

## CHAPTER 11

### YOUNG ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

11.1 Aboriginal and Torres Strait Islander youth is a group that received special attention in the Royal Commission's Final Report. In addressing these issues the Royal Commission dedicated Chapters 14 and 30 of the *National Report*<sup>1</sup> to Aboriginal and Torres Strait Islander youth. The Royal Commission identified poor participation and achievement in education, low incomes, limited employment opportunities, inadequate housing and poor health as factors impacting on the disadvantaged position of young indigenous people.

11.2 The Royal Commission found that young indigenous people were over-represented in their contact at all stages of the juvenile justice system. It also found that this early contact with the system had a significant impact on young indigenous people's future entry into the system.

11.3 The Royal Commission identified the negative influences of institutionalisation and separation from families, the breakdown of family relationships and community ties in Aboriginal and Torres Strait Islander society all contributing to the devastating outcomes for indigenous youth. It was emphasised that there was an urgent need to address the disadvantage faced by young indigenous people. With the changing demographic structure of the Aboriginal and Torres Strait Islander population, the Royal Commission was concerned that, unless the disadvantages of young indigenous people were addressed, more would come into contact with the criminal justice system leading to greater numbers being incarcerated.

11.4 The Royal Commission stressed the need for governments and Aboriginal and Torres Strait Islander organisations and communities to work together to devise programs and strategies to minimise young indigenous Australians' involvement in the welfare and criminal justice system.

11.5 The Committee paid particular attention to a number of recommendations of the Royal Commission concerning youth. Recommendations 62 and 234 to 245 are specifically concerned with implementing change through the delivery of programs, policy initiatives and legislative enactments to curtail the numbers of young Aboriginal and Torres Strait Islander people entering the criminal justice system.

---

<sup>1</sup> RCIADIC, *National Report*, Vols 2 and 4, AGPS, Canberra, 1991

## *Recommendation 62*

11.6 Commissioner Johnston held grave fears for the future of young Aboriginal and Torres Strait Islander people and the potentially disastrous repercussions if the widespread problems facing them fail to be addressed.

11.7 In Recommendation 62, Commissioner Johnston stressed the:

*.....urgent need for governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise.<sup>2</sup>*

11.8 Unanimous support was given by all governments to Recommendation 62, in the March 1992 *Response by Governments to the Royal Commission Report*.<sup>3</sup> The Commonwealth Government's March 1992 response stated:

*The Commonwealth will seek to implement a comprehensive national Aboriginal and Torres Strait Islander Youth Strategy to assist local communities to address youth issues. A key focus of the strategy will be directed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice system. It will emphasise the involvement of parents, elders and other community bodies in planning and implementing local strategies.*

*The Commonwealth will also ensure agencies which administer programs and services to Aboriginal and Torres Strait Islander youth give priority to community needs, develop information and communication systems to ensure local communities are fully informed of programs and services, and develop their own plans in conjunction with Aboriginal and Torres Strait Islander Commission (ATSIC) Regional Councils taking account of local youth development plans.<sup>4</sup>*

---

<sup>2</sup> RCIADIC, *National Report*, Vol 2, p 252

<sup>3</sup> *Aboriginal Deaths in Custody, Response by Governments to the Royal Commission*, Vol 1, March 1992, p211

<sup>4</sup> *Aboriginal Deaths in Custody, Response by Governments to the Royal Commission*, Vol 1, March, 1992, pp211-2

11.9 When this response was repeated in the *1992-93 Commonwealth Implementation Annual Report*,<sup>5</sup> the words 'taking account of local youth development plans' had been omitted. It is unclear why the words have not been included except that the Committee notes that no reference is made in the response to local youth development plans.

11.10 The Department of Employment, Education and Training (DEET) was the lead agency responsible for implementing the Aboriginal and Torres Strait Islander National Youth Strategy. The Committee is deeply concerned that the *1992-93 Commonwealth Implementation Annual Report* failed to mention the progress of the National Aboriginal and Torres Strait Islander Youth Strategy. It is the Committee's understanding that the strategy has not been implemented.

11.11 The Commonwealth Government has failed to provide reasons why the National Aboriginal and Torres Strait Islander Youth Strategy has not been implemented. DEET stated that under the umbrella of the Commonwealth's Youth Social Justice Strategy (YSJS), which commenced in the 1989 Budget, programs were developed to assist young indigenous people. The YSJS was a mainstream program, predating the Royal Commission, which comprised a comprehensive \$100m package of initiatives for disadvantaged young people. However, funding was allocated for a four year period to address the issues of access by disadvantaged young people to adequate income support, accommodation, health care, employment, education and training. However, funding for the YSJS ceased in 1993.

11.12 Following an evaluation of the YSJS in 1991, young Aboriginal and Torres Strait Islander people and juvenile offenders were identified as priority groups.<sup>6</sup> The Committee suggests that the soundness of the YSJS was highly questionable if it took 2 years of the 4 year program to identify Aboriginal and Torres Strait Islander youth and juvenile offenders as priority groups amongst disadvantaged youth.

11.13 Under the YSJS, a number of initiatives were implemented to assist young Aboriginal and Torres Strait Islander people including:

- . the Disadvantaged Young People's Program;
- . the Youth Strategy Action Grants Program;
- . Youth Information and Access Pilot Programs;
- . the development of occupational information; and
- . a study on the provision of rural and remote services to youth.

---

<sup>5</sup> *Implementation of Commonwealth Government Responses to the Recommendation of the Royal Commission into Aboriginal Deaths in Custody, First Annual Report, 1992-93, Vol 2, p61*

<sup>6</sup> *Implementation of Commonwealth Government Responses to the Royal Commission into Aboriginal Deaths in Custody, Vol 1, p92, & Vol 2, p61*

11.14 The Committee did not conduct a full review of the programs under the YSJS. However, while the YSJS may have been of some benefit to Aboriginal and Torres Strait Islander youth, the Committee finds it is unacceptable that for bureaucratic convenience, a mainstream program became the mechanism through which the Commonwealth Government dealt with Recommendation 62, rather than developing a National Aboriginal and Torres Strait Islander Youth Strategy.

11.15 The Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Michael Dodson, expressed concern on the implementation of Recommendation 62. In his submission, Commissioner Dodson questioned the level of negotiation that had taken place with Aboriginal organisations:

*..... it is apparent that a number of strategies have been put in place which might in some way contribute to the result sought in Recommendation 62 .....*

However:

*..... it is not easy to get an overall picture of the impact of the programs... There is little to indicate that Aboriginal organisations have been involved in negotiation ... There is no evidence of any positive outcomes of programs in actually reducing the rate of involvement of Aboriginal youth in the welfare and criminal justice systems, or in the reduction of the rate at which they are separated from their families and communities.<sup>7</sup>*

11.16 It is apparent to the Committee, that by failing to develop a comprehensive National Aboriginal and Torres Strait Islander Youth Strategy in consultation with indigenous organisations, the Commonwealth Government has demonstrated a lack of commitment to this Recommendation.

11.17 The Committee recommends that:

the Office of Indigenous Affairs be responsible for co-ordinating the development of a comprehensive National Aboriginal and Torres Strait Islander Youth Strategy across all relevant Commonwealth departments and agencies. The Strategy should be cognisant of the role of state and territory governments.  
(Recommendation 75)

---

<sup>7</sup> Evidence, pS2290-2291

## State and Territory Responses

### *Australian Capital Territory*

11.18 The ACT Government indicated in its Annual Implementation Report that it strongly supported all initiatives to prevent separation of young Aboriginal and Torres Strait Islander people from their families and to address young people's special needs. A bail supervision scheme was conducted by the ACT Juvenile Justice which prevents juvenile offenders from unnecessary detention.<sup>8</sup>

11.19 The Committee notes that the Australian Capital Territory had not detailed the type of strategies that have been negotiated with Aboriginal and Torres Strait Islander communities.

### *Northern Territory*

11.20 The Northern Territory Government reported that the main thrust of its Juvenile Justice programs was to divert juvenile offenders from custody. Regional and remote area resident juvenile justice officers provided a broad range of community-based programs for offenders to minimise the need to separate Aboriginal juveniles from their families and communities.<sup>9</sup>

11.21 There was no mention of the strategies implemented to assist young indigenous people in welfare issues.

### *Western Australia*

11.22 The Western Australian Government indicated that increased funding was directed to the Youth and Community Program which was managed at the local level through the Department for Community Development (DCD) District Offices. Additional funds were primarily directed to the prevention of offending, and these funds along with responsibility for young offenders were transferred to the Ministry of Justice on 1 July 1993.<sup>10</sup>

11.23 The Ministry of Justice was proposing to invite ATSIC Regional Councils to nominate representatives to undertake a liaison/consultancy role to facilitate their direct input into planning and program development at corporate, regional and local levels.<sup>11</sup>

---

<sup>8</sup> ACT Government Annual Implementation Report, p46

<sup>9</sup> Northern Territory Annual Implementation Report, p31

<sup>10</sup> Western Australia Annual Implementation Report, p61

<sup>11</sup> Western Australia Annual Implementation Report, p61

11.24 While the Western Australian Government report indicated a willingness to undertake consultation with Aboriginal and Torres Strait Islander people in the design and service delivery of programs, the Committee received a submission from the Aboriginal Legal Service of Western Australia (ALS of WA) strongly questioning whether the actions of the Western Australian Government were genuinely seeking to bring about change in relation to indigenous juveniles.

