CHAPTER 9

IMPRISONMENT AS A LAST RESORT

9.1 On the statistics available to the Royal Commission it found that in 1989 the over-representation of indigenous people in adult prisons nationally was 15.1. That is, an indigenous adult was more than 15 times more likely than a non-indigenous adult to be sentenced to prison at that time. In the same year the over-representation rate for Western Australia was 26.3.[1] In 1994, over-representation nationally was 19.4 with Western Australia and South Australia having over-representation rates of 25.9 and 25.7 respectively.[2]

9.2 The Royal Commission examined the extraordinarily high imprisonment rate of Aboriginal people and the ways in which the court process and particularly the sentencing process contributed to this state of affairs.

9.3 The Commission found that Aboriginal people in prison invariably presented to the courts with prior convictions and with a history of apparent recidivism. The vicious cycle faced by these people was outlined by the Commission:

> *If the offender again appears charged with a similar offence to that for which he/she was previously imprisoned, so much the greater are the prospects of further imprisonment. Such an offender is caught in a vicious cycle. The more times imprisoned the less are the prospects of rehabilitation, the greater the prospects of re-offending. For a person with limited education, few employment prospects and little income the prospects of re-offending are great. If that person is also highly visible to police so that in the event of offending the prospect of arrest is also great then the vicious circle is likely to be quickly completed. For many Aboriginal people this vicious circle is the reality of their lives. Where alcohol dependence is also a factor then so much faster is the circle completed and the process repeated.*[3]

9.4 The Royal Commission commented on the conflict between Aboriginal customary laws and mainstream Australian laws. The notion of prior convictions affecting subsequent sentencing is incomprehensible to many Aboriginal people and

---

1 RCIADIC, *National Report*, Vol 3, p67

2 See Table 5.4 in Chapter 5

3 RCIADIC, *National Report*, Vol 3, p68

serves to confirm their view that the court system is unfair.[4] Imprisonment is not seen as an appropriate punishment by many Aboriginal and Torres Strait Islander people. The Committee discussed the recognition of customary law in Chapter 6.

9.5 The Royal Commission found that:

> *.... the imprisonment rate of Aboriginal people is extraordinarily high throughout Australia, and that fact alone significantly increases the probability of there being further deaths in custody. This picture of the disproportionate rate of imprisonment was one of the factors which influenced Commissioner J H Muirhead QC to recommend in his Interim Report (at Chapter 4) that all governments commit themselves to the objective that imprisonment be seen as a last resort.*[5]

9.6 The Royal Commission believed that measures were needed to address the disadvantage that indigenous people face in court proceedings:

> *When, finally, all procedures which may divert an Aboriginal person away from the sentencing process have been exhausted and the person faces a judge, a magistrate or justice of the peace for sentencing, the most critical factor in the sentencing process will be the range of options available to the sentencer. In recent years that range of options has been greatly expanded by a series of legislative initiatives which recognize the principle of imprisonment as a last resort and provide further alternatives to imprisonment. It is in this area of reform that the most significant reduction in the rate of Aboriginal imprisonment may occur.....*[6]

The Royal Commission found that another critical factor in determining the sentence is the willingness of the sentencer to use alternatives to imprisonment.[7]

9.7 In dealing with this pattern of over-representation in prisons the Royal Commission said:

> *The most significant change will occur when sentencers are convinced that non-custodial sentences are, generally speaking, the sentencing option most likely to allow rehabilitation of offenders. Coupled with such a decision by the sentencers there must also be a change in the community attitudes so that the public recognize that their best interests are served by the courts adopting sentencing options. The*

---

4 RCIADIC, *National Report*, Vol 3, pp61-62

5 RCIADIC, *National Report*, Vol 3, p60

6 RCIADIC, *National Report*, Vol 3, p 62

7 RCIADIC, *National Report*, Vol 3, pp62-3

options that should be considered are those which encourage the rehabilitation of offenders without overlooking the appropriate needs of the broader community for protection and for the punishment of offenders.[8]

9.8 The Royal Commission considered the various non-custodial sentencing options available such as community service orders and home detention schemes and the important role that community-based options can play in reducing the level of imprisonment for Aboriginal people. Fines and fine default were examined together with their substantial contribution to the over-representation of Aboriginal people in correctional institutions.

9.9 The lack of adequate statistics on sentencing was raised by the Commission:

There are no statistics on the sentencing of offenders which distinguish between Aboriginal people and non-Aboriginal people on a national basis and which would have enabled us to compare the sentences imposed by the courts in different States and Territories. I am of the view that this is quite unsatisfactory and that greater efforts must be made by the relevant authorities to redress this situation. Such statistical information as we have been able to collect on sentencing has come from correctional authorities, and this, while better than nothing, is not entirely satisfactory. It tells us nothing about the large numbers of people who are dealt with by the courts but who are not sentenced to prison, or any of the non-custodial options.

It is particularly in the category of shorter sentences that the disproportionate rate of imprisonment is most pronounced.[9]

9.10 The Royal Commission drew attention to the lack of Aboriginal participation in courts other than as defendants or Aboriginal Legal Service representatives. This resulted in Aboriginal people viewing the system 'as corrupt and reflecting the racist attitudes of society and subsequently as an agent of oppression'.[10] The extent of this view was commented on by the Commission:

Both as to determination of guilt or innocence and as to penalty, Aboriginal people overwhelmingly regard the system as loaded against them and as either ignorant of or dismissive of their culture.[11]

---

8 RCIADIC, *National Report*, Vol 3, p68

9 RCIADIC, *National Report*, Vol 3, p64

10 RCIADIC, *National Report*, Vol 3, p72

11 RCIADIC, *National Report*, Vol 3, p72

9.11 The Royal Commission discussed a variety of approaches around Australia, both good and bad, but which indicated that in a number of areas judges and magistrates strived to match the justice of their courts with the needs and expectations of the relevant Aboriginal community. Evidence to the Commission suggested that there were significant differences in imprisonment rates and circumstances between sentences meted out by magistrates and Justices of the Peace.[12] The question of Justices of the Peace determining cases is dealt with later in this chapter.

9.12 A wish by indigenous people to have a greater role in the court process was outlined by the Commission:

> *Aboriginal people throughout Australia have expressed the desire for much greater involvement in the court processes, especially in the sentencing process. In the view of the communities, they best know the impact of criminal behaviour on each community and have a keen appreciation of the needs of the individual offenders.*

9.13 The Royal Commission stated that:

> *The courts must be rigorous in ensuring that all processes which increase the fear or intimidation which many Aboriginal people experience in the court system should be modified wherever possible to reduce those anxieties. Interpreters must be provided to Aboriginal defendants whenever necessary. There is a popular misconception that if Aboriginal people appear to understand conversational English they do not need interpreters. The tension engendered by court proceedings, the style and formality of language used by lawyers often means that much of what occurs is foreign to the defendant.*[13]

It went on to stress that:

> *.... reducing the intimidating atmosphere of courts is not only necessary to reduce the perception of racism and injustice, which many Aboriginal people feel characterizes the court process, but is also essential if the courts are to gain an accurate appreciation of the issues which are relevant to questions of guilt or innocence and to sentencing.*[14]

---

12 RCIADIC, *National Report*, Vol 3, p74

13 RCIADIC, *National Report*, Vol 3, p77

14 RCIADIC, *National Report*, Vol 3, p77

Community Justice Initiatives

9.14 The Royal Commission noted the growing recognition that the prison system had failed to meet the needs of both the Aboriginal and non-Aboriginal communities to provide long term protection through the rehabilitation of offenders.[15] It also noted that while there was acceptance in principle for the encouragement of Aboriginal involvement in developing community based sentencing options, efforts to achieve this had been haphazard and piecemeal. It found more broadly based reform was needed.[16]

9.15 The Commission identified two areas where community involvement and/or control had undisputed value. These are Community Justice Panels and community involvement in the management of sentencing schemes. Community Justice Panels, such as those operating in Victoria, can advise courts on appropriate sentences and may take control and responsibility over the supervision of offenders and the treatment of victims.[17]

9.16 The Royal Commission made the following recommendations on imprisonment as a last resort:

> *Recommendation 92*
>
> *That governments which have not already done so should legislate to enforce the principle that imprisonment should be utilized only as a sanction of last resort.*
>
> *Recommendation 93*
>
> *That governments should consider whether legislation should provide, in the interests of rehabilitation, that criminal records be expunged to remove references to past convictions after a lapse of time since last conviction and particularly whether convictions as a juvenile should not be expunged after, say two years of non-conviction as an adult.*
>
> *Recommendation 94*
>
> *That:*
>
> *a Sentencing and correctional authorities should accept that community service may be performed in many ways by an offender placed on a community service order; and*

---

15 RCIADIC, *National Report*, Vol 3, p80

16 RCIADIC, *National Report*, Vol 3, p80

17 RCIADIC, *National Report*, Vol 3, p83

b *Consistent with the object of ensuring that offenders do not re-offend, approval should be given, where appropriate, for offenders to perform Community Service work by pursuing personal development courses which might provide the offender with skills, knowledge, interests, treatment or counselling likely to reduce the risk of re-offending.*

Recommendation 95

That in jurisdictions where motor vehicle offences are a significant cause of Aboriginal imprisonment the factors relevant to such incidence be identified, and, in conjunction with Aboriginal community organizations, programs be designed to reduce that incidence of offending.

Recommendation 96

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

Recommendation 97

That in devising and implementing courses referred to in Recommendation 96 the responsible authorities should ensure that consultation takes place with appropriate Aboriginal organizations, including, but not limited to, Aboriginal Legal Services.

Recommendation 98

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

Recommendation 99

That legislation in all jurisdictions should provide that where an Aboriginal defendant appears before a Court and there is doubt as to whether the person has the ability to fully understand proceedings in

the English language and is fully able to express himself or herself in the English language, the court be obliged to satisfy itself that the person has that ability. Where there is doubt or reservations as to these matters proceedings should not continue until a competent interpreter is provided to the person without cost to that person.

Recommendation 100

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

Recommendation 101

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

Recommendation 102

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

Recommendation 103

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

Recommendation 104

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

Recommendation 105

That in providing funding to Aboriginal Legal Services governments should recognize that Aboriginal Legal Services have a wider role to perform than their immediate task of ensuring the representation and provision of legal advice to Aboriginal persons. The role of the

Aboriginal Legal Services includes investigations and research into areas of law reform in both criminal and civil fields which relate to the involvement of Aboriginal people in the system of justice in Australia. In fulfilling this role Aboriginal Legal Services require access to, and the opportunity to conduct, research.

Recommendation 106

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

Recommendation 107

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

Recommendation 108

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

Recommendation 109

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

Recommendation 110

That in view of the wide variety of pre-release and post-release support schemes conducted by Corrective Services authorities and other agencies and organizations in various parts of the country it is the view of the Commission that a national study designed to ascertain the best features of existing schemes with a view to ensuring their widespread application is highly desirable. In such a study it is most

important that consultation take place with relevant Aboriginal organizations.

Recommendation 111

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

Recommendation 112

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

Recommendation 113

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

Recommendation 114

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

Recommendation 115

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

Recommendation 116

That persons responsible for devising work programs on Community Service Orders in Aboriginal communities consult closely with the community to ensure that work is directed which is seen to have value to the community. Work performed under Community Service Orders should not, however, be performed at the expense of paid employment which would otherwise be available to members of the Aboriginal community.

Recommendation 117

That where in any jurisdiction the consequence of a breach of a Community Service Order, whether imposed by the court or as a fine default option, may be a term of imprisonment, legislation be amended to provide that the imprisonment must be subject to determination by a magistrate or judge who should be authorized to make orders other than imprisonment if he or she deems it appropriate.

Recommendation 118

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

Recommendation 119

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

Recommendation 120

That governments consider introducing an ongoing amnesty on the execution of long outstanding warrants of commitment for unpaid fines.

Recommendation 121

That:

a *Where legislation does not already so provide governments should ensure that sentences of imprisonment are not automatically imposed in default of payment of a fine; and*

b *Such legislation should provide alternative sanctions and impose a statutory duty upon sentencers to consider a defendant's*

capacity to pay in assessing the appropriate monetary penalty and time to pay, by instalments or otherwise.[18]

Commonwealth

Commonwealth wide issues

9.17 The Commonwealth Implementation Annual Report does not respond to Recommendation 92. The Committee agrees with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Michael Dodson, who points out that this is a major recommendation and warrants in principle support being stated. The lack of response is in stark contrast with part of the response to Recommendation 95 about imprisonment on motor vehicle offences:

> *The Commonwealth is determined to use every effort to ensure that the Commonwealth, State and Territory Governments design and implement programs, not only to reduce the incidence of offending, but also to divert offenders from the criminal justice system. To achieve this end, the Commonwealth has raised several key Recommendations in Ministerial forums.*[19]

9.18 In response to Recommendation 96 concerning cross-cultural training for judicial officers, the Commonwealth said in its initial response to the Royal Commission in March 1992:

> *The Government has referred the Recommendation to the Chief Executive Officers of Federal Courts, for implementation by the courts. The Attorney-General's Department is developing a training and development program in conjunction with the Federal Courts and the Australian Institute of Judicial Administration. The program will involve participation by Aboriginal and Torres Strait Islander groups such as Aboriginal Legal Services.*[20]

In its 1992-93 report it said:

> *A meeting was held in Melbourne in November 1992, attended by judicial officers and representatives of Aboriginal and Torres Strait Islander organisations and Aboriginal and Torres Strait Islander legal services across Australia. As a result of that meeting, a pilot workshop on cross-cultural awareness, designed and delivered by the Aboriginal Community Research and Development Unit of Curtin University, was held in Perth in May 1993. The Australian Institute of Judicial*

---

18 RCIADIC, *National Report, Overview & Recommendations*, pp52-7

19 *Commonwealth Implementation Annual Report 1992-93*, Vol 2, p105

20 *Commonwealth Implementation Annual Report 1992-93*, Vol 2, p106

Administration is co-ordinating the program. Aboriginal and Torres Strait Islander legal services and other organisations are consulted in the design and delivery of the material for the project.[21]

9.19 Commissioner Michael Dodson commented on this response:

Progress has not been fast, as following a 'seminal' meeting in November 1992, only one 'pilot workshop' is reported having been held in Perth in May 1993. I am aware however that there were initiatives in the Judicial Commission of New South Wales which are not mentioned in the Report.

9.20 Tharpuntoo Legal Service observed that the funding of $50,000 does not indicate that any great priority is being given by the Commonwealth to implementing this recommendation.[22] The Committee agrees with both of these comments.

9.21 The Committee recommends that:

the Commonwealth give greater priority and commitment to the implementation of Royal Commission Recommendation 96. (Recommendation 46)

9.22 The Commonwealth said that it had implemented Recommendation 97 in that the legal services and other organisations were consulted in the design and delivery of the material for the above project.[23]

9.23 In response to Recommendation 99 on the provision of interpreters the Commonwealth responded in March 1992:

The Commonwealth Attorney-General's Department has been funded to develop a program for the use of interpreters for Aboriginal people in the courts. The program involves liaison and consultation with Aboriginal groups, State and Federal Courts and legal bodies including the Aboriginal Legal Service. Commonwealth criminal investigation legislation, and the current draft of the Evidence Bill, both provide for

---

21 *Commonwealth Implementation Annual Report 1992-93*, Vol 2, p106

22 Evidence, p552

23 *Commonwealth Implementation Annual Report*, Vol 2, p107

interpreters. In Commonwealth criminal matters, and most civil matters, an interpreter will be provided at no cost.[24]

9.24 In its 1992-93 Implementation Annual Report the Commonwealth said:

> *A pilot course was conducted in South Australia for Aboriginal Pitjantjatjara speakers. The course was conducted by the Adelaide College of Technical and Adult Further Education with lecturers in Pitjantjatjara provided by the Institute of Aboriginal Development in Alice Springs. Three people, including two women, graduated in 1992-93 to level 2 of the National Accreditation Authority of Translators and Interpreters standards in Pitjantjatjara language.....*
>
> *The Attorney-General's Department is planning to support language courses in Torres Strait Islander Creole in Queensland, and further courses in the Pitjantjatjara language in other centres in South Australia.*[25]

9.25 While any increase in the availability of interpreters is to be welcomed the Committee does not believe that the Commonwealth is doing enough. The Committee heard of people's basic human rights being breached on numerous occasions each day in Australia. This is an intolerable situation and the Commonwealth's response is grossly inadequate. The Commonwealth has ignored the international conventions that are being breached. The International Commission of Jurists, Western Australian Branch, said that:

> *.....in many country areas of WA the lack of properly trained interpreters for accused Aboriginal persons results in frequent violations of their human rights (see ICCPR articles 14(1), (3)(a), (b), (f), 26 and 27).*[26]

Similar evidence was heard in Queensland[27] and the Northern Territory.[28]

9.26 In its report *Language and Culture - A Matter of Survival* this Committee recommended that:

> *The Commonwealth establish under ATSIC a separate national interpreter service for Aboriginal and Torres Strait Islander languages*

---

[24] *Commonwealth Implementation Annual Report*, Vol 2, p108

[25] *Commonwealth Implementation Annual Report*, Vol 2, p108

[26] Evidence, pS265

[27] Informal discussions, Cairns, and Tharpuntoo Legal Service, evidence, pS322-3

[28] Informal discussions, Darwin and Alice Springs

to ensure that people have reliable access to trained interpreters and translators. The service should be separately funded. Because of the number and geographical distribution of language speakers, a network service utilising existing Aboriginal and Torres Strait Islander language resources where possible, would be most appropriate.[29]

The Commonwealth responded that:

ATSIC will research the viability of establishing a national interpreter service for Aboriginal and Torres Strait Islander languages.[30]

9.27 In *A Matter of Survival* this Committee also recommended that:

In implementing Recommendation 99 of the Report of the Royal Commission into Aboriginal Deaths in Custody, a stronger obligation be imposed on courts to establish a person's fluency in Standard Australian English in determining the need for an interpreter. This would include translating Aboriginal English where required.[31]

9.28 The Commonwealth responded:

This recommendation is supported in principle, although the Commonwealth is not in a position to direct courts. The Commonwealth Attorney-General's Department has been provided funding to develop a program for the use of interpreters for Aboriginal people in the courts. The program involves liaison and consultation with Aboriginal groups, State, and Federal Courts and legal bodies including Aboriginal Legal Services.

In addition, the planned Aboriginal languages awareness campaign by ATSIC will strongly encourage the use of interpreters in situations such as this.[32]

9.29 The Committee does not accept the claim that the Commonwealth is unable to legislate with regard to Federal Courts. The Implementation Annual Report makes no mention of the Committee's earlier recommendation or any action to implement it. This is again a serious omission. No mention is made of the ATSIC language awareness campaign or its effectiveness. It is difficult to accept that the Commonwealth is taking this recommendation at all seriously.

---

29 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Language and Culture - A Matter of Survival*, AGPS, June 1992, p62

30 Government Response to *A Matter of Survival*, December 1992, p6

31 *A Matter of Survival*, p62

32 Government Response to *A Matter of Survival*, p7

9.30 The *Crimes Act 1914* includes a requirement that investigatory officers provide the assistance of an interpreter to a person being questioned. The obligation to provide an interpreter is on the investigator. The Committee believes that a similar provision should apply across Australia to provide adequate protection to those people whose first language is an Australian indigenous language. Similarly, a provision should apply across Australia which guarantees the provision of an interpreter in court where necessary.

