and they cannot aid police in catching anyone. What they do imply, however, is that it is significant that the crimes were committed by Aborigines, that the reader should make sense of the story differently because Aborigines were involved, rather than others. The crimes become Aboriginal crimes, something one learns to recognise and comprehend in the pages of a newspaper, and something one learns to expect is behaviour characteristic of Aboriginal people. There are also indirect ways in which the Aboriginality of an alleged offender is made known in some newspaper reports which require attention. Some, like the stating of a person's place of residence, for example an Aboriginal community, is perhaps unavoidable and fairly standard practice regardless of race or cultural background. Equally, recognisable Aboriginal names can identify Aboriginality, but these sorts of practices have not been put to the RCIADIC as being of concern to Aboriginal people. However, it was submitted to the Commission that the identification of lawyers as being employed by the Aboriginal Legal Service may not be necessary in straight forward criminal matters where wider issues of Aboriginal affairs are not being touched upon. The following quote picks up my meaning here:

> We go back to the court where I work every day: The situation is we've written to the Kalgoorlie Miner in the past where we've felt that every time it was an Aboriginal person that was highlighted in really dark ink or the big writing or it always said: Aboriginal Legal Service [RCIADIC Transcript, Kalgoorlie, 199O].

Ethically, journalists are not supposed to identify the race or cultural-ethnic background of an alleged or proven criminal offender unless the fact is of necessary relevance to the story. This is expressed in the Journalists' Code of Ethics as follows:

> They shall not place unnecessary emphasis on gender, race, sexual preference, religious belief, marital status or physical or mental disability [Australian Press Council, 1989:19].

Similarly, the Australian Press Council's (APC) Statement of Principles also deals with this point:

> A newspaper should not, in headlines or otherwise, state the race, nationality or religious or political views of a person suspected of a crime, or arrested charged or convicted, unless the fact is relevant [APC 1989:4].

Concern among Aboriginal people that these ethics and principles should be adhered to, was expressed in a letter of complaint to the Editor of the Daily News on 18 May 1990 by the Director of the Western Australian Aboriginal Media Association over the identification of the Aboriginality of an offender in a report the previous day:

> Failure to abide by this ethic, which disturbingly, is all too often the case, leads readers to associate criminality with 'racial' or cultural background, in this case Aboriginality. The cumulative effect of such reporting practices is to increase racial prejudice in our community.
>
> I request that you publish an apology for his breach of ethics and that you instruct reporters and sub-editors to be vigilant on this issue as a matter of professionalism [Eggington, 1990].

lnterestingly, in punishing this letter, the Daily News omitted the last paragraph of the above part of it (Daily News, Letters, 18 May 1990). As much as the inclusion of these ethics was a progressive development in media policy when adopted in 1986, they have limitations which enable media producers to attempt to justify continued identification of Aboriginality in crime stories. Problems lie in the interpretation of the meaning of the words 'unnecessary emphasis' in the Code of Ethics clause and 'unless the fact is relevant' in Principle 9 of the APC Principles.

The cumulative effect of the identification of Aboriginality in crime reporting, whether justified or not, is that media consumers overwhelmingly retain in their memories a negative image of Aboriginal people. Research supporting this has been noted previously. Clearly, given that there continues to be concern at the seemingly groundless identification of the Aboriginality of criminal offenders by the media, there needs to be a serious rethink of the efficacy of existing guidelines and professional codes dealing with the issue, and the methods of policing there. Either these are inadequate and in need of further clarification and amendment, or they are simply being disregarded by some media producers, or perhaps both.

18.9 RACIAL AND COLONIAL STEREOTYPES AND IMAGES

It must be stressed that the use of racial stereotypes in the media do not

necessarily reflect the conscious views of journalists, although they may in some cases. Rather they 'speak through' individual journalists, as part of a powerful institutional way of seeing and writing. Dr John Hartley told the Commission:

> Racial stereotyping and racism in the media is institutional, not individual. That is, it results from news values, editorial policies, from routines of news gathering that are not in themselves racist or consciously prejudicial. It results from the fact that most news stories are already written before an individual journalist is assigned to there, even before the event takes place. A story featuring Aboriginals is simply more likely to be covered, or more likely to survive sub-editorial revision or spiking, if it fits existing definitions of the situation [RCIADIC Transcripts, Perth, 1990].

There are a number of stereotypes of Aborigines circulating within Australian society and popular culture, for example, that they are primitive and lack complex laws and social organisation, are all alike, that they are racially more prone to alcoholism, violent, ancient, emotional, criminal, mindlessly cruel, lazy, simple, mystical, live in a timelessness state or on the so-called 'positive' side, are childishly innocent, noble savage, 'beautiful people' and so on.

A major government commissioned report into attitudes toward Aboriginal people in 1985, mentioned earlier, supports this assessment:

> The predominant stereotype is of a primitive, nomadic people who are passive and lazy, and have become virtual alcoholics under the influence of white society [ANOP, 1985:13].

Most of these kinds of racial stereotypes have been observed by the Commission in media treatment of Aboriginal issues over the past decade. An instructive example follows. A page one caption to a photograph of a former Gallipoli veteran, and his great-grandson clearly states their names and ages ('John McCleery, 103; two-year-old great-grandson Benjamin'). However, a page 14 caption to photograph of an Aboriginal woman and her grandchild does not include names or ages. The assumption behind this last photo and caption is that all the reader needs to know is that the people depicted are Aboriginal, not who they are as individual people, that Aboriginal-ness is the determining meaning of the article.

As noted in earlier sections of my report (especially in Chapters 6 and 8) race relations of an Aboriginal and non-Aboriginal kind need to be critically examined. Contrasting representations express the view that the image of any Aborigines stand for all Aboriginal people, that Aboriginal persons first and foremost represent not themselves as individuals or a group engaged in a particular activity at a particular time in a particular context, but a race and a culture that is different/outside the dominant anglo-celtic realm. The two white people are accorded the status of identifiable individuals, citizens with names, whereas the two Aboriginal people are nameless, non-citizens, representing a group that is other than the 'us' or 'we' that the articles construct as the collective readership. Only rarely are newspaper photos of non-Aboriginals in similar circumstances captioned without identifying the subjects. It is almost a question of journalistic propriety and certainly courtesy that published close-up photographs identify the individuals depicted.

The patent inadequacy of common sense and common knowledge as means to make sense of the historically produced situation of Aboriginal people and its political implications for all Australians cannot be seen as the sole responsibility of

the media. That is, as considered in Chapter 12, the failure of the education system to create an awareness and understanding of Aboriginal history, culture and the implications of colonisation within children is likely to pave the way for uncritical acceptance of media reports and images. The absence of any comprehensive long-term Government-initiated public education campaign about Aboriginal affairs aimed at lifting European Australia out of its ethnocentric indifference is of equal seriousness. The ANOP study of 1985 commissioned by the Federal Government, which examined community attitudes to Aboriginal issues stated that 'a campaign is desperately needed' and is worth quoting at length:

> It would be easy to despair at the extent of the ignorance, intolerance and misunderstanding uncovered by our research towards Aborigines generally and land rights more specifically. And much of the opposition to land rights in middle Australia is founded on lack of knowledge and understanding, compounded by underlying fears and prejudice. A campaign is definitely if not desperately, needed and ANOP recommends that to have lasting impact, the campaign should be like no government has ever attempted. Black rights generally, and land rights in particular, represent the most divisive and potentially explosive issues we have ever dealt with - and we suspect that this country has faced in the post war period ... Continued silence by government means that those with vested interests in opposing land rights will retain the initiative and community attitudes will harden and divide further [ANOP, 1985:5].

On a broader scale however, the continued lack of recognition of indigenous rights and reconciliation manifests aspects of the ongoing processes of colonisation.

It was noted earlier, that one of the most consistent representations of Aboriginal people made through the media was in association with alcohol. In the next chapter, I consider the critical issue of alcohol and substance use.

ALCOHOL AND SUBSTANCE USE

Similarly to the findings of Langton (1990:23) when reporting to the National RCIADIC concerning underlying issues in the Northern Territory, this Commission has also found that much of the content of discussions related directly to problems arising from alcohol use and how to solve there. The following material reflects some of the major concerns and issues regarding alcohol use.

19.1 HISTORICAL ASPECTS OF ALCOHOL

As noted by Brady (1990:195) 'it is often assumed that the Aboriginal populations of Australia had no access to alcoholic beverages before the arrival of the First Fleet from England in 1788'. This assumption denies that 'mood altering fermented beverages derived from indigenous natural flora' (ibid) were sought after and used by Aboriginal people prior to and following contact (see e.g. Basedow, 1929 and Duncan-Kemp, 1934, as cited in Brady, 1990). It is also a commonly held misconception that the granting of drinking rights, in itself, in 1971 led to the currently perceived high level of alcohol consumption by Aboriginal people. The following points give a more accurate portrayal of the real situation.

Firstly, as discussed elsewhere, recent surveys have shown there to be a similar

proportion of non-drinkers in the Aboriginal and non-Aboriginal communities. Secondly, as recorded by Haynes et al (1972), the prohibition laws began to be relaxed some seven years earlier with the south-west region being proclaimed a non-restricted area in 1964. In 1966 this was extended to cover the land south of Port Hedland excluding the Northern and Eastern divisions and the Wiluna area of the North Eastern division. In July 1971 the remaining restrictions on Aboriginal drinking rights were lifted in the Kimberley and Eastern Goldfields regions. Thirdly, as noted above, a brief look at history shows that alcohol has been a significant part of some Aboriginal peoples lives both prior to and since soon after colonisation.

Hasluck (1970) records some of the early comments about Aboriginal alcohol consumption:

1. 1834 - the 'Perth Gazette' reported on complaints of natives [sic] being made drank.

2. 1849 - the Protector at York warned two 'very well known settlers-cum-publicans of that district against supplying liquor to natives [sic]'.

3. 1850 - the Perth Protector of Aborigines reported on the 'growing vice of drunkenness'.

4. 1857 - the annual report of the Protector of Aborigines, Symmons, blamed the 'convict class' for the increasing level of drunkenness among Aborigines.

Hasluck (1970) goes on to document the concern of the colonialists to control Aboriginal access to alcohol. Their subsequent legislative attempts at this date from 1836-37 when the Select Committee produced two reports which included the comment that 'the sale of ardent spirits to natives [sic] be prevented' (p.55). The Publicans Act of 1843 attempted to prohibit the supply of spirit and fermented liquor to Aborigines. Hasluck's (1970) comments reflect the inefficiency of these attempts: 'The text of the legislation and the frequent complaints of drunkenness of natives [sic] do not suggest that this was a very thorough-going protective measure' (p. 158).

The Wines, Beer and Spirit Sale Act of 1880 again prohibited the sale of alcohol to Aborigines. In 1902 this was amended to ensure 'part-Aborigines' (sic) were similarly prohibited and hence bound by the Act. The Licensing Act of 1911 (Sections 118-120) continued this prohibition on the sale or gift of alcohol to Aboriginal people and also banned the loitering on licensed premises, unless gainfully employed by the licensee. The Aborigines Act of 1905, which later became the Native Administration Act 1905-1936, enabled exemption, as outlined elsewhere, from the various constraints placed on Aboriginal people by the legislature. However, as noted by Neville (1947), the courts were quite strict in the administration of the law. He relates the story of a non-Aboriginal man being sentenced to three months imprisonment for supplying his Aboriginal wife, who did not have an exemption certificate, with a glass of beer. The Native Administration Act 1905-1940 saw the strengthening of Section 48 of the 1936 Act to include the prohibition of not only the supply or sale of alcohol or opium but also the request to be supplied or given these substances, by Aboriginal people.