11.25 The ALS of WA chronicled a number of key changes that have taken place in Western Australia in the past two years impacting on young people:

- . *the introduction of 'boot camps' targeting male offenders between 16-21 years of age. Aboriginal males comprise 35% of the target group and yet there has been no consultation with Aboriginal organisations on the proposal;*
- . *the cessation of funding to the Lake Jasper Project which is a non-government program established by Aboriginal people to provide an alternative to custody for young Aboriginal offenders;*
- . *in January 1994, Operation Sweep, was implemented for a 10 week period which resulted in the apprehension and removal of 400 children by the Police from the streets in Perth. The great majority of the children were apprehended under the welfare provision of the Child Welfare Act for being in moral danger. Rather than being taken home immediately (as required under the Act) the children were taken in the backs of Police vans to the Police Station where their parents had to collect them. In some instances, children were charged with offences such as disorderly conduct, resist arrest, assault of a public officer, offences which may well have resulted from Police intervention with otherwise law abiding young people;*
- . *the State Attorney-General has recently announced increased penalties for assaults on Police Officers. The regularity with which Aboriginal youth are charged and convicted of assault of a public officer causes this ALS of WA to be alarmed at these new measures. Often these charges escalate from interventions by the Police in the lives of non-offending Aboriginal youth through routine questioning and asking for names and addresses; and*
- . *the use of imprisonment and remands in custody by Justices of the Peace and magistrates for young offenders charged with petrol sniffing under the by-laws of the Aboriginal Communities Act.<sup>12</sup>*

---

<sup>12</sup> Evidence, pS622

11.26 Further, the ALS of WA stated that there was still a lack of consultation with Aboriginal people in the development of programs and policies in the criminal justice area.<sup>13</sup> In particular, the ALS of WA pointed out that the introduction of sentencing legislation, the *Crime (Serious and Repeat Offenders) Sentencing Act* was undertaken without consultation with Aboriginal and Torres Strait Islander communities and against the advice of sections of the community. The ALS of WA said that proposed changes to the *Bail Act* and the *Child Welfare Act* had also been introduced without consultation with Aboriginal communities and there was every indication that these changes would impact predominantly on youth, leading to increased numbers of young indigenous people being held in custody.<sup>14</sup>

11.27 The actions of the Western Australian Government reported by the ALS of WA were very disturbing. Statistics provided by the AIC show that indigenous juveniles are 48 times more likely to be in a Western Australian juvenile detention centre than non-indigenous juveniles.<sup>15</sup> The Committee questions the sincerity of the Western Australian Government to make a genuine commitment to bring about a reduction in the number of Aboriginal and Torres Strait Islander young people entering the criminal justice system while it continues to support measures such as 'boot camps', implements programs such as 'Operation Sweep', and increases penalties for assaulting police officers. The Committee fails to understand how these actions will bring about the objectives of Recommendation 62 which sought to reduce the numbers of Aboriginal and Torres Strait Islander young people coming into contact with the welfare and criminal justice systems.

11.28 The Committee is highly critical of the lack of negotiation that should have taken place with Aboriginals and Torres Strait Islanders with respect to legislation, such as the *Crime (Serious and Repeat Offenders) Sentencing Act*, the *Bail Act* and the *Child Welfare Act*. It would appear that by ignoring the advice of sections of the community which aired their concern over the introduction of the *Sentencing Act*, the Government disregarded the opinions of the community and sought to entrench its control over the lives of Aboriginal and Torres Strait Islander people.

11.29 The Committee finds the Western Australian Government's response cosmetic and contrary to the intent of the Royal Commission. The response also failed to detail how it would address the welfare issues and to what extent it had devised strategies in negotiation with Aboriginal and Torres Strait Islander communities. The cessation of funding to the Lake Jasper Project suggested that the Government had little intention of supporting Aboriginal-devised and Aboriginal-controlled

---

<sup>13</sup> Aboriginal Legal Service of Western Australia, Inc., Implementation of the Royal Commission into Aboriginal Deaths in Custody, Fact Sheets on Juvenile Justice in Western Australia

<sup>14</sup> Aboriginal Legal Service of Western Australia, Inc., Facts Sheets on Juvenile Justice in Western Australia. Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody

<sup>15</sup> *Facts and Figures, Persons in Juvenile Corrective Institutions*, Australian Institute of Criminology, March 1993

programs. This indicated a poor attitude to self-determination for Aboriginal and Torres Strait Islander people.

11.30 The Committee commends the ALS of WA for maintaining a close scrutiny of the actions of the Western Australian Government by producing reports such as *Striving for Justice*. This provided the public with an independent assessment of the implementation of the Royal Commission recommendations and of the effects of Government policies on indigenous people.

### *New South Wales*

11.31 The New South Wales Government response detailed the range of projects implemented by the Office of Juvenile Justice following a major conference in 1990, involving staff from Aboriginal organisations and government departments. The results of the conference provided the basis for the development of several community-based projects co-ordinated by the Office of Juvenile Justice.<sup>16</sup>

11.32 The Committee notes that in late 1994, the New South Wales Government released its White Paper, *Breaking the Crime Cycle: New Directions for Juvenile Justice in New South Wales*. This statement of the Government's Policy on juvenile justice announced several major initiatives, especially in relation to juvenile crime prevention and community alternatives to court processing. The White Paper included a section on Aboriginal and Torres Strait Islander young people and the juvenile justice system.

11.33 The Committee noted from the White Paper, that the New South Wales Government intended to undertake consultations with Aboriginal people, communities and organisations on policing practices and policies and had increased the employment of Aboriginal people within all levels of the Police Service and in particular, in policy development and operational areas.<sup>17</sup>

11.34 The Committee noted that no information was provided in the response on strategies devised in negotiation with Aboriginals and Torres Strait Islanders to reduce the separation of indigenous youth from their families and their communities.

### *Queensland*

11.35 The Queensland Government response indicated that it had taken a two-pronged approach in response to Recommendation 62. The Government had implemented a Juvenile Crime Strategy which involved two major initiatives; the

---

<sup>16</sup> NSW Annual Implementation Report, pp61-2

<sup>17</sup> New South Wales Government, White Paper, *Breaking the Crime Cycle, New Directions for Juvenile Justice in NSW*, p8

development of a crime prevention strategy and the introduction of legislation, the *Juvenile Justice Act 1992*.<sup>18</sup>

11.36 The *Juvenile Justice Act 1992* provided an increased range of non-custodial sentencing options for young offenders and is based on the Royal Commission principles. It included the need to divert young people from the courts where appropriate, the principle of detention as a last resort and the need to take account of the cultural background of people who come in contact with the juvenile justice system.<sup>19</sup>

11.37 The Department of Family Services and Aboriginal and Islander Affairs was reviewing child protection policy and legislation with the intention of revising the Child Placement Principle and incorporating the review recommendations into proposed new child protection legislation.<sup>20</sup>

11.38 The Committee notes that the Aboriginal and Torres Strait Islander Overview Committee had been supportive of the *Juvenile Justice Act, 1992*, commenting that it substantially improves the manner in which juveniles are treated in the criminal justice system.<sup>21</sup>

#### *South Australia*

11.39 The South Australian Government was considering the recommendations of a report by the Parliamentary Select Committee Review of the Juvenile Justice System. The Select Committee made a number of recommendations relating to consultation, crime prevention, policing, training, participation and empowerment.<sup>22</sup>

11.40 A number of programs to prevent juveniles from entering the justice system had been developed, such as the Country Aboriginal Youth Team, Youth Support Groups and the setting up of the Shed Project. Separation of juveniles from their families or communities was minimised by the *Children's Protection Act*, Family Care Communities and Aboriginal Intensive Neighbourhood Care Program.<sup>23</sup>

11.41 A diversity of legislative enactments, policy changes and program implementations were outlined by state and territory governments in response to

---

<sup>18</sup> *Queensland Government Annual Implementation Report*, Vol 3, pp66-7

<sup>19</sup> *Queensland Government Annual Implementation Report*, Vol 3, pp66-7

<sup>20</sup> *Queensland Government Annual Implementation Report*, Vol 3, p68

<sup>21</sup> *Queensland Government Annual Implementation Report*, Vol 1, p26

<sup>22</sup> *South Australian Annual Implementation Report*, p89

<sup>23</sup> *South Australian Annual Implementation Report*, p89

Recommendation 62. The degrees to which these responses met the requirements of the Recommendation and were negotiated with Aboriginal organisations were difficult to assess as the Committee did not conduct a review of the strategies and programs nor did it receive substantial evidence or feedback from Aboriginal and Torres Strait Islander organisations.

11.42 The need to negotiate with Aboriginal organisations on issues that will have significant implications for Aboriginal people and, in particular, on their effects on Aboriginal and Torres Strait Islander youth, is essential. Negotiation is necessary to bridge the cultural differences between Aboriginal and Torres Strait Islander people and non-indigenous people and to ensure that indigenous Australians gain and retain control of their lives and their communities. Aboriginal and Torres Strait Islander involvement in the formulation of legislative changes and policy issues together with program design and delivery is crucial to their empowerment and self-determination.

11.43 The Committee recommends that:

future Commonwealth, state and territory government Annual Implementation Reports should include evaluations by Aboriginal and Torres Strait Islander organisations and communities of the appropriateness and effectiveness of programs implemented in response to Recommendation 62. (Recommendation 76)

#### Programs and Initiatives for Young Indigenous People

11.44 Recommendations 236 to 238 supported the need for negotiation between governments and indigenous organisations to develop community-based and devised programs and strategies to assist young Aboriginal and Torres Strait Islander people. The recommendations promoted the need for adequate funding for community-based programs and the employment and training of Aboriginal and Torres Strait Islander people in the delivery of these programs and within the criminal justice and welfare system generally. These Recommendations directly relate to Recommendation 62.