9.31 These protections are necessary at both police interviews and in courts, if Australia is to fulfil its obligations under the International Covenant on Civil and Political Rights. The Commonwealth's failure to adequately respond to this recommendation, especially where breaches of basic human rights are occurring with such great frequency, is of grave concern to this Committee.

9.32 The Australian Law Reform Commission (ALRC) in its 1986 report on the Recognition of Aboriginal Customary Laws said that:

> *The aim should be to ensure that interpreters are available as needed at all stages of the criminal justice process (ie during police interrogation, as well as in the courts).*[33]

9.33 The ALRC noted that while there was no common law right to an interpreter the court may in its discretion allow an interpreter to be used. It found that the reliance on the court's discretion, rather than conferring a right to an interpreter in appropriate cases, was unsatisfactory.[34] The Commission quoted Justice Kriewaldt, speaking of the 1950s:

> *.....in the Northern Territory the trial of an Aborigine in most cases proceeds, and so far as I could gather, has always proceeded, as if the accused were not present. If he were physically absent no one would notice this fact. The accused, so far as I could judge, in most cases takes no interest in the proceedings. He certainly does not understand that portion of the evidence which is of the greatest importance in most cases, namely, the account a police constable gives of the confession made by the accused. No attempt is made to translate any of the evidence to him.*[35]

9.34 While in most trials interpreters are used when needed, the situation in magistrates courts continues to fit Justice Kriewaldt's description. Tharpuntoo Legal Service told the Committee in Cairns that with an 87% illiteracy rate, English

---

33 *The Recognition of Aboriginal Customary Laws*, p444

34 *The Recognition of Aboriginal Customary Laws*, p441

35 *The Recognition of Aboriginal Customary Laws*, p442

was often the second, third or fourth language of its clients.[36] They told the Committee that 75-80% of their clients going through the court system have no idea of what is being said.[37] Tharpuntoo pointed out that procedural unfairness in the investigative phase would lead to injustice in the courtroom.[38] The ALRC noted that the availability of interpreters remained a problem.[39]

9.35 The Commonwealth has failed to respond to the Law Commission's 1986 report, despite the Royal Commission Recommendation 219 to do so.

9.36 The common law does not provide the right to an interpreter[40] although the Commonwealth and South Australia provide guarantees through legislation and the ACT guarantees an interpreter at police interrogation.[41] The common law in remaining jurisdictions falls well short of protecting the human rights guaranteed by Article 14, Clause 3(a) of the International Covenant on Civil and Political Rights.

9.37 It is of grave concern to the Committee that this vital Article is being breached daily in Australia[42] and people are being imprisoned daily following these breaches.

9.38 The failure to provide an interpreter where one is needed also breaches Article 5(a) of the International Convention on the Elimination of All Forms of Racial Discrimination and in the case of juveniles, Article 40(2) of the Convention on the Rights of the Child.

---

36 Tharpuntoo Legal Service, evidence, p571

37 Tharpuntoo Legal Service, evidence, p571

38 Tharpuntoo Legal Service, evidence, p574

39 *The Recognition of Aboriginal Customary Laws*, p444

40 Australian Law Reform Commission, *Multiculturalism and the Law*, Report No. 57, 1992, p33

41 RCIADIC, *National Report*, Vol 3, p77

42 Informal discussions, Alice Springs, Darwin, Broome, Kalgoorlie, Cairns
Tharpuntoo Legal Service, evidence, pp571-4, S322-3
RCIADIC, *Regional Report - Underlying Issues - Western Australia*, pp189-91
RCIADIC, *National Report*, Vol 3, p77
Commonwealth Attorney-General's Department, *Access to Interpreters in the Australian Legal System, Report*, AGPS, 1991, pp127-33

9.39 The Committee recommends that:

the Commonwealth Government introduce legislation within six months, which will protect the rights of Aboriginal and Torres Strait Islander peoples in accordance with Article 14, Clauses (a) (b) and (f) of the International Covenant on Civil and Political Rights. In addition, the legislation should guarantee that a person convicted of an offence will be informed promptly of that fact and the consequent penalty, in detail and in a language which that person understands. (Recommendation 47)

9.40 In its 1992 response to Recommendation 100, concerning increasing Aboriginal and Torres Strait Islander staffing in courts, the Commonwealth said:

> *The Commonwealth has referred the Recommendation to the Chief Executive Officers of Federal Courts, for implementation by the courts.*
>
> *Aboriginal staff will be employed and trained in line with the Australian Public Service Aboriginal Employment Strategy. A pilot program is being developed to train Aboriginals as interpreters in the courts, and in the criminal investigation process.*
>
> *In addition, the Commonwealth has agreed to develop an accredited para-legal training course for Aboriginal Legal Service Field Officers and other Aboriginal and Torres Strait Islander para-legal workers. The Commonwealth is also willing to negotiate with the States and Territories on measures to encourage Aboriginal employment in courts.*[43]

9.41 In the 1992-93 response virtually no evidence was given on the implementation of these proposals.

9.42 Recommendation 110 sought a national study of pre-release and post-release support schemes to ascertain the best features of existing schemes to enable their wider adoption. While the Royal Commission stressed the need for consultation with Aboriginal organisations in the implementation of all recommendations, it specifically stressed the need within Recommendation 110. (The Committee dealt with the lack of consultation for this Recommendation in Chapter 3, paragraphs 3.94-3.96).

---

[43] *Commonwealth Implementation Annual Report*, Vol 2, p109

9.43 In its 1992-93 response the Commonwealth said:

> *In late 1992, DEET commissioned the Australian Institute of Criminology to conduct the study. The resulting report, Keeping Them In, Keeping Them Out was published in 1992. It will provide a basis for discussion at a national conference of Corrective Services and TAFE representatives in November 1993. Expenditure in 1992-93 was $40,000.*
>
> *In conducting the study, the AIC consulted widely with relevant Aboriginal and Torres Strait Islander organisations.*
>
> *This Recommendation is considered to be fully implemented.*[44]

9.44 As the Social Justice Commissioner, Mr Michael Dodson, has pointed out this response is misleading. Mr Dodson said

> *The Annual Report states that 'in conducting this study, the AIC consulted widely with relevant Aboriginal and Torres Strait Islander organizations'. From the internal evidence in the Report itself this statement would appear to be simply untrue as far as pre-release programs are concerned. This leaves the reader with a very uncomfortable feeling about the reliability of other claims of wide consultation with Aboriginal and Torres Strait Islander people, which cannot be so readily checked as the present one.*[45]

9.45 In conducting the study the AIC only surveyed prison administrators. The authors pointed to the limitations of the study, particularly that it was only a preliminary study:

> *The scope of this study was severely restricted by the short time frame proposed by the client. Initially it was stipulated that the study be conducted through to completion in nine weeks. Due to lengthy delays in the return of questionnaires, an additional month was required to complete the study. Unfortunately, as can be seen from the list of responses, some of the largest prisons failed to complete questionnaires. For these prisons, completion would have been the most arduous, due to the complexity of prison structures, and work pressures on staff. This can, therefore, only be considered a provisional study, since effective assessment of education and training programs nation-wide would at least require visits to some correctional*

---

44 *Commonwealth Implementation Annual Report*, Vol 2, p116

45 Evidence, pS2211

centres in each state, and the allocation of sufficient time for all respondees to complete questionnaires.[46]

9.46 The Committee is deeply concerned at the grossly misleading nature of the DEET response. DEET indicated that the AIC report is also to be used as the basis for implementing Recommendations 184-185.[47] Recommendation 110 is quite an important recommendation but its handling by DEET has been totally unsatisfactory. The AIC report indicated that it was only a preliminary study. The project was carried out without appropriate consultation and does not meet the requirements of Recommendation 110.

9.47 The Committee recommends that:

the Minister for Employment, Education and Training ensure that Royal Commission Recommendation 110 is implemented by:

- **undertaking the consultation called for in the Recommendation; (Recommendation 48) and**
- **undertaking the national study called for in the Recommendation. (Recommendation 49)**

9.48 In its 1992 response to Recommendation 115, the Commonwealth said:

The actual recording of statistical and other information is the responsibility of State and Territory corrections authorities, but the Australian Institute of Criminology (AIC) will be able to advise on the suggested research.[48]

9.49 In the 1992-93 report the Commonwealth said:

To facilitate this work the Australian Institute of Criminology has discussed the use of a uniform approach to recording statistics on individuals in prison and other parts of the criminal justice system with State and Territory corrections departments. The monthly AIC publication Australian Prison Trends now shows the number of Aboriginal and Torres Strait Islander prisoners and the indigenous imprisonment rate for each State and Territory, and nationally. These

---

46 *Keeping Them In and Keeping Them Out*, AIC, Canberra, 1992, p7

47 *Commonwealth Implementation Annual Report*, Vol 2, pp164-7

48 *Commonwealth Implementation Annual Report*, Vol 2, p121

and related statistics could form the basis of the State/Territory-level research envisaged by this Recommendation.

The Institute will continue to assist State and Territory corrections administration in maintaining uniform statistics. If it is invited to do so, it will advise on the design and conduct of research related to recidivism and the effectiveness of non-custodial sentencing orders and parole.[49]

9.50 The Social Justice Commissioner commented:

I would suggest that it is desirable for the Commonwealth to take a more proactive role in this area. If it is left to States and Territories the probabilities are either it will not be done, or it will end up being done in ways that give rise to problems when it is endeavoured to establish comparisons and a national picture. The AIC, given its other responsibilities in regard to Aboriginal imprisonment, should be encouraged and funded to pursue this Recommendation.[50]

9.51 The Committee agrees with Commissioner Dodson's proposal.

9.52 The Committee recommends that:

the Commonwealth seeks the agreement of the Corrective Services Ministerial Council for the Commonwealth to fund the Australian Institute of Criminology to further implement Royal Commission Recommendation 115. (Recommendation 50)

9.53 In the 1992 response to Recommendation 121 the Commonwealth stated:

Federal enforcement of fines, including default imprisonment, time to pay, Community Service Orders, and payment by instalments, is governed by applied State/Territory law (s. 15A of the Crimes Act). Section 16C of the same Act requires the court to take into account the financial circumstances of the offender before imposing a fine.[51]

9.54 The 1992-93 response merely repeats the above. Nowhere does the Commonwealth say it is implementing part (a) of the Recommendation.

---

49 *Commonwealth Implementation Annual Report*, Vol 2, p121

50 Evidence, pS2218

51 *Commonwealth Implementation Annual Report*, Vol 2, p124

9.55 The Committee recommends that:

the Commonwealth promptly implement Part (a) of Royal Commission Recommendation 121. (Recommendation 51)

Jervis Bay Territory

9.56 The Commonwealth has made no response to Recommendations 92-94, 96-103, 108-113, 116-118 and 120 as they relate to the Jervis Bay Territory. This is a serious omission and should be rectified in future reports.

9.57 In its response to Recommendations 114, 115 and 119 the Commonwealth response states:

> *For Jervis Bay, the Commonwealth supports the resourcing of appropriate agencies, and the participation of Aboriginal communities.*[52]

The Committee deems this response unsatisfactory because no actual progress is detailed. The departmental Contact Officers nominated in the Annual Report have no direct responsibility for the Jervis Bay Territory.

9.58 Where ACT legislation applies, recommendations made by the Committee in the next section should be implemented by the Commonwealth for the Jervis Bay Territory.

9.59 The Committee recommends that:

the Minister for Environment, Sport and Territories table in Parliament within 3 months Commonwealth responses to all recommendations of the Royal Commission as they relate to the Jervis Bay Territory. (Recommendation 52)

---

52 *Commonwealth Implementation Annual Report,* Vol 2, pp117, 121 & 122

Australian Capital Territory

9.60 The ACT Government has implemented most of the recommendations in this section, where applicable. However, it has not implemented Recommendation 93 concerning the expunging of criminal records after a certain period. It is still under consideration.

9.61 In relation to Recommendation 96 and 97 staff from relevant departments have undertaken cross-cultural training but the consultation required in devising the courses has not occurred.[53]

9.62 The ACT Government supports Recommendation 103 but has yet to provide for Community Service Orders as an option for fine defaulters.[54] In relation to Recommendation 107 the ACT Government said it was sympathetic to the local Aboriginal and Torres Strait Islander communities' request for an autonomous local legal service but notes that the Commonwealth funds Aboriginal Legal Services.[55]

9.63 Recommendation 109 has not been implemented. New corrective services legislation being prepared will provide for a wide range of non-custodial sentencing options.[56]

9.64 An Integrated Justice Information System is being developed to implement Recommendation 115. Juvenile Justice has a five year plan to upgrade computer capability to implement this Recommendation.[57] The Committee believes that this is too long a lead time in such a sensitive area as juvenile justice. The Committee deals further with juvenile justice issues in Chapter 11.

9.65 The ACT does not intend to implement home detention as provided for in Recommendation 118. It said that:

> *Proposed new corrections legislation provides for intensive community supervision as an alternative. This will include many features in common with home detention but will be less intrusive and also provides rehabilitative components.*[58]

---

53 *ACT Government Implementation Report 1992-93*, pp65-6

54 *ACT Government Implementation Report 1992-93*, p70

55 *ACT Government Implementation Report 1992-93*, p70

56 *ACT Government Implementation Report 1992-93*,p70

57 *ACT Government Implementation Report 1992-93*, p73

58 *ACT Government Implementation Report 1992-93*, p74

9.66 The ACT said that it does not propose to implement Recommendation 120 by providing an amnesty on long outstanding warrants.[59] As the six states have complied with this Recommendation and the ACT Government has not provided any reason for its failure in this area, the Committee believes the ACT Government should review its decision.

9.67 The ACT has not implemented Recommendation 121 but is currently reviewing alternatives to imprisonment for fine defaulting.[60]

9.68 Community comments about the implementation of these recommendations mainly concerned the low level of service received from the Aboriginal Legal Service and the particular problems facing women in accessing legal aid in domestic violence cases.[61] Police witnesses confirmed the difficulty in having the ALS visit clients in police custody.[62]

9.69 The Committee recommends that:

the Prime Minister, through the Council of Australian Governments, seek an undertaking from the Australian Capital Territory Government to:

- **implement Recommendations 93, 97, 103, 109, 120 and 121 of the Royal Commission without further delay; (Recommendation 53) and**
- **expedite the implementation of Recommendation 115. (Recommendation 54)**

Victoria

9.70 The Committee received little evidence from Victoria. At the time of finalising this report the Victorian Government had not tabled its 1992-93 Implementation Annual Report.

---

59 *ACT Government Implementation Report 1992-93*, pp74-5

60 *ACT Government Implementation Report 1992-93*, p75

61 Informal discussions, Canberra

62 Australian Federal Police, evidence, pp1322-3

9.71 The number of Aboriginals and Torres Strait Islanders in prison custody in Victoria has steadily risen from 65 in 1988 to 123 in 1994.[63] Their over-representation rate over the same period has steadily increased from 12.8 to 18.9.[64]

9.72 The March 1992 responses indicated that the Victorian Government had implemented or partially implemented nearly all of the Recommendations 92-121.

9.73 The Victorian Aboriginal Legal Service told the Committee that a drug and alcohol program operated by Galiamble in St Kilda runs three half-way houses around Victoria. Victorian courts have been keen to place people in non-custodial settings if there are some guarantees that the community can be safeguarded and the program offers a real chance of rehabilitation.[65] However, the Legal Service told the Committee:

> *The Galiamble treatment centre also suffers from considerable financial difficulties. The main problem they have is that they do not have funding to provide workers to come to court to give evidence for people in bail hearings. Attending court causes massive problems for the workers at the program. They have suggested that they should receive a funding increase to enable them to provide a full-time worker to perform that role.*[66]

This indicates that Recommendation 112 is not being fully implemented.

New South Wales

9.74 The New South Wales Government in its 1992-93 Annual Report indicates that it has implemented most of the Recommendations 92-121 where they are state responsibilities.

9.75 The number of Aboriginal and Torres Strait Islander prisoners in custody in New South Wales has risen from 385 in 1988 to 813 in 1994.[67] The NSW over-representation rate over the same period has increased from 11.4 to 17.1.[68] New South Wales has by far the highest number of indigenous prisoners in Australia. Queensland, with a similar total indigenous population had only 490 indigenous prisoners in 1994. The Committee views with considerable concern the increase in

---

63 See Chapter 5, Table 5.3

64 See Chapter 5, Table 5.4

65 Evidence, p1468

66 Evidence, p1468

67 See Chapter 5, Table 5.3

68 See Chapter 5, Table 5.4

indigenous imprisonment which is contrary to the main intent of the Royal Commission.

9.76 In its 1992 response to Recommendation 105 the State Government said:

> *Funding to Aboriginal Legal Services is governed by the 1976 agreement between NSW and the Commonwealth which recognises the Commonwealth as the provider of legal aid funding. In NSW the funding programme is administered by the Aboriginal and Torres Strait Islander Commission.*[69]

In its 1992-93 Report it added:

> *The Aboriginal Legal Service has written to the Premier (February 1993) requesting financial assistance with the costs of court transcripts and access to Public Defenders. Office of Aboriginal Affairs is following these issues up with the relevant departments (Courts Administration and Attorney-General's respectively).*[70]

9.77 The New South Wales Government has said that funding to the Aboriginal Legal Services is inadequate.[71] As a result many Aboriginal people can't afford to brief private counsel. Lack of access to the Public Defenders by ALS clients was also raised by the Aboriginal Justice Advisory Committee, who have also taken it up with the NSW Government. The Committee believes that if an individual can have access to the Public Defender through the Legal Aid Commission that person should also have the same access to the Public Defender through the ALS. The Legal Aid Commission is 55% funded by the Commonwealth[72] but the Aboriginal Legal Service is 100% funded by the Commonwealth.

9.78 The Aboriginal Legal Service Ltd told the Committee:

> *We would like access to the Public Defenders Office for particular matters: appeals, which are a specialised area; complicated murder trials; and perhaps trials where we are representing more than one person–multiple defendants.*[73]

9.79 In New South Wales and South Australia the Committee heard of discrimination by State Governments in the provision of much cheaper court

---

69 *NSW Government Implementation Annual Report 1992-93*, p88

70 *NSW Government Implementation Annual Report 1992-93*, p88

71 *NSW Government Implementation Annual Report 1992-93*, p89

72 ALS Sydney, evidence, p1167

73 Evidence, p1167

transcripts to clients of the Legal Aid Commissions than to clients of the Aboriginal Legal Services.

9.80 The Royal Commission outlined the inequalities facing Aboriginal people in their dealings with the law. The inequalities outlined above are petty and totally unnecessary. The Committee believes that the Commonwealth together with the relevant states should address these inequalities without delay.

9.81 The Committee recommends that:

where necessary the Commonwealth renegotiate the agreements with state and territory governments on the provision of legal aid funding to ensure that Aboriginal and Torres Strait Islander people are not disadvantaged in using Aboriginal Legal Services compared with using the Legal Aid Commission. (Recommendation 55)

9.82 On several occasions the poor level of representation provided by the Aboriginal Legal Services in New South Wales and the Australian Capital Territory was raised with the Committee. The Western Aboriginal Legal Service was not subject to this criticism. The criticisms ranged from failing to respond when people were in police custody for questioning, failing to turn up to court and a poor level of representation in court by some solicitors. The Aboriginal Justice Advisory Committee pointed out that lack of, or poor representation in courts is contributing to higher imprisonment rates in New South Wales. The AJAC told the Committee that the lack of representation can mean that someone receives the maximum sentence, whereas incompetence can add up to six months to a sentence.