The repeated attempts by the legislature to restrict Aboriginal peoples access to

and consumption of alcohol was a failure. This has been noted by Hasluck (1970) and Neville (1974). Indeed Neville even comments that 'if we are to pursue the matter logically we must in time grant these [sic] all the privileges we ourselves enjoy' (p.252). The 1958 Report of the Special Committee on Native Matters (With Particular Reference to Adequate Finance) considered the issue of alcohol in the context of possible objections to the granting of Citizenship. FAE Bateman's response to their questioning on this matter was: Those natives [sic] who want to drink already get it, so many of the problems associated with drink are already with us' (p. 10).

This point is developed further in the Annual Report of the Commissioner of Native Welfare for the year ending 30 June 1968 in which the increase in the number of Aboriginal people convicted for alcohol related offences is discussed. The reason put forward is that this probably reflects the fact that drinking was becoming more open, as it was no longer illegal, and hence police contact was more likely.

19.2 ' WHY' ALCOHOL AND SUBSTANCE USE?

Despite many efforts by Aboriginal and non-Aboriginal people to deal with the devastating effects of alcohol, the numbers of people drinking to excess are on the increase. However, while many people maintain 'binge' drinking, and there are a variety of social mechanisms that are often associated with drinking patterns and partners, it also needs to be pointed out that there are also many Aboriginal people who do not drink at all. While this is a complex matter, overall, evidence received through the RCIADIC conferences throughout the State, overwhelmingly reveal that alcohol related matters in the Aboriginal community are recognised as a major issue of concert (see RCIADIC Transcripts from Roebourne, Broome, Geraldton, Carnarvon, Esperance, Albany and Perth, 1990). This concert is seen not only in terms of the conflict alcohol related difficulties present to Aboriginal people with regard to family dislocation, illness, violence and low self esteem, but also in terms of the way alcohol is linked to arrest and custody. As noted above, with regard to the Deaths in Custody cases within western Australia, all were in some way associated with alcohol.

From the findings put before me, it continues to be significant that non-Aboriginal people, and the structures of which they are a part, must be better informed about the 'why' of alcohol. They must be informed that alcoholism is an introduced illness, which carries with it social and physiological consequences, that has emerged among Aboriginal people largely because of their political, social, legal, economic and cultural marginalisation in this State. Further, until non-Aboriginal people and institutions accept and acknowledge this fact, the need to address the very serious consequences presented by the over-use of alcohol, there will be no lasting resolution. In sum, over-use of alcohol is simultaneously a health problem, a cause of other health problems, and a symptom of socio-political related problems.

19.3 SOME CONSEQUENCES OF ALCOHOL

Alcohol was identified by both Aboriginal and non-Aboriginal people as one of the most common problems confronting Aboriginal people in this State. Some of the reasons put forward to explain why alcohol is such an important factor in the lives of Aboriginal people (whether someone actually drank or not was not important)

included:

> It is just that we are downtrodden and that is where we are stuck ... we are classified all the same. You are no better than the one that drinks and lays around in the bush. We are no better [RCIADIC, Esperance Transcript in confidence, 1990:106].

Land displacement and being forced to live without sufficient resources for alcohol rehabilitation services, not enough Aboriginal people involved in alcohol rehabilitation, ease of access to alcohol and credit for alcohol, peer pressure, powerlessness, fear and family breakup, and unemployment were all given as reasons why people drink (RCIADIC Transcript, Mary River, 1990: 14-17).

> You're not a man if you don't drink [RCIADIC Transcript, Mary River I990: 17];
>
> ... Because nobody like there ... They has not got the power of their own to support themself because they class themself as a nobody [RCIADIC Transcript, Mary River, 1990:18);
>
> The Aboriginal person never brought it on himself [RCIADIC Transcript, Roebourne, 1990:39];
>
> Loss of our land [RCIADIC Transcript, Perth, 1990:324];
>
> Social causes of inequality and lack of opportunity [RCIADIC Transcript, Carnarvon, 1990];
>
> People drink because of pressure and stress [RCIADIC, Transcript, One Arm Point, 1990].

Alcohol use, and its consequences, was identified by the NAHSWP as one of the major health problems during its consultation process. It must be considered as a health problem in its own right, as a cause of other health problems and as a consequence of the social, political, economic and cultural deprivation impacting on Aboriginal people. It is important to acknowledge that drug use, including alcohol, is a significant problem in the wider Australian community and the target of the National Drug Offensive. It is inappropriate to label alcohol as a uniform Aboriginal problem, as there is a wide range of drinking behaviours both within and between communities.

Of the 32 deaths under consideration by this Royal Commission, ten (31.25%) had some alcohol detected in their bodies at autopsy. Nineteen (59.4%) were in custody on an alleged alcohol related matter (assumed drank, disorderly, driving under the influence, or for non-payment of a fine for an alcohol related matter).

The widely held assumption that all Aboriginal people are large consumers of alcohol, was frequently reported to the Commission. This myth can be easily dismissed by consideration of some of the surveys conducted in Western Australia in recent times:

(i) In 1986, a survey of the general population, by Blaze-Temple et al (1986), showed that 30.1% of all those surveyed were non-drinkers (38.5% women and 17.9% men);

(ii) In 1986, a survey of homeless Aboriginal people in Hedland by Smith et al (1986), showed that 28% were non-drinkers (28.6% women and 28.2% men);

(iii) In 1986, a survey of Aboriginal people in Wiluna by Smith et al (1987), showed that 23.1% were non-drinkers (32.7% women and 13% men);

(iv) In 1984, a survey of Aboriginal people in Roebourne by the Alcohol Advisory Committee (1984), showed that 39.7% were non-drinkers (55.6% women and 29.3% men);

(v) In 1981, a survey of Aboriginal people in Collie by Willoway et al (1981), showed that 25% were non-drinkers (40% women and 16.7% men).

Alcohol impacts upon the health of the drinker in many ways. If the drinker is able to maintain a balanced diet then some of the consequences will be less marked than in someone who is unable to maintain an adequate diet. This is compounded by the high incidence of other causes of ill-health: e.g. cardiovascular disease, diabetes, hepatitis. The social disruption which is often associated with alcohol consumption not only impacts upon the health of the consumer, but also on the health of those in the community of which the consumer is a part. Despite this, alcohol also has a positive role in Aboriginal communities according to the NAHSWP. Drinking is beginning to be seen as a group activity in which the sharing 'promotes sociability and solidarity' (NAHS, p. 193).

Despite the lack of evidence, and the almost universal discrediting of the notion, there are still those who promote the simplistic and victim blaming theory that there is a genetic basis to Aboriginal alcohol consumption. As recently as May 1990 Professor Norman Palmer, the recently appointed Head of the Biochemistry Department at the University of Western Australia, proposed conducting research to see if genetic factors influence the drinking behaviour of Aboriginal people in remote communities (Uniview, 1990, p. 11). As the NAHSWP records show, it is time for people to recognise the 'complex and dynamic situation in which many historical, legislative, political and social factors interact to produce a social milieu in some Aboriginal communities in which alcohol figures prominently' (p. 194). Alcohol must be seen as a symptom of dispossession, alienation and discrimination resulting in a loss of self esteem, and not the cause of that loss. An instance of this was stressed by John Williams, the Community Medical Officer in Carnarvon for 12 years, who is quoted in Commissioner O'Dea's Report on the death of Wayne Dooler: '... drinking was a symptom of a deep, underlying stress in the community' (p.2).

19.3.1 Sobering up shelters and other initiatives

While Commissioner O'Dea addresses the issue of sobering up shelters in some detail, the following provides an overview of some of my concerns in this regard.

In order to address excess drinking effectively it must be approached on a community basis and not with an individual disease ideology in mind. Stop gap measures which appease the police and take the pressure off there, such as sobering up shelters, need to be linked to a broader approach which deals with the

structural determinants, as outlined above, of drinking. Otherwise the pressures which force people to drink heavily will not decrease, and hence more people will be drinking heavily and more shelters will be required, and so on. Commenting on the proposed sobering up shelters, Commissioner O'Dea, in his report on the death of Wayne Dooler, commented:

> For these centres to be successful in aiding Aboriginals, they must be operated by Aboriginal people [p.22].

The Western Australian Alcohol and Drug Authority (WAADA) is only proposing that four sobering up shelters be established at present. They will be located at Halls Creek, Fitzroy Crossing, South Hedland and Perth. They will be run strictly as sobering up shelters with no formal integration with educative or rehabilitative initiatives (R. Midford, Project Co-ordinator, WAADA, May 1990). This is in conflict with the report to the western Australian Aboriginal Health Policy Review (AHPR) Team which stated that they would be:

> complemented by education and training initiatives, and research and evaluation programs [p.7].

The Perth and Port Hedland shelters have been awarded to the Salvation Army. The Peoples Church has been selected to manage the shelter in Halls Creek and a local Aboriginal group will manage the one in Fitzroy Crossing. Despite decriminalisation of drunkenness, the options for the rest of western Australia remain the lockup or being transported home at the discretion of the police.

The role of the WAADA report (1990) needs to be evaluated further. This report acknowledges that it has been difficult for Aboriginal people to access the services offered by the WAADA. In order to address this the WAADA has recently reviewed its admission criteria to Carrellis, the detoxification centre in Perth, and advertised to employ an Aboriginal receptionist and nurse there. Though this is a step towards ensuring Aboriginal people feel a little more comfortable when accessing the service of the centre, it by no means guarantees that access. The report to the AHPR Team tends to deal with alcohol as an individual pathology rather than as a response to the social, economic or political forces which impact on a person's self esteem, power and position in society. Indeed it is a descriptive report of activity rather than a statement of philosophy and direction and the actions which should flow from that. If significant and effective strategies are to be implemented, then clear statements regarding 'causation', aims and objectives need to be stated. The report to the Commission from the Alcohol and Drug Authority, July 1990, describes some of the underlying causes of alcohol use in the Aboriginal community but do not convey a clear understanding of real underlying causes and the factors which stem from there. There is just a restating of the list of factors put forward by the 1977 House of Representatives Standing Committee on Aboriginal Affairs along with the views of some Aboriginal agencies with no prioritising of the cause or effect of drinking behaviour.

The Alcohol and Drug Authority commissioned an independent review of Aboriginal alcohol rehabilitation or treatment programmes in 1988, the O'Connor Report. It is of note that this review only looked at programmes run by Aboriginal organisations and did not look at the services provided by the WAADA itself. This lengthy report contained some detailed descriptions of the history of many of the services. It included some rather paternalistic recommendations such as the power of the proposed Area Training Officers regarding monitoring and accountability compliance. These seem at odds with the advocacy of 'self-management' (albeit

with strings attached). Despite the deficiencies and criticisms contained in the report about most of the existing services, it concluded that 'we do not believe that radical closure of existing facilities will improve this situation; instead we suggest that they be worked with to develop their full potential' (O'Connor, 1988:193). If the review team felt strongly about this then a more positive orientation regarding the empowerment and self-determination aspects of existing initiatives rather than the shortcomings would seem more appropriate. The provision of adequate material resources and assistance with developing managerial skills are necessary requirements for the success of such programmes.