#### *Recommendation 236*

*That in the process of negotiating with Aboriginal communities and organisations in the devising of Aboriginal youth programs governments should recognise that local community based and devised*

*strategies have the greatest prospect of success and this recognition should be reflected in funding.*<sup>24</sup>

*Recommendation 237*

*That, at all levels of the juvenile welfare and justice systems there is a need for the employment and training of Aboriginal people as youth workers in roles such as recreation officers, welfare officers, counsellors, probation and parole officers, and street workers in both government and community organisations. Governments, after consultation with appropriate Aboriginal organisations, should increase funding in this area and pursue a more vigorous recruitment and training strategy.*<sup>25</sup>

*Recommendation 238*

*That once programs and strategies for youth have been devised and agreed, after negotiation between governments and appropriate Aboriginal organisations and communities, governments should provide resources for the employment and training of appropriate persons to ensure that the programs and strategies are successfully implemented at the local level. In making appointment of trainers preference should be given to Aboriginal people with a proven record of being able to relate to, and influence, young people even though such candidates may not have academic qualifications.*<sup>26</sup>

11.45 In the Commonwealth Government's 1992 response to Recommendation 236 it stated:

*The Commonwealth recognises and acknowledges the importance of local community-based and devised strategies. The Commonwealth will seek to put in place an Aboriginal and Torres Strait Islander Youth Strategy focusing on community-based plans through which support will be provided for locally identified youth needs (see response to Recommendations 62 and 237).*<sup>27</sup>

11.46 The Commonwealth Government's 1992 response to Recommendation 237 stated:

---

<sup>24</sup> RCIADIC, *National Report*, Vol 4, p177

<sup>25</sup> RCIADIC, *National Report*, Vol 4, p177

<sup>26</sup> RCIADIC, *National Report*, Vol 4, p178

<sup>27</sup> *Aboriginal Deaths in Custody - Response by Governments to Royal Commission*, Vol 3, p900

*Under the proposed Aboriginal and Torres Strait Islander Youth Strategy, the Commonwealth will examine funding to Aboriginal and Torres Strait Islander organisations to employ community youth workers and recreation officers to assist communities in the implementation of youth programs.*

*Under the Public Service strategies, funded by the Commonwealth, through the Department of Employment, Education and Training, States and Territories will be asked to emphasise recruitment and training of Aboriginal and Torres Strait Islander people in youth program service areas.*

It also indicated that funding would be provided to Aboriginal organisations to establish supervised juvenile bail hostels with indigenous staff.<sup>28</sup>

11.47 The Commonwealth Government's 1992 response to Recommendation 238 stated:

*Under the proposed Aboriginal and Torres Strait Islander Youth Strategy, the Commonwealth will examine the employment and training of Aboriginal and Torres Strait Islander people to deliver programs to Aboriginal and Torres Strait Islander youth.*<sup>29</sup>

11.48 The Committee reiterates that the responses, in the *1992-93 Commonwealth Implementation Annual Report*, to each of the recommendations makes no reference to the Aboriginal and Torres Strait Islander Youth Strategy. The Committee noted that the Strategy has not yet been developed.

11.49 The *Commonwealth Implementation Annual Report* for 1992-93 detailed the initiatives implemented as part of the YSJS initiatives in conjunction with a number of education, employment and training programs.

11.50 Youth-specific programs developed by ATSIC were also outlined including:

- . the Youth Bail Accommodation Program;
- . the Young Person's Sport and Recreation Development Program;
- . the Young Person's Development Program;
- . the Regional Development and Planning Program (formerly the Young People's Employment Program /Inwork); and
- . the In-work Traineeship Program.

---

<sup>28</sup> *Response by Governments*, Vol 3, pp905-6

<sup>29</sup> *Response by Governments*, Vol 3, p910

11.51 The Committee did not conduct an extensive review of the programs that had been implemented by DEET and ATSIC. Some general comments were made by Aboriginal and Torres Strait Islander organisations on a number of ATSIC programs and are mentioned below. A discussion on the Youth Bail Accommodation Program is included under Recommendation 242.

*The Young Person's Sport and Recreation Development Program*

11.52 The Young Person's Sport and Recreation Development Program provides funding to state and territory governments to develop and promote sport and recreation programs for young people. An allocation of \$8.36 million over five years has been provided. In partnership with the Australian Sports Commission, joint responsibility agreements have been entered into with states and territories in relation to co-funding arrangements, project objectives and procedures for evaluation after two years program delivery.<sup>30</sup> Thirty-eight Development Officers have been employed around Australia to assist with the program.

11.53 Deaths in Custody funding has been provided to state and territory governments to co-ordinate the delivery of the Young Person's Sport and Recreation Program. Major concerns were raised by Aboriginal and Torres Strait Islander organisations about the funding arrangements for the Program. Representatives from one state co-ordinating body, the Victorian Aboriginal Youth, Sport and Recreation Cooperative Limited, told the Committee that the organisation received only \$150,000 from ATSIC.<sup>31</sup> The recurrent funds paid for two full-time staff and one part-time officer, operational costs and the remainder of the allocation goes to Sports Development Grant funding.<sup>32</sup>

11.54 The Committee was told that \$310,000 was allocated from Deaths in Custody funds to the Victorian Department of Sport, Recreation and Racing to employ five Aboriginal field officers to work throughout the state on sport and recreation programs.<sup>33</sup>

11.55 The Victorian Co-operative commented that there was no guarantee that the indigenous field officers employed through the State Government would provide indigenous specific programs because they were under the direction of individual local governments which determine which programs would be implemented at the local community level.<sup>34</sup> Although the Victorian Co-operative argued for independence from local government control, the Committee believes that it is

---

<sup>30</sup> *Commonwealth Implementation Annual Report*, Vol 2, p261

<sup>31</sup> Informal discussions, Victorian Aboriginal Youth, Sport and Recreation Cooperative Ltd.

<sup>32</sup> Exhibit No 38

<sup>33</sup> Informal discussions, Victorian Aboriginal Youth, Sport and Recreation Cooperative Ltd.

<sup>34</sup> Informal discussions, Victorian Youth, Sport and Recreation Co-operative

important that indigenous people are represented in local government organisations and can play a valuable role in bringing about changes to the delivery of programs and local government policies. Greater presence in local government decision-making processes will assist in breaking down the barriers between indigenous and non-indigenous people, and ensure that indigenous views are placed before the local government authorities.

11.56 In Yalata in South Australia, the Committee heard that the sports and recreation program had made a positive impact in the community<sup>35</sup>, however, ATSIC funding for the program had ceased, to the disappointment of the program co-ordinators and to young people in the community. Further, because the community had lost the funding for the sports and recreation program, other programs which had sport and recreation components were also affected. The Yalata community told the Committee that ATSIC failed to appreciate the implications of cutting funds and the impact on the effective delivery of programs.

11.57 The Committee was told that although the Yalata community had sought reasons for ceasing funds to the program, it had not received adequate answers from ATSIC. The community believed that ATSIC had a responsibility to inform its Regional Councillors why it had stopped the funds. The community reinforced the view of the Royal Commission that community-based programs were the most effective therefore should have had commensurate funding to continue the program.<sup>36</sup> The Committee believes that before ATSIC provides 'seeding' grants to establish programs, ATSIC should negotiate with state and territory governments to ensure that if the pilot program is successful, state and territory governments will provide a commitment to fund the continuation of the program.

11.58 During the Committee's visit to New South Wales, it was told by Aboriginal community organisations in Dubbo, that sport and recreation programs were not filtering through to young indigenous people. The Committee was told that difficulties were experienced in the delivery of the Young People's Sport and Recreation Program because the region had only one liaison officer stationed at Orange. The officer is expected to cover a wide area stretching from Dubbo to Albury but remains within the Dubbo and Bourke region because of the 'tyranny of distance' experienced in servicing all the areas. Consequently, young people in Wilcannia and surrounding areas, particularly the southern regions, cannot take advantage of this program.<sup>37</sup>

---

<sup>35</sup> Informal discussions, Yalata-Maralinga Health Service,

<sup>36</sup> Informal discussions, Yalata Community Inc

<sup>37</sup> Informal discussions, Dubbo-Ga Local Aboriginal Land Council, Western Aboriginal Legal Service, Family Violence Education Aboriginal Corporation and Dubbo Aboriginal Medical Co-operative

11.59 The Committee was told of delays in the Young Person's Sport and Recreation program being implemented in New South Wales. Mr Gary Ella, Assistant State Manager for ATSIC said that:

*One of the reasons that it has been delayed in starting is because we have been negotiating that the four Aboriginal sports development officers, or recreation officers, who are going to be employed will continue to be employed with the Department [of Sport, Recreation and Racing] after the completion of the program. The program itself has initially been funded for two years, and one of the delays has been to make sure that we could get full-time employment afterwards, and that the program could continue with funding from the state Government.*

Mr Ella further explained:

*The funds were released in June 1992 - so that was fairly late in the financial year- they carried the funding over into 1993-94. At the moment we have had four officers employed and the program, I guess, has only started in May of this year.<sup>38</sup>*

11.60 A submission from the Aboriginal Development Foundation for Sport and Recreation (WA) stated that the Young People's Sport and Recreation Development Program, administered through the Western Australian Ministry of Sport and Recreation, had no formal procedures in place to involve the Foundation in the design and implementation of the program.<sup>39</sup> The Foundation had sent out a survey to Aboriginal organisations and communities seeking feedback regarding the program. Early responses to the questionnaire indicated that Aboriginal people were generally unaware that the program existed.<sup>40</sup>

11.61 The Committee is concerned that the Young Person's Sport and Recreation Program is not being funded directly to Aboriginal and Torres Strait Islander organisations to enable them to develop their own priorities in delivering culturally appropriate, locally-devised programs.