9.83 Another frequent issue raised in a number of centres visited by the Committee was the multiple charge syndrome known as 'the trifecta'. An initial charge or a minor matter such as offensive language, often following police actions, sets off a chain of events which usually results in additional charges such as resist arrest or assault officer which are more serious charges. This syndrome is not confined to New South Wales. The Committee was told by Aboriginal Legal Service representatives that some magistrates were quite resistant to suggestions of police provocation. The Aboriginal Justice Advisory Committee (AJAC) said that the sensitivity of magistrates to 'the trifecta' varies. However, the AJAC told the Committee that where magistrates were showing some reluctance to convict on 'the trifecta', police were using malicious damage charges, usually to part of a police uniform. Magistrates took this as a more serious charge, on which the AJAC said that offenders too often face a gaol sentence.

9.84 The Committee recommends that:

the Prime Minister, through the Council of Australian Governments, seek the cooperation of state and territory governments to ensure that all magistrates are aware of Recommendation 86 and its role in the 'trifecta' multiple charge syndrome. (Recommendation 56)

9.85 While in NSW, the Committee heard quite a deal of evidence on conditions within prisons. The Committee heard that inadequate medical and dental services were available to Aboriginal inmates of NSW prisons. Prisoners at Bathurst Gaol said that they had to pay for dental services themselves.[74]

9.86 The Committee was told that while there are a lot of mental health problems within the prison system, access to psychiatric services is very poor for indigenous prisoners. Prisoners who are depressed or suicidal are not being effectively diagnosed by the prison medical service.[75] The Committee heard of the very high rates of deliberate self-harm at Mulawa Women's Prison and of the oppressive conditions imposed on female prisoners.[76] At the other women's prison, Norma Parker, there is hardly any self-harm. Evidence to the Committee was that the Department of Corrective Services has been very slow to address this serious problem at Mulawa.[77]

9.87 Evidence was given by the Corrections Health Service that it had no Aboriginal person working as a health worker and that it had just gained funding to employ its first Aboriginal Mental Health Worker.[78] The mental health worker will work with the crisis intervention team at Long Bay. The Chief Executive Officer of the Corrections Health Service estimated the indigenous prison population at 600. There are actually over 800 Aboriginal and Torres Strait Islander prisoners in NSW prisons[79], the highest number in Australia. The Committee believes that the NSW Government should be providing more effective and culturally relevant health services to Aboriginal and Torres Strait Islander prisoners as called for by the Royal Commission.

---

74 Informal discussions, Bathurst

75 Informal discussions, Sydney

76 Aboriginal Deaths in Custody Watch Committee, evidence, p1094

77 Informal discussions, Sydney

78 Evidence, p1262

79 Evidence, p1263 See Table 5.3 in Chapter 5

9.88 Despite this poor performance by the prison medical service the Committee was told of Aboriginal Medical Service (AMS), staff being refused entry to see a sick prisoner after driving one and a half hours to a prison.[80]

9.89 The Committee was very concerned that the Chief Executive Officer of the Corrections Health Service was unaware of the major Royal Commission findings until he read them in a November 1993 issue of the *Medical Journal of Australia*.[81] A doctor from the AMS visits prisons in Sydney on a regular basis but this is not paid for by Corrective Services.[82] The Committee also heard of the AMS having to buy medicines for some prisoners.[83] These are yet further examples of state government agencies diverting resources from Commonwealth funded community organisations to provide services that are the state's responsibility to provide and fund. The AMS is the most appropriate body to provide many of these services. The New South Wales Government should consider contracting the AMS to provide culturally appropriate services to indigenous prisoners.

9.90 The Committee recommends that:

the Prime Minister, through the Council of Australian Governments, seek assurances from the New South Wales Government that:

- **Recommendations 150 and 152 of the Royal Commission are fully implemented. (Recommendation 57)**

9.91 Virtually all Aboriginal organisations the Committee spoke with in the State were very dissatisfied with the way that the Department of Corrective Services Aboriginal Taskforce (DOCSAT) operated. The complaints were generally that, despite having a number of Aboriginal and Torres Strait Islander people on the Committee, it was run by non-Aboriginal people.

9.92 Evidence was also given to the Committee that Corrective Services representatives on DOCSAT interfered with the running of Aboriginal inmate committees established under Recommendation 183. One person, who was elected as the chair of the Bathurst inmates committee, did not meet with the approval of

---

80 Informal discussions, Sydney

81 Evidence, pp1260-1

82 NSW Government, evidence, p1262 and informal discussions, Sydney

83 Informal discussions, Sydney

the Department. He was told that he could not be the chair[84] but the inmate committee was not told anything. The two groups of prisoners that the Committee spoke with still wanted him to be the chair. A non-prisoner has been appointed by the Department to the inmates committee at Bathurst Gaol and advised the Committee that the Koori inmates could determine the inmates committee membership only after the Department's Sydney Office had approved the membership. The Committee finds this contrary to the intent of Recommendation 183. When the Committee visited in August it was told that the new inmates committee had not met since 30 May. The appointed member of the inmates committee said that this was 'because of NAIDOC celebrations'. Recommendation 183 called for the 'formal recognition of such bodies as capable of representing the interests and viewpoints of Aboriginal prisoners'. This is not being implemented at Bathurst Gaol.

9.93 The Department of Corrective Services said that there were 127 Aboriginal prisoners at Bathurst.[85] When at Bathurst, the Committee heard that access to educational courses was limited and that there were no separate classes for Aboriginal inmates. Basic literacy classes for Aboriginal inmates had been discontinued and only a mainstream program was available, which limited access by Aboriginal inmates. Many Bathurst prisoners are from western New South Wales where Aboriginal illiteracy rates are high.[86]

9.94 Prisoners are frequently moved to another gaol in the middle of a course disrupting or ending the prisoner's participation. The evidence from prisoners at Bathurst and other evidence the Committee heard about prisons generally, is that access to 'education courses in self-development, skills acquisition, vocational education and training, including education in Aboriginal history and culture', as outlined in Recommendation 184, is poor. The Aboriginal Justice Advisory Committee said that there was a need for adequate pre and post release programs in NSW prisons which was not being met.[87]

9.95 In a pilot project, four post release schemes were funded by ATSIC for $864,000 over three years. At the completion of the pilot the Department of Corrective Services took over the funding of the program at $343,000 for each of the next three years. Of the original 4 projects only one at Bathurst continues, run by the Department's appointee to the inmates committee. The original projects were at Dubbo, Bathurst, Armidale and Kempsey. Currently, the program is running at Bathurst, Lismore, Newcastle and Parramatta. The Dubbo project had a community committee oversighting its operations. Aboriginal community representatives in Dubbo spoke highly of the operations of the Dubbo project as did representatives of

---

84 Informal discussions, Bathurst and NSW Government, evidence, p1269

85 NSW Government, evidence, p1269

86 Aboriginal Justice Advisory Committee, evidence, pS1808

87 Aboriginal Justice Advisory Committee, evidence, pS1808 and informal discussions

the Aboriginal Justice Advisory Committee.[88] The replacement projects are run totally by Department of Corrective Services personnel. This is not in keeping with the self-determination principles of Recommendation 188 and cannot be as effective as Aboriginal designed and operated projects.

9.96 Aboriginal organisations told the Committee that the Department of Corrective Services, particularly through DOCSAT, is afraid to permit any Aboriginal control of Aboriginal programs and activities other than on the Department's own non-Aboriginal terms. The Committee agrees with the Aboriginal Justice Advisory Committee that if post-release schemes are to be effective they need to be under Aboriginal community control. Effective liaison with, rather than control by Corrective Services is necessary.

9.97 The Committee recommends that:

the Prime Minister, through the Council of Australian Governments, seek the agreement of the New South Wales Government to implement Recommendation 188 and 192 in relation to programs for Aboriginal prisoners and post-release schemes. (Recommendation 58)

9.98 The New South Wales Government is implementing Recommendation 100. On several occasions during its visit to New South Wales the Committee heard positive comments on changes made by the Department of Courts Administration. The Department has adopted a strategy to:

- *increase the number of Aboriginal people permanently employed within the Department to at least 2% of total staffing by June 1998;*
- *improve the distribution of Aboriginal staff throughout the organisation so that a profile of Aboriginal staff more closely resembles the general staff profile in terms of types of positions held, including supervisory and management positions; and*
- *assist the Department to improve its efficiency and effectiveness in respect to its dealings with the Aboriginal community by increasing the number of Aboriginal members of staff located in appropriate areas, that is both geographically and organisationally.*[89]

---

88 Informal discussions, Dubbo, Sydney

89 Department of Courts Administration, evidence, pS2143

9.99 A cross cultural Aboriginal training program has also been developed. All Senior Executive Service staff have undertaken the course and it is to be extended to all staff eventually.[90] The Department had also held a probation service seminar in Casino for local Aboriginal community representatives and held Culture and Law Days at Tabulum and Wallaga Lake.[91]

South Australia

9.100 The South Australian Government has accepted and implemented most of the Recommendations 92-121 that are relevant.

9.101 The number of Aboriginals and Torres Strait Islanders in prison custody in South Australia has risen from 114 in 1988 to 222 in 1994.[92] Their over-representation rate over the same period has increased from 19.5 to 25.7.[93] The South Australian Government said:

> *Aboriginal prisoners made up 18.8% of all known-race admissions to prison in 1992. As Aboriginal adults make up only 0.85% of the South Australian adult population this represents an estimated over-representation by a factor of 22. This means that South Australia imprisons Aboriginal people at a rate second only to Western Australia.*[94]

Recommendation 93 on the expunging of convictions after a period has not been implemented in South Australia.[95] On Recommendation 94 the Government said:

> *The Criminal Law (Sentencing) (Education Programs) Amendment Act was passed by Parliament on 13 May 1993 and is yet to be proclaimed. The Act provides that a sentence may require a person to attend an educational course. Court Services Department will determine an appropriate date for proclamation.*[96]

9.102 No reasons are given for the excessive delay in proclaiming this legislation. The Committee believes that the Recommendation should be implemented without further delay.

---

90 Department of Courts Administration, evidence, pS2144

91 Department of Courts Administration, evidence, pS2145

92 See Chapter 5, Table 5.3

93 See Chapter 5, Table 5.4

94 *1993 Implementation Report, South Australian Government*, p62

95 *1993 Implementation Report, South Australian Government*, p101

96 *1993 Implementation Report, South Australian Government*, p102

9.103 South Australia has not implemented Recommendation 98 on the phasing out of Justices of the Peace determining charges or penalties.[97] The Government response does not indicate any intention to implement it despite supporting it in principle in its 1992 response.

9.104 South Australia is one of the few jurisdictions to guarantee the right to an interpreter. The response does not clearly detail the extent of the interpreter service provided for its Aboriginal and Torres Strait Islander clients.

9.105 In its response to Recommendation 100 the South Australian Government appears to lack commitment to employing more Aboriginal people as court staff:

> *The Court Administration Authority fully supports the concept of employment of Aboriginal staff but in practice suitable staff are often difficult to obtain.*[98]

The Committee believes that a more proactive response is required, as has been the case in New South Wales.

9.106 The Committee is not convinced by the response to Recommendation 101 that any real change is occurring. Despite claiming the Recommendation is partially implemented it does not appear to be being implemented in any real sense. Recommendation 102, which calls for breaches of non-custodial orders to normally be dealt with by summons, has not been implemented.[99]

9.107 The report indicates that Recommendation 104 is implemented but the only evidence is the cryptic comment:

> *These are matters of government policy on sentencing guidelines.*[100]

9.108 The South Australian Government claimed to have implemented Recommendation 109, which called for an examination of sentencing options. However, the necessary consultation, as set out in Recommendation 188, clearly had not occurred.

9.109 Recommendation 117 seeks to have alternatives to imprisonment considered in dealing with Community Service Order breaches. The State Government responded:

---

97 *1993 Implementation Report, South Australian Government*, p104

98 *1993 Implementation Report, South Australian Government*, p105

99 *1993 Implementation Report, South Australian Government*, p106

100 *1993 Implementation Report, South Australian Government*, p106

To assist Magistrates manage their workload, the Criminal Law (Sentencing) Act, Section 71 provides clerks of court with power to determine a breach of a community service order given by a Magistrate. If the breach is proven, no discretion is provided other than for the clerk of court to order the offender to serve the appropriate sentence.

The Department of Correctional Services has raised this issue with the Courts Administration Authority. An amendment to the legislation would be necessary to meet the recommendation.[101]

9.110 The response to Recommendations 114 and 117 as with several other responses in this section displayed a lack of urgency or commitment to action. The Committee believes a more proactive approach is necessary if these recommendations are to be implemented.

9.111 Part (a) of Recommendation 121 which seeks to ensure that imprisonment is not automatically imposed for fine default, had not been implemented. The report stated:

In 1992 the number of admissions of Aboriginal prisoners increased by a dramatic 72% from the 1991 level, while the number of admissions to prison for non-Aboriginal people increased by 60%. This is mainly related to the changes in custodial practices and legislation causing a significant increase in the numbers imprisoned for fine default.[102]

Part (b) of the Recommendation, about a dependent's ability to pay, appears to be implemented.

9.112 The South Australian Government's main witness, Mr David Rathman, indicated that the provision of alternatives to custody required a lot more attention.[103] A problem facing judges was not whether government agencies had considered alternatives to custody but whether Aboriginal communities had the capacity to address alternatives to custody. While some communities have been able to meet the requirements because of funding arrangements, other communities are unable to be flexible enough to provide alternatives.[104] Mr Rathman sought funding from ATSIC to allow communities to provide alternatives to custody.[105] While the Committee is not entirely unsympathetic to this approach it believes that

---

101 *1993 Implementation Report, South Australian Government*, p111

102 *1993 Implementation Report, South Australian Government*, p62

103 Evidence, p931

104 Evidence, pp931-2

105 Evidence, p932

the main funding to implement Recommendation 112 should come from the State Government.

9.113 The Committee recommends that:

the Prime Minister, through the Council of Australian Governments, seek the agreement of the South Australian Government to:

- **implement Royal Commission Recommendations 93, 98, 100, 101, 102 and 121(a); (Recommendation 59)**
- **expedite the implementation of Royal Commission Recommendations 94, 114 and 117; (Recommendation 60)**
- **ensure that consultation with Aboriginal organisations occurs on Royal Commission Recommendation 109. (Recommendation 61)**

Northern Territory

9.114 The Northern Territory Government appears to have implemented a little over half of the relevant recommendations. Quite a few are said to be in the process of implementation.

9.115 The number of Aboriginals and Torres Strait Islanders in prison custody in the Northern Territory has risen from 276 in 1988 to 350 in 1994.[106] Their over-representation rate over the same period has increased from 11.4 to 13.00.[107]

9.116 The Northern Territory Government response stated that Recommendation 92 had been implemented. No evidence was given and the following comments imply that it had not been implemented:

> *Consistent with current Northern Territory Government Policy. A review of Northern Territory sentencing legislation is currently underway. All sentencing issues including whether to enshrine this principle in legislation will be considered.*[108]

---

[106] See chapter 5, Table 5.3

[107] See Chapter 5, Table 5.4

[108] *Northern Territory 1992-93 Annual Report*, p45

9.117 A number of other recommendations claim to be implemented but the comments indicate only that the recommendation will be taken into account in the review of sentencing legislation. These Recommendations are 94, 102, 103, 109, 111, 117 and 121.[109] However, part of the response to Recommendation 102 gives a clear indication of intent to implement Recommendation 92:

> *As part of the review of sentencing legislation currently being undertaken there will be a legislative requirement for courts to consider non-custodial sentencing options before imposing a first term of imprisonment.*[110]

However, the Northern Australian Aboriginal Legal Aid Service (NAALAS) told the Committee that the sentencing criteria in the Sentencing Bill does not include the principle of gaol being the last resort.[111]

9.118 In response to Recommendation 121 on alternatives to imprisonment for fine default the Northern Territory Government report stated:

> *All defaulters are given the option of a Community Service Order in lieu of imprisonment in the first instance.*[112]

However, NAALAS said that there was no arrangement to ensure that people arrested for fine default were assessed for community service.[113]

9.119 NAALAS was concerned that the draft of the new *Sentencing Act*, if implemented, would result in more people going into custody and being in custody longer, contrary to Recommendation 92.[114] NAALAS was concerned that the total effect of the new *Sentencing Act*, amendments to the *Bail Act* and the *Summary Offences Act* would be to significantly increase the number of Aboriginal people in custody.[115]

9.120 The Central Australian Aboriginal Legal Aid Service (CAALAS) told the Committee that at least half the people who go to court at present, go to gaol and this includes people who have not paid fines. CAALAS was also concerned that if people miss turning up in court on the set date, they are fined $1000 and cannot do

---

109 *Northern Territory 1992-93 Annual Report*, pp45-50

110 *Northern Territory 1992-93 Annual Report*, p47

111 Evidence, pS1666

112 *Northern Territory 1992-93 Annual Report*, p47

113 Informal discussions, Darwin

114 Evidence, ppS1666-7

115 Informal discussions, Darwin and evidence, pS1666-7

Community Service instead of the fine. If they do not manage to get the fine paid within six months they have to serve 20 days in custody for this failure.[116] The Committee considers that such fines will inevitably lead to more people in custody.

9.121 The new *Sentencing Act* was also of concern to CAALAS who pointed out that people would complete only half their sentence and then do community work. Many people then reoffend and have to serve the second half of their old sentence and then serve the new one. Both NAALAS and CAALAS referred to this as the revolving door syndrome.[117]

9.122 CAALAS also told the Committee that there were not enough alternatives to prison. It believed bush camps and farms could be used more to provide useful work and an environment for changing attitudes. With better education about existing protocols in the towns, there would be fewer street offences by people from bush areas visiting towns.[118]

9.123 When questioned about the effects on imprisonment of the proposed legislation, a witness for the Northern Territory Government said:

> *We are very conscious of the fact that there will be increased imprisonment. That has been recognised by our Government, by Cabinet. We have accordingly noted that there will be an increased need for funding for those imprisonment levels consistent with the government's law and order platform.*[119]

9.124 NAALAS commented further:

> *The main thrust of all these provisions is more gaol and longer gaol for defendants. They are essentially political in nature. They are based on the false premise that law and order is breaking down. They are based on the CLP and Labor Party view that the public ie. the voters, do not support the reasoned and objective Recommendations of the Deaths in Custody Commission.*[120]

9.125 The Committee is concerned that the Northern Territory Government accepts that legislative changes being made will increase custody numbers contrary to the Royal Commission recommendations.