The actual clinical contact provided by the Alcohol and Drug Authority to Aboriginal people in 1988-89 was minimal. This ranged from 2% (i.e. 41 people) undergoing some form of Detoxification at Carrellis, to an impressive sounding 47% of the clinical services provided by the Derby Regional Office to Aboriginal people. This is no where near so impressive when the actual number of people this represents is stated; Sixteen (16) (WAADA, July 1990). This highlights the inadequacy of the services Aboriginal people have access to throughout the State. Though the WAADA supports four alcohol rehabilitation services run by Aboriginal people (Ngurawaana, Milliya Rummura, Walgo Wydgee and Yamatji Ngura) there are no such centres readily accessible to the people of the south west. Between 1 to 10% of clients of metropolitan based non-government (and non-Aboriginal) agencies were Aboriginal. This represents only 1 to 47 people per agency (WAADA, July 1990).

The inadequacy of the resources provided by the WAADA around the State was a common comment at the regional conferences conducted by the Commission (RCIADIC Transcripts, Broome, Geraldton, Esperance, 1990). There are only two positions for each of the six country regions. In two of those regions there was only one worker at the time of the conference (Kalgoorlie and Albany).

The Alcohol and Drug Authority's stated future initiatives include: in-service education on Aboriginal socio-cultural and economic issues for non-Aboriginal staff; developing more Aboriginal-focussed programmes; improving Health Department of Western Australia AHW skills in substance use problems; employment of an Aboriginal Education Officer; attempting to improve the accessibility of the Authority's detoxification facility; and support for the metropolitan based Nyoongar Alcohol and Substance Use Service (WAADA, July 1990). These seem useful initiatives, but this must be contrasted with limited financial resources being provided to the community organisations, and tokenistic staffing in the regions. It is difficult to envisage the true desire of the Authority to provide a meaningful service to Aboriginal people.

19.4 'ALCOHOL KILLS SOMETHING IN YOUR BODY'

> European professionals are absorbed in the concept of alcoholism as individual pathology and this obscures the real issues. A move must be made (away) from the disease concept of alcoholism if change and solutions are to be forthcoming [Fagan & Swan, 1989:195].
>
> Grog kills the cells in the body but it also kills the traditions and the culture - everything [RCIADIC Transcript, One Arm Point, 1990].

Alcohol has many effects on a person. It affects a person's judgement and is a

significant factor in traffic accidents. It acts as an agent to decrease inhibitions so that people may be more likely to participate in risk behaviour. Many people commented during the Commission's conferences and meetings, that alcohol allowed people to say things they were too oppressed, or 'shy', to say when they were not under the influence of alcohol. It acts as a depressant and hence is a key factor in suicide and self-inflicted harm attempts. In a recent review of reported incidents of self-harm 47% of the Aboriginal people involved were reportedly under the influence of alcohol (RCIADIC Criminology Research Unit Paper 16, 1990). Spencer's submission to the Commission supports this *(G/14/S/p.3).*

Alcohol can create a chemical dependency with regular daily consumption, which can cause a withdrawal state, on ceasing consumption, which includes anxiety, tremor, visual or auditory hallucinations that are particularly disturbing. Spencer in his submission comments that it is not hard to see why people in seclusion may become very frightened in a short period of time and may decide that the only means of escape is to kill themselves. He goes as far as to say that 'All people for whom a history of excessive alcohol input is a possibility and who are to be locked in a small cell for any longer than a few minutes should be regarded as potential candidates for the acute alcohol withdrawal syndrome known as Delirium Tremens and should be rendered the appropriate medical treatment and management' (p.4). Hunter (1988) also comments than an 'alcoholic psychosis', may occur in steady drinkers without actually stopping drinking and it may persist for months.

Other effects of alcohol include the rapid consumption of limited financial resources. The tendency to eat poorly, due either to drinking or the lack of money, increases the chances of malnutrition, which increases the chances of illness due to decreased immune status. Fits are more common because of the possibility of withdrawal fits or the lowering of the fit threshold in people who suffer from epilepsy. Trauma is more likely as are specific diseases such as gastritis and intestinal bleedings, liver disease, renal disease, heart disease, high blood pressure, anaemia, and mental conditions, such as Korsakoff's psychosis.

Given the massive impact that alcohol has had on the lives of Aboriginal people in this State - either directly or indirectly - the following section considers an aspect of relevant legislation in relation to this critical issue.

19.5 LIQUOR LICENSING ACT (1988), WESTERN AUSTRALIA

As noted at the commencement of this chapter, alcohol use and drinking rights was a matter frequently raised with this Commission, by members of the Aboriginal and non-Aboriginal community. The inception of 'Drinking Rights' were often the subject of critical comment.

Aboriginal people were said to have been introduced to their right to drink by:

> officers [who] were sent around mission stations where people knew nothing about drink at all. And they were told to go down to the nearest pub to Laverton, for example, and places like that and go and ask for it, take your money in and get it. And if they refuse you come and tell us because it's your right.
>
> They didn't tell there there were any wrongs about it, or any possibilities of addiction and so on. Although a little booklet was prepared in the south-west

> for the Nyoongah people telling 'em how to dress and then to go into a hotel and ask for a drink and so on and to be properly respectable-looking when they went into a hotel [RCIADIC Transcript, Kalgoorlie, 1990:407].

It is not proposed to deal with the history and granting of 'drinking rights' here as that was referred to earlier. This Section deals with the present Liquor Licensing Act (1988) and the need for enforcement of its provisions.

The problem of alcohol use in communities is addressed in the Committee to Defend Black Rights (CDBR) submission on underlying issues (see p.90 for community comment). The CDBR submission to this Commission raises thow and by whom a person is defined as 'drunken' as a threshold issue. This definition is contained in Section 115(3) and is said to be inadequate (see p. 126-128, CDBR Submission). The perception of what constitutes a 'drunken person' is a continuing problem and a matter about which there is a need to further educate police officers.

19.5.1 The sale of alcohol to drunken persons

While referring extensively to alcohol use throughout the State, the ALS in its submission made the point that in the Kimberley, the Pilbara and the Murchison/Gascoyne Aboriginal people are served alcohol by publicans even after they are clearly drunk. This situation would also appear to prevail in the Eastern Goldfields although specific reference is not made to that area in the ALS submission.

I understand that under Section 44 of the Police Act it is an offence for a publican to have drunken or disorderly people on the premises. Under the previous legislation of the Liquor Act, the complaint was made to the Hedges Review that at Roebourne and Mowanjum (Derby), juveniles freely obtained liquor and were prosecuted for under-age drinking intermittently. No-one could remember a licensee being prosecuted. Hedges also received recurrent complaints about extremely drunk people being supplied with alcohol (Hedges, 1986:23-29).

The present Liquor Licensing Act 1988 specifically prohibits the sale of alcohol to a 'drunken person' (Section 115(2), Liquor Licensing Act). The provision in the Act is mandatory. A publican 'shall not' sell or supply liquor to a drunken person. The penalties for doing so are:

> In the case of the licensee or manager $5,000, in the case of an employee or agent $2,000, and in any other case $1,000.

Obviously, if licensees or their employees or agents were being charged and penalized according to the Act, there would be some deterrent to the continuance of the practice. The practice continues and it would appear that licensees are rarely if ever charged with the offence.

The ALS submission suggests that in the Pilbara:

> There is also a significant problem of Aboriginals being served until they are drunk and when their money has run out the licensees ring the police and have the Aboriginal person arrested [p.44 and see also CDBR submission on underlying issues p. 124].

The Police Union Submission to my Commission, while not actually addressing this issue, made the following comment:

> The Royal Commission must, in the Union's view, implore Aboriginals to accept responsibility for health, education and respect for the rules of the society in which they live and from which they expect to benefit [p. 18].

Nobody would dispute the extent of the problem of alcohol use and its secondary effects - disturbance, disruption, violence, poverty, disease, hunger. Aboriginal people are struggling to address the extent of the problem (CDBR Submission, 1990:98 et seq). The struggle of Aboriginal people must, to have any success, be supported by the law enforcement agencies.

My Commission was told in Kalgoorlie that there was a two member Liquor and Gaming Branch to police the whole area. There was an acknowledged need to provide new police with education about their duties with respect to the Liquor Licensing Act. Superintendent Webb told the Commission that:

> we do have prosecutions being launched against publicans ... as a deterrent for whatever breaches they commit [RCIADIC Transcript, Kalgoorlie, 1990:314].

Superintendent Davies from Geraldton, told this Royal Commission that the police are to 'let the licensee know he will he charged if he serves people affected by liquor'. He had himself:

> spoken to the two joint owners of the [a hotel] and ... informed there that, if they permit drunkenness on their premises, namely that front verandah area, we'd be looking at having there charged [RCIADIC Transcript, Geraldton, 1990:264].

My Commission, after being apprised of the situation in Wiluna through perusal of the transcripts in the Anderson case and the submission of the ALS, is of the view that it would be apparent that the police, in arresting Aboriginal people for 'drunk' or associated offences are exercising their discretion in favour of the licensees of that hotel in a discriminatory fashion. It is also apparent that this use of discretion is to some extent sanctioned by some superior officers, which I regard as unsatisfactory. When questioned about the numbers of charges brought against licensees, one Magistrate in a large country town told this Commission in confidence that there had been 'very, very, very few indeed'.

The law in this area is quite clear. The Police Force of western Australia has Liquor Branch officers. All other members of the Force have the power to charge offenders under the Liquor Licensing Act 1988 yet 'very, very, very few' prosecutions are launched against licensees (see also CDBR Submission, 1990:135).

19.5.2 Government advice on Liquor Licensing

The Government in its advices as to implementation of the Vincent Report recommendations commends the new Liquor Licensing Act to this Royal Commission as providing an 'increased range' of penalties which include:

- suspension of license;
- cancellation of license;
- variation of license;
- disqualification of licensees; ·
- fines of up to $5,000;
- security bonds for future conduct.

The relevant disciplinary sections of the Liquor Licensing Act 1988 are Section 95 and Section 96. Disciplinary action may be taken where the continuation of the license is not in the public interest or when the safety, health or welfare of persons resorting to the hotel may be placed in jeopardy, Section 95(4) (j) & (k).

Superintendent Davies commented about the Wiluna Hotel:

> At one stage the police were just leaving the drunken people laying on the verandah of the hotel. And I've told there they've got to address the problem, they could be at risk as far as their health goes ... [p.264].

It would appear that if that situation has continued since December 1988, Section 95(4) (j) & (k) of the Liquor Licensing Act 1988 are arguably applicable. The police response is to 'talk' to the licensees about the problem. The Government further assured me that Section 155 of the Liquor Licensing Act 1988 requires the Commissioner of Police to issue orders and directions to police officers to prevent breaches of the Act. That would allow for pro-active responses. In evidence put before my Commission it would appear to me that that is not happening.

The Government has not addressed the suggestion of the Vincent Report that the 'Liquor Act' be reviewed. It is the view of this Commission that the application of the Liquor Licensing Act 1988 needs to be examined in the light of the comments contained infra, but that the problem is essentially one of enforcement.

19.5.3 The Police Union view

The Police Union in its submission in response to Recommendation 23 of the Vincent Report refers to the 'Liquor Act' which is the title of the old Act and an incorrect appellation. The Union is of the opinion that the penalties in the 'Liquor Act' are adequate. Presumably the Union means the penalties of the 'Liquor Licensing Act 1988'. It is the view of the Union that the problem with penalties capable of imposition is that courts 'may' impose penalties which 'fall far short of the maximum'. The Union in its submission went on to comment that alcohol is 'often' purchased by the friends of 'the drunken Aboriginal'. This Commission takes the view that this may well be the case in some instances but this would not be the norm, in spite of police assertions to the contrary (see for instance p.42 Chatunalgi Transcript, Halls Creek).