11.62 The Committee is also concerned that Aboriginal and Torres Strait Islander recreational officers employed by state and territory governments from the Commonwealth Deaths in Custody funds were often used to deliver mainstream programs which do not necessarily reach young indigenous people. The Committee has commented in previous reports, such as *Mainly Urban* and *Rhetoric or Reality?*, on indigenous people's reluctance to access mainstream programs because they fail to meet their special needs and are often culturally inappropriate.

---

<sup>38</sup> Evidence, p 1219-1220

<sup>39</sup> Evidence, pS262-263

<sup>40</sup> Evidence, p S263

11.63 The Committee believes that Aboriginal and Torres Strait Islander recreational officers should be targeting indigenous youth and providing indigenous communities with programs which they want and which meet their local needs. The role of state, territory and local governments is to provide infrastructure support such as facilities to enable the programs to be implemented.

11.64 The Committee recommends that:

**the Young Person's Sport and Recreation Development Program be reviewed to ensure that it maximises the role of Aboriginal and Torres Strait Islander organisations in the delivery of the program and maximises the empowerment of Aboriginal and Torres Strait Islander youth; (Recommendation 77)**

#### *In-Work Traineeship Program*

11.65 The In-Work Traineeship Program was developed by ATSIC in 1992-93, based on the Career-Start Traineeship Scheme administered by DEET. The Program aims to improve the employment prospects of young Aboriginal and Torres Strait Islander people by providing part-time employment placements in Aboriginal and Torres Strait Islander organisations, for up to two years, linked to TAFE training.

11.66 The Committee notes that in the Overview Reports prepared by ATSIC, the Inwork Traineeship Program experienced difficulties following its introduction due to the program being based on DEET's mainstream program. In particular ATSIC identified arranging training, developing a suitable curriculum and providing teaching resources as main obstacles to its successful implementation.<sup>41</sup>

11.67 Representatives from Tjutjunaku Worka Tjuta Incorporated told the Committee, in informal discussions in Ceduna, that ATSIC's In-Work Traineeship guidelines failed to take account of Aboriginal learning styles. The In-Work Traineeship was regarded as more theory oriented than competency based training and there was a need to have the program 'on the ground' and outside the TAFE environment. It was suggested that by changing the environment from TAFE to the workplace, more young people would be enticed to undertake the programs offered.<sup>42</sup>

---

<sup>41</sup> *Commonwealth Implementation Annual Report*, Vol 1, p225

<sup>42</sup> Informal discussions, Tjutjunaku Worka Tjuta, Ceduna Community Development Employment Projects

11.68 The Committee believes that ATSIC must negotiate with Aboriginal and Torres Strait Islander communities in developing programs so that they take account of the special needs and requirements of the recipients of the program.

#### *The Young People's Development Program*

11.69 The Young People's Development Program provides, in cooperation with the states and territories, programs to address the extreme disadvantage of young Aboriginal and Torres Strait Islander people. The programs include employment and training for community youth workers, cultural education provided by community elders, intervention programs for young people at risk or in the juvenile justice system, and hostel accommodation. ATSIC Regional Councils develop local community strategies and action plans to implement these programs.

11.70 The Committee did not get much opportunity to review these programs during the inquiry, but was told of a Young People's Development Program operating in Port Lincoln and Ceduna. A representative from the ATSIC Regional Office in Ceduna told the Committee that the program was a preventative strategy to stop children having to go to court and involved all major organisations in the community. Some problems were being experienced with the program, in particular the need for more input from ATSIC and more co-ordination with locally established crime prevention committees and TAFEs. The Committee was told in Ceduna that many ATSIC programs involving young indigenous people assumed that the participants had acquired a certain level of educational attainment. However, Aboriginal youth frequently have poor literacy and numeracy skills and very low self esteem.<sup>43</sup>

11.71 Evidence confirmed the view of both the Committee and the Royal Commission that Aboriginal and Torres Strait Islander participation in the design and implementation of programs is essential if they are to be successful. One very positive program to help young people was the Petford project. Petford is a training camp on a rural property near Mareeba run by an Aboriginal man, Mr Jeff Guest, which takes young Aboriginal people off the streets and away from detention centres. Young indigenous people are involved in breaking horses.<sup>44</sup>

11.72 The Petford training camp is an example of a very constructive rehabilitation environment for young Aboriginal and Torres Strait Islander offenders. The focus of the camp is to develop self-esteem and improve the mental, emotional and physical well-being of juveniles.

11.73 The Committee strongly believes that ATSIC and DEET should give greater support to the funding of programs for young Aboriginal and Torres Strait Islander people for bush trips or for camps similar to Petford.

---

<sup>43</sup> Informal discussions, ATSIC Regional Office, Ceduna

<sup>44</sup> Family and Prisoners Support Group, evidence, p517

11.74 Unless proactive programs are implemented, at the grassroots, with the principle of self-determination at the core, the numbers of young Aboriginal and Torres Strait Islander people coming into contact with the criminal justice system are unlikely to improve.

11.75 While the Committee noted that state and territory governments have implemented a range of policy and program responses, the Committee did not conduct a review of state and territory programs implemented in response to these three Recommendations.

11.76 The Committee recommends that:

the Prime Minister, through the Council of Australian Governments, gain agreement that future Annual Implementation Reports of Commonwealth, state and territory governments include information on:

- . the programs and strategies that are community based and devised which specifically target youth; (Recommendation 78)
- . the extent of negotiations with Aboriginal and Torres Strait Islander communities and organisations on the development of indigenous youth programs and strategies; (Recommendation 79)
- . the extent to which program guidelines and performance indicators were negotiated with Aboriginal and Torres Strait Islander people; (Recommendation 80) and
- . Aboriginal and Torres Strait Islander community assessment of the programs and strategies implemented for young indigenous people. (Recommendation 81)

#### *Diversion from the Court System*

11.77 Recommendation 240 stated that:

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

- b *that wherever possible the police caution be given in the presence of a parent, adult relative or person having care and responsibility for the juvenile; and*
- c *that if a police caution is given other than in the presence of any such person having care and responsibility for the juvenile such person be notified in writing of the fact and details of the caution administered.*<sup>45</sup>

11.78 The Commonwealth's 1992-93 response to Recommendation 240 stated:

*This recommendation does not apply to the Australian Federal Police's national operational responsibilities. It has been implemented in the ACT and Jervis Bay Territory in respect of their community policing responsibilities. In implementing this recommendation there has been an ongoing process of co-ordination with local Aboriginal community in the Jervis Bay area.*<sup>46</sup>

State and territory responses to Recommendation 240 are set out below.

11.79 The ACT Government's report indicated that the *Children's Services Act 1986*, the Australian Federal Police (AFP) General Instruction 13 (people under 18 years of age), AFP ACT Regional Instruction 21/93 (Children), and the *Liquor (Amendment) Act 1987* outline procedures to be followed by police when dealing with juveniles.<sup>47</sup>

11.80 The Queensland Government response stated that the *Juvenile Justice Act 1992* provided for the use of cautioning to be administered where practicable in the presence of a parent of the child, a person chosen by the child or a person chosen by the parent of the child.<sup>48</sup> The Act also provides for the cautioning to be conducted by an elder of the community.<sup>49</sup>

11.81 The NSW response stated that Police Instructions detail when cautions should be given and require that a person responsible for the child be present when a formal caution is given.<sup>50</sup>

---

<sup>45</sup> RCIADIC, *National Report*, Vol 4, p184

<sup>46</sup> *Implementation of the Commonwealth Government Responses to the Royal Commission into Aboriginal Deaths in Custody*, Vol 2, p267

<sup>47</sup> *ACT Annual Implementation Report*, p150

<sup>48</sup> *Queensland Annual Implementation Report*, pp254-5

<sup>49</sup> *Queensland Annual Implementation Report*, p255

<sup>50</sup> *NSW Annual Implementation Report*, p176

11.82 The Northern Territory report indicated that the established policy of the Northern Territory Police Department was in accord with this Recommendation, through General Order - Children - Code C3.<sup>51</sup>

11.83 The Western Australian Government report stated that the Recommendation had been implemented and was current practice.<sup>52</sup>

11.84 The South Australian Government reported that following a Parliamentary Select Committee review of the Juvenile Justice System, a new system of Juvenile Justice had begun in South Australia. New roles have been given to police, parents, families and victims. Sections 6 and 7 of the *Young Offenders Act 1993*, assigned statutory force to the matters raised in this recommendation.<sup>53</sup>

11.85 While the responses by the Commonwealth, state and territory governments indicated that Recommendation 240 had largely been implemented either through police standing orders and practices or through legislative enactments, there was little evidence to suggest the police actually adhere to the use of formal or informal cautioning as a matter of course in policing practices.