---

[116] Informal discussions, Alice Springs

[117] Informal discussions, Darwin, Alice Springs, and evidence, pS1666

[118] Informal discussions, Alice Springs

[119] Evidence, p1019

[120] Evidence, pS1667

9.126 The Committee recommends that:

the Prime Minister, through the Council of Australian Governments, seek the cooperation of the Northern Territory Government to ensure that legislative changes are in accordance with the Royal Commission recommendations and will result in fewer Aboriginal and Torres Strait Islander people being incarcerated. (Recommendation 62)

9.127 Evidence from NAALAS on the availability of court interpreters and Aboriginal court staff contradicts the Government's assertion that Recommendations 99 and 100 were being implemented.[121] The Darwin Aboriginal Women's Shelter supported evidence by NAALAS on the lack of interpreters in the court system.[122]

9.128 CAALAS said that it uses its own interpreters in court on bail days as the court itself, the police or the Department of Law have no interpreters. This is a further example of mainstream agencies being responsible for the diversion of Aboriginal Affairs funding from its intended purpose to pay for services which are the Northern Territory Government's responsibility.

9.129 Another serious matter concerning language barriers was raised by NAALAS. For security reasons prisoners' phone calls to their families must be in English. This prohibits some prisoners ringing their families. The Committee was also told that prisoners have to 'apply in writing' for phone calls and then somehow get their relations in the community to ring on the day for which approval is given. The Committee finds such conditions unnecessarily oppressive and in some cases would deprive prisoners of their rights.

9.130 The Committee was told by NAALAS that mental health problems impacting on custody were not being appropriately addressed. NAALAS said that an Alice Springs man had been held in Darwin for seven and a half years as a result of being incorrectly diagnosed. There are considerable language problems when non-Aboriginal psychiatrists assess Aboriginal people.[123]

9.131 The Northern Territory is one of the few jurisdictions that has home detention as a sentencing option, which was called for in Recommendation 118.[124] NAALAS said that home detention in the Northern Territory is more flexible than

---

[121] *Northern Territory 1992-93 Annual Report*, p52

[122] Evidence, pS1667

[123] Informal discussions, Darwin

[124] *Northern Territory 1992-93 Annual Report*, p49

in other jurisdictions due to the initiatives of individual correctional services officers.[125]

9.132 Problems with prisoners attending funerals were raised by NAALAS. This was raised in Recommendation 171, to which the Government responded:

> *Implemented.*
>
> *Current provisions allow attendance at funerals, providing escorting officers and funds for travel etc are available.*[126]

9.133 However, NAALAS told the Committee that:

> *the prisoner has to be escorted by officers, and funds have to be borne by the family for both the travel expenses and the salaries of the officers. Two officers are required for one prisoner, at a cost of $200 each per day - even if the funeral is in Darwin - plus accommodation expenses. This poses a problem when a funeral is held a long way away from where a person lives, and a plane may have to be chartered. It may cost up to $6000. This poses problems for Aboriginals who cannot afford to go because the community feels as though that person has failed it. To add insult to injury, prisoners remain handcuffed at funerals. They cannot even embrace their family, which may well be part of the process required.*[127]

This varies from the practice in other jurisdictions where the state pays for the cost of transport of prisoners in their care. From this the Committee concludes that Recommendation 117 is not being implemented. With variations, difficulties of prisoners attending family funerals were raised in other states.

9.134 The Committee recommends that:

> **the Prime Minister, through the Council for Australian Governments, seek the co-operation of the Northern Territory Government to implement Royal Commission Recommendations 92, 94, 99, 100, 102, 103, 109, 111 and 171. (Recommendation 63)**

---

[125] Informal discussions, Darwin

[126] *Northern Territory 1992-93 Annual Report*, p78

[127] Informal discussions, Darwin

Queensland

9.135 In its Annual Report on implementation, the Queensland Government said it had implemented most of the recommendations relevant to it in this section. While they are not dealt with in this chapter the Committee commends the Queensland Government for also dealing with Juvenile Justice provisions for each of these recommendations in its Annual Report. This model could well be adopted by other jurisdictions.

9.136 The number of adult Aboriginals and Torres Strait Islanders in prison custody in Queensland has risen from 431 in 1988 to 490 in 1994.[128] Their over-representation rate over the same period has increased from 12.4 to 16.3.[129]

9.137 Recommendation 94 was not being implemented as it is being left to the discretion of the court.[130] Recommendation 95 relating to motor vehicle offences, had not been implemented. The report said that research should be undertaken but that additional resources would be required. The 1993 response indicated that no progress had occurred.[131]

9.138 Recommendation 96 had been implemented for court, probation and parole staff. Insofar as Recommendation 96 was addressed to judicial officers it had not been implemented nor even mentioned.[132] Tharpuntoo Legal Service told the Committee in Cairns in June:

> *Worrying signs of judicial conservatism in Queensland suggest that it is comparatively unreceptive to the Royal Commission's call for greater cultural sensitivity on the bench. This state lacks, for example, a judicial commission of the kind established in New South Wales, which has already carried out its own courses in gender and cultural awareness. No less a figure than the Chief Justice of the High Court, Sir Anthony Mason, in comments reported early last month, endorsed the provision of such training for judges.*[133]

9.139 Recommendation 97 on consultation was only implemented to the same extent as Recommendation 96.

---

[128] See Chapter 5, Table 5.3

[129] See Chapter 5, Table 5.4

[130] *Queensland Government Progress Report to December 1993*, p105

[131] *Queensland Government Progress Report to December 1993*, pp106-7

[132] *Queensland Government Progress Report to December 1993*, pp107-8

[133] Evidence, p553

9.140 The Committee recommends that:

the Prime Minister, through the Council of Australian Governments, seek the agreement of the Queensland Government to fully implement Recommendation 96 of the Royal Commission to ensure greater cultural sensitivity by judicial officers. (Recommendation 64)

9.141 Recommendations 99 and 100 have not been implemented. While the right to an interpreter exists, evidence to the Committee was that interpreters were not being provided in magistrates courts.[134] The 'addition of a requirement for positions of first line supervisor in the Magistrates Courts Branch that they possess an ability to communicate with Aboriginal and Torres Strait Islander people'[135] while highly desirable does not meet the requirements of either Recommendation. The establishment of specialist Aboriginal and Torres Strait Islander recruitment section was only foreshadowed.[136]

9.142 The Queensland Government indicated that some progress has been made on the implementation of Recommendation 104 concerning sentencing options being relevant to the community.[137]

9.143 In response to Recommendation 108 the Queensland Government responded:

> *With respect to Aboriginal and Torres Strait Islander Legal Services, this is a matter for the Commonwealth which has responsibility for funding. However, courts have a general discretion to adjourn matters where it is in the interest of justice to do so.*[138]

9.144 Tharpuntoo Legal Service drew the Committee's attention to failures to implement Recommendation 108 on Cape York magistrates circuits. They also highlighted the need to fully implement Recommendation 96:

> *Tharpuntoo is very concerned that, in its experience, magistrates travelling from Cairns show almost no appreciation of the social, cultural and historical factors operating within our client communities nor seemingly any interest in learning more about how the*

---

134 Tharpuntoo Legal Service, pp571-4, ppS322-3

135 *Queensland Government Progress Report to December 1993*, p111

136 Queensland Government Progress Report to December 1993, p111

137 *Queensland Government Progress Report to December 1993*, pp114-5

138 *Queensland Government Progress Report to December 1993*, p118

communities work. There is also very little effort on their part to make the court procedure more intelligible and relevant to indigenous persons caught up in the criminal justice system.

Indeed a recent development set out below suggests that, rather than moving to a greater accommodation of difference and difficulty arising from Aboriginal and Islander interactions with the criminal justice system, the Cape circuit magistracy is taking a more hardline and inflexible approach.....

In January 1994, Practice Guidelines for Magistrates Courts on Cape York Peninsula were promulgated. The Guidelines are introduced by the author as intended 'to assist in management of the flow of work through the Court in a way which enables all involved in the administration of the Court to understand what is expected to occur for the efficient disposal of the Courts (sic) business'.

The Guidelines, the document states, 'will be enforced to ensure the effective use of the allocated Court time'. The Guidelines purport to apply to operate at the Magistrates Courts of Coen, Lockhart River, Aurukun, Weipa, Bamaga, Pormpuraaw and Kowanyama only. Five of these courts are in Aboriginal and Islander communities on the Cape.[139]

9.145 A barrister briefed to advise Tharpuntoo on these issues advised that:

[I]n their present form, the Practice Guidelines for Cape York Magistrates' Courts issued by T F Pollock SM on 20 January 1994 have no legal effect whatsoever. It is not within the power of a sole magistrate in Queensland to make such Guidelines or to enforce adherence to them.[140]

9.146 Tharpuntoo questioned the legitimacy of any court not allowing time to obtain instructions. 'Taken to its logical conclusion it amounts to a denial of legal representation.'[141]

9.147 Tharpuntoo said that further Guidelines were 'in apparent ignorance of the presumption of innocence and the right of any defendant to put the prosecution to proof. The Guideline challenges and affronts many hundreds of years of criminal jurisprudence'.[142]

---

[139] Evidence, pS303

[140] Evidence, pS304

[141] Evidence, pS305

[142] Evidence, pS306

9.148 Tharpuntoo also drew attention to breaches of Recommendation 60 on the verbal abuse of young people[143] and the use of racist or offensive language or comments in log books and other documents:

> *On frequent occasions the Visiting Magistrate on circuit has also referred to Aboriginal and Islander defendants as 'you people'.*
>
> *In the Townsville Children's Court in April 1994, a 14 year-old Aboriginal boy we call 'A' appeared on a number of charges. 'A' had been before the Children's Court before. On the QP9, the Queensland Police Service form, filled out for every alleged offence, A's occupation is noted as 'Dropout'.*
>
> *The expressions used with these Aboriginal children by police and magistrates is obviously inappropriate and offensive. An Australian child of whatever ethnic background should not be submitted to these remarks.*[144]

9.149 The cost of attending a trial was raised by Tharpuntoo in Cairns as a substantial barrier to justice:

> *Within the Peninsula there is a real deterrent to people pleading for a trial because of the disadvantaged circumstances that they find themselves in. It is a very traumatic experience to have to come down here for a district court list. They will be told to be here Monday, but that list might be two weeks long. An average return fare from any of those communities is between $500 and $700, and then they have to accommodate and feed themselves for that two-week period in town. It acts as a real deterrent and people will plead guilty.*[145]

9.150 The Committee recommends that:

> **the Prime Minister, through the Council of Australian Governments seek a commitment from the Queensland Government to implement Recommendation 108 particularly in conjunction with the full implementation of Recommendation 96. (Recommendation 65)**

---

[143] Evidence, pp306-7

[144] Evidence, pS308

[145] Evidence, pp571-2

9.151 Recommendation 111 does not appear to have been implemented other than by an appointment to the Parole Board.

9.152 In implementing Recommendation 114 the Queensland Government indicated a substantial commitment to this principle. In its 1992 response it said that:

> *In 1989 the Queensland Corrective Services Commission developed a recruitment policy aimed at increasing the composition of Commission staff to 10% representation of Aboriginal and Torres Strait Islanders across all levels of the QCSC. The QCSC has achieved nearly half this figure at present. Particular emphasis is placed on the areas where a majority of Aboriginal and Torres Strait Islander offenders are under supervision. Aboriginal and Torres Strait Islander liaison staff as well as Aboriginal and Torres Strait Islander Community Corrections Officers have been employed.*[146]

9.153 In its 1993 response it said:

> *This goal is yet to be achieved. However, a further increase in staff towards this target will occur in 1993-94. Increased community participation will be achieved through contracting service delivery to communities.*[147]

9.154 It was not clear from the Government's 1993 response whether Recommendation 117 had been fully implemented particularly in relation to fine defaulters. The response stated:

> *The Penalties and Sentences Act 1992 has extensive provisions for dealing with the consequence of a breach of community-based orders and fine-option orders.*[148]

9.155 The Queensland Government has not implemented Recommendation 118 on home detention other than as an early release scheme for prisoners.[149]

---

[146] *Queensland Government Progress Report to December 1993*, p123

[147] *Queensland Government Progress Report to December 1993*, p123

[148] *Queensland Government Progress Report to December 1993*, p126

[149] *Queensland Government Progress Report to December 1993*, pp107-8

9.156 The Committee recommends that:

the Prime Minister, through the Council of Australian Governments, seek the cooperation of the Queensland Government to fully implement Royal Commission Recommendations 94, 95, 96, 99, 100, 108, 111, 117 and 118. (Recommendation 66)

Western Australia

9.157 Western Australia had implemented just over half of the relevant recommendations in this section. It had not implemented Recommendation 93 except for juveniles. Recommendation 95 had only been implemented in gaols and the implementation did not appear to have involved consultation with Aboriginal community organisations. There needs to be a much greater emphasis on prevention in the community, involving consultation, to reduce the number of offences.

9.158 The number of Aboriginals and Torres Strait Islanders in prison custody in Western Australia has risen from 528 in 1988 to 687 in 1994.[150] Their over-representation rate over the same period has increased from 23.8 to 25.9.[151]

9.159 Recommendation 98, on phasing out the use of Justices of the Peace for the determining of charges or imposing penalties, had not been implemented. The Western Australian Government said:

> *The sentencing powers of Justices of the Peace (JsP) are being considered in the development of the proposed Sentencing Act. In addition, a comprehensive review of the JsP system is currently being undertaken. It is anticipated that the review will be completed by 31 March 1994.*[152]

9.160 Quite strong views have been expressed by the Australian Law Reform Commission, Royal Commissioners Muirhead, Johnston, Dodson and O'Dea and others (see paragraphs 9.15-9.16) on the unsuitability of Justices of the Peace sitting

---

150 See Chapter 5, Table 5.3

151 See Chapter 5, Tale 5.4

152 *Government of Western Australia Implementation Report 1993*, pp75-6

on criminal cases. An exception noted by the Royal Commission was that of Aboriginal justices sitting in Aboriginal communities.[153]

9.161 The highly unsatisfactory situation in Wiluna was drawn to the attention of the Committee. In the period 1 January to 31 August 1994 the Justice of the Peace sat on 91 of the 99 occasions on which the court sat in Wiluna. The Justice dealt with 91.5% of the 1072 charges.[154] The small remainder of the cases were heard by a magistrate. The Aboriginal Legal Service of Western Australia (ALS of WA) who undertook the study of justice in Wiluna said:

> *The continued use of Justices of the Peace particularly in an environment where legal representation is inaccessible, is fraught with the dangers of injustice occurring as a result of inexpertise and lack of knowledge. In the period studied, 5 persons were sentenced to imprisonment by the Justice of the Peace for offences against the Liquor Licensing Act. This Act has no provision for imprisonment of offenders. Accordingly, the JP's sentences were not simply ultra vires but resulted in the imprisonment of 5 community members without basis in law. Sentencing options by the Justice of the Peace also lack the range utilized by the magistrates Court with fines and gaol generally being the only options considered. Excessive familiarity with persons coming before the court is also a problem. Over the period examined, $58,410 of the fines imposed were made ineligible for conversion to work & development order. Such an order is sometimes but not commonly exercised in magistrates courts. Wiluna currently has only one available Justice of the Peace for the hearing of matters.*[155]

9.162 The fairness of court processes in Wiluna and the availability of legal representation was raised by the ALS of WA:

> *Of 1072 charges only 5 charges involved pleas of 'not guilty'. Few defendants regard a 'not guilty' plea as available to them. There are a number of reasons for this. Language difficulties, lack of interpreters, lack of understanding of court process and jargon, and the subtle but effective intimidation resulting from a strong police presence in Court and the lack of effective legal representation contribute to the problem. This difficulty is substantially worsened by the lack of effective Legal representation in the majority of cases. Of the 1072 charges studied persons were legally represented on only 116 charges.*

---

153 RCIADIC, *National Report*, Vol 3, p75

154 *Counting the Cost*, p21

155 *Counting the Cost*, pp21-2

This unsatisfactory situation was worsened by the police practice of setting 99 separate Court days from 1/1/94 to 31/8/94 making it impossible for the Aboriginal Legal Service to attend. The average number of clients on each of these occasions was only 6.9 defendants. Frequently court would be scheduled shortly after the arrest of a defendant and without notification to the Aboriginal Legal Service. The nearest Aboriginal Legal Service office is at Meekatharra almost 200kms away and the nearest solicitor at Geraldton about 700km away. Other than to secure a rapid disposition of matters it is difficult to explain the police decision to list court days in a frequent and ad hoc fashion. Arrangements are currently being trialled whereby the court, composed of a single Justice of the Peace sits once a week only, with notice being provided to the ALS to arrange representation. Legal representation in the longer term requires serious consideration.[156]

9.163 Despite the repeated criticisms by senior review bodies such as the Australian Law Reform Commission and the Royal Commission, Western Australia has continued the system of Justices of the Peace determining cases, with the disastrous consequences outlined above.

9.164 The Dixon Inquiry in 1981 found that justices in some areas imposed terms of imprisonment more often than was necessary.[157] A 1984 study showed that Justices were four times more likely to impose a sentence of imprisonment than magistrates and more likely to impose longer sentences.[158] The study also found that Aboriginal defendants were far more likely to appear before lay justices than were non-Aboriginal people. Commissioner O'Dea said:

This Commission considers that the continued use of Justices of the Peace as judicial officers in court proceedings is incompatible with the fair and equal administration of justice in this State. It is recommended that government implement a policy designed to phase out the use of justices in courts in this State with a concurrent expansion in the numbers of Stipendiary Magistrates.....