In addition the Union submission stated:

> Blatant abuse of the law by publicans has always brought some response by police which in many cases is by way of counselling and encouragement [p.28]

Clearly, the Union cannot mean that its members are giving 'encouragement' to sell alcohol to intoxicated persons. In any event, given the fact that police throughout this State have constantly expressed grave concerns about alcohol use by Aboriginals, it is this Commission's view that the present police policy of providing 'counselling and encouragement' to publicans in 'blatant' conflict with the law, is not in the public interest, cannot be seen to be an appropriate use of the police discretion, is not in the spirit of 'community policing', and is certainly not 'law enforcement'.

Whatever the guidelines the Commissioner of Police has provided to the members of the Force they are apparently either inadequate or ignored. The problem of alcohol use is a national problem of considerable dimensions requiring urgent action by all parties. It gravely concerns this Royal Commission that legislation which has been enacted to provide sanctions for offenders in the liquor trade is not being adequately or appropriately enforced by the police. Publicans in the trade of selling or supplying alcohol to intoxicated persons should not in the view of this Commission, be 'counselled', they should be prosecuted.

My Commission recommends that the Commissioner of Police review the guidelines provided to members of the Police Force so that they more fully reflect the Vincent Report Recommendation that:

> 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 [23(b) Vincent Recommendation].

The Police Union in its submission to this Commission further calls for a review of the 'Liquor Act' which review was recommended by Vincent in January 1988 prior to the proclamation of the Liquor Licensing Act in December 1988. This Commission does not feel that a review of the sections of the Liquor Licensing Act 1988 mentioned in this section is warranted. What is required is the simple enforcement of the legislation.

19.5.4 Park and street drinking

Section 119(1) of the Liquor Licensing Act 1988 prohibits park drinking. Section 119(4) of the Liquor Licensing Act 1988 prohibits street drinking. Aboriginal people have in the past, been arrested for these offences to a lesser degree than for the offence of 'drunk'. With the decriminalisation of 'drunk' and the failure of the Government to immediately provide funding for the establishment of sobering up shelters, it is becoming apparent that the use of the offences of 'park and street drinking' is coming into vogue. Arrests are taking place for street drinking instead of disorderly conduct (p. 17, Chatunalgi Transcript) and the offence of park drinking has increased (p.62, ibid). At conferences held by this Royal Commission, park and street drinking were matters of major concern in Carnarvon, Geraldton and Kalgoorlie. Comments passed were generally in respect of the untidiness of people drinking in public.

Commissioner Bull in his evidence to this Commission stated that:

> Street drinking is a matter that [the Police] try and enforce, you know, with a certain amount of discretion ... I know certainly a number of towns, I've had complaints from people within the town and local government areas have, because police, they say, have not taken action against Aboriginals for street drinking... If Aboriginal people have a certain place they want to drink, if it's out of the way, well, you know, my officers won't take any action [RCIADIC Transcript, Perth, 1990:630-631].

The Ombudsman has in his 1989 Annual Report made reference to a street drinking matter, where he sustained the complaint of a non-Aboriginal person who was arrested for the offence of drinking out of a can of beer when driving (a preliminary breath test proved negative). The officer who arrested the complainant was regarded by the Police Department as having 'acted lawfully and ... not abused the powers conferred by legislation' (p.27, Ombudsman's Annual Report, 1989). The Acting Commissioner of Police, in justifying the police officer's arrest of the complainant for what is clearly a minor matter, which would equally clearly be adequately dealt with by a summons (pursuant to Police Routine Order 1-12.2 and 1-12.3) said:

> I believe a subjective interpretation of instructions is unavoidable in an environment encompassing officers deployed in an operational sphere where, at times, circumstances demand rapid decisions [Ombudsman's Annual Report, 1989:29].

Commissioner Bull has told this Commission that:

> ... of course an arrest is necessary if it is to stop the continuation of the offence which largely ... is the reason for the arrest occurring in the first place, and for other reasons, but largely to stop the continuation of the offence ... the main [indicator] being to stop the continuation ... for disorderly conduct or whatever ... [RCIADIC Transcript, Perth, 1990:596-597].

It is acknowledged that the preparation of summonses is time consuming and not resorted to as often in the country as it could be (ibid:598). Hence, a situation may well develop whereby the offences of 'park and street drinking' supplant the abolished offence of 'drunk'.

Certainly, in Carnarvon the Shire President (who is also a JP) made the observation in evidence that:

> street drinking, which we consider anti-social behaviour ... leads to very untidy behaviour within the streets, lolling around or lying around the footpaths, fighting, brawling, foul language and so forth [RCIADIC Transcript, Carnarvon, 1990: 136-137].

That Shire Council had discussed the matter with the police. There was talk of setting aside a special drinking place but this had not occurred at the time of my Commission's conferences. Park and street drinking may well replace the offence of 'drunk' as the single most significant contribution to Aboriginal prisoner statistics in the coming years. The Police Union through the agency of one of its officials, in conference with my Commission advised:

> One of the things that decriminalisation will do of course, is will ensure that police officers now charge the people within the streets perhaps with the offences that they ought to have in the past have been charged with which were of a more serious or greater nature than that which they had originally been subjected to. That the offences they will now be charged with are more likely to end in imprisonment, fine or some other means of determination [RCIADIC Transcript, Perth, 1990:758].

It would seem that now that the offence of 'drunk' has been abolished, people will be charged with the 'proper' offence, and they will be penalised with imprisonment or fines as in the old days prior to decriminalisation.

There has been some concern expressed amongst Aboriginal communities that the replacement offence would be disorderly conduct. It would appear to this Royal Commission that 'park and street drinking' is an offence which is objectively capable of easy proof. Fines for offences against the Liquor Licensing Act will, in all probability, not attract the application of the Fine Default Scheme which has been implemented in this State since the establishment of this Royal Commission. The reason for this is that the fines currently being imposed are small enough for it not to be attractive to convert payment to a 'Work and Development Order' even though the maximum fine for street drinking is $500.

From research and investigation carried out through my Commission into the use of alternative charges since the decriminalisation of 'drunk' it would appear that street drinking and disorderly conduct have in fact increased. Recently the Broome Court of Petty Session, convening on the Monday after the Shinju Festival (21 August 1990) heard five cases of park drinking on the Male Oval, each defendant was fined $35.00 plus $20.00 costs in default 3 days in custody; and three cases of street drinking, same penalty. A further charge of drinking rum on Dampier Terrace was adjourned for a not guilty plea. A study of the statistics returned from the ALS for their July court hearings indicate a marked increase in the use of the offence of 'street drinking'.

It is often stated that Aboriginal people do not drink in hotels for a number of reasons, these being:

(1) they are not welcome in hotels;

(2) they suffer discrimination in hotels;

(3) the prices in Hotels are out of their reach;

(4) they do not dress appropriately to go into hotels.

This being the case, it is dear that in towns like Geraldton on the foreshore; Broome on Male Oval and Dampier Terrace; Carnarvon at the old Civic Centre; Roebourne at the park; Kalgoorlie at 'Skinny Park' nature strip; Aboriginal people will become increasingly vulnerable to arrest for 'park and street drinking'.

Commissioner O'Dea in his Reports on Kim Polak and Misel Wiagana comments on the issue of 'street drinking'. Kim Polak was in custody serving time in default of non-payment of a fine imposed for street drinking. Commissioner O'Dea observes:

> ... the street drinking for which Polak was initially arrested remains an

> offence. There would appear to be little justification for this in the light of the decriminalisation [RCIADIC Report on Polak, p.50].

Misel Wiagana had seven prior convictions for the offence of street or park drinking. In the Polak Report Commissioner O'Dea posits alternatives to arrest for these offences, namely:

1. ignore the offence;

2. continue to arrest people;

3. provide areas where people can drink without running the risk of being arrested.

In my view, Option 2 seems unacceptable and I concur with the comments of Commissioner O'Dea that it is:

> ... undoubtedly a very expensive way to deal with the relatively minor problem posed by Aboriginal fringe dwellers who have nowhere to drink in Kalgoorlie and not only in monetary terms. It is extremely wasteful of police and Court time, and in social terms aggravates tensions between police and Aboriginals. Effectively it persecutes some of the most unfortunate members of our society [RCIADIC Report on Polak, p.51].

The first option is not a solution to the problem at all as it clearly just fails to address the issues. As long as the offences remain on the Statute Books the 'most unfortunate members of our society' may be subject to the imperative to 'police' there. What is necessary is an injection of funds to provide alcohol rehabilitation centres, that are run along guidelines which are culturally and socially appropriate to the needs and aspirations of Aboriginal people. Aboriginal organisations should be provided with resources and funds to respond to the social and cultural needs that give rise to these problems.

19.5.5 Applications for extended trading hours

My Commission was told of the unannounced extension of trading hours of alcohol outlets in Eastern Goldfields towns. The ostensible reason for the extension of trading hours was to provide mine workers with access to alcohol when their shifts concluded. In some country towns (i.e. Leonora - 6.00 am opening) alcohol is available for sale before Supermarkets open. Section 76 of the Liquor Licensing Act allows for an application for extension of trading hours to be made without the requirement it be advertised. The application may be determined by discretion of the Director. Essentially, I suggest that this section of the Act be amended so that no such extension of hours can take place without advertisement, notice and a proper heating allowing for objections.

One of the most important pieces of legislation in relation to this whole issue, is that of the Decriminalisation of Drunkenness, which is canvassed below.

19.6 DECRIMINALISATION OF DRUNKENNESS

State and Territory Governments throughout Australia have progressively

decriminalised public drunkenness. This trend has been spurred in recent years through the recommendations made by the Muirhead Interim Report into Aboriginal Deaths in Custody and other reports, e.g.: 'In jurisdictions where drunkenness has not been decriminalised, Governments should legislate to abolish the offence of public drunkenness' (Muirhead Report: 4.3 and 5.2) and 'Governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction as a last resort' (Vincent Report: 4.2 and 4.4). Both reports also suggested that facilities be established to care for drunk persons.

In June 1989, State Cabinet approved the development and implementation of alternative procedures and facilities to minimise the use of police cells to detain drunk persons, and legislation decriminalising public drunkenness was passed by State Parliament in December of that year, and proclaimed, through the Amendment (Detention of Drunken Persons) Act 1989 on 24 April 1990. The Act amends the Police Act 1892 through the alteration of Section 53 and Section 54. However, there are difficulties with amending these sections as demonstrated below:

Section 53 has been amended so that police can no longer arrest a person for the offence of 'drunk' with or without a warrant. The expression 'drunk or disorderly' has been replaced with 'conducting himself [sic] in a disorderly manner'. One of the complex matters that arises with the introduction of this amendment, is that a person can still be arrested for disorderly conduct, but not for drunkenness. The section remains otherwise the same. Hence it could be argued that the police can use the offence of 'disorderly' where they previously used the lesser offence of 'drunk'.

As observed, Section 54 has also been amended to provide the police the power to apprehend people for disturbing the peace on 'ships, vessels and in houses licensed for the sale of alcohol'. The amendment to this Section, can result in the power of arrest being limited so that the police can no longer arrest a person for 'drunk' in those places, but can, on the other hand, arrest there for 'disorderly conduct'.

The Police Act 1892 provisions in respect of drunkenness offences including habitual drunk Section 65(6), recently repealed, was the subject of criticism in this State over a number of years.