11.86 One of the difficulties in assessing the adequacy of police practices was the absence of any statistical data to support the use of cautioning by police in their interactions with young Aboriginal and Torres Strait Islander people. This data was considered to be an important monitoring requirement by the National Aboriginal Youth Law Centre. The Centre points out that no government had provided any statistics to demonstrate the level of administration of cautions to Aboriginal juveniles.<sup>54</sup>

11.87 The Centre provided a number of examples which suggested that police were ignoring the Recommendation or governments were acting in a contrary manner to the thrust of the Recommendation:

- . *in Western Australia, the option to issue attendance notices under legislation has not been exercised once;*
- . *recent legislative proposals in Western Australia and South Australia provide for the administration of cautions (in particular circumstances) if a young person admits guilt; and*
- . *the recent incident in Queensland where a group of young Aboriginal people were driven to an isolated area, cautioned and*

---

<sup>51</sup> Northern Territory Annual Implementation Report, p33

<sup>52</sup> Western Australia Annual Implementation Report, p130

<sup>53</sup> South Australia Annual Implementation Report, p163

<sup>54</sup> Evidence, p 2158

*abandoned, failed to attract real action against police who abuse their powers of authority.*<sup>55</sup>

11.88 The National Aboriginal Youth Law Centre believed that there was an absence of relevant enforcement mechanisms to ensure that cautions are used widely by police. One notable change, implemented in the Queensland *Juvenile Justice Act* 1992, provided for a young person to apply for the dismissal of a charge on the grounds that the young person should have been cautioned in the first instance.<sup>56</sup>

The Queensland Overview Committee was also supportive of the changes being implemented in Queensland in relation to the treatment of juveniles with the introduction of the *Juvenile Justice Act* 1992.<sup>57</sup>

11.89 The use of police cautioning and the policy of arrest as a sanction of last resort were seen as two essential measures to divert young people from the courts but the Committee obtained limited evidence on the extent of their use.

11.90 The Committee was told by the Aboriginal Legal Service solicitor in Karratha, Mr Dan Dwyer, that Marble Bar Police are actively involved in the community and in sporting and recreational activities, particularly with young people. Their policing practices were successfully diverting young indigenous people away from the courts. The effectiveness of community policing practices is measured by the fear people have in being reprimanded by police, as this reprimand is backed by the community. Mr Dwyer said that for a person from that community to get 'growled out' by the police is regarded as worse than actually going to court.<sup>58</sup>

11.91 The Committee believes that with the implementation of the police custody computerised data system, statistics should also be collected on the cautioning of young Aboriginal and Torres Strait Islander people throughout each jurisdiction. This would provide an effective monitoring mechanism on the extent to which cautioning is used to divert young people away from the criminal justice system.

---

<sup>55</sup> Evidence, p 2158

<sup>56</sup> Evidence, p2158

<sup>57</sup> *Queensland Annual Implementation Report*, p26

<sup>58</sup> Evidence, p 159

11.92 The Committee recommends that:

the Prime Minister, through the Council of Australian Governments, seek agreement that:

police procedures and practices maximise the use of informal and formal cautioning of young people;  
(Recommendation 82)

data on the cautioning of young Aboriginal and Torres Strait Islander youths is collected and recorded by all police stations on the computerised custody data system;  
(Recommendation 83) and

statistics on the numbers of juveniles cautioned are included in Annual Implementation Reports.  
(Recommendation 84)

### Family Group Conferencing

11.93 The Committee is aware of the strong interest that has been taken in the introduction of Family Group Conferencing (FGC) as a diversionary program, in particular, in New South Wales and South Australia.

11.94 The Committee notes that Family Group Conferencing had been introduced as an alternative to formal court processing as part of reforms to the South Australian juvenile justice system. Although the Committee did not discuss the FGC program with the South Australian Government it understands that some differences exist between the New South Wales model and the South Australian scheme.

11.95 The Committee noted that a variation on Family Group Conferencing, Community Aid Panels, had been piloted in the Northern Territory<sup>59</sup>, however, due to time constraints, the Committee did not obtain information on the program during its visit to the Northern Territory. In evidence to the Committee, the Australian Federal Police indicated that the New South Wales model of FGC was being implemented in the Australian Capital Territory.<sup>60</sup>

---

<sup>59</sup> Northern Territory Implementation Annual Report, p191

<sup>60</sup> Evidence, pp1314-15

11.96 Late in 1990, a proposal for change in the juvenile justice system was made in a submission to a New South Wales Parliamentary Standing Committee. The proposal was based on a study of the workings of the New Zealand *Children, Young Persons and their Families Act 1989*, which had resulted in a high percentage of juvenile offenders being diverted from the court system and had significantly contributed to the rehabilitation of offenders.<sup>61</sup>

11.97 A trial program loosely based on the New Zealand scheme, was established in Wagga Wagga. The success of this trial had progressively led to a number of pilot programs around the state including Marrickville, Campbelltown, Castle Hill, Bourke (including Brewarrina) and Moree (including Mungindi and Boggabilla).<sup>62</sup>

11.98 The family group conferencing program seeks to maximise the effects of cautioning procedures. It was recognised that there was an under-utilisation of police cautions in New South Wales, particularly when dealing with juvenile offenders, and this was compounded by anecdotal evidence that suggested that even when used, police cautions were used poorly, or contrary to the Commissioner's Instructions.<sup>63</sup>

11.99 The family group conferencing program brings together an offender and the victim of a crime to participate in an informal, loosely constructed meeting to discuss the offence and to negotiate appropriate responses. The conference does not focus on the victim or the offender; it focuses on the harm caused and looks at the most appropriate ways to make reparations for the harm done.

11.100 The family group conference enables the community, as defined by the offence, to determine how to deal with the consequences of the incident. The FGC allows families to take greater responsibility for the outcomes and to provide support for young people.

11.101 The FGC provides the direct involvement of victims in the decision-making process and this is regarded as an important part of the process of accountability. Through direct confrontation with the offender, it is argued that victims are able to express their anger and frustration and have their needs taken into account. It also enables victims to participate in the process of deciding restitution and reparation.<sup>64</sup> In the court situation, this does not happen.

---

<sup>61</sup> RCIADIC, *National Report*, Vol 4, p183

<sup>62</sup> Informal discussions, Mr John McDonald. Also see McDonald, J, *The NSW Police Service, Family Conferencing Program, Information Sheet*

<sup>63</sup> The Wagga Wagga Police and Community Juvenile Justice Initiative - A victim centred approach. Exhibit

<sup>64</sup> Christine Alder & Joy Wundersitz, *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism*, Australian Studies in Law, Crime and Justice, Australian Institute of Criminology, 1994, p7

11.102 In the New South Wales pilot programs, the police are the prime initiators, convenors and co-ordinators of the FGC. Following an assessment of the offence committed and the young offenders history, the police establish whether the offender is entitled to participate in a FGC. Serious indictable offences such as murder or rape cannot be dealt with by family group conferencing, however actual bodily harm could be.<sup>65</sup>

11.103 All offenders deemed eligible are offered the program. Because it is a discretionary system, offenders have to admit guilt and sign a statement to that effect before they can participate in the family group conference.<sup>66</sup> Alternatively, an offender is able to choose to go through a court or opt out of the conference at any time during the process and have the matter resolved by a court.

11.104 The Committee was told that more than 900 young people had been involved in the FGC since it was set up in Wagga Wagga in 1991. Although 5 to 6 per cent of participants re-offended, there had been a 25 per cent better than average success rate in diverting young offenders from the court system.<sup>67</sup>

11.105 The Committee is aware that since the introduction of the Family Group Conferencing program in New Zealand, dramatic outcomes had been achieved including:

- . the rate of youth court appearances had dropped from 67 per 1000 in 1988 to 16 per 1000 in 1990<sup>68</sup>;
- . the number of beds in detention centres in 1981 was 4500, in 1992 there were only 76 beds<sup>69</sup>;
- . in 1984, New Zealand operated and maintained 24 juvenile detention centres. Currently there are 4 in use<sup>70</sup>;

---

<sup>65</sup> Informal discussions, Wagga Wagga Police and Citizens Youth Club

<sup>66</sup> Informal discussions, Wagga Wagga Police and Citizens Youth Club

<sup>67</sup> Informal discussions, Wagga Wagga Police and Citizens Youth Club

<sup>68</sup> *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* p40

<sup>69</sup> Informal discussions, John McDonald

<sup>70</sup> Informal discussions, John McDonald

· during 1989-90, the New Zealand Department of Justice documented cost savings of NZ\$8 million following closure of juvenile detention centres;<sup>71</sup>

· during 1989-90 NZ \$1 million was recouped to victims for loss of damage and property.<sup>72</sup>

11.106 While Aboriginal organisations gave support for the family group conferencing scheme<sup>73</sup> a number of concerns were submitted to the Committee regarding aspects of the approach:

· the scheme tended to focus on first and second offenders, and these people were least in need of the scheme. The scheme should concentrate on repeat offenders.<sup>74</sup>

· police perceptions of the young person and the degree of remorsefulness expressed can influence police preparedness to take a person on the scheme;<sup>75</sup>

· indigenous youth who resent the police are less likely to benefit from the scheme. Because of police discretion in selecting participants for FGC, independent involvement other than police and monitoring of the diversionary scheme is crucial.<sup>76</sup>

11.107 The New South Wales Aboriginal Justice Advisory Committee believed that the level of influence of the police in the family group conference process should be removed and the role of the police should be restricted to policing matters and arrest.<sup>77</sup> The Redfern Aboriginal Medical Centre supported FGC but stressed the need to involve community people in the process.<sup>78</sup>

---

<sup>71</sup> The information is taken from an unpublished, internal discussion paper prepared by John McDonald and Steve Ireland for the NSW Police Service. The information is based on data provided by the Department of Justice, New Zealand. Cost savings of \$8 million include savings accrued after redundancy payouts to service providers following closure of juvenile detention centres.