While justices continue to preside over courts in this State it is considered that statutory limitations on their sentencing powers be introduced as an interim measure.[159]

---

156 *Counting the Cost*, p21

157 RCIADIC, *Regional Report - Individual Deaths - Western Australia*, Vol 1, p365

158 RCIADIC, *Regional Report - Individual Deaths - Western Australia*, Vol 1, p366

159 RCIADIC, *Regional Report - Individual Deaths - Western Australia*, Vol 1, pp368-9

9.165 The Committee recommends that:

the Prime Minister, through the Council of Australian Governments, seek the assurance of the Western Australian Government that the use of Justices of the Peace to determine cases cease as soon as possible. (Recommendation 67)

9.166 The Western Australian Government claims to have implemented Recommendation 99 on the use of interpreters. Evidence to the Committee in a number of centres was that interpreters were not being used in many cases where they should be.[160] The Government response also noted:

> *A training course for Aboriginal people as court staff and interpreters is currently being piloted through the Language Centre at Halls Creek. It is intended to offer similar training in the Warburton area in 1994.*[161]

9.167 Recommendation 100 was said to be subject to ongoing implementation:

> *Seminars are held for judges and magistrates which include information on the scope and effectiveness of non-custodial orders.*

However, a solicitor for the ALS of WA in Broome did not believe there was an adequate range of alternatives.[162] The ALS of WA said that sentencing authorities were not fully informed about the non-custodial options available and these were being under-utilised for Aboriginal offenders.[163]

9.168 Recommendation 102 had not been implemented. The Government's intentions were outlined:

---

[160] *Counting the Cost*, p76
RCIADIC, *Regional Report - Underlying Issues - Western Australia*, Vol 1, pp121-4, 189-91
ALS of WA, Broome, evidence, pp126, 129-30
ALS of WA, Kalgoorlie, evidence, pp178-80
ALS of WA, Perth, evidence, pp287-8

[161] *Government of Western Australia Implementation Report 1993*, p76

[162] Evidence, p125

[163] *Striving for Justice*, Vol 1, pp62-3

The Community Corrections Directorate is considering internal breach discipline for non-compliance with non-custodial orders. The Juvenile Justice Division is considering the introduction of an Attendance Notice Scheme to deal with non-compliance of non-custodial orders.[164]

9.169 The Annual Report indicated that Recommendation 103 had been implemented. However, the ALS of WA pointed out that:

> *..... if the minimum period for the fine is less than one week's imprisonment then the dollar value of the work and development order is less than the dollar value of a day served in prison. This is because the minimum period of a Work and Development Order is fourteen hours so a $60 fine converts to fourteen hours as does a $175 fine. A fine of $180 converts to twenty-eight hours Work and Development Order. The fine default rate is $25/day. The previous government recognised the anomalies in this system.*
>
> *Since the first Government response a proposal by Joint Select Committee on Parole has been prepared which suggests amending legislation to enable conversion formula for WDOs to provide one day of default to require four hours work. It also proposes that fine default rate be increased to $50/day and be cumulative.*
>
> *The Aboriginal Legal Service urges the state government to act immediately to implement amendments proposed by the Joint Select Committee on Parole in regard to fine defaults and WDOs in view of the fact that 60% of Aboriginal prisoners are serving sentences for fine default only.*[165]

9.170 The Government said that it has not implemented Recommendation 111 but that it had partially implemented Recommendation 117:

> *Breaches of Community Service Orders must already be dealt with by a Judge or Magistrate who may consider the other forms of penalty in respect of the breach.*
>
> *Work and Development Order breaches do not return to Court but are subject to warrant issued by the Community Corrections Manager. To return the group to Court would have a major impact on Court activity levels.*[166]

---

164 *WA Government Implementation Report 1993*, pp75-6

165 *Striving for Justice*, Vol 1, pp63-4

166 *Government of WA Implementation Report 1993*, pp75-6

9.171 The ALS of WA outlined difficulties with breaches of orders:

> *where the order has been imposed as a fine default option such as in the case of a work and development order, there is provision for the court to simply cancel the order, without the offenders appearance and to issue a warrant for the offenders imprisonment.....*
>
> *Of the Aboriginal prisoners received in the Department for Corrective Services facilities in 1993, 60% were imprisoned for fine default only. Thus it is the case that Aboriginal people may still be imprisoned both for the default or for the breach of the fine-alternative, the work and development order. This is despite the fact that breach of CSO's imposed as prison alternatives in respect of offences more serious than those dealt with by the WDO system, will not necessarily result in imprisonment.*[167]

9.172 Western Australia had not implemented Recommendation 118 but indicated:

> *Consideration is being given to the use of home detention as a sentencing option in the development of the Sentencing Bill. However options such as curfew requirement under an Intensive Supervision Order may be more appropriate.*[168]

9.173 One Government concern has been the possibility of net-widening. The ALS of WA shared this concern but has suggested to the State Government that:

> *it examines the operation of the home detention scheme in the Northern Territory. There, safeguards operate to prevent offence net-widening. There, the sentencing authority must receive a report from the probation and parole officer that establishes that the offender is otherwise facing certain imprisonment, before an order for home detention may be issued.*[169]

9.174 The Western Australian Government claimed to have partially implemented Recommendation 121.[170] However, the ALS of WA is highly critical of the failure to implement this crucial Recommendation:

> *The imprisonment of Aboriginal people for fine default remains an enormous problem in Western Australia. The government has already*

---

167 *Striving for Justice*, Vol 1, pp69-70

168 *WA Government Implementation Report 1993*, p80

169 *Striving for Justice*, Vol 1, p70

170 *WA Government Implementation Report 1993*, p70

in these submissions been urged to take all possible steps to eliminate this pattern of poverty induced imprisonment.[171]

If 60% of Aboriginal prisoner receptions were for fine default, then the Committee agrees that implementing this Recommendation is crucial.

9.175 The ALS outlined a number of serious deficiencies within the present system and went on to say:

> *All these matters must be taken into account by the government in amending the existing system which is failing so lamentably to divert fine defaulters from prison. However it is the view of the Aboriginal Legal Service that the government would be better advised to scrap the existing system altogether and implement a new system based in its entirety on the scheme operating in the Northern Territory. This scheme has been remarkably successful. The number of fine defaulters imprisoned decreased by 23% following its introduction.*[172]

9.176 The ALS of WA also sought the implementation of Part (b) of Recommendation 121 by:

> *.....imposing a statutory duty on sentencers to consider a defendant's capacity to pay any fine levied. This does not restrict the discretion of sentencers. Merely it requires them to consider relevant information before imposing a fine which if defaulted on will only generate further costs to both the individual and the community.*[173]

9.177 The Committee believes that Recommendation 121 is a major recommendation in terms of its impact on the rates of imprisonment of Aboriginal and Torres Strait Islander people. The delay in its implementation means many people are being quite unnecessarily incarcerated.

9.178 The Committee recommends that:

> **the Prime Minister through the Council of Australian Governments seek the agreement of the Western Australian Government to implement Recommendations 93, 95, 98, 99, 102, 103, 111, 117 and 121 without further delay. (Recommendation 68)**

---

171 *Striving for Justice*, Vol 1, p71

172 *Striving for Justice*, vol 1, p73

173 *Striving for Justice*, Vol 1, p73

9.179 On the administration of courts, the Committee was quite concerned about evidence on the operation of the court at Wiluna. The ALS of WA outlined gross deficiencies in the running of the court:

> *Whilst typically, the dissemination of Court related information is conveyed to defendants by the clerk of the petty sessions, in Wiluna the clerk of petty sessions is the officer in charge of police. It is upon the police therefore, that defendants rely for information vital to their interests. It is not presently the practice of the Wiluna Court to issue penalty notification slips to defendants as is the practice in all other courts.*
>
> *Defendants typically leave the court with little knowledge of the penalty imposed, and remain in this state of ignorance until a warrant for their arrest is issued. It appears that the clerk of petty sessions is not properly alerting persons arrested for unpaid fines of their right to convert the warrant into a work & development order. Police are obliged under standing orders to get prisoners to sign a Form C435 if they elect incarceration in lieu of a work & development order. This procedure is not being followed. Of the 297 individuals charged over the period, only 24 (8%) have had the opportunity to convert fines imposed for 54 charges to work & development orders. Only $36,984 in fines have been converted to work & development orders in 1994.*
>
> *It appears that the clerk of petty sessions may be exercising a discretion which has no statutory or regulatory basis, in refusing defendants work & development orders. The only discretion in relation to eligibility for work & development orders, other than the Magistrate/justice of the peace, lies with the Community Corrections service which compiles a list of ineligible persons. On several occasions prisoners have had to contact the Community Corrections Service directly, following refusal by the Wiluna clerk of petty sessions to allow work & development orders in lieu of incarceration. Frequently it is only as a result of transfer to Greenough Prison, that fine defaulters are able to establish contact with the Community Corrections Service to allow fines to be converted to a work & development order. Transfers to Greenough from the Wiluna lockup only result where significant default sentences are imposed, and in this light it is interesting to note that 14 of the 24 work & development orders were commenced by persons with substantial monetary penalties in excess of $2000.*
>
> *The proper procedure, upon arrest with a commitment warrant is to inform the defendant of his/her right to convert the fine to a work & development order, and incarcerate the person only if the Court or Community Corrections Service has negatively assessed the persons suitability for work & development. It is then the duty of the clerk of*

courts to forward a 'C400' application to the Community Corrections Service. Not one 'C400' form has been received by the Community Corrections Service this year and in this regard police are in breach of their own standing instructions. The co-existence of the role of the officer in charge as clerk of petty sessions together with the existing meal allowance scheme appears to involve a further serious conflict of interest, and coincides with apparent breaches of police standing orders.[174]

9.180 The Committee is concerned that such gross distortions in the administration of justice could go undetected for so long. It is of great concern to this Committee that similar situations may occur in many other small courts in Western Australia.

9.181 The Committee recommends that:

the Prime Minister, through the Council of Australian Governments, seek an assurance from the Western Australian Government that the staffing of courts will be reviewed and monitored to ensure that court staff and procedures do not act to the detriment or disadvantage of people coming before the court, in breach of the intent of legislation. (Recommendation 69)

[174] *Counting the Cost*, p19

CHAPTER 10

POLICE RELATIONS WITH INDIGENOUS PEOPLE

10.1 The Royal Commission saw the relationships between police and indigenous people as one of the key issues to be addressed if the over-representation of Aboriginal and Torres Strait Islander people in custody was to be reduced. The Committee fully agrees with the importance attached to these relationships.

10.2 The Royal Commission outlined the history of Aboriginal-police relationships and the importance of that history:

> *Historically the police have acted as the most consistent point of Aboriginal contact with colonial power. This is pertinent to the present situation, for past history relating to police action is very much alive in the minds of Aboriginal people. Similarly, police share a certain heritage relating to the treatment of Aboriginal people.*[1]

10.3 The Royal Commission further details this history:

> *If one leaves aside agencies dedicated to the management or reshaping of Aboriginal lives, such as protection boards and missions, police have been until very recent times, and in many places continue to be, the section of the non-Aboriginal community with which Aboriginal people have had most contact, which gave Aboriginal people much reason to fear and dislike police, and little reason to think well of them. Aboriginal resistance to the taking of their lands was put down by para-military forces along a moving frontier that spread from Port Jackson in 1788 and continued into more remote areas in Australia as late as the 1930s. Originally conducted by troops or armed bands of settlers, these operations were taken over by police as police forces were formed. In widespread Aboriginal perceptions of police there is an unbroken continuity. When warfare ceased at different times and different points on this moving frontier, control and repression of Aboriginal people did not cease. Attempts by Aboriginal people to maintain themselves from the settlers' herds that had displaced their game met with police action .....*[2]

---

1 RCIADIC, *National Report*, Vol 2, p21

2 RCIADIC, *National Report*, Vol 2, p204

The legacy of violence and disrespect remained long after the situation which gave rise to it, and still has not been entirely eradicated. Although attitudes have gradually changed, violence to men and abuse of women remains part of what Aboriginal people fear from police in many parts of Australia today, even where they no longer experience it.[3]

10.4 The Royal Commission outlined how this history is reflected in contemporary attitudes:

Aboriginal people in their many submissions and in consultations conducted during this inquiry have most frequently identified their relations with police officers as the most serious and constant indicator of the injustice and prejudice which they experience in society. The circumstances which gave rise to this Commission illustrate starkly the extent to which Aboriginal people regard police as enemies. When a series of Aboriginal hangings occurred in police cells, there were large numbers of Aboriginal people who could and did readily draw the conclusion that police were simply killing Aboriginal people. Hostility to police is widely shared among Aboriginal people of all ages and in most communities throughout Australia, whether people are living on remote outstations, in rural towns and fringe camps, or in major cities.

On both sides, from the police and Aboriginal viewpoint, there is the tendency to stereotype. Often the stereotypes have more to do with historical legacies, or particular past experiences, than with the realities of the current situation. Even the interpretation of the contemporary situation is often highly selective, police tending to stereotype all Aboriginal people according to the characteristics of a minority with whom they have problems, and Aboriginal people often having their current view of the situation dominated by a minority of police who conform to the historical stereotype of a rough, offensively spoken and racist officer.[4]

10.5 The attitude of a number of individuals and organisations with whom the Committee spoke during the Inquiry is summed up in a quotation from the Royal Commission's Aboriginal Issues Unit on attitudes in Tasmania:

For most Blacks, the only contact with Police usually amounts to a bad experience. It is not surprising therefore, that the reputation of Police in the community is very poor. This is not to say that the community believes that every police officer is bad. However, the intensity of racism demonstrated by those officers who are involved in conflicts

---

3 RCIADIC, *National Report*,Vol 2, p205

4 RCIADIC, *National Report*, Vol 2, p207

with Aborigines has a great impact on the community, as the story of experience while in custody is shared around very quickly.[5]

10.6 The same Aboriginal Issues Unit went on to raise the additional problems faced by Aboriginal women:

> *Of particular concern to the community is the attitude of Police Officers to Aboriginal women. During arrest and detention, Aboriginal women are consistently abused, verbally with terms such as 'black slut', 'whore', etc. While it is improper for individuals to be insulted by police officers in the first place, the nature of such insults is particularly threatening for young women who are placed at the mercy of several white males in unfamiliar surroundings.*[6]

10.7 The Royal Commission noted that much was happening, on both sides of the Aboriginal-police relationship, to destroy the long-standing stereotypes. There has been some shift of power and resources into Aboriginal hands. In many of the police services there has been an 'enlightened realisation at senior levels that the old relationship with Aboriginal people is no longer acceptable'.[7] This has resulted in real attempts to change the inherited attitudes and practices.[8]

10.8 The Royal Commission stressed the importance of improving relationships:

> *Whilst hostility towards police is widespread among the Aboriginal community, my investigations and those of other Commissioners have also demonstrated that in many places relations are good and long-standing patterns of mutual distrust and antagonism are changing for the better. It is rare for such situations to receive publicity and the effect of the constant media reporting of Aboriginal-police relations in a way which highlights division and confrontation misleads not only non-Aboriginal people but also Aboriginal people to believe that police departments and officers are universally opposed to Aboriginal interests.*
>
> *To paint a picture of unrelieved opposition and division between Aboriginal people and police is not only to distort the truth but also to deny just recognition to the efforts which so many Aboriginal people and police officers have made in order to improve relations. It is a sad fact of life that it takes courage for an Aboriginal leader or a police officer to publicly acknowledge fault on each others' own side and to*

---

5 RCIADIC, *National Report*, Vol 2, p241

6 RCIADIC, *National Report*, Vol 2, p242

7 RCIADIC, *National Report*, Vol 2, p208

8 RCIADIC, *National Report*, Vol 2, pp207-8

be prepared to listen to the other's point of view. I am impressed by the numbers of people on both sides of what, admittedly, remains a divide who quietly and determinably demonstrate the courage to go beyond rhetoric, to put the past behind them and to get on with the task of improving relations.[9]

10.9 Although this chapter concentrates on the marked deficiencies in police-Aboriginal relationships, the Committee did hear of many positive initiatives and changes. In many instances improved relationships have a long way to go to be fully effective but the important point is that the improvement has actually begun.

Royal Commission Recommendations

10.10 The Royal Commission made two major recommendations on community policing:

Recommendation 214

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

Recommendation 215

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

a *The methods of policing used, with particular reference to police conduct perceived by the Aboriginal community as harassment or discrimination;*

b *Any problems perceived by Aboriginal people; and*

c *Any problems perceived by police.*

Such negotiations must be with representative community organizations, not Aboriginal people selected by police, and must

---

9 RCIADIC, *National Report*, Vol 4, p80

be frank and open, and with a willingness to discuss issues notwithstanding the absence of formal complaints.[10]

10.11 Recommendations 216-233 address other policing issues including two recommendations on the relationship between police and Aboriginal Legal Services:

Recommendation 223

That Police Services, Aboriginal Legal Services and relevant Aboriginal organizations at a local level should consider agreeing upon a protocol setting out the procedures and rules which should govern areas of interaction between police and Aboriginal people. Protocols, among other matters, should address questions of:

a *Notification of the Aboriginal Legal Service when Aboriginal people are arrested or detained;*

b *The circumstances in which Aboriginal people are taken into protective custody by virtue of intoxication;*

c *Concerns of the local community about local policing and other matters; and*

d *Processes which might be adopted to enable discrete Aboriginal communities to participate in decisions as to the placement and conduct of police officers on their communities.*

Recommendation 224

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

Government Implementation Responses to the Recommendations

10.12 Commonwealth, state and territory responses to these recommendations will be considered below.

---

10 *Queensland Government Progress Report to December 1993*, Vol 3, p230

Commonwealth

10.13 The Australian Federal Police (AFP) advised that there was no liaison committee at Wreck Bay, in the Jervis Bay Territory, but that arrangements with the community allowed for consultation on a day-to-day basis.[11] The Wreck Bay Community Council has indicated that it prefers informal liaison rather than a regular formal meeting and that it prefers to operate on a 'needs' basis. The Jervis Bay Officer-in-Charge is also a member of the Nowra Police-Aboriginal Liaison Committee.[12]

10.14 In the Jervis Bay region, an AFP Regional Instruction requires that the Aboriginal Legal Service or Aboriginal Liaison Committee be notified when Aboriginal people are arrested or detained. Where an Aboriginal person is intoxicated, he or she is normally released into the care of a committee member.

Australian Capital Territory

10.15 The ACT Government's Implementation Annual Report responded to Recommendations 214 and 215 by saying:

> *The Police/Aboriginal Liaison Committee, which has been re-named the Aboriginal/Police Liaison Committee, is currently being reviewed and restructured in close cooperation with the ACT Aboriginal and Torres Strait Islander Advisory Council.*
>
> *The Liaison Committee will provide a forum for communication between Aboriginal peoples and Torres Strait Islanders and the AFP in relation to policing procedures as envisaged in this recommendation.*
>
> *The ACT Government has established a Community Safety Committee to maintain and enhance a safe community by reducing the level and fear of crime in the ACT. Although not specifically targeted at the Aboriginal and Torres Strait Islander communities, the Committee's strategies will benefit members of the ACT Aboriginal and Torres Strait Islander communities.*[13]

10.16 In response to Recommendations 223 and 224 it said:

> *Australian Federal Police ACT Regional Instruction 1/92 (Watch House), at paragraphs 11 and 70-71 requires that the Aboriginal Legal Service or the Aboriginal Liaison Committee (ALC) be notified when*

---

11 Evidence, p1317

12 *Commonwealth Implementation Annual Report*, Vol 2, pp237-8

13 *ACT Government Implementation Report 1992-93*, p138

Aboriginal persons are arrested or detained in the ACT. Members of the Liaison Committee are on call 24 hours per day.[14]

10.17 Evidence was given that the Aboriginal Legal Service, based in Redfern NSW, often failed to respond to notification by police.[15]

10.18 In evidence, the Australian Federal Police outlined a range of groups that it liaises with in the ACT.[16] There was some criticism of the Liaison Committee for being reactive.[17] Representatives of the ACT Aboriginal and Torres Strait Islander Advisory Council said that police-Aboriginal relations in the ACT were better than other areas. They pointed to the constructive approach by police to adopt community approaches to problems in the Narrabundah area:

> *A few months back we had a lot of media hype—it was after the Wilcannia situation—about these young Aborigines in trouble causing problems at Manuka, et cetera. The council took the initiative in calling the police and community people together—not just Aboriginal people, but also other people in Narrabundah—to try to sort out the problem. Of course, in looking at it, we found out that there was basically a group of young people of which not quite a half were Aboriginal kids. Yet the media played it up as a black issue, with black violence going on in this area.*
>
> *The response from the wider community was a calling for police to have more powers and more presence. One of the things that we have been working through the community is that it is their community. It is their responsibility to look after their young people. They do not need the police driving cars every five minutes around their neighbourhood. So it is trying to, again, give empowerment to the people who are in so-called problems, rather than putting more restrictions and controls over them.*[18]

Queensland

10.19 The Queensland Government supported Recommendation 214. In its December 1993 response it said:

---

14 *ACT Government Implementation Report 1992-93*, p142

15 Informal discussions, Canberra, and Australian Federal Police, evidence, p1323

16 Evidence, p1316

17 Mr Stan Grant, evidence, p1296

18 Informal discussions, Canberra, and Australian Federal Police, evidence, p1316

Police Community Consultative Committees and Aboriginal and Torres Strait Islander Liaison Committees, which are progressively being established, provide a forum for this in line with Community Policing philosophies. In addition the QPS is currently conducting an extensive review of the delivery of policing on remote Aboriginal and Torres Strait Islander communities. The review involves extensive consultation with members of each of the communities concerned. The review includes consideration of community policing issues and how the community and police can work together more effectively.[19]

10.20 It also supported Recommendation 215 and responded in similar terms as for the previous Recommendation, adding:

> *At a more informal level, consultation and negotiation on these issues is conducted by Aboriginal liaison officers with local police and Aboriginal and Torres Strait Islander community police.*[20]

10.21 Despite the responses given by the Queensland Government, in the two major centres visited by the Committee, Cairns and Brisbane, relations between police and the Aboriginal and Torres Strait Islander communities appeared to be very poor. Witnesses in Brisbane indicated that Aboriginal-police relations were at an all time low.[21] In Cairns, there was no effective liaison committee established between police and the Aboriginal community. The Njiku Jowan Aboriginal Legal Service in Cairns, had sought to establish protocols as recommended by the Royal Commission but had been rebuffed by the police.[22] This is despite the Queensland Government seeking to implement Recommendations 223 and 224 through the Police Custody Manual, Section 2.5.8 of which says:

2.5.8	*Notification to the Aboriginal and Torres Strait Islander Legal Service*
Policy	*The Police Service supports the notion that the Aboriginal or Torres Strait Islander Legal Service responsible for the area is notified of the arrest of Aboriginal and Torres Strait Islander people.*

---

19 *Queensland Government Progress Report to December 1993*, Vol 3, p230

20 *Queensland Government Progress Report to December 1993*, Vol 3, p230

21 Ms Cherie Imlah, evidence, p764
Watch Committee, evidence, p679, 682, 684, 685
Aboriginal and Torres Strait Islander Legal Service (Brisbane), p724, 732-36, 744, 747
Informal discussions, ATSIC Brisbane Regional Council

22 Njiku Jowan, evidence, p610

Procedure

The regional or local police Cross Cultural Support Officer should facilitate the development of a protocol for the supply of information to the Aboriginal or Torres Strait Islander Legal Service concerning the arrest of Aboriginal and Torres Strait Islander people.