In the case of Wicker v Taylor (No. 210 of 1974, unreported) Section 65(6) of the Act was referred to as being 'antiquated'. Similar sentiments were expressed in the case Doyle v Higgins (No. 195 of 1974, unreported) when the bench called for a 'modern version [of the Act] more attuned to present methods'.

In 1985 John Hedges recommended that Section 53 of the Act be amended so that an offender be released 'without incurring a penalty or liability to pay costs' (Review on Aboriginal Communities Act 1979, 1985:58).

Decriminalisation of drunkenness does not mean that people are no longer dealt with by the police when they are presumed to be intoxicated. Such a person can be 'detained' by police. Police can take the person to a hospital but that would appear to be an unlikely option in that in some areas at least the policy of the hospital is that it will not accept intoxicated persons per se. Such a person can also be released to another individual after having been detained but police are not directed to take the intoxicated person to any location as a matter of policy or right.

The stated aim of Decriminalisation of Drunkenness is to reduce the numbers of people in custody yet what is of concern is that the Criminology Research Unit Paper on 'Public Drunkenness - Australian Law and Practice' shows that where decriminalisation has been the subject of legislation and comes into operation the number of people detained does not fall but, in fact, rises. This is obviously problematical, but is not incapable of resolution. What is urgently required in tandem with decriminalisation is the establishment of socially and culturally appropriate sobering up centres. The western Australian Amendment to the Police Act retains police involvement in the 'detention' of intoxicated persons thereby allowing past policy to operate as enacted.

The new Act is not supported by sobering up shelters; there is no 'duty' imposed on police to utilise such shelters when they are constructed and it allows police the discretion to 'defer' release of a person detained between midnight and 7.00 are if release is not in a person's 'best interests'. Aboriginal people will arguably again be exposed to the unfavourable exercise of police discretion.

As to the use of alternative charges since the decriminalisation of drunkenness, a Clerk of Courts in a Western Australian town (date and place indeterminate) is quoted by Greta Bird as having told her;, prior to the passing of decriminalisation legislation:

> We were told not to gaol Aborigines for 'drunk' so the police laid a 'begging alms' charge and we put him away for a month [cited in Hazelhurst, 1987:71].

The Police Union response to decriminalisation Recommendation 5, RCIADIC Interim Report, was opposed to the 'rule of priority' of taking Aboriginal people home as police 'should not become taxi drivers' (p.33, Submission). In the body of its submission, the Police Union suggests:

> ... the legislation has merely thrown a blanket over the cesspool of alcohol addiction simply hiding the problem from view. In the Union's view it is most probable the problems of alcohol will, become progressively worse, for with the drastic reduction in ability to recognise the extent of drunkenness evident in society, so the ability to respond decreases proportionately. Those in need of help will not be recognised [p. 11, Submission].

The connection between failing to prosecute people for the offence and the alleged ensuing increase in problems associated with alcohol is tenuous. Further, it is apparent to my Commission that 'those in need of help' have rarely been the recipients of the 'help' they need after being charged with the offence of drunk, because they have never had access to the sobering up centres that should be established.

In Answers to Questions, the Commissioner of Police stated that the Police Department does not endorse the imposition of a statutory duty on police to consider alternatives to detention (3.1). He agrees that police cells are inappropriate for the detention of intoxicated persons (3.3(a)). No doubt most serving police would agree with that statement. The Commissioner of Police was unable to advise whether there had been an increase in the use of alternative charges (3.7(a)) since the decriminalisation of drunk. The Commissioner of Police also holds the view that the 'significant benefit of decriminalisation is breaking the

chain' even though Aboriginal people are still largely going to the police lockup.

The Superintendent of Police at Kalgoorlie advised my Commission that his 'troops' were instructed that if a person was drunk and was playing up and the situation could not be defused, then they should arrest for the 'alternative charge' - the 'proper one'. He stated that in the past the charge of drunk had been substituted for the proper charge (RCIADIC Transcript, Kalgoorlie, 1990:308).

There was a concern at Leonora that people were coming to the cells for a bed as they knew they wouldn't be charged (RCIADIC Transcript, Kalgoorlie, 1990:313). The hospital at Leonora would not take 'drunks' unless they were injured. The police could not leave people at other places either (RCIADIC Transcript, Kalgoorlie, 1990:312). And at Geraldton comment was made by the Superintendent of Police that in about 1987:

> they were going to decriminalise drunkenness, there was a tendency for people to be charged probably with disorderly conduct, when they committed disorderly conduct, rather than when they were drunk [RCIADIC Transcript, Geraldton, 1990:263].

In addition to the above, another matter of increasing concern to Aboriginal people in this State, especially in the Eastern Goldfields and Central Reserves regions, is that of substance use. The following section considers some of these concerns.

19.7 OTHER SUBSTANCES

The use of volatile substances is an issue which was raised with my Commission by members of various communities. There are a number of reasons for this occurring. They are similar to the reasons outlined above for alcohol consumption. Powerlessness combined with a sense of frustration and boredom are frequently proposed reasons. The former Co-ordinator of the Western Australian State Working Party on Petrol Sniffing (SWPPS) informed the Commission that: the age range of people participating in this activity is 4 to 25 years; in 1989 seven children under the age of 15 years died from inhaling volatile substances; and the SWPPS is working on a community model to approach this problem (that is, they are working with the communities and families rather than the individual sniffers). However, they are concentrating mostly on the Central Reserves region.

During the Kalgoorlie conference the RFDS acknowledged the difficulty with evacuating sniffers and commented that they tended to sedate there with an injection prior to the flight (RCIADIC Transcript, Kalgoorlie, 1990:8). When questioned about night flights they stated that the only airstrip that presented a problem at night was Wingelina which even with flares they would prefer not to use at night due to the surrounding hills (RCIADIC Transcript, Kalgoorlie, 1990:10). Evidence provided to the Commission in confidence alleged RFDS's refusal to evacuate sniffers in the past (RCIADIC Transcript, Kalgoorlie, 1990: 108). The Kalgoorlie Police stated that the Royal Flying Doctor Service 'basically refuse to bring there in' when they are badly affected (RCIADIC Transcript, Kalgoorlie, 1990:327). Indeed six badly affected by inhalant use (out of a bus load of 32) were recently transported by the police from Warburton to Kalgoorlie, then Perth by road. They were checked by the nurse at Laverton, en route, and at the Kalgoorlie Hospital on arrival as the police were concerned about the condition of the six (RCIADIC Transcript, Kalgoorlie, 1990:328).

Aboriginal people at my Commission's Kiwikurra Conference, expressed concern that some of the people sniffing petrol were being arrested and sentenced to periods of detention. They felt that this was an inappropriate way to deal with these people and they considered that 'they should be cared for properly' (RCIADIC Transcript, Kiwikurra, 1990:13). In sum, they expressed the view that detention was not the answer.

The current concentration on petrol inhalation in the Central Desert region does not mean that there are no problems in other areas in the state. During the community consultation process undertaken by the Commission, concern was expressed about the level of inhalant use in other areas, in particular, Perth and Albany. In order to address this the Carers Group in Albany has set-up a 'grandparent' programme to try and re-establish some stronger cross-generational links within the community (RCIADIC briefing notes and Transcript, Albany, 1990). They are also establishing drug-free activities at the Community Centre with the aim of providing youth with some positive options. An Aboriginal youth worker estimates that the extent of inhalant use in Perth is much higher than anyone cares to recognise (RCIADIC Transcript, Perth, 1990:697). My understanding is that the youth worker has proposed a number of possible activities to try and decrease the incidence of this activity. Namely, an Aboriginal youth sporting facility and country trips to highlight Aboriginal history andto show that somebody cares.

The circumstances that have created the extensive need for alcohol and substance use can only be considered as having been set and based on the ongoing violence of colonisation. But, as noted in earlier chapters, alcohol and violence are often associated, mostly with distressing consequences. In the next chapter, I address some of the underlying issues that impinge on the devastation of violence.

VIOLENCE

Throughout this report, violence has been mentioned on a number of occasions (e.g. Chapters 5 and 6). From the outset, it needs to be stated that alcohol cannot be seen as the absolute or, indeed, the only cause of violent behaviour. Alcohol can, however, be seen to exacerbate violent behaviour among Aboriginal people (see e.g. Hunter, 1987; Reser, 1990).

As Langton observes (1990:29) 'new styles of violence have developed from grog'. These 'styles of violence' are markedly different from those described below where Aboriginal people drew on certain types of physical force to maintain aspects of law and order. However, from evidence put before me, it became clear that in some areas violence is endemic among those who make extensive use of alcohol. The circumstances often created by heavy drinking can undermine respect for Aboriginal Law, and social relationships and practices that seek to maintain Aboriginal societies.

Violent fighting, drunken driving, and funerals have, in many places, become part of day by day life. Heavy drinking can serve as a catalyst for violence in remote, urban and rural settings (cf. Daylight and Johnstone, 1986; M. Tonkinson, 1987; Bolger, 1990). For instance, Daylight and Johnstone (1986:67), paying particular reference to women, but with obvious and similar consequences for men, observe that:

> Some look to alcohol to blot out their own burdens, and others are victims of the drinking habits of family members ... Violence is often the result when people drink alcohol because of stress, strain, hopelessness and frustration.

In addition to the distressing effect of the results of violence on adult women and men, it is also important to note that overcrowded living conditions mean that in some households, where there exist children from a number of individual family units, the potential for conflict is likely to increase because of the tendency of children to become embroiled in particular conflicts,

Violence in the context of male/female relationships should not be undermined, together with the influence of institutionalisation referred to in earlier sections. Consideration needs to be given to how the effect of institutionalisation has introduced agendas that manifest conflict between Aboriginal men and women. Conflicts regarding status, upward mobility, jealousy, child care, educational and work opportunities are just some of the matters that can lead to conflict. These conflicts are often generated because of a number of adverse effects on contemporary social life which were referred to in Chapter 6.

20.1 CULTURAL ASPECTS OF VIOLENCE

In my Commission's view, it is also necessary to discuss some of the cultural aspects of violence. Traditionally, violence was not the only sanction against misdemeanours, but it was one of the ways in which wrong doing could be dealt with. In contemporary circumstances, disputes can, and often are, resolved by punishments imposed through the use of physical force, and many people see that system as one which can best serve to stabilise the breakdown of law and order in various settings. For instance, at a bush meeting in the Kimberley, it was observed by senior Aboriginal men that:

> ... the old men .-. they mentioned a few things. The main thing they said was people need to return to their own traditional country to do a number of things, the first one being to show the young who they are. That is, like their skin groups. To show how the relationships work between all people, kids, woman, man. To put back or reinforce old laws. If need be give hidings and spearings when people do wrong but no killing [RCIADIC Transcript, Mary River, 1990].

The resolution of conflict can be institutionalised to the degree that it is carried out in a highly controlled manner, and usually in public, with various people participating in defined ways according to their associations with the 'wrong doer' or those who have been wronged.

From published and unpublished works, and from further evidence put before my Commission, I can only conclude that violence has increased among Aboriginal society, both in the amount of violence inflicted, and in how, and to whom, that violence is inflicted. What appears to be true, is that whereas in previous times, members of Aboriginal society often used what may be described as violence or physical force to enforce certain aspects of law and order, today physical force has, in many areas, where excess alcohol use occurs, become almost uncontrollable and mindlessly violent. This is especially so not only with regard to

the violence directed toward women and children but also among men themselves.

What is of most concern, is that which I refer to now as the 'ongoing violence of colonisation'.