<sup>72</sup> Informal discussions, Wagga Wagga Police and Citizens Youth Club

<sup>73</sup> Informal discussions, Wagga Wagga Local Aboriginal Land Council and Aboriginal Medical Service, Redfern

<sup>74</sup> Aboriginal Legal Service Wagga Wagga, evidence pS1712 and informal discussions

<sup>75</sup> Aboriginal Legal Service Wagga Wagga, evidence pS1711

<sup>76</sup> Aboriginal Legal Service Wagga Wagga, evidence pS1712

<sup>77</sup> Informal discussions, NSW Aboriginal Justice Advisory Committee

<sup>78</sup> Informal discussions, Redfern Aboriginal Medical Service

11.108 While acknowledging the positive outcomes of the Wagga Wagga program, the Committee believes that care needs to be exercised to ensure equitable access to the scheme by Aboriginal and Torres Strait Islander youths. The Committee understands that changes are being made to the method of delivery of the New South Wales Program which will be renamed as Community Youth Conferences.<sup>79</sup>

11.109 The Committee recommends that:

the Prime Minister, through the Council of Australian Governments seek agreement for:

- . the Family Group Conferencing program to be placed on the agenda of a number of Ministerial forums including the Australian Aboriginal Affairs Council and the Ministerial Council for Education, Employment, Training and Youth Affairs for consideration; (Recommendation 85) and
- . an evaluation to be undertaken of the effectiveness and appropriateness of Family Group Conferencing in relation to Aboriginal and Torres Strait Islander youth with a view to the program being taken up by other states and territories. (Recommendation 86)

#### Non-custodial Options to Detention

11.110 *Recommendation 242*

*That, except in exceptional circumstances, juveniles should not be detained in police lock-ups. In order to avoid such an outcome in places where alternative juvenile detention facilities do not exist, the following administrative and where necessary, legislative steps should be taken:*

- a Police officers in charge of lockups should be instructed that consideration of bail in such cases be expedited as a matter of urgency;*

---

<sup>79</sup> New South Wales Government, White Paper, *Breaking the Crime Cycle, New Directions for Juvenile Justice in New South Wales*, 1994

- b *If the juvenile is not released as a result of a grant of bail by the police officer or Justice of Peace then the question of bail should be immediately referred (telephone referral being permitted) to a magistrate, clerk of Court or such other person as shall be given appropriate jurisdiction so that bail can be considered;*
- c *Government should approve informal juvenile holding homes, particularly the homes of Aboriginal people, in which juveniles can lawfully be placed by police officers if bail is not allowed; and*
- d *If in the event a juvenile is detained overnight in a police lock-up every effort should be made to arrange for a parent or visitor to attend and remain with the juvenile whether pursuant to the terms of a formal cell visitor scheme or otherwise.*

*Such steps should be in addition to notice that the officer in charge of the station should give to parents, the Aboriginal Legal Service or its representative.<sup>80</sup>*

11.111 The Commonwealth Government's 1992-93 response stated that this recommendation had been substantially addressed by the *Children's Services Act 1986* (ACT) and the *Bail Act 1992* (ACT), which apply in the Jervis Bay Territory.<sup>81</sup>

#### State and Territory Government Responses

11.112 The ACT Government Report stated that juveniles are detained in a remand centre and only in exceptional circumstances would juveniles be held in police watch houses. The AFP General Instructions 8 (Bail) state that it is police practice to expedite bail. Officers of the Court attempt to obtain legal representation for young people coming before the Court from either Aboriginal Legal Services or the ACT Legal Aid office.

11.113 The Australian Capital Territory Government said it will examine the possibility of introducing informal juvenile holding homes in consultation with the Aboriginal and Torres Strait Islander communities.<sup>82</sup>

11.114 The Northern Territory Report stated that the established policy of the Northern Territory Police Department was in accord with this Recommendation.

---

<sup>80</sup> RCIADIC, *National Report*, Vol 4, p202

<sup>81</sup> *Commonwealth Implementation Annual Report*, Vol 2, p268

<sup>82</sup> *ACT Annual Implementation Report*, pp152-3

General Order - Children - Code C3 had been amended to reflect the intention of this Recommendation.<sup>83</sup>

11.115 Evidence before the Committee highlighted the effects of legislation on access to bail for young Aboriginal people and its potential to increase their rate of incarceration in the Northern Territory. A submission by Katherine Regional Aboriginal Legal Aid Service Inc. (KRALAS) was strident in its criticism of recent legislative amendments introduced by the Northern Territory Government. KRALAS stated that as a result of amendments to the Northern Territory *Bail Act* bail will become more difficult to obtain, particularly for Aboriginal people.<sup>84</sup>

11.116 The *Bail Act* requires that a person who fails to appear before the court on a prescribed date, will be issued a fine of \$1,000. The Central Australian Aboriginal Legal Aid Service (CAALAS) believed that the new bail legislation would result in more indigenous people being held in prison or police cells awaiting trial or other forms of court appearance that will not result in convictions or sentences of imprisonment.

11.117 CAALAS explained that recent amendments to the *Summary Offences Act* would also result in an increase in the number of Aboriginal people being locked up for minor offences. The penalty for loitering has been increased from \$200 to '\$2,000 or imprisonment for 6 months or both'. As Aboriginal and Torres Strait Islander people are renowned for 'street offences' it is realistic to expect more people being imprisoned in the Northern Territory for what are really minor offences.<sup>85</sup>

11.118 The Queensland Annual Implementation Report stated that the Queensland Police Service policy dictated that juveniles should only be held in watch-houses after all other options have been exhausted. A protocol had been developed in relation to holding juveniles in police cells.<sup>86</sup>

11.119 The Queensland Government said it would give priority to additional funding for the development of community-based alternatives to detention centres. The *Bail Act 1980* was being reviewed by the Queensland Law Reform Commission. Evidence to the Committee in Cairns was that juveniles remained in the Watch-house for days because the Department of Family Services could not find places for them.<sup>87</sup>

---

<sup>83</sup> *NT Annual Implementation Report, p34*

<sup>84</sup> Katherine Regional Aboriginal Legal Aid Service Inc, Exhibit No. 39

<sup>85</sup> Informal discussions, Central Australian Aboriginal Legal Aid Service  
*Northern Territory Annual Implementation Report, p34*

<sup>86</sup> *Queensland Annual Implementation Report, p256*

<sup>87</sup> Informal discussions, Queensland Police Service, Cairns

11.120 The Committee was told of the detention of a young boy from Thursday Island picked up in Cairns on a warrant. The boy was held in the Cairns Watch-house for two weeks before the Aboriginal Legal Service became aware that the boy had been in custody.<sup>88</sup>

11.121 The Committee was also told of a disturbing case involving the failure of Queensland Police to appropriately deal with a young indigenous person. A 12 year old female was picked up by the police and held in custody, because she refused to step onto the footpath after being asked by police to do so. This indicates a failure by the Queensland Police to adequately consider alternatives when handling young indigenous people. Her father, Mr Tiga Bayles recalled:

*A 12 year old juvenile, a young female, was pinched. They could have dealt with it. Now why was she pinched? She did not step onto the footpath when the policeman told her so. Technically she in the wrong; she was told to move out of the way.*

*Another young Aboriginal was lying face down, handcuffed...waiting to be put into a wagon. My daughter stepped in and said, 'What are you doing? Why is he being taken away?' They said, 'Listen, you get on the footpath'. She refused. They grabbed her by the shoulders and wanted to move her over. She swung around and tried to break free of the police. With that you are in the wagon, too. She looks like she is 14 or 15. She is 12 years old. She was taken to the police station and then they realised she was only 12 years old.<sup>89</sup>*

11.122 Mr Bayles expressed further concerns about police handling of the matter. He said that he had spent time trying to locate his daughter, and after finding her, waited three hours before she was released. The following morning, he went with his daughter to the Children's Court:

*The Police tried to say there was no record of her having been taken to the police watch-house. She had her bail form on her and said, 'Here, I didn't pick this up in the rubbish bin'. So they had to acknowledge that she was detained. The Police did not have any file or brief on her. They could not deal with the case; it had to be remanded. The following week they still came with no file, no brief whatsoever.<sup>90</sup>*

11.123 The Western Australia Annual Implementation Report stated that holding juveniles in police lock-ups was kept to a minimum and delays in transferring

---

<sup>88</sup> Njiku Jowan Legal Service, evidence p625

<sup>89</sup> Evidence, p643

<sup>90</sup> Evidence, p644

juvenile remandees from non-metropolitan areas to the Juvenile Remand Centre were kept to a minimum.<sup>91</sup>

11.124 The Annual Implementation Report also said that police orders require that parents and Juvenile Justice Officers should be notified immediately a juvenile is detained. In the case of an Aboriginal or Torres Strait Islander youth, members of the Aboriginal Visitors scheme were contacted. The use of Court Attendance Notices should ensure that juveniles are not detained in police lock-ups.<sup>92</sup>

11.125 While the Western Australian Government's response suggested that some precautions were being taken to prevent young Aboriginal people from being taken into custody, the Committee does not regard the response as adequate and reassuring. During the Committee's visit to Western Australia, it was told a number of times that young people are taken from rural areas in the Goldfields Region to Longmore Remand Centre in Perth and held for long periods until their cases came before the courts. They would then be returned to their communities for the court hearing.<sup>93</sup> The Committee believes that there is an urgent need for the Western Australian Government to provide youth bail hostels or family custody alternatives to minimise separation of young indigenous people from their families and communities.