The protocol should cover the issues of:

- *authorisation of identified members of a legal service to whom the information is to be released;*
- *the location and frequency of the transfer of the information;*
- *the mode of transfer of information;*
- *forwarding of information from stations that do not have access to the QPD computer system.*

The information provided to the Aboriginal and Torres Strait Islander Legal Service should include:

- *identification details of the prisoner;*
- *nature of the charge;*
- *time, date and place of the Court the prisoner is to appear, where appropriate.*

The regional or local Cross Cultural Support Officer should ensure that consultation with local Aboriginal and Torres Strait Islander organisations is an integral component of the development of the protocol.[23]

10.22 A witness from the Queensland Police Service, Senior Sergeant Preston, representing the Queensland Government told the Committee that liaison with legal services in the north of the state were quite good. Cairns Police said that their relations with Tharpuntoo were cold and that they had little contact with Njiku

---

[23] Queensland Police Service Custody Manual, p19

Jowan.[24] This was corroborated by the legal services. In contrast, the Committee heard of effective community liaison occurring in Innisfail, although it was noted that this process requires perseverance:

> *You were talking about police-Aboriginal relationships. In Innisfail, we have some sort of a good relationship ..... we work in conjunction with the police with a liaison type situation. Our Aboriginal people are represented and they go and we have discussion with the police. We have certain rights. We broke away from that and we had a community where everyone came along to have a discussion with the police. There is no instant magic to that. It is a long process.*[25]

The same witness described relationships in Mareeba as shocking due to racist attitudes of both police and the wider non-indigenous community.[26]

10.23 It is clear that, because it is not followed, the Custody Manual is quite ineffective in ensuring both that protocols are established with Aboriginal Legal Services and that liaison with Aboriginal communities occurs. The need for community policing in Cairns was outlined to the Committee. Ms Nicol, Chair of the Cairns Regional Council of ATSIC said:

> *In a few of the areas throughout our region we have had police employed who are not in a position to communicate effectively with Aboriginal and Torres Strait Islander people. Therefore, it can be seen as being provocative with people being arrested in that town because there is not a community relationship with the police officer. I think it is indicative of the way, if we are going to develop programs, that they must reach out and touch people who are in a position to make attitudinal changes within bureaucracies, and not just pick up the end bits where it is still our people going into prisons.*[27]

10.24 Ms Cherie Imlah further reinforced the need for community policing:

> *What you have got to do is to get the respect of the community for the justice system and you will not get that while there continue to be black deaths in custody and bashings and violence by police against Aboriginal people. There has to be recognition of those structures.*
>
> *There are police who do recognise those structures in various areas. They work very well with the communities because of that and they*

---

24 Informal discussions, Cairns

25 Njiku Jowan, evidence, p619

26 Njiku Jowan, evidence, p622

27 Evidence, p589

get the cooperation and the respect of the community because they respect those social structures.[28]

10.25 The introduction of Aboriginal Liaison Officers (ALOs) was intended to be an effective intermediary between the Aboriginal community and police at a local level. However, the Committee was told that in Townsville, Cairns and Mareeba there is a lack of identification between the Liaison Officers and the community and that this is a major stumbling block to their success.[29] The community is not sufficiently involved in the recruitment process.[30] The Committee was told that the Liaison Officers in Townsville:

> *have not been allowed to go to community meetings. I can understand why because they get fairly heated and personal, but there is no other mechanism at the moment for them to work with the community and I do not think that the police services sees that there should be. Apparently the crime rates have dropped according to someone I spoke to and the police are reasonably happy about it, but they want to have this control and the community is beginning to see those people as police rather than as liaison officers. That really was not the idea of the scheme.*
>
> *The other thing is that the police are starting to use them in ways which are inappropriate as far as the community is concerned and also as far as the liaison officers themselves are concerned. They are being used as police and they are not police, they are liaison officers, and they are supposed to work in that way.*

10.26 Ms Imlah expanded on the confusion between Aboriginal communities and the Queensland Police Service as to the role of the Aboriginal Liaison Officers:

> *There was a set role. I am just speaking about Townsville from recent knowledge. The ones who went in initially, knew their role, were told their role, and were happy about it. But some of them left, because they were being alienated from the community, and they have had quite a rapid turnover of ALOs in Townsville.*
>
> *The ones who have replaced them do not seem to know what their role is, because it has changed. Even though the people at the top may have a clear idea of the role of the ALOs, the police on the beat are using them inappropriately. There is no explanation given to the police on the beat and the patrols of how liaison officers should be used. There is no monitoring, and no understanding of the role of the*

---

28 Evidence, p763

29 Ms Cherie Imlah, evidence, p761

30 Njiku Jowan, evidence pp611-2, pp621-2

ALOs by those police. There is a breakdown of communication at two levels, between the ALOs and the Aboriginal community, and between the police on the beat and police at the top, who should be informing police officers in service about how the Aboriginal liaison officers should work.[31]

10.27 The Aboriginal Liaison Officers in Cairns were subject to widespread criticism from Aboriginal organisations that the Committee spoke with. The Liaison Officers were selected by the police with little or no Aboriginal community involvement. Consequently the Liaison Officers do not have the trust of the broad Aboriginal community[32] and are not able to fulfil any liaison role. Worse still, they appear to be used by police officers to carry out tasks which the police prefer not to undertake themselves. Evidence was heard of Liaison Officers both threatening and carrying out arrests, despite not having the power to do so,[33] and other harassment of Aboriginal people[34]. While the system of Liaison Officers is now working in Innisfail it is not working in Cairns, Townsville or Mareeba.[35]

10.28 In Recommendation 233, the Royal Commission warned that 'special attention should be given to the wisdom of police aides being engaged to work in communities other than those from which they were recruited'. This warning appears to go unheeded in Queensland. The Queensland Police Service also needs to develop and apply clear guidelines for the Aboriginal Liaison Officers so that they and the police can work together more effectively. New South Wales appears to have addressed this question successfully (see Appendix 8).

10.29 Nonetheless, while aware of these shortcomings elsewhere, the Legal Service and the Regional Council in Brisbane were keen to see the introduction of Liaison Officers in Brisbane. They had been seeking their introduction for some time without success. However, they are keen to ensure that the community plays a part in their selection and that they come from the communities they are to liaise with. A particular need for Aboriginal Liaison Officers was seen in the Valley Mall, the City Mall, resident South Side, Inala and Woodridge-Kingston.[36]

10.30 The Queensland Police Minister has announced that the number of Aboriginal Liaison Officers is to be doubled from 47 to 94. The Committee notes that 27 of the

---

31 Evidence, p762

32 Njiku Jowan Legal Service, evidence, pp611-2, pp621-2

33 Tharpuntoo Legal Service, evidence, p570

34 Njiku Jowan Legal Service, evidence, pp612-4

35 Njiku Jowan Legal Service, evidence, pp622

36 Informal discussions with the Brisbane Regional Council and Legal Service

new ALOs will be in Brisbane with 15 going to the Metropolitan North Region and 12 to the Metropolitan South Region.

10.31 On its visit to Yarrabah, the Committee heard that relations with police had improved in the last few years but there was still considerable room for improvement. A new police station and watch-house was built during the Royal Commission period and followed 3 deaths in the old Yarrabah Watch-house. Despite approximately $1.5m being spent on the new Watch-house, including video surveillance equipment, people in custody are taken into Cairns because it is not a 24 hour facility. When released, they are left to find their own way back to Yarrabah which is a $12 bus fare.[37] People without either the fare home or accommodation, risk harassment from police and the potential of further charges.

10.32 Recommendation 91(c) of the Royal Commission asks governments to give consideration to amending bail legislation to enable police officers to release a person on bail at or near the place of arrest without necessarily conveying the person to a police station. The Queensland Government supported this recommendation but has failed to address part (c) in its response.[38]

10.33 Community members also complained that police do not respond to domestic violence calls. The Yarrabah police station closes at 7.00pm and police do not respond to calls made after that time until the next day. As the wet canteen closes at 6.00pm it is unrealistic to cease police services at 7.00pm.

10.34 The Committee believes that the part-time servicing of a community of 2700 people is inadequate and only serves to reinforce the poor view Aboriginal and Torres Strait Islander people have of the equity of current policing practices. The Royal Commission drew attention to the complaint of many Aboriginal and Torres Strait Islander communities that they are over-policed yet receive inadequate services from police:

> *On the one hand, Aboriginal communities and families witness the perfunctory incarceration of their relatives for minor offences involving public drinking. On the other hand, where police aid is needed it is claimed, on some occasions, to be unavailable, or else local police are perceived as indifferent.*
>
> *..... there is a very widespread perception by Aboriginal women of the indifference of police to acts of violence against them. Domestic violence, rape and even murder have been cited as failing to attract the due attention of police and the criminal justice system.*

---

37 Njiku Jowan, evidence, pp626-7
A similar situation applies when people from Cardwell, Tully and Murray are taken to Innisfail and then released, evidence, p627

38 *Queensland Government Progress Report 1993*, pp101-2

This may seem to be completely at odds with the earlier suggestion of over-policing, but there may not in fact be any contradiction.[39]

10.35 There was clear evidence of a high degree of institutionalised racism in the police activities reported to the Committee in Queensland. Policing practices were aimed at removing Aboriginal people from the streets.[40] The Committee was told of the moving-on and harassment of Aboriginal and Torres Strait Islander people by police and Aboriginal police liaison officers despite the lack of legal move-on powers.[41] Vagrancy is still an offence in Queensland and people, in particular Aboriginal and Torres Strait Islanders, are still being arrested for this offence, which is in effect being arrested for being homeless.

10.36 The Committee is particularly disturbed that the archaic offence of vagrancy is still on the statute books. The Committee believes that it is an affront to human dignity and requires urgent attention. In Cairns, neither the Queensland Government nor the Cairns City Council provide adequate hostel accommodation or other facilities for the many transient Aboriginal and Torres Strait Islander people who need to visit Cairns to access medical and other services.[42] Attempts to establish a transient camp failed because of a lack of follow through by state and local government agencies.[43] Despite this abject failure to provide adequate facilities, transients and homeless people are being harassed daily in the Esplanade in Cairns and other parks throughout the city. Evidence to the Committee was that this harassment is carried out by Police, Police Liaison Officers and security staff contracted to Cairns City Council. Aboriginal Hostels Ltd have a couple of hostels for transients but the largest is reported to be in poor repair and people are reluctant to use it until it is refurbished.[44] Cairns police told the Committee that homeless people had been staying in an old nightclub before it had been demolished recently.

10.37 Several witnesses referred to the harassment of Aboriginal people in parks, especially the Esplanade, as being related to the protection of tourism or in response

---

39 RCIADIC, *National Report*, Volume 3, p41

40 Brisbane Aboriginal Legal Service, evidence, pp 716,740

41 Brisbane Aboriginal Legal Service, evidence, p566

42 Cairns Regional Council ATSIC, evidence, pp591-4
Some of these people have been required to come to Cairns to appear in the superior courts there. Others have been released in Cairns, far from the place in which they were arrested.

43 Cairns City Council, evidence, pp530-2

44 ATSIC, Cairns Regional Council, evidence, p591

to complaints by the tourist industry.[45] The ill-fated Lockhardt River bussing incident was partly funded by the Tradewinds Hotel.[46]

10.38 As mentioned above, there is no effective liaison arrangements between the police and the Aboriginal and Torres Strait Islander communities in Cairns. The Cairns City Council does not have any effective liaison process in place.[47] The Royal Commission said that:

> *Police and other government authorities, including especially local government authorities, have a responsibility to facilitate the access of Aboriginal communities to decision making which affects policing priorities and local public order regulation. Where they do not, perhaps it is time for more determined action by other government agencies to balance the political disadvantage which many Aboriginal communities experience.*[48]

10.39 Tharpuntoo Legal Service advised that it was putting on night staff in an attempt to stop the harassment of Aboriginal people by the police and by security staff contracted by Cairns City Council.[49] Njiki Jowan is also putting on staff for the same purpose.[50] Police should be preventing the harassment of citizens and breaches of their human rights rather than being the perpetrators.

10.40	The Committee recommends that: **additional resources be provided to the Human Rights and Equal Opportunity Commission to allow a number of small task forces to be established. These task forces should be sent to trouble spots such as Cairns to gather evidence on human rights breaches that are regularly occurring and to launch prosecutions against offenders. (Recommendation 70)**

---

45 Njiku Jowan Legal Service, evidence, p618, 623
Tharpuntoo Legal Service, evidence, p561
and informal discussions, Cairns

46 Cairns City Council, evidence, p540

47 Informal discussions, Cairns

48 RCIADIC, *National Report*, Vol 3, p32

49 Tharpuntoo Legal Service, evidence, p566

50 Njiku Jowan, evidence, p623

10.41 There is little likelihood of improvements in police attitudes to Aboriginal and Torres Strait Islander people as a result of the Royal Commission if police are unaware of the major thrusts of the Royal Commission's report. Evidence to the Committee indicated a serious lack of awareness of the Royal Commission's basic thrusts or worse, indicated an unwillingness to implement them.[51]

10.42 One submission to the Inquiry included a copy of the Internal Report by the Queensland Police Service on the incidents outside police headquarters on 8 November 1993 following the news of Daniel Yock's death.[52] This high level internal police report attempts to provide an analysis of what went wrong with police management of the protest.

10.43 The Report continuously refers to Aboriginals or Aboriginal with a lower case *a*. The Report frequently describes demonstrators simply as Aboriginals, stereotyping all Aboriginals as demonstrators, eg. 'A request made from Sierra 591 suggested that the aboriginals be stopped on Victoria Bridge'.[53] Two members of the Cross-Cultural Support Services section of the Police Service were criticised in the Report:

> ..... *as being mentally and emotionally conditioned to the perceived plight of the Aboriginal and Torres Strait Islander people. Their concerns and leanings appeared to be towards total commitment to the needs of those people.* (Committee's emphasis)[54]

10.44 The Report was critical of a number of police procedural deficiencies in the handling of this incident. These included a lack of clear lines of command and a lack of contingency plans to secure police headquarters in such situations. There was no mention in the report of the lack of plans to maintain calm or contingency plans to restore calm, amongst people who were highly emotional following the death of Daniel Yock in police custody the previous day. There was no criticism of this failure in the police report. Rather, the cross-cultural officers who tried to restore calm were heavily criticised:

> *There is a distinct danger in personnel performing liaison duties to the extent and depth of these present officers with no safeguard against excessive personal and emotional interaction and familiarity.*[55]

---

51 Tharpuntoo Legal Service, evidence, pS960

52 Evidence, pS1856

53 Evidence, pS1856

54 Evidence, pS1859

55 Evidence, pS1860

10.45 This brings up the greatest failure revealed by the Report. The high-level officers responsible for preparing this report have a very rudimentary understanding of what community liaison involves. The Report's authors believe that spying on the group being liaised with, is an integral part of liaison:

> *Personnel performing duties within the Cross-Cultural Support Services have no and do not possess [sic] any acquired skills through training in intelligence gathering, a major function of a liaison officer.*[56]

10.46 The Report recommends:

> *Members performing Cross-Cultural Support Service duties receive basic training in intelligence gathering, analysis and dissemination. Consideration should be given to the appointment of an intelligence officer.*
>
> *Cross-Cultural Support Service members serve a maximum of 2 years in that role to safeguard members against familiarity and excessive personal and emotional interaction and contact.*[57]

10.47 The Queensland Government has said that Police Community Consultative Committees and Aboriginal and Torres Strait Islander Liaison Committees are being established to implement Recommendation 214. It should be emphasised that this Recommendation cannot be implemented by liaison committees where one party spies on the other. If the Royal Commission recommendations are not understood and acted upon at senior levels they have little chance of adoption by the rest of the Queensland Police Service.

10.48 As this Committee noted in its 1992 Report, *Mainly Urban*:

> *Repression was an integral part of the process of colonisation where the original inhabitants were subdued and possession was taken of their land. The colonial era has long been over but some people continue to behave as though repression is still necessary.*[58]

The Committee again makes the point that repression has no place in the process of liaison nor in establishing productive working relationships with any community.

10.49 The Committee is of the view that this internal review reveals deeply entrenched racist attitudes existing at senior levels of the Queensland Police Service.

---

[56] Evidence, pS1859

[57] Evidence, pS1838

[58] *Mainly Urban*, p209

It is a matter of extreme urgency that racism be addressed at all levels of the Queensland Police Service.

10.50 The Committee recommends that:

the Prime Minister, through the Council of Australian Governments, seek the co-operation of the Queensland Government to a review being undertaken by the Human Rights and Equal Opportunity Commission to assess the level of institutionalised racism within the senior levels of the Queensland Police Service. (Recommendation 71)

10.51 It is of serious concern to the Committee that the implementation of the Royal Commission recommendations within the Queensland Police Service has been grossly inadequate. Despite this the Police Service has readily taken Deaths in Custody funding from the Commonwealth for the upgrading of police facilities.