20.2 THE ONGOING VIOLENCE OF COLONISATION

> A lot of old people have something to say ... on the Canning stock route when white people shot everyone, at Well 37, a long time ago ... one called Joe William who took a woman away and someone from that camp come up and killed him and then he was taken away down south to prison ... [RCIADIC Transcript, Mary River, 1990].
>
> One old man said police got people who are sleeping, and grabbed there for no reason and put there into gaol. They do not grab white people for the same thing. He said that is how people get sick when they are going into gaol too many times ... [RCIADIC Transcript, Mary River, 1990].

These two accounts, recorded during a bush meeting in the Kimberley, occurred at an estimated 50 years apart. They describe the ongoing violence of colonisation. A further, more recent, example of continuing violence is also explicit in what has become known as the 'Sampi case'. That case, which concerned the brutal killing of a young Aboriginal male in Broome in the State's northwest in 1989 by two non-Aboriginal assailants, resulted with one of the assailants being convicted of manslaughter and sentenced to three and a half years imprisonment, and the other assailant being acquitted (refer West Australian Newspaper, 12 May 1989). Such a decision needs to be contrasted with that where another brutal killing of a young non-Aboriginal male occurred, in Perth, in 1990. Again two non-Aboriginal assailants were involved. Both assailants were found 'guilty' and sentenced to life imprisonment (refer West Australian Newspaper, 16 June 1990).

While I are aware that there are a number of legal and social complexities in relation to both these cases that should be explored, a task which is outside my jurisdiction, it is difficult not to see that popular contrasts such as these can, and do, still occur in this State. Aboriginal aspirations for natural justice, while getting closer, still seem too far away. I now tam more directly to some of those aspirations and forms of natural justice.

ABORIGINAL ASPIRATIONS AND NATURAL JUSTICE

In this final chapter, I attempt to bring. together some of the major themes that have been examined throughout my report. This is not meant to be a comprehensive exercise, as the report, in so many ways, speaks for itself through the discussion and detail which has been provided throughout the preceding pages. What this final chapter actually intends, is to convey an overview of some of the concerns which emerged throughout my inquiries in this State, and to put forward some considerations for the future of Aboriginal and non-Aboriginal relations. As noted at the commencement of this report, recommendations from my Commission's inquiries, have been provided direct to the National Commissioner, the Honourable Elliott Johnston, Q.C..

21.1 A NEED FOR SOCIAL AND ECONOMIC CHANGE AND THE RECOGNITION OF INDIGENOUS RIGHTS

In concluding my report I would like to re-state some of the major themes that have arisen throughout my Commission in considering the 'underlying issues' that lead to the high levels of custody for Aboriginal people, and, all too often, to the tragic death of Aboriginal people in custody in Western Australia. In doing so, I wish to pay tribute to the thirty two persons whose lives and deaths should not end with this inquiry. They offer to us the beginning of a new and better chapter in our relationship.

It is important to realise that the history of Aboriginal and non-Aboriginal relations in this State has its own non-exclusive distinctiveness, although that history also has many elements that are in common with other States and the Territory. Whatever the positive or negative outcomes have been these, in pan, constitute the quality of relationships today.

The life and death of the individuals who died in Western Australia have been looked at within the requirements that were imposed on me by the Letters Patent (see Appendix 1). 'Why' people died, and 'why' the levels of custodies for Aboriginal people in this State are extremely high, cannot be easily explained. My report touches upon some of the matters that are most relevant to those questions. Commissioner O'Dea and other relevant Commissioners have provided reports of their inquiries into the individual deaths. These Commissioners have made findings about how people died in custody. In a sense, the other Commissioners have examined the people who died in custody from the case itself looking out to 'underlying issues', whereas my Commission has primarily examined 'underlying issues' looking back into the cases. In some instances, these examinations have overlapped, or are complementary in a variety of explicit and implicit forms.

Considering the circumstances that constitute the individuality of each person who died either in the police lockup, hospital or prison while in custody, it is clear that the quality of their relations with those who had a duty of care toward there required re-assessment (see, for instance, Chapters 4, 5 and 14).

It seems to me that Aboriginal people, on the whole, experience the world very much with humanity and the importance of relationships uppermost in their considerations. In assessing whether someone is to be trusted, confided in, truthful and honest, it is easy to arrive at an answer if the conduct of the relations under consideration have manifested themselves in a discourteous and inhuman way. Constantly, as discussed throughout my report (especially in Chapters 5, 8, 10, 12 and 18), Aboriginal people have described their relationship with those in authority roles as not, satisfactory, racist or inhuman.

From the Commission's overall findings, it is apparent that the lives of all those who died in custody were punctuated by the ups and downs of people who were in their chain of relationships. Their relationship to everyone, Aboriginal and non-Aboriginal, to institutions, regulations, heart-break and happiness, custody and freedom. Where there are good relationships between Aboriginal people and police, prison officers, medical officers or public servants, it is normally based upon individual charisma, common sense, openness, and respect for the space of the other. Structures, orders, regulations and guide-lines tend not to be what produces good relationships of their own accord. They, of course, need to be designed to bring about the good of the relationship, but it is the quality of the interpersonal

contact that is paramount for the Aboriginal person. People who take a meticulous statutory notion to their role and responsibilities, find their relationships with Aboriginal people are often going to be perceived as insensitive and uncaring, which leads to an impaired basis for a quality relationship. Friction, conflict, fear and anger build up quickly on both sides in these types of situations.

The excessive use of alcohol (which is discussed in a number of ways in Chapters 4, 5, 14 and 19), makes it far too easy for Aboriginal people to feel affronted when the police arrive on the scene. Police often find it imperative to be assertive and authoritarian. From evidence put before me, it appears that the human relationship skills of young officers seem to emerge later, rather than earlier, in their careers. Younger police officers seem to find it easier to dominate their peer group among members of Aboriginal society, because they have invested in there authority that sometimes exceeds the maturity of their years. Enmeshed in a police culture that has many demands outside of the law to socially control Aboriginal people, this task can be seen as something natural and good to do. This is particularly so if Aboriginal youth, especially young Aboriginal men, are portrayed by sectors of the media as some type of criminal predator who are placing at risk the social fabric of non-Aboriginal society.

For most Aboriginal people, the memory of the past on reserves and missions, ruled over by non-Aboriginal people and all they were seen to represent, is not easily forgotten. Nor are the 'protector' and 'welfare' roles played by police as instruments of government policies, as detailed in my report, forgotten. There continues to be a deep sense of loss, injustice and denial of recognition that still pervades the societies of Aboriginal people. This is probably more pronounced in regional and metropolitan areas, than in the remote discrete communities, which is primarily because some Aboriginal people have basically been able to maintain aspects of their space from the non-Aboriginal world.

However, that space from the non-Aboriginal world is rapidly changing as material contained throughout my report details. Some instances of the possible catalysts for change could be seen in the fact that police stations at Warburton and Balgo in the eastern and northern parts of Western Australia will soon diminish that space, and create new challenges to the quality of relationships between police and Aboriginal people. Significantly, where only a few years ago Pintubi people walked into Kintore and Kiwikurra carrying their Law, they now need to bow to the laws of a Queen they never knew existed. Those Aboriginal groups currently living there, left missions and Government settlements to move back to their traditional lands. In pan, this was to put distance between there and what non-Aboriginal society had to offer. This has little to do with the material goods of the non-Aboriginal world, but it has much to do with being secure and in a position where decisions about cultural, social, economic and legal matters can be effective. Aboriginal people in these situations have a sense of being able to get on with the priorities of their lives without too much interference from non-Aboriginal imperatives. There is a sense of being able to control the processes of westernisation and assimilation. However, the signs are there that aspirations such as these, are still subordinated and subjugated to non-Aboriginal imperatives, and there is no real regard being shown to indigenous rights.

People who do not constantly rely upon the service of others in the public sector fields, probably find Aboriginal aspirations and demands quite difficult to understand. In fact it has become quite clear to me that there are many things non-Aboriginal people do not understand about Aboriginal society (Chapters 6, 8, 9 and 18 make available some discussion on this issue). It is even a difficult matter

for those who provide public services to Aboriginal people, to see how their relationship to those people determines whether Aboriginal people are going to access the intended good of Government policies and programmes or not. Aboriginal people have, for far too long, been at the receiving end of acts of largess, channelled through bureaucratic functionaries whose loyalties have been primarily to Government policies of assimilation, integration, self-determination and self-management than to the people themselves. These public servants have neither been contracted by Aboriginal people nor can they be fired by Aboriginal people. As ATSIC is currently enacted, it does not really provide that avenue for Aboriginal people (see especially Chapter 9).

In my Commission's view, Aboriginal people often find themselves in a non-contractual relationship with non-Aboriginal society. They are expected to be responsible and accountable for every cent of public money, but they do not determine who has positions in the bureaucracy and who is meant to be responsive to their needs, plans and aspirations. The Public Service Union has successfully ensured members jobs in Aboriginal Affairs. The externalising of responsibilities for all aspects of Aboriginal people's lives continues even though, on the surface, it appears to have changed. The legacy of the welfare attitude and the persistence of the 'policing imperative' makes it difficult for Aboriginal people not to he cynical about incremental change that may contain some benefit for themselves. Policies and their implementation, administration, plus reviews, are more the domain of the public servants than of Aboriginal people. Aboriginal people stand outside of the real control and decision making arenas, but are abused and condemned as guilty when outcomes from the perspective of public expenditure are not what is expected.

Aboriginal people share the commonality of their oppression by non-Aboriginal systems, policies and values. Non-Aboriginal people often stay as individuals and most do not share the experiences of being the oppressed. They consider themselves not accountable for what went before or, indeed, for what is taking place today. Aboriginal people grieve and hold themselves accountable and responsible for what has happened to their people. Experiencing a constant powerless relationship with non-Aboriginal people and their societal structures, has bred hopelessness and resignation. How to stimulate motivation out of this type of social and cultural malaise, requires experiencing a win in some arena or other. In my view, it does not necessarily matter how minor to begin with. Its ability to spark action and hope for change and improvement should not be under-estimated.

Often, I believe, this sort of change and improvement has more to do with processes and respect, rather than questions of absolute principle. At the local or regional level, it is usually a matter of how best to deliver the service in a way that will involve and respond to Aboriginal sensitivities. Material recorded in Chapters 11 and 15 evidences the necessity of considering local and regional levels, especially in relation to the socio-cultural and economic empowerment of Aboriginal people. When structures and organisational formats are imposed and thrust upon Aboriginal people, there is no sense of ownership developed. Such things tend to come from outside Aboriginal considerations and initiatives. When there is no sense of ownership, there is no pride. For pride to be advanced, there needs to be control and sensitivity to enable delivery and participation. Without these dynamics being put in train, there will be repetition of past patterns of rejection, failure and resistance.

Contracting, involving, supporting and resourcing Aboriginal controlled organisations, offer the best opportunity to get some of the crucial matters about

progress and achievement right. In my Commission's view, they offer the best mirror images of Aboriginal people doing and achieving things for themselves. They also provide a focus for non-Aboriginal interests to transmit to Aboriginal aspirations and concerns.