11.126 The ALS of WA claimed that amendments to the *Bail Act* were exacerbating the detention of young indigenous people and that this was contrary to the intent of the Royal Commission recommendations. The amended *Bail Act* had resulted in three significant changes affecting young people:

- . *it takes away the right for young people to get personal bail. Young persons under the age of 17 will not be released on bail unless there is a responsible adult to sign an undertaking;*
- . *bail is not available at all to young persons who are alleged to have committed a serious offence while on bail for another serious offence; and*
- . *there are increased bail conditions such as curfews.*<sup>94</sup>

11.127 The ALS of WA sought statistics on the number of young people denied and granted bail since the amendments came into operation at the end of February 1994. The statistics were unobtainable from the Ministry of Justice, however, other

---

<sup>91</sup> *Western Australia Annual Implementation Report*, p132

<sup>92</sup> *Western Australia Annual Implementation Report*, p132

<sup>93</sup> Informal discussions, Yamatji Ngura Incorporated, Kalgoorlie, Evidence, p182

<sup>94</sup> Aboriginal Legal Service of Western Australia, evidence, pS621

figures provided by the Ministry showed that a juvenile muster at Longmore Remand Centre for the week ending 18 March 1994 was the highest muster since 1 July 1993.<sup>95</sup>

11.128 The ALS of WA report to the Western Australian Government, *Striving For Justice*, highlighted that without any Aboriginal youth bail hostel in the state, the amendments to the *Bail Act* were likely to discriminate against those juveniles without family ties and those living transitory lifestyles.<sup>96</sup>

11.129 The Committee shares the concern of the ALS of WA and considers that the treatment of young Aboriginal and Torres Strait Islander people in Western Australia is totally unsatisfactory.

11.130 The Committee recommends that:

**the Prime Minister, through the Council of Australian Governments seek undertakings from the Western Australian Government that prolonged and unnecessary detentions of young Aboriginal and Torres Strait Islander people be discontinued. (Recommendation 87)**

11.131 The South Australian Government Annual Implementation Report claimed that Recommendation 242 had been practice in South Australia for many years. Emergency and bail accommodation options are being established.<sup>97</sup>

11.132 The NSW Annual Implementation Report stated that the laws regarding the detention of juveniles in police cells are set out in Section 9, *Children (Detention Centre) Act 1987*. Informal juvenile holding homes have been established at Redfern (youth bail hostel) and Bourke (rural training centre).<sup>98</sup> The Youth Bail Hostel at Redfern, which has now ceased operating, is discussed at paragraph 11.143.

---

<sup>95</sup> Aboriginal Legal Service of Western Australia, evidence, p 621

<sup>96</sup> Aboriginal Legal Service of Western Australia, *Striving For Justice* A Report to the Western Australian Government on the Implementation of the Royal Commission into Aboriginal Deaths in Custody

<sup>97</sup> *South Australian Annual Implementation Report*, p132, 165

<sup>98</sup> *NSW Annual Implementation Report*, p178

11.133 The Committee's attention was drawn to the treatment of a 17 year old Aboriginal youth charged with urinating on a policeman's lawn in a NSW town.<sup>99</sup> His lawyer said that he:

*has spent 20 hours in custody and has been dragged to court across many kilometres of winding country road in handcuffs in the back of a wagon holding on to the internal wire mesh so that he did not fall and injure himself.*

11.134 The court was told that despite a Royal Commission recommendation that juveniles should only be detained in 'exceptional circumstances', an impossible bail of \$1000 cash had been imposed. Normally a court attendance notice is issued to defendants instead of bail being required.

11.135 When the youth appeared in Dubbo Children's Court his lawyer asked the magistrate to 'send a clear message to the town's police in relation to this matter'. He said they had 'abused their power' and the 'processes of the court' and that the refusal of bail was 'small-minded' and 'vindictive'. The magistrate said a court attendance notice would have been 'more appropriate' and dismissed the charge.<sup>100</sup>

11.136 It is clear that the implementation of recommendations concerning Aboriginal youth, such as 242, is still very poor in some areas of New South Wales and that supervision by senior police managers is inadequate.

11.137 The Committee believes that there is an urgent need for statistical data to be collected across Australia on the use of bail as an alternative to police custody. This would allow evaluation of the implementation of Recommendation 242. This data should be made public.

#### Alternative Accommodation - Youth Bail Hostels

11.138 Although the Royal Commission stressed the need for alternative accommodation for young Aboriginal people taken into custody by police there is currently only one Aboriginal youth bail hostel operating in Australia. This is at Alice Springs (See paragraph 11.145-150). An allocation of \$6.46m over five years as part of Royal Commission funding was made available for bail accommodation facilities throughout Australia.

11.139 A Youth Bail Hostel was established in Brisbane during 1992-93 with an ATSI grant of \$755,000. The Queensland hostel, known as the D B Walker Lodge was a 25-bed, culturally appropriate, alternative facility to accommodate young Aboriginal people on bail.

---

<sup>99</sup> South Eastern NSW Indigenous Regional Council, ATSI, evidence, pp1287-8

<sup>100</sup> Chris Murphy, *Sun-Herald*, 21 August 1994, p13

11.140 The South East Queensland Indigenous Regional Council told the Committee that the DB Walker Lodge was now closed. The Brisbane Tribal Council, had gone into liquidation and the premises were subsequently sold for \$400,000.

11.141 The Committee is very concerned that a valuable indigenous community asset has been closed and no support or substitute facilities have been provided to divert young indigenous people from custodial environment.

11.142 The loss of the only youth bail hostel in Queensland was a real concern for Aboriginal organisations. The Piabun Aboriginal Corporation told the Committee there was a desperate need to find alternative accommodation facilities for young indigenous people:

*If you look at what we have here you will see that, overall, we have not got accommodation or shelter for those children when they are on remand - we have nothing....*

*In Brisbane alone, we do not have one refuge. We do not have the money to cover those areas, to cover homeless children and to help children who are on alcohol and drugs. .... We need to see that in future these children are taken care of. It is part of our culture to take care of the children and our youth, but none of these issues have been taken care of.<sup>101</sup>*

11.143 The Committee was informed that juveniles taken into custody in Cairns were being kept in the Watch-house because there was no alternative accommodation. Children remain in the Watch-house if the Department of Family Services is uncontactable as is the case after hours and on weekends or when it cannot find alternative accommodation.<sup>102</sup> While attempts are made to contact the family of a child to arrange bail, there are many situations where there is no parent or anyone else into whose custody the child can be bailed. The Department of Family Services is contacted and decides whether the child is placed in alternative care. If a child is to remain in custody, she or he will be placed at Cleveland Hospital in Townsville, at Wilston in Brisbane or the child can be held in a special section set aside in the Cairns Watch-house for juveniles.<sup>103</sup>

11.144 Funds were provided through the Sydney ATSIC Regional Council to establish Jaapalpa youth bail hostel with supplementary funds provided by the State Government. Jaapalpa was the only youth bail hostel throughout New South Wales and was funded under the ATSIC program. Problems have been experienced in the

---

<sup>101</sup> Evidence, p 653

<sup>102</sup> Informal discussions, Queensland Police Service, Cairns

<sup>103</sup> Informal discussions, Queensland Police Service, Cairns

ongoing operations of Jaapalpa<sup>104</sup> and it is currently closed, pending a review of the operations of the hostel.

11.145 Young indigenous people taken into custody in Wilcannia are transported to Broken Hill<sup>105</sup> while Aboriginal youth taken into custody in Dubbo are transferred to Sydney. This is due to a lack of appropriate facilities in those areas.

11.146 The Committee visited Arende House, the youth bail hostel in Alice Springs. The hostel is run by the Central Australian Aboriginal Child Care Agency with the support of the ATSIC Regional Council, the Alice Springs community and the Northern Territory Government.<sup>106</sup>

11.147 The Committee was told that the facility had been branded by some as a detention centre, however, it was stressed by the management, this was not the case.<sup>107</sup> Due to the building's previous use as a youth detention centre many parents were reluctant to visit their children at the centre.

11.148 Staff at Arende House recommended that separate facilities should be provided for children under the care of the Welfare Department rather than being placed with children on bail.<sup>108</sup>

11.149 Another concern expressed by the staff at Arende House is the inadequate funding provided by the Northern Territory Government to care for welfare cases placed with the hostel.<sup>109</sup> The Northern Territory Government was not meeting the obligation to fund children under its care. The Committee is concerned that ATSIC funding is being used to pay for welfare services that should be provided by the Northern Territory Government.