10.52 The QEA Aboriginal and Torres Strait Islander Legal Service in Brisbane pointed out that agreements reached at liaison meetings were not being implemented by police on the streets:

> *the Brisbane Aboriginal community for some years had been maintaining a police-Aboriginal liaison committee that used to meet monthly at Murri Murra at South Brisbane. That would take place over four or five hours on one particular day a week; they would really exchange ideas and talk. However, the legal service and workers at street level such as Murrie Watch and others found very little benefit with those meetings. So junior police working in the van patrols and vehicles on the street level would still carry out procedures and actions that were definitely to the detriment of Aboriginal people. So the legal service and others found themselves in a conflict situation.*[59]

10.53 This frustration was outlined by another witness from the Legal Service:

> *At a recent community meeting with the police officers, the community voted unanimously not to have any more liaison with the police officers because of the continual process of having senior officers present and then for some reason when we get something confirmed and an agreement is reached somebody else comes along and we have to go*

---

59 Evidence, p733

through the process. It seems that is happening all the time. Every time we deal with any meetings we have, we have been saying we should just record what we are talking about and play it at every meeting that we come to. That is the type of situation we have got now. So what they are saying is that the community does not owe the police department anything. If they want to hold our hand in friendship, they have to be fair dinkum and genuine in their attempts. While these officers, these cowboys, are continuing to abuse our people on the street, there can be no liaison between the community and the police department.[60]

10.54 Minutes supplied to the Committee of a meeting between West End Police and Aboriginal Community members in June 1994 shows how not to go about liaison. As one observer described it:

The police arrived with their own (non written) agenda: the problems they perceived, and how the Aboriginal people should deal with these in co-operation with the police. They stated that they would be specifically targeting Aboriginal youths, as they were responsible for most of the crime in this area - an assertion that was not substantiated. However, they argued that this was not harassment or discrimination, and did not accept the Aboriginal community could reasonably perceive it in that way. When questioned about their manner of approaching youths, their response was that officers would be required to act in a proper/lawful manner. The desirability of police attitudes displaying respect and friendliness when stopping and questioning youths was dismissed as unenforceable. If this is an example of the 'consultation' occurring with communities on a state-wide basis, it is next to useless except to reinforce the Aboriginal community's perception that police attitudes and behaviour are as rigidly entrenched as ever. Particularly after the recent death, the community in West End/South Brisbane is concerned for the safety of its youth, and meetings like this do nothing to lessen their concern.[61]

10.55 According to the above account the West End police indicated at the meeting that because they believed Aboriginal youths were responsible for most of the crime in the West End area, they would specifically target Aboriginal youths at any time of the day or night. They are reported to have said that they would stop and question any Aboriginal youths.[62] As well as being a travesty of community policing, such action targeting all Aboriginal children in this way would be a breach of the *Racial Discrimination Act 1975.*

---

60 Evidence, pp732-3

61 Lin Morrow & Andrew Dunstone, evidence, pS1826

62 Minutes of meeting prepared by Aboriginal participants, evidence, pS1829

10.56 The Committee recommends that:

> **the Human Rights and Equal Opportunity Commission scrutinise police activities in the inner Brisbane area to gather information on any breaches of the *Racial Discrimination Act* and to launch prosecutions against offenders. (Recommendation 72)**

10.57 The Committee was dismayed that the Queensland Government representatives, including the police, appearing before the Committee, seemed unaware of, and consequently unconcerned about the incredible damage to police-Aboriginal relationships brought about by the Daniel Yock death and subsequent events.[63]

South Australia

10.58 The Committee did not receive a great deal of evidence on police-Aboriginal relationships, which it took to be a good sign. The Committee heard of very good relationships at Yalata and positive comments were made in Ceduna about working relationships with police.[64] In Adelaide, the Committee heard of some 'ups and downs' with police relationships, often depending on individual officers. Overall there was an absence of strong criticism.

10.59 Chief Inspector Marshman, giving evidence on behalf of the South Australian Government, outlined the changes that were being implemented within the Police Service and the difficulties in changing long held attitudes:

> *It is fair to say that we have within our recruit training system accepted the recommendation of the Royal Commission inasmuch as it spells out the need to deal with the historical perspective of relations between the police and Aboriginals and also the legal impediments that have been placed in the way of having these dealings undertaken completely fairly. I think it is important to point out that there has been, up until 1955, an absolute enshrinement in law of a belief which almost demanded different policing of Aboriginal people. It is not something which we were particularly pleased with but whilst it was part of the law, it was something with which we had to deal.*

---

63 Queensland Government, evidence, pp792-7, 799-800, 806

64 Informal discussions, Yalata and Ceduna

Quite clearly we are now making strong efforts to remove what remains, within that generation of police officers currently serving, the remnants of that sort of imbued action, if you like, in the way that we dealt with Aboriginal problems.[65]

10.60 Another problem hindering changes in attitudes was raised by the South Australian Police. Following the Committee conveying positive comments from the community about community policing at Yalata, Chief Inspector Marshman thanked the Committee and said:

.....one of the huge problems that all of our agencies have had has been a lack of positive reinforcement when individual people have really done the right thing.[66]

10.61 In other states the Committee heard of negative reinforcement from some elements of the police service when individual police officers implemented improved policing practices.

10.62 Professor Elliott Johnston QC, who was the National Royal Commissioner, told the Committee that he believed that the Royal Commission had had a very significant impact on police. Speaking generally of police across Australia he said that there is now an improvement in the way in which police direct their attention to problems which were not very clearly perceived before. However, there are still a lot of police officers who, through no fault of their own, were involved with the racist policies of the past.[67]

10.63 On the implementation of Recommendation 223 and 224 the Aboriginal Legal Rights Movement (ALRM) said that it was consulted by the Police Department on the rewriting of General Order 3015 which relates to the relationship between the ALRM and the Police Department.[68]

Victoria

10.64 While the Committee received only limited evidence on police-Aboriginal relationships, that evidence was of some concern. The Victorian Aboriginal Legal Service told the Committee:

Over the past few years relations with the police have been difficult in some country areas. Because the recession has affected country areas of Victoria, a large number of local businesses have suffered an

---

65 Evidence, p927

66 Evidence, p928

67 Informal discussions, Adelaide

68 Informal discussions, Adelaide

economic decline. It is the belief of a large number of people in small towns that the only economic hope these towns have is to encourage tourism. The issue of public drunkenness, public drinking by Aboriginal people, is seen as a barrier to the development of tourism in those areas. As a result, there has been a backlash against Aboriginal people in towns such as Mildura, Swan Hill and Robinvale. Local councils have introduced no drinking ordinances and, in addition, have pressured police to try to move Aboriginal people out of the centres of these towns to the outskirts of town. As a result of the difficulty between Aboriginal people and the police and other non-Aboriginal people in the towns, there have been continued incidents of racism and rough handling of Aboriginal people by the police.

The service is of the belief that, at the present time, the police complaints authority has not been a powerful force in preventing these incidents. The statistical information available shows that the number of police disciplined or dealt with for these incidents is a minute proportion of the people complained about. The experience of the service is that when complaints are made about police, they tend to band together and there is little that occurs at any level to address such incidents.[69]

10.65 There was a statewide police-Aboriginal liaison committee and a police Aboriginal police liaison officer. The liaison officer position was not filled and the liaison committee has ceased to function formally, due to changes in membership and retirement. However, there is informal contact between the remaining police and Aboriginal members but it no longer has state wide coverage.[70]

10.66 A paper prepared by Ruben Allas, a Senior Research Officer of the Victorian Aboriginal Legal Service, points to differential arrest rates in various centres in Victoria with Mildura and Melbourne being disproportionately high. It suggests these high rates are associated with 'the presence of services specific to Aboriginal people and high Aboriginal visibility'. The paper also says:

Two factors we deemed responsible for these high rates are the increasing number of local governments that have local alcohol ordinances, and prejudiced policing, or enforcement of certain sections of the Summary Offences Act, esp 13, 14 and 15, and a section on consorting (fraternising with known felons) of the Vagrancy Act.[71]

---

69 Evidence, pp1465-6

70 Victorian Aboriginal Legal Service, evidence, p1476

71 Ruben Allas, *Rates of Aboriginal Apprehensions in Victoria: 1990 to 1993*, paper delivered to ANZ Criminology Society, September 1994

10.67 These high rates were of particular concern to the Legal Service in view of the improvements that have occurred since the Royal Commission:

> *The unusual apprehension for drunk charges is aggravated by the fact that there are a number of initiatives in place since the completion of the Royal Commission into Aboriginal Deaths in Custody such as the Sobering up centres, Community Justice Panels, and an improved relations between Aborigines and Police through the Aboriginal Police Liaison Committees, as well as an improved Police Standing Order for apprehended Aborigines that are supposed to divert minor offenders including drunks from the criminal justice system.*[72]

Northern Territory

10.68 The Committee heard of improvements in police-Aboriginal relations in a number of centres. In Alice Springs, Tangentyere Council said that a cooperative relationship has been developed between the police and the night patrol.[73] Since the introduction of the night patrol there has been a significant decrease in the number of people taken to police cells. The police will only hold problem drinkers, not accepted by the sobering-up shelter, for six hours and then ring the night patrol to take them home. The Committee was told that this had never happened in the past.[74]

10.69 The Central Australian Aboriginal Legal Aid Service (CAALAS) said that police had improved in a number of areas. CAALAS officers are now allowed to go into the Watch-house. Representatives of CAALAS said that police were trying to improve their relationship with CAALAS but it remained to be seen whether it continued through to CAALAS' clients. CAALAS was still concerned that arrest rates had increased and that people were being picked up to keep them off the streets.[75]

10.70 The Northern Australian Aboriginal Legal Aid Service (NAALAS) told the Committee that there had been some improvement in relationships with police but the relationship in the past had been very poor.[76] Complaints against the police are still dealt with by the police and NAALAS believes this to be quite unsatisfactory because of the historical relationship.[77]

---

72 Ruben Allas, *Rates of Aboriginal Apprehensions in Victoria: 1990 to 1993*, paper delivered to ANZ Criminology Society, September 1994

73 Informal discussions, Alice Springs

74 Informal discussions, Alice Springs

75 Informal discussions, Alice Springs

76 Informal discussions, Darwin

77 Informal discussions, Darwin

10.71 The Northern Territory Police were happy with the development of the cell visitor scheme, seeing it as very successful.[78]

10.72 On the subject of in-service cross cultural training for police, Tangentyere Council was somewhat cynical, likening the courses to teaching old dogs new tricks. For Tangentyere the problem remained that unless officers have an understanding of the different groups, they make decisions on the basis of their own values. It said that unless racism in the police service is dealt with effectively the problem is not going to go away.[79]

10.73 The Alice Springs Women's Shelter was concerned that lip-service was given to teaching Aboriginal studies in Police academy cross cultural courses. Shelter representatives were also concerned that it was men's traditions rather than women's that were being taught in cross cultural courses.[80]

10.74 There was general agreement on the need for more police-aides, especially female aides. At the time of the Committee's visit there was only one police aide in Alice Springs.

Western Australia

10.75 In response to Recommendations 214 and 215 the Western Australian Government said there was ongoing implementation and that Recommendation 215 was partially implemented:

> *Cabinet endorsed the recommendations of the review of the Special Government Committee on Aboriginal/Police and Community Relations (SGC) in May 1993. The structure and functioning of the committee has been strengthened by the following changes:*
>
> - *An Aboriginal person has been appointed to the position of Chairperson;*
> - *The committee has been restructured to reflect greater Aboriginal involvement;*
> - *An additional staff item has been allocated;*
> - *Aboriginal members of the committee, in addition to existing functions, form an Advisory Committee to the Commissioner for Police;*
> - *To foster closer contacts with police aides, police aides have been based and worked out of the office of the SGC; and*

---

78 Evidence, p1031

79 Informal discussions, Alice Springs

80 Informal discussions, Alice Springs

The committee is now a member of the Western Australian Community Policing Council.[81]

10.76 The Government said that the Committee had progressively established closer working relationships with police and that the Police Department increasingly called on the SGC for advice on program and policy development.[82] One of the terms of reference of the SGC is to develop and support a statewide liaison structure to promote increased communication, the reduction of tensions and the resolution of potential conflicts at the regional and local levels. Attention was drawn to one of the problems facing police/Aboriginal liaison committees around Australia:

> *The unstable nature of a number of these local committees can be partly attributed to changes in police officers which often means the process of redevelopment has to occur.*[83]

10.77 The Western Australian Government referred to an initiative which also addressed Recommendation 219 concerning the recognition of customary law:

> *An important initiative that has been sponsored through the SGC is the Aboriginal Alternative Dispute Resolution Project. The project was established to resolve some of the difficult problems created by inter-family feuding within the Aboriginal community. Funding from the Office of Multicultural Affairs enabled the project to operate until June 1993. The Police Department has been funding the project since this time, and negotiations are currently being undertaken to establish the project within the Specialist and Strategic Services Division of the Ministry of Justice.*
>
> *The dispute resolution project is a positive example of a process aimed at keeping people out of the justice system. The process of alternative dispute resolution is consistent with that of self-determination and promotes realistic options for people to make decisions and take responsibility for their actions and personal decision making.*[84]

10.78 In response to Recommendations 223 and 224 the Western Australian Government said that they were partially implemented:

> *The development of protocols as recommended and reinforced by evidence in the Royal Commission reports is supported by Western Australian Police. Local Aboriginal/Police Liaison committees are well*

---

81 *Government of Western Australia Implementation Report 1993*, p120

82 *Government of Western Australia Implementation Report 1993*, p120

83 *government of Western Australia Implementation Report 1993*, p121

84 *Government of Western Australia Implementation Report 1993*, p121

placed to resolve many of the issues raised in the recommendation, and where a particular issue cannot be resolved at the local level it can then be referred to a Regional or the State Committee for resolution.

The Western Australian Police Service considered it inappropriate for responsibility for the placement and conduct of police officers to be abrogated to other parties or abraded in any way.[85]

10.79 The implementation of local liaison committees is only partial. In several centres the committee visited there was no effective liaison committee eg. Broome, Roebourne, Karratha. However an effective liaison process was in place in Kalgoorlie and in Marble Bar.

10.80 Similarly, evidence to the Committee suggested that neither the protocols of Recommendation 223 nor the interim measure of Recommendation 224, while supported, were being implemented. There appears to be no real commitment from the managers of the Police Service to community policing when the Government said that it is 'inappropriate for responsibility for the placement and conduct of police officers to be abrogated to other parties or abraded in any way'.[86] This lack of a degree of accountability to the community has lead to the disastrous policing situations in Wiluna and Roebourne outlined elsewhere in this report. The Committee is disturbed by the lack of understanding of what community policing involves and, even worse, a lack of understanding as to why community policing is necessary. Evidence to the Committee indicated monitoring by and accountability to senior police managers was ineffective in many respects.

10.81 The ALS of WA commented:

The main concern of the Police appears to be the maintenance of the status quo. The only part of the recommendation that has received any detailed consideration is part (d) which deals with enabling discrete Aboriginal communities to have an input into decisions about the placement and conduct of police in their own communities. Even this initiative has been rejected by the Police.[87]

10.82 The ALS commented on the Government response to Recommendation 215:

The government response indicates resistance by police and that the recommendation is not in fact supported. It is a nonsense to say that the recommendation is supported and then say that Aboriginal involvement in policing practices at the local level is not supported.

---

85 *Government of Western Australia Implementation Report 1993*, p123

86 *Government of Western Australia Implementation Report 1993*, p123

87 *Striving for Justice*, p126

However in some areas where Aboriginal/Police Liaison Committees had been established they seemed to have had a positive effect on relations. To a large extent their success has been solely dependent on the individuals involved. Commissioners Dodson and O'Dea and the AIU[88] of Western Australia all supported the concept of Aboriginal Police Liaison Communities at least to the extent that the committees arose out of requests of the Aboriginal community and were not imposed upon them.

The thrust of this recommendation is the need for a genuine effort by both Police and Aboriginal people to improve relations. The ALS is of the view that the Police response indicates an unwillingness to become involved in a process of consultation and negotiation with Aboriginal people and organisations both at the local and state levels. As long as the Police Department does not accept their responsibility to the community and validity of community input, relations between the Police and both the Aboriginal and non-Aboriginal communities will remain poor.[89]

10.83 In response to a comment by a senior police officer,[90] relayed by the Committee, resisting the idea of written protocols between police and Aboriginal communities the ALS of WA said:

Your need to develop written protocols would mean a process of consultation and discussion with the Aboriginal community. That process alone would be constructive, if the police came to it with a positive attitude.[91]

10.84 The Task Force on Aboriginal Social Justice commented on criticisms of police policy and practice:

The Task Force is, however, of the view that while some of these criticisms remain valid, there has been a gradual change in recent years. There have been attempts from the most senior levels in the police force to change both attitudes and practice. Some of the required changes will take time - particularly amongst a large group with some entrenched attitudes and habits - but the Task Force wishes

---

88 Aboriginal Issues Unit of the Royal Commission

89 *Striving for Justice*, pp122-3

90 Informal discussions, Karratha

91 Evidence, p296

to commend those responsible for seeking to generate change, and to encourage them in this process.[92]

10.85 The Committee agrees with the Task Force and commends those who have made positive changes. While acknowledging that it takes time to change a large group, some of whom have entrenched attitudes, the Committee believes that police managers need to show greater leadership and management skills. The situation in Wiluna should have been identified and addressed by police managers well before the ALS of WA drew attention to it. The situation in Roebourne should also have been identified and rectified.

10.86 As noted in Chapter 8 the implementation of community policing in Western Australia is very uneven. While the Police Service senior management appears to be opposed to community policing in practice, while supporting it in principle, the Committee heard of several places in Western Australia where effective community policing practices have been implemented. Advances have been made in places such as Kalgoorlie, Marble Bar and Halls Creek but in areas such as Roebourne, Wiluna and Broome there is no effective liaison between police and the Aboriginal community. Inappropriate and inefficient policing continues in Roebourne, Wiluna and Broome.