Relationships with custodial officers, like police and prison personnel, are crucial ones as information detailed throughout Chapters 2, 4 and 5 illustrates. Firstly, because the Aboriginal person in the custody position is at the most powerless point in a life which has had more than equal amounts of despair, insult, shame, and hopelessness associated with it prior to arrest. Socio-economic factors and relationships can be so bad in the outside world that some Aboriginal people see prison as a type of refuge. I cannot say whether some would prefer to be in prison rather than out in the broad society. It has been put to me that Aboriginal people outside of custodial settings still experience life as though they were actually in custody. This may have more to do with the policing imperative engaged in by most of non-Aboriginal society, and not just the indiscretions of insensitive police officers. It is probably also related to Aboriginal people's lack of trust and faith in non-Aboriginal people, as evidenced throughout my report. Police often tend to be singled out and focussed upon, because they are combative about the need for the policing imperative.

However the practice of putting prisoners into isolation cells as a way of dealing with disciplinary or other problems, requires some comment. It may be practical for the system of prison justice, but I are not convinced it is a useful means for dealing with depression, fear, stress and trauma brought about by unclear causes at the time of placement. In my Commission's view, the world of interconnected relationships with human beings and spirit beings cannot be under-estimated when dealing with Aboriginal people who are stressed, depressed and exhibiting signs of withdrawing into themselves. This, of course, is more seriously complicated when linked to fears or anxieties about repercussions within Aboriginal Law. To talk about the contents of Aboriginal Law outside of the circle of responsible Law people, is a serious breach and can involve harsh penalties. If someone fears they have transgressed, or are held accountable to some aspect of Aboriginal Law, then they will be unable to talk to anyone about it. The availability of psychiatrists well trained, but lacking knowledge of Aboriginal cultural beliefs and practices, may help in a crisis, but will not heal anxiety about transgressions against Aboriginal Law, societal values or customary practices (see, in particular, Sections 5.11 and 14.7-14.8). That requires an Aboriginal resolution. There are mechanisms for dealing with such matters in Aboriginal societies. The format may vary, but basically it will usually involve appropriate relatives from both sides coming together to represent the interest of their families and expressing their obligations. The outcome may be physical punishment or compensation in some form. Usually the matter is settled over time but not necessarily forgotten, depending upon the seriousness of the breach of Customary Law, so the weight of its penalties will be feared. If there is no resolution found and no arrangements made to reconcile the parties through a process as outlined above, then the one who is accused can easily become what might be termed psychotic and manic. Sentencing and punishment by non-Aboriginal courts are not taken into account by Aboriginal Law people. A non-Aboriginal person may think there is nothing to make an Aboriginal person go this way, which can be an extremely distressing and disconcerting experience for prison officers, particularly if an individual, in this type of state, attempts some self-inflicted injury and may be successful in ending their life. There are many other cultural and social obligations and responsibilities that may not fall within the ambit of what is referred to as Traditional Law', but that does not diminish their imperative nature for particular Aboriginal groups. It is for reasons of

these cultural and social realities of Aboriginal peoples lives that schemes like the Aboriginal Visitors Scheme are so crucial. Aboriginal organisations such as the medical and legal services, and child care agency, are essentially well placed to respond sensitively to matters as well.

A point which became critically clear to me, is that police tend to encounter Aboriginal people when they are possibly at their worst, especially if intoxicated. They usually approach each other out of a sense of distrust, fear, retaliation. This is especially true when the police officer has not had any other form of contact with Aboriginal people. The stereotypical views conjured up through media representation of past confrontations is possibly all the officer has to go on. As stated in Chapter 5, two and a half hours on Aboriginal matters in the Police Academy training period, would only confirm all that was worst about Aboriginal people. If there is no broader exposure to Aboriginality apart from associations with alcohol, drugs and aspects of criminality, then the police officers are destined to remain ignorant and entrenched in stereotypical views about Aboriginal people. Additionally, the police will continue to be misunderstood and perceived by Aboriginal people as not having an ability to transcend the imperatives of the police culture. Having a large section of the police on duty while still on probation has to, in my view, be of great concern. Professional training in human relationship skills, cultural sensitivity, and appreciation of socio-economic difference, are essential if custodies for Aboriginal people are going to be reduced.

What may appear as mutual efforts to improve understanding, treatment and behaviour are so quickly countered by actions underlined with insensitivities or insulting language. There is simply not enough presentation of the practical working together between Aboriginal people and police. The Aboriginal Visitors Scheme has been encouraged by senior officers where the Scheme operates, but on occasions a visitor may not receive all the co-operation they need. This may be because their identification cards are not signed by the Police Commissioner but by the Commissioner for the Aboriginal Affairs Planning Authority. It could also be many other things, such as police feeling that a visitor is interfering with their work, over-stepping their role, or creating a situation where police officers seem to be accountable in a small way to the Aboriginal society. In a State where 32 out of the 99 deaths inquired into occurred, and where Aboriginal people are 2.7% of the population, but are 43 times more likely to be taken into custody, there may be resentment to the Aboriginal Visitors Scheme as something which appears to offend what ordinary decency should automatically generate.

When custody in police lockups is contrasted with custody in prisons, it can generally be said that prison officers encounter Aboriginal people when they are sober and potentially at their best. Often they get to see another side of the same person the police arrest. Prisons have a routine and, by and large, some certainty associated with it. Police lockups are usually meant for people who have not yet been convicted by a court of an offence. They tend to be places of uncertainty, no-one seems to know any of the answers to the questions an arrested person may have and, at times, it seems there is little interest in finding the answers as well. It can appear to an Aboriginal person that they are doing their punishment prior to the consideration of the court. The court, however, decides whether a person is to go to prison, not the police, although how a person comes before the court is a matter associated with the police. Too often police are perceived as the ones who relieve, or do not relieve, people of their freedom. While in some instances this may be true, if one takes into account police discretion, as with so many other issues, it is essential to see the complexity of the matter as a whole.

Often these neat distinctions get further confused for Aboriginal people because lockups, police stations and the court house, are all together on the one block or the one building. Where police act as court orderlies, prosecutors and clerk of courts, the judiciary does not appear to be independent of police influence, and justice does not appear to dwell where it might or should. It is this type of association, interaction, and coalescing of functions, duties and responsibilities that generates the greatest lack of faith and disbelief in the criminal justice system for Aboriginal people. This is further reinforced when, on occasion at the court room, lawyers, prosecutors and departmental personnel, appear to openly discuss matters concerning an Aboriginal person who witnesses this going on over the top of there. The person just sits there feeling irrelevant and confused, and grows angry because his/her representative appears to be doing 'deals' with the prosecutor. This may well be acceptable court procedure, but it is not what an accused Aboriginal person understands or appreciates. For those who are sentenced, it can amount to a crisis of faith in the Aboriginal Legal Service or representative. Anxieties and doubt arise as to whether they were properly represented, or whether their instructions were followed. While in some instances this may be true, there are often various reasons for this as I have demonstrated throughout Chapters 4 and 5.

In Chapter 5, it was also discussed that police lockups tend to be places where everything seems to resonate with racism and accusations. Cells are not motel rooms, and there is none of the privacies that most citizens take for granted. The trauma and experience of being incarcerated in the lockup goes beyond just physical confinement. A person is stripped of any power or freedom they may have held. They are completely in the care of someone else who more often than not does not share their interest. It is not what the majority of Australians know or would want to experience. Basically, the officers are there to do their duty and carry out their jobs. No-one is there to help, comfort or provide automatic support. Such things have to be requested. While there is a 'duty of care', it does not equate with the care of affection. As noted earlier, officers can be caught unaware of the depth of emotional stress and trauma a person has when they are taken into custody. They can be fixated with the view that odd behaviour does not reflect different things (such as severe illness or extreme despair as some of the individual reports show) but only drunkenness. At other times, however, certain police officers have read the signs correctly and prevented tragedies in the lockup, and that should not be forgotten. In my view, the police officers involved in such matters, should be given the opportunity to share that experience with other officers. It is the cross-cultural understanding that has to be attempted if certain lessons are going to be learnt from deaths in custody. There is a lot of practical experience amongst particular police and prison officers in dealing with Aboriginal people in a positive way. Work shops between police, prison officers and Aboriginal people at the local or regional level, should be considered as a practical vehicle to exchange experiences, and recount and consider how positive results have been arrived at. there should be a concentration on human responses to the situation, as well as those that are technical and procedural.

An Aboriginal person's sensitivity to further acts of inhumanity and callousness meted out while in custody easily conjures up the culmination of hurtful, shameful, unhappy, regretful events and memories where things have not been right for there. No one explanation can satisfy why and how life no longer has any value or worth, except that others see a value in its preciousness. If that goes, there does not appear to be much left. It may be the cold and legal rendition of care that does not abide human warmth and feeling that crushes a person's spirit. Fears arise that may have no clear logical or rational base, but are associated with anxieties that

someone may take your life or further violate your already disregarded rights. It was discussed in Chapters 4 and 14 and Section 6.8, that some self-inflicted injuries may be part of an act seeking attention. And such an act may be undertaken because of the conviction that there is no-one who really does care. The sense of despair in these situations transcends the cells and the particular officers, and goes to what meaning and purpose can be derived from reflecting upon the experiences of a particular life. Officers and cells are not, however, the only causes of this. The level of inhumanity may not be intended but it cannot be avoided when the rights of others mean nothing, and their race becomes a source of derision and abuse. Spartan physical conditions, odours of stench, dampness, dim light, poor ventilation and extremes of hot and cold do not help a depressed and sad human spirit.

Peoples lives are quite radically and suddenly disrupted when they are taken into custody. Whatever plans, obligations or responsibilities they may have had are terminated. It is only when contact is made by family members, friends, or those from Aboriginal organisations visit, that some of the anxieties associated with these external matters to being in custody can be raised and hopefully taken up and resolved. It is very important for those in custody to be aware that family and friends know they are there. It will be the rare Aboriginal individual who will want to hide this fact. Similarly it is very important for family and friends to see and talk to those in custody as soon as possible. Suspicion and allegations of brutality arise very quickly when Aboriginal people experience being shut out or obstructed in their request to see those in custody. Proper reasons need to be given. Too often, it appears, officers are hiding behind someone or something else. It could be the Coroner, or the Special Investigation Branch, or it may simply be that the officer in charge has not yet made a decision about something like ball. This type of encounter simply leads to heightened anxiety that matters are not right and suspicion can easily get a grip on the imagination, which encourages the belief that foul play is going on and will not necessarily be detected. In my view, consideration needs to be paid to these sorts of needs, especially when a sentenced Aboriginal person is transported out of society and into prison. If anxieties, worries and fears about immediate family or personal concerns are not resolved, they can become overwhelming in the early period of cell custody in relation to that person's overall outlook on life.

In addition to the above, it has also become clear to me that there is simply not enough presentation and recognition in the wider world of what Aboriginal people do for themselves. For instance, many Aboriginal people work with non-Aboriginal people. This is often a collective effort that is required to meet some of the needs that face Aboriginal people. It is not just the police and prison officers who have to become aware of Aboriginal people. Members of other cultural groups within non-Aboriginal society have also to become aware of this policing imperative role, and how adversely that affects access to services as well as entry into relationships which could have mutual benefits. It is especially important to come to grips with this at the cross-cultural interface, involving interpersonal relationships as well as systems and institutions. Where Aboriginal and non-Aboriginal people talk and work together, there are usually positive community responses to addressing the needs. This does not mean they have to always agree. It is the interaction and interfacing that is helpful. At times this may be combative, but if there is an appreciation developed for the effort and assistance being provided, then that type of behaviour can be accommodated without distracting from achieving the goals.