10.87 The ALS of WA commenting on the response to Recommendations 214-5 said:

The initial matter for consideration is the move towards community policing and what it means for Aboriginal people. If it means a genuine move towards the police working with, and being accountable to, the local community then the concept has some merit. However if it means increased involvement and intervention in the lives of Aboriginal people then the ALS would regard the concept with some caution.[93]

10.88 In Broome, the Committee was told by the ALS of WA that since the Royal Commission there were fewer complaints of physical intimidation by Aboriginal people arrested by police.[94] However, selective policing was outlined by the Legal Service in Broome:

There are a lot of Aboriginal people in Broome who, when they come before the court, appear to have appalling records, but they are all for offences of that type. Unfortunately, when you look at the record of a white person who has been living in Broome for the same amount of time, those sort of offences simply never appear on their records. That

---

92 Government of Western Australia, *Task Force on Aboriginal Social Justice, Report of the Task Force*, April 1994, Vol 2, p568

93 *Striving for Justice*, p121

94 Informal discussions, Broome

is a great concern. They are the sort of offences which really only arise if you are a member, it seems, of a group that is specifically targeted by the police. That seems to happen.[95]

10.89 The solicitor from the Legal Service also said of treatment at the police station:

I am not suggesting that all police are unfair and awful. Indeed, I think there are many police who attempt to do the right thing; but they understandably work under a mentality that if they think they have the right person they want to process them quickly, get them into court quickly, get a guilty plea and move on to the next one. That can never be in the best interests of people who do not understand the system, do not know what their rights are, and are not having their rights explained to them.[96]

10.90 On the question of complaints against police, either in the magistrate's court or a formal complaint, the ALS of WA in Broome said:

.....the situation will always be that you will have three or four police officers with one story and you will have an Aboriginal person with another. Almost invariably the Aboriginal person will have the disadvantage of having been affected by alcohol at the time and the magistrate is left in the situation where he has four witnesses swearing one thing and a person who admits to having been intoxicated swearing another. So, no, it is almost never that an Aboriginal person, or a white person either making the same allegation, is going to be believed.[97]

10.91 The Committee did not visit Marble Bar but Mr Dan O'Dwyer of the ALS of WA in Karratha outlined the differences in policing between Roebourne and Marble Bar. He said that while the relationship between Aboriginal people and the police was not perfect, there was a very effective relationship:

It seems to me that for a person in Marble Bar to get–to use the term which they use themselves–growled out by the police, that is worse than actually going to court and being convicted. When they get growled out, they are put on the outer with their own community as well. I have observed in the hotel that in the general community there is this feeling that there is a community of non-Aboriginals and Aboriginals that operates. It is not perfect. I am not trying to paint

---

95 Evidence, p118

96 Evidence, p116

97 Evidence, p118

a perfect picture but it is much better than I have seen elsewhere. I believe that has got a lot to do with the community policing.[98]

10.92 As outlined in Chapters 7 and 8 police-community relations in Roebourne are bad with high levels of overpolicing and high charge rates. As the Royal Commission paid particular attention to poor policing practices in Roebourne, there was an expectation that the Police Service would have paid pay particular attention to improving the situation. The Committee's impression on visiting Roebourne was that little had changed. The Committee heard evidence that since the arrival of a new sergeant in Roebourne, police community relations had also deteriorated markedly. There were also allegations of intimidation by the sergeant of members of the community, both Aboriginal and non-Aboriginal.[99] Unfortunately the sergeant was not present when the Committee visited the lock up in Roebourne. However, the Committee raised its concerns with the Superintendent in charge of the Region at Karratha.

10.93 In contrast the Committee heard of marked improvements in community policing in Kalgoorlie. An Aboriginal-police relations meeting had resulted in a very large drop in the crime rate.[100] Police had become involved in supporting the Aboriginal-run street patrol. As mentioned in Chapter 8 (paragraphs 8.73-8.74) the State Government acknowledged the effectiveness of community policing initiatives saying that the street patrol in Kalgoorlie had dropped the crime rate 50%. If the same police involved in the street patrol work had stayed at the police station 'they would not have dropped it one per cent'.[101]

10.94 Clearly there is a need for the Western Australian Government to give clear directions to the Police Service to implement these Royal Commission recommendations to enable the Police Service to become more effective in reducing crime and reducing the current wastage of taxpayers' money caused by inefficient practices.

New South Wales

10.95 The New South Wales Government in its initial response to the Royal Commission in 1992 supported Recommendation 214 saying:

Implemented. Community Based Policing is the principal operational strategy of the New South Wales Police Service. Patrol Commanders in areas with significant Aboriginal communities are required to

---

98 Evidence, p159

99 Informal discussions, Roebourne

100 Informal discussions, ATSIC Regional Council, Kalgoorlie

101 Government of Western Australia, evidence, p381

consult with representatives of those communities, particularly through Community Consultative Committees.

a *A number of towns are identified in the National Report. Policing levels and styles in those towns are being reviewed.*

b&c *These issues are under review in line with the development of the State Crime Prevention Plan. The NSW Police Service encourages Aborigines and Aboriginal organisations to actively participate with their community policing programmes. Patrol Commanders in areas with Aboriginal communities are required to consult with those communities, particularly through the Community Consultative Committee process. It should also be noted New South Wales Police Service currently has 32 Aboriginal Community Liaison Officers and there are 40 Aboriginal Police Officers.*[102]

Its June 1993 position added:

- *The Aboriginal Community Liaison Officer (ACLO) scheme has been expanded.*
- *Aboriginal Client Consultant and four Regional Aboriginal coordinators have been appointed.*
- *Aboriginal people are encouraged to participate in Community Consultative Committees and Cultural Awareness days.*
- *A 'Customer Satisfaction Survey' is currently being distributed to Aboriginal communities throughout the state.*[103]

10.96 In its 1992 response to Recommendation 215 the State Government said:

Implemented. Patrol Commanders involve Aboriginal Community Liaison Officers and Community Consultative Groups in the community policing of each patrol. The issues raised in this recommendation have been referred to Patrol Commanders.

Its June 1993 position added:

This is being achieved through Aboriginal Community Liaison Officers, Regional Aboriginal Coordinators and Community Consultative Committees discussing matters with Patrol Commanders. The recently

---

[102] *NSW Implementation Annual Report*, p162

[103] *NSW Implementation Annual Report*, p162

formed Police/Aboriginal Council has 12 elected Aboriginal members who meet regularly with the Commissioner of Police.[104]

10.97 In relation to Recommendation 223 the Government supported it, saying in 1992:

> *This recommendation has been referred to Patrol Commanders and will be subject to further consultation with the Aboriginal Legal Service.*

and adding in June 1993:

> *This recommendation is currently being reviewed by the Office of the Commander, Professional Responsibility.*[105]

10.98 While the New South Wales Government supported Recommendation 224, which concerns interim measures while Recommendation 223 is being implemented, it gave a totally irrelevant response:

> *Informal arrangements to this effect exist in many locations, however this recommendation will be considered in consultation with Patrol Commanders and the Aboriginal Legal Service.*

Adding in June 1993:

> *This recommendation is currently being reviewed by the Office of the Commander, Professional Responsibility.*[106]

10.99 The Government's claim that Community Based Policing is the principal operational strategy is hard to sustain in the field. As mentioned in Chapter 8 (paragraph 8.29) the places visited by the Committee, Nowra, Wagga Wagga, Wilcannia and Dubbo, only Nowra had a police-Aboriginal liaison committee. Wilcannia was one of the towns identified in the Royal Commission's *National Report*:

> *Wilcannia, the western town in which Mark Quayle died, illustrates one response to tensions in the town, that is, more police, more weapons and more surveillance. This response is evident in the town, as is the problematic result. Commissioner Wootten wrote:*
>
> > *Wilcannia, with a population of 1000 of whom some 800 are Aboriginal, is serviced by 11 police, a police population ratio*

---

[104] *New South Wales Government Report 1992/93*, p162

[105] *New South Wales Government Report 1992/93*, p166

[106] New South Wales Government Report 1992/93, p166

nearly six times that of the State as a whole. Aboriginal people often ask 'Why are there so many police? ' The facts are that the State-wide police/population ratio is 1:432. In Chatswood it is 1:926, in Redfern 1:353, in Bourke 1:142, and in Wilcannia 1:77. The bill for policing in Wilcannia was $816,581 for 1989/90, with other costs, including the cost of the court, bringing the cost of 'justice' in Wilcannia conservatively to $1,143,381 per annum.

Some observers see this massive police presence as a cause of, rather than a limitation on crime. A major offence in Wilcannia is swearing at the police. Arrests for swearing at police often arise as police constantly drive up and down the main streets of the town obviously scrutinizing the Aboriginal population. Eventually some Aboriginal calls abuse at the police, who seek to make an arrest. Charges of resisting arrest and assaulting and hindering police are likely to follow.[107]

10.100 Since the *National Report*, the number of police in Wilcannia has increased from 11 to 13 for a town with a population of less than 1000. The Committee heard that the policing of Wilcannia has become increasingly inappropriate and inefficient with virtually no recent attempt to liaise with the majority of the community. Aboriginal attempts to establish a committee have been largely unsuccessful. Evidence was given that the police segregate themselves from Aboriginal people who comprise the majority of the population.[108] Inefficient use is made of the Aboriginal Community Liaison Officers because of this isolation from the community.[109]

10.101 Evidence was given that an Aboriginal consultative committee existed briefly while Senior Sergeant Ken Jurotte was the Patrol Commander at Wilcannia. Mr Jurotte appeared before the Committee as a private citizen. He describes the history of the consultative committee:

When I arrived in Wilcannia, there was a community consultative committee in operation. It was not very well patronised by the Aboriginal people and when I inquired from the Aboriginal community why this was the case they said that, in their view, it was set up specifically to meet the needs of non-Aboriginal people in the town. I took it on board and I formed an Aboriginal Community Consultative Committee, which I met with once a month. Bearing in mind that the population breakdown of Wilcannia is 800 Aboriginal people and 200 non-Aboriginal people, I decided to meet with the Aboriginal

---

107 RCIADIC, *National Report*, Vol 2, pp227-8

108 Mr Ken Jurotte, evidence, p1069

109 Informal discussions, Wilcannia

community on a once-a-month basis and with the other community consultative committee once every two months, the difference being that the community consultative committee, the one that was in force when I got there, dealt with issues like the resurfacing of footpaths and the placement of pedestrian crossings, et cetera.

I viewed the issues of police/Aboriginal relations as a main and ongoing point of conflict. With a view of giving Aboriginal people some input into policing out there, I decided to establish the Aboriginal Community Consultative Committee. The criticism that came from that was unbelievable. It was said that I was biased against white people because I met with the Aboriginal people more often than I met with the other community consultative committee. The view of the district commander was that I was trying to divide the community. My view was eventually to have both the community consultative committees amalgamated. The district commander was not receptive to the idea of allowing the Aboriginal people at that stage to amalgamate. At that point, I had overwhelming Aboriginal participation in the Aboriginal CCC and very little input into the other one. But it provided the Aboriginal one with an opportunity of getting involved in policing.

Since I have left that has been devolved: it does not happen. In fact, I have been told that the other community consultative committee which became critical of the police and the way they were policing the town has also been devolved.[110]

10.102 While Mr Jurotte was the Patrol Commander at Wilcannia the number of police was reduced from thirteen to nine but it has now returned to 13.[111] There have been three major incidents of public unrest since Mr Jurotte left Wilcannia.[112]

10.103 If community based policing is to be effectively implemented then much stronger leadership and commitment from Police Service senior managers is necessary.

10.104 The Committee was struck by the marked differences in perceptions of Aboriginal and non-Aboriginal people it spoke with in Wilcannia. Aboriginal people saw the situation with the police as having become much worse in the last year. Representatives of the Shire Council and a few other non-Aboriginals the Committee spoke with saw an improvement in relations with the police. This gulf was reflected in discussions in Dubbo where the police believed their relations with Aboriginal

---

[110] Evidence, p1068-9

[111] Evidence, p1063

[112] Evidence, p1064

people were good and their practices fair. However, Aboriginal people in Dubbo saw serious shortcomings in the relationship and practices.

10.105 While police in several locations made statements such as 'our door is always open', past relationships, strong in the memory of many, constitute a very strong barrier to entering that door. Liaison meetings can achieve much but it is important that they be held on neutral ground or at least not on police premises.

10.106 Mr Jurotte described a general problem with police-Aboriginal liaison committees:

> *My experience is that the police service and members of that service do not want to deal with Aboriginal people who do not think the same way they do. If they have an Aboriginal person who speaks up and criticises, they consider that that person is a troublemaker and they do not want that type of person on the committee because they get bogged down in a confrontation or whatever. Unfortunately, this organisation wants token Aboriginal people on committees. They do not want to deal with people who have an opinion or with people who will not agree with everything they put forward. They want people who are going to say, 'That is a terrific idea. That is great.*[113]

10.107 However, by way of contrast the Committee heard more positive comments in Nowra, where a liaison committee is in place and has improved understanding and relationships with the community. This was particularly highlighted when the local NAIDOC committee did not get any funding for its National Aboriginal Week program. The police became involved and helped with funding for a sports day at Bomaderry and a disco that night.

10.108 On the implementation of Recommendation 223 the Western Aboriginal Legal Service (WALS) said:

> *To date no such protocol has been suggested nor implemented. Unlike the Broken Hill Patrol of the NSW Police Service, the Wilcannia Patrol makes little if any attempt to contact the WALS concerning the arrest, interrogation and detention of Aboriginal persons. The general practice is for the Broken Hill patrol to contact this office when a detainee arrives in Broken Hill.*[114]

10.109 The Legal Service also pointed to the failure in Wilcannia to implement Recommendation 243, which requires the immediate notification of the relevant Aboriginal Legal Service where a juvenile is taken to a police station for interrogation or as a result of arrest:

---

[113] Evidence, p1069

[114] Evidence, pS2419

This office cannot recall any time that the Wilcannia Patrol has advised this office that a juvenile has been arrested or is in custody. It should be mandatory for the police to make efforts to contact a representative of WALS or other legal advisor prior to interrogation and the question of bail. This office is of the view that there is marked reluctance of the Wilcannia Patrol to contact the WALS as, it is inferred, the presence of a solicitor decrease the likelihood that the juvenile will be granted bail if the mandatory considerations under the NSW Bail Act are adopted.[115]

10.110 The New South Wales Government claimed to have implemented Recommendation 243 but then said:

The Commissioner's Instructions requires that when a juvenile is to be questioned at a police station, police will take immediate steps to notify a parent or guardian and await the arrival of that person. Informal arrangements to advise the Aboriginal Legal Service exist in a number of locations.[116]

The Recommendation did not call for optional informal arrangements for advising legal services.

10.111 There have been some positive moves within the community at Wilcannia. The Committee saw progress being made through CDEP projects. Some reductions have been made in the times that alcohol is available and there has been a change to cans only for cold take-aways. A community committee, the Murra Murra Committee, has been established to try to address a number of the problems that the community faces, and to improve the coordination of government services and consultation in the town.

10.112 The Committee heard positive reports from several locations on the use of Aboriginal Community Liaison Officers (ACLOs). In informal discussions a number of Aboriginal organisations sought the appointment of more ACLOs, particularly female liaison officers. The New South Wales Police Service has produced a particularly clear outline of ACLO duties as well as a list of activities not to be performed by ACLOs.[117] These are reproduced in Appendix 8 and are designed to maximise the effectiveness of the ACLOs which includes avoiding their alienation from the community. With the exception of Wilcannia, where the Committee was told that the role of the ACLOs is being subverted, these guidelines appear to have been effective in maximising the effectiveness of liaison officers.

---

[115] Evidence pS2420

[116] *New South Wales Government Report 1992/93*, p178

[117] New South Wales Police Service, evidence, pp2020-2

10.113 Allegations of racism within the police service in the far-western towns of New South Wales were raised by several witnesses. The Royal Commission cited the report of Commissioner Wootten in his *Report of the Inquiry into the Death of Clarence Alec Nean*:

> *The North West of New South Wales has the largest concentration of Aboriginal population in New South Wales outside of Sydney. There are a number of towns, of which Walgett is one, in which there is a high proportion of Aboriginals in the population. These have a number of problems in common as well as specifically local problems.*
>
> *Collectively they form a group of towns which are the source of a large number of Aboriginals in custody in New South Wales and a significant proportion of the deaths in custody. They have high numbers of police and what is felt by many Aboriginals to be oppressive policing. There are many indications of racism that make life unpleasant for Aboriginals.*[118]

10.114 The Royal Commission went on to say:

> *The nature of that racism was vividly documented in the Report of the Inquiry into the Death of Mark Anthony Quayle, which related to Wilcannia.*[119]

10.115 The Committee was told in Wilcannia that one police officer and several Aboriginal Liaison Officers had resigned from the Police Service because of racism amongst the police in Wilcannia.[120] Evidence was given of frequent and extensive use of racist language used by police in Wilcannia.[121] Evidence was also given of offensive sexual language frequently used towards Aboriginal girls and women.[122] The Committee does not believe such behaviour from police should be tolerated.

10.116 Similarly appalling behaviour was reported of some police in Bourke:

> *A sergeant of police was referring to Aboriginal prisoners in a cell, in front of constables–he is supposed to be their role model–as 'dirty, stinking, rotten, niggers'. That is the way the man was referring to Aboriginal prisoners. I do not think that is right in anyone's mind. I am not the hero of the moment but that is just not right. I am not*

---

[118] RCIADIC, *National Report*, Vol 2, p227

[119] RCIADIC, *National Report*, Vol 2, p227

[120] Mr Jurotte, evidence, p1074

[121] Mr Jurotte, evidence, pp1060-1

[122] Mr Jurotte, evidence, p1061, p1136

going to stand still while people say to me that they are not going to eat and drink with a pack of niggers and that my wife is a black slut. That is what I blew the whistle on.[123]

10.117 Mr Ken Jurotte, a senior sergeant of police but appearing as a private citizen, claimed that there was a lack of commitment by the NSW Police Service to improve relationships with Aboriginal people:

I truly believe that that genuine commitment does not exist, and that those executives who are genuinely interested in establishing a more meaningful relationship are in the minority and are fearful of speaking out, for fear of being branded 'nigger lovers', as so many other police have been branded by their colleagues. Those who have striven to befriend, interact with, and learn from Aboriginal people have been bastardised, humiliated and criticised.[124]

10.118 The submission from the New South Wales Police Service stated:

The Service recognises that racism is a problem, as it is within all large organizations, and, indeed, the general community. As you will read in this document, through education and training, the Service is attempting to overcome racism born of ignorance, intolerance and prejudice by making its members aware of social problems within Aboriginal communities, and of the historic relationship between police and those communities.[125]

10.119 The Committee believes that the education and training approach should continue. However, a much more proactive approach is needed by police managers to eliminate racist language and treatment of Aboriginal people.

Conclusion

10.120 Witnesses reminded the Committee that establishing the liaison process can require a deal of effort from both sides, often over an extended period. However, as reported to the Committee there comes a point where the barriers of stereotyping and mistrust begin to break down and the most effective form of liaison can occur. Occasional setbacks are to be expected with changes in police personnel, community movements and the occasional incident which will place strains on the process. The existing successful liaison structures show that these obstacles can be overcome if both sides can see the long-term benefits of effective liaison to themselves.

---

[123] Mr Ken Jurotte, evidence, p1136

[124] Evidence, p1060, p1133, p1140

[125] Evidence, pS2002

10.121 The Committee emphasises that for the effectiveness of the liaison process to be maximised more than formal meetings are required. From the more successful models that the committee has heard of there is clearly a need to sit down and meet with one another informally and interact socially. The Committee agrees with the evidence that it is in those less formal, social settings that there is a greater chance of appreciating the other person's point of view.[126] While most of the successful models the Committee heard of were in rural areas the Committee nonetheless believes that a similar approach can still be used in larger urban settings.

10.122 Evidence to the committee is that community policing practices are more efficient and effective in both reducing crime rates and meeting the needs of the whole community than traditional police practices. The Committee notes with concern a growing emphasis in the public arena, on claims of growing crime rates and the need for more police. Crime statistics do not show as great an increase as is commonly perceived. The Royal Commission warned that more police do not necessarily result in a reduction of the crime rate. The Commission found that in many cases it resulted in an increase.

10.123 The Committee believes that what is needed is not more policing but more effective policing. Community policing practices are an important element in more efficient and effective policing.

10.124 The Committee recommends that:

the Prime Minister, through the Council of Australian Governments, seek the cooperation of state and territory governments to:

- **urgently implement recruitment policies which will increase indigenous representation within Police Services; (Recommendation 73) and**
- **implement the community based policing recommendations of the Royal Commission. (Recommendation 74)**

[126] Mr Ken Jurotte, p1139, 1141