It has also become evident to me that there is little, if any, understanding about

how Aboriginal people have transmitted through various interactions and involvement with non-Aboriginal enterprises or industries to where they find themselves today. There is little appreciation of the fact that it was through these exposures to what non-Aboriginal people's life represented, that Aboriginal people became aware of what non-Aboriginal society and its values were about. there appears to be little appreciation about the correlation of this interaction and involvement with non-Aboriginal enterprise and industries and the extensive contribution and sacrifice made by Aboriginal people towards there. There are many points of contribution that Aboriginal people have made to support and build up what non-Aboriginal people's objectives have been. Aboriginal people have participated with non-Aboriginal people, particularly as workers, but often have not benefited commensurate with their contribution or sacrifice. Chapters 2, 7 and 11 explore this inequitable situation in some detail. Aboriginal people's exposure and participation has been through the pastoral, farming, pearling, mining and the war effort. These have been times of interaction and contribution for what would be considered the 'common good' despite, on the whole, rewards going to other than Aboriginal people. Any objective consideration of the foundation of most primary industries in this State will show how, initially, Aboriginal people participated. Currently Aboriginal people are largely marginalised and tied to a welfare basis which does little for economic independence to break out of the poverty and powerlessness cycles (see, for instance, Chapters 7, 10, 15 and 17). What we are faced with is how to find ways where Aboriginal people can contribute on their terms. We are faced with trying to identify the positive examples and extending those for others to consider. It should be patently clear from my report that Aboriginal people cannot achieve equality and participation in the nation without some positive response from non-Aboriginal society. There is need for specific Aboriginal organisations to advocate and service the particular needs of Aboriginal people. These should not be feared, but promoted, contracted and resourced to carry out responsibilities as Aboriginal people and to negotiate, liaise and help non-Aboriginal society improve their understanding and interaction with Aboriginal people.

Aboriginal people have had to live through various structures and policies imposed on there by successive forms of government, as material contained in chapters throughout my report illustrates. It has been through the exercise of authority and power aimed at fitting Aboriginal people into something non-Aboriginals have invented, that has been most problematic. Despite being colonised, culturally and economically marginalised and incarcerated throughout the brief history of this nation, Aboriginal people still do not respond the way non-Aboriginal people would always like there to. Gradually Government instrumentalities have made attempts to allow 'advisory' roles for Aboriginal representation. This has taken place through consultative mechanisms, and all suffer from an obvious lack of power to effect and implement advices. There was also little or no control over the procedure and practices that accompanied implementation of what-ever Government made of the advice or consultation. In my view, processes of consultation should become processes of negotiation.

In direct relation to Government, as stated in this report, the Aboriginal Affairs Planning Authority evolved from the State Native Welfare Department. Similarly the Aboriginal and Torres Strait Islander Commission has come from the Federal Department of Aboriginal Affairs, as well as a number of other Aboriginal agencies. There are numerous differences between both statutory bodies that I will not dwell on here. However I wish to focus on change and its impact on, or accommodation for, Aboriginal people and their rights and aspirations. Both ATSIC and the AAPA are at some distance from those they are meant to service. Both are associated

despite their distinct jurisdictions, functions and powers, with holding immediate responsibility and decision making in Aboriginal Affairs. There is little consideration of their limited mandates by Aboriginal people. Mechanisms endowed on ATSIC and AAPA have been perceived as the avenues for achieving action concerning the needs and aspirations of Aboriginal people. When failure is experienced in addressing these needs, so too does confidence in there wax and wane. State versus Commonwealth arguments only help to create confusion and division, loyalties and alliances, depending on the popularity of the particular Government agent in recent or past performance. Aboriginal people can be lulled into an artificial sense of achievement and acceptance on the basis of token recognition and patronage of their cultural and societal values. Western legal approaches as to who has standing or jurisdiction are not always the primary considerations, and rarely are those arguments presented to Aboriginal people. This can restrict choice and understanding about ways that Aboriginal people may wish to be self-governing. Often Aboriginal people are faced with balancing trust and deception in assessing governments as well as political parties. This game has been played with monotonous regularity and sophistication for many years now, and key people are often the least affected by the outcomes. Aboriginal people have been caught up as either the patronised and exploited, or as outsiders and stirrers.

The importance of all this for custodies, for deaths in custody, and for premature death outside custodial settings, is that it contributes to an environment of powerlessness, resentment and spiral hopelessness. Those who have been responsible for externalising responsibilities and denying ownership to Aboriginal people are held accountable. Aboriginal people expect there to be morality, justice, and some return of what has been taken. This responsibility is usually associated with the representatives of non-Aboriginal people. That is, of governments and their various instrumentalities. It was governments who took away the land, the children, aspects of the Aboriginal life-style, culture and inheritance. Aboriginal people, without a great deal of western education, often raise two very simple questions in this regard. Why did government need to do these things? When will they take up their responsibilities and honestly address these matters with us?

From my inquiries, it is clear that what has happened has happened. That should be acknowledged, and Aboriginal people now expect to be dealt a new deal. Mind you, there is much that has been undertaken over the years by Government, some of which has been positive. I have not been able to look at that fully in my report because of the matters I are required to focus upon.

The major impact of this history can be divided into two broad areas. Firstly where some advisory participation is offered, Aboriginal people may engage in this on the basis that something is better than nothing. This may manifest itself in roles of assistants, aides, or in an advisory role on policy and strategy, but not really have any effective decision making power. The questions of autonomy and control are more geared toward advice and modifying and shaping policy and programmes, than actually exercising responsibility for formulation, evaluation, monitoring, funding and promotion. This may be all that is seen as possible or indeed permissible. A sense of achievement and importance can attach itself to those who become effective and skilled in what the Government policy sets out to achieve. This may, in fact, have little to do with the upholding of Aboriginal cultural or societal values. Participation in this type of process may be undertaken at great personal sacrifice and cost to individual Aboriginal people, and may be motivated by a sense of acculturation and assimilation. Despite the amount of training, exposure and cajoling that has gone on to achieve this type of participation from

Aboriginal people, it still produces crises of identity, self esteem and self worth for Aboriginal people, especially if it lacks group or family endorsement. It also generates forms of resistance.

The second area has more to do with having no confidence in the morality of non-Aboriginal society. It is based upon an Aboriginal perspective of history and knowledge of broken promises and failed programmes. There has been no reciprocation by non-Aboriginal people to the accommodation that Aboriginal people have provided there. Aboriginal people do not wish further piece-meal solutions, but a major overhaul and restructure of the relationship with governments, and not just their various departments.

In this situation, control and participation is directed toward power, autonomy and responsibility, which severs links with many mechanisms that currently determine and decide matters for Aboriginal people. Negotiation needs to replace consultation and advisory postures, and local or regional priorities and cultural sensitivities should be upper most in consideration. However, rhetoric and ideologies can become more important than achievement through compromise. Compromise can be seen as prejudicial to principles of indigenous rights. The argument should, in my view, centre more around Aboriginal governance without a clear distinction between notions of sovereignty and Aboriginal rights under various legislation. At times there may be consideration of Aboriginal powers under various government constitutions. In my view. there is little hope to be perceived in the domestic political arena and many Aboriginal people have more confidence in international forums. The persistence of the doctrine of 'terra nullius' makes it easy to avoid complex questions of Aboriginal indigenous rights. This, in turn, makes for little or no confidence that Aboriginal unceded rights to land, culture, society and economy are able to be made out in any claims. In limited and restricted ways, through the exercise of government powers and jurisdiction, recognition needs to be made. These have not gone far enough to be of sufficient recognition. There needs to be a strategy developed in conjunction with Aboriginal people in the State that sets up a process to deal with the problems that have been highlighted in this report. Clearer delineation of State responses to Federal strategies to address Aboriginal matters needs to be fully emphasised, and Aboriginal people must take some of the initiative themselves instead of waiting for Government to do things for there.

It is, in my view, critical to be aware that my inquiries have tended to look at situations that relate to the most unfortunate and often unpleasant side of life for Aboriginal and non-Aboriginal people. What became manifestly clear to me is the need for change to take place at societal levels for both non-Aboriginal and Aboriginal people. There can be no doubt that the present situation is highly unsatisfactory, some would rightly say desperate, and that scarce resources must be concentrated to produce quick results. Too often this type of thinking has produced undesirable outcomes for Aboriginal people as well as financial waste. This does not mean we are to do nothing. However 'knee jerk' reactions to alleged 'crime waves' tend to produce 'law and order' campaigns or the planning and building of more prisons and institutions. These priorities are rarely measured against the need for a concentrated effort to address the social, cultural, legal and economic needs of the materially poor and marginalised in our society who tend to be the ones who occupy the police lockups, courts and prisons. In a number of ways, these people are distinguished from the vote for change, and so are left out and rejected from what the vested interests of the mainstream want. This makes it difficult for those of goodwill and positive contributions to keep going and, as noted at the beginning of this report, in many ways it can be argued that the 'scene has

been set for that what we are witnessing today'.

The short term tactics and strategies that are aimed at alleviating the conditions and needs of systems, do not necessarily deal with what are real and persisting problems, not only for Aboriginal people, but for non-Aboriginal people as well. For instance, we have, one day, to come to the maturity where some of the categories I have referred to throughout this report, no longer carry odious innuendos and discrimination. There is a need to recognise that non-Aboriginal law and, indeed, the criminal justice system, is a product of Europe and the British form of justice which intruded here in 1829, made some minor concessions to Aboriginal people, but, upon Statehood in 1890, removed even these. There have been few concessions to Aboriginal rights since that time. The arguments of colonisation and its consolidation over Aboriginality have persisted to this day. The time has come for this to change. In my Commission's view, there is considerable merit in planning now to achieve improvement by the first century of Federation in 2001.

western Australia is part of the Federation of Australia and both are subject to, not only, domestic considerations, but global ones as well for the remaining twentieth and into the twenty-first century. Concepts and practices that persist and have more to do with colonisation, racism and assimilation, are not going to achieve much except more of what has already not nurtured the uniqueness of the oldest living culture on earth, and reduced their members to being the most incarcerated people, per head of population, in the world. No-one attending my inquiries was proud of this, and the heartening thing is that many human beings from across sections of society warn to see this changed and a new deal to occur. This should be one where the cards are cut and dealt from the top, and where Aboriginal groups become more innovative about overcoming confrontation and consultation. It should also be one where governments become just and moral in responding to Aboriginal aspirations for greater self-governance. Through negotiation, much will be achieved.

LIST OF APPENDICES

1. Copies of Commissioner Dodson's Letters Patent from State and Federal Government (see Section 1.1)

2. Details concerning material provided to Commissioner Dodson's Commission (list of locations where meetings and conferences held, witnesses, submissions, interviews, exhibits) (see Section 1.7)

3. Historical chronology (see Chapter 2)

4. ALS Research Paper 4 and survey form (see Section 5.3.2)

5. Mission Lands Report recommendations (see Section 6.4. 1)

6. Copy of Kanparrmi community's submission concerning 'living area excision' (see Section 6.4.2)

7. Raw data on Kimberley and Pilbara regions concerning consumer price survey on essential foods (see Section 7.1)

8. Juvenile justice and incarceration (see Sections 10.3.1 and 10.3.3)

9. Newspaper clippings: Mt Magnet, Geraldton and Mullewa (see Section 18.5)

10. Newspaper clippings: 'Aboriginal gangs terrorise suburbs' (see Section 18.5)

11. Newspaper clippings: contrasting views of non-Aboriginal youth as conveyed in the media (see Section 18.5)

12. Newspaper clippings: after the funeral of Edward Cameron (see Section 18.6)

13. Newspaper clippings: The Kimberley Echo (see Section 18.6)

14. Newspaper clippings: identifying Aboriginality (see Section 18.8)