11.150 Another matter of concern is the funding cutbacks by ATSIC to Arende Youth Bail Hostel. The staff at Arende House were uncertain of the full impact of the funding reduction. However, there was only sufficient funds to cover the wages of workers. Additional funds were required to cover the appointment of more staff to supervise the increased numbers of children sent to the centre and to cover the costs of providing food and other basic necessities.<sup>110</sup>

---

<sup>104</sup> Evidence, p1229

<sup>105</sup> Informal discussions, Aboriginal Legal Service and Ngarrapaana CDEP, Wilcannia

<sup>106</sup> *Commonwealth Implementation Annual Report*, Vol 1, p191

<sup>107</sup> Informal discussions, Central Australian Aboriginal Child Care Association

<sup>108</sup> Informal discussions, Central Australian Aboriginal Child Care Association

<sup>109</sup> Informal discussions, Central Australian Aboriginal Child Care Association

<sup>110</sup> Informal discussions, Central Australian Aboriginal Child Care Association

11.151 The Committee was told that there was no remand centre in Alice Springs. If a juvenile is held in custody he or she will either get sent to the Alice Springs gaol or placed in the women's section of the police watch house.<sup>111</sup>

11.152 South Australia has yet to establish a youth bail hostel although the need for a hostel has been identified for some time as a means of reducing Aboriginal remand numbers.<sup>112</sup> Funding has been secured from ATSIC through the Aboriginal Child Care Agency to develop and run two youth bail hostels. The Hostels in Adelaide and Port Augusta are expected to open in early 1995. However, the Committee cannot understand why ATSIC should provide funds for the establishment of these facilities given that they are a state responsibility.<sup>113</sup>

11.153 The Western Australian Government has yet to establish a youth bail hostel. The Committee was informed by the Chair of the ATSIC Regional Council in Kalgoorlie, that negotiations were underway to provide a youth bail hostel in the Kalgoorlie-Goldfields region. Although endorsement of the project had been given by the Western Australian Government, complications arising from divisions between the Department of Community Services and the Ministry of Justice had delayed the opening of the hostel. A consultancy firm was currently negotiating the terms and conditions for the establishment of the bail hostel.<sup>114</sup>

11.154 The Committee was told that, in the absence of any youth bail accommodation in Western Australia, young Aboriginal and Torres Strait Islander people taken into custody and detained are placed in Longmore Remand Centre in Perth.<sup>115</sup>

11.155 The Committee is appalled at the general lack of alternate youth bail accommodation facilities for Aboriginal and Torres Strait Islander youth. It is totally inadequate for Australia to currently have only one Aboriginal youth bail hostel. Far greater commitment must be given by all state and territory governments to provide adequate youth bail hostel accommodation and this should be regarded as a high priority area for implementation. This is a particularly acute example of the mismatch between government's support for a recommendation and government's inadequate commitment to the implementation of the Recommendation.

---

<sup>111</sup> Informal discussions, Central Australian Aboriginal Child Care Association

<sup>112</sup> Informal discussions, Professor Elliot Johnston

<sup>113</sup> Informal discussions, Professor Elliot Johnston

<sup>114</sup> Evidence, p193, p221,

<sup>115</sup> Evidence, pp181-3

11.156 The Committee recommends that:

**the Prime Minister, through the Council of Australian Governments, gain undertakings from state and territory governments to provide bail accommodation for Aboriginal and Torres Strait Islander youths. (Recommendation 88)**

## CHAPTER 12

### OTITIS MEDIA

12.1 An issue that received particular attention during the inquiry was the incidence of Otitis Media among Aboriginal and Torres Strait Islander children. An article by Juanita Sherwood in the *Aboriginal and Islander Health Worker Journal*, gave the following information on the nature of Otitis Media (OM):

*OM is generally brought on by a cold, flu or chest infection. The infection causes the eustachian tube (the tube that connects the ear to the nose) to swell up. This stops the normal drainage and ventilation of the middle ear. The middle ear space then becomes full of fluid. This reduces the conduction of sound waves through the middle ear to the inner ear where the sound is picked up by the brain. Therefore the child's hearing will be reduced and this is called a conductive hearing loss (CHL).*

*OM is a common childhood disease that touches many children at least once in their life time. However, chronic OM is a disease that affects most Aboriginal children and leaves scars not just on their eardrums but on their language, literacy acquisition, self-esteem, schooling and post-education and life-opportunities.<sup>1</sup>*

12.2 Although no specific recommendations were made by the Royal Commission in relation to Otitis Media, the discussion leading to Recommendation 72 makes mention of hearing impairment among some of those Aboriginal people who died in custody.

12.3 The Royal Commission was concerned about the effects of truancy on Aboriginal children, pointing out that this has sometimes acted as a point of introduction into the welfare and juvenile justice systems.<sup>2</sup> Recommendation 72 of the Royal Commission states:

*That in responding to truancy the primary principle to be followed by government agencies be to provide support, in collaboration with appropriate Aboriginal individuals and*

---

<sup>1</sup> *The Management of Children with Otitis Media*, Aboriginal & Islander Health Worker Journal, Vol 17, No. 4, July/August 1993, p15

<sup>2</sup> *RCIADIC, National Report*, Vol 2 p366

*organizations, to the juvenile and to those responsible for the care of the juvenile; such support to include addressing the cultural and social factors identified by the juvenile and by those responsible for the care of the juvenile as being relevant to the truancy.*<sup>3</sup>

12.4 In considering this recommendation the Royal Commission's *National Report* canvassed some of the issues in relation to the non-attendance of Aboriginal children at school:

*not being able to hear or understand what a teacher is saying; not understanding the subject; being homesick or ill; not being able to keep up with other students; and inappropriate punishments.*<sup>4</sup>

12.5 During this inquiry the Committee paid considerable attention to the issue of hearing loss due to Otitis Media (OM). This is a condition that is extremely prevalent in most Aboriginal and Torres Strait Islander communities. The Committee believes that it has not been seriously addressed by governments to understand the causes of the disease through research and also to put in place programs to address the problem.

12.6 The Royal Commission into Aboriginal Deaths in Custody outlined the importance of this issue, which the Committee believes is worth quoting at length.

*The effects of hearing impairment on educational achievement is commented on in several of the cases including Graham Walley, Clarence Nean, Craig Karpany and the young man who died at Elliot. ...*

*At Cherbourg the Commission heard that 'a good percentage' of school children had hearing problems. In the majority of cases such problems are the result of middle ear infections caused by poor living conditions.*

*Ear diseases such as Otitis Media have a significant effect on educational performance, and therefore on a child's self-esteem, as was found to be the case with Graham Walley. Walley's hearing impairment*

*would have added to his problems because it has a compounding effect ... of reducing self-esteem and seeing himself very negatively ... certainly it would have been a*

---

<sup>3</sup> RCIADIC National Report, Vol. 2, p368

<sup>4</sup> RCIADIC National Report, Vol 2, p364

*factor in poor behaviour.*

*According to file minutes presented to the Commission: 'His ability to be able to express himself very ably in written language and his inability to express himself in spoken language can be directly attributed to his hearing problem'.*

*Clarence Nean similarly had a lifelong problem with his ears, a situation which, as Commissioner Wootten reports, was widespread amongst the Aboriginal population of New South Wales:*

*The experience of Clarrie Nean is a reminder of how much many young Aboriginal people have been handicapped by health problems. All his life he suffered from ear problems which are notorious as possible reasons for poor performance of children at school. The Superintendent of the Aborigines Welfare Board wrote in 1958 that many children were brought to Sydney repeatedly for treatment of a similar condition and very little if any success had been achieved in any of the cases. ...*

*Hearing problems may account for some of the classroom social activity which has been identified as specifically Aboriginal - such as peer-teaching - and which also has the potential to be interpreted as disruptive and punishable. Cathy Evermore notes*

*the use that hearing impaired children make of other children (often seated adjacent) to 'translate'. In a conventionally structured class situation, such translation is likely to be interpreted by teachers as disruptive behaviour, but the removal of this resource can disadvantage a child's progress.<sup>5</sup>*

12.7 The Royal Commission also commented on the educational implications for children in the Northern Territory:

*Up to half of the children in any classroom cannot hear their teacher properly. Such impairments result in significant delays in the development of speech, language and cognitive skills, to reduced learning abilities, and subsequently to poor educational achievement. Amplification is or has been used at Nguiu, Pularumpi, Yuendumu, Yipirinya and Lajamanu Aboriginal schools, where reported effects have included:*

---

<sup>5</sup> RCIADIC, National Report, Vol2, p351-352

- . improved listening skills;
- . faster, more confident and more appropriate responses to verbal instructions;
- . improvement in spoken English;
- . greater participation in classroom activities;
- . improved speech discrimination skills.

*Auditory discrimination ability is associated with the development of the basic skills that are essential to success at school.*<sup>6</sup>

12.8 Evidence around Australia yielded varying estimates of the proportion of Aboriginal and Torres Strait Islander children with hearing impairment due to Otitis Media. Estimates ranged from around 70% to 98% with rural areas being slightly higher than urban areas. Juanita Sherwood said:

*Its prevalence amongst Aboriginal people in Australia is ten times greater than for non-Aboriginal Children. Little is known about the true causes of this disease amongst Aboriginal communities or its cure, although research is currently being undertaken to investigate many of the factors thought to contribute to its development. It is the considered opinion of myself that most of the causes usually nominated (eg hygiene, living conditions etc) amount to blaming the victim, and the real cause is the low immunity levels of so many Aboriginal people.*<sup>7</sup>

12.9 This view was supported by Ms Linda Burney, President of the New South Wales Aboriginal Education Consultative Group in evidence given at a public hearing in Sydney:

*In New South Wales, as well as many other places in this country, we know—it is not estimation—that between 75 per cent and 80 per cent of any classroom of Aboriginal students will have this particular condition. It is not only about a health problem, it is also about an education problem and, taking it one step further, it is also about life chances. In a survey that was carried out in New Zealand, which looked at the same issue that you are looking at—and that is, incarceration of Aboriginal people—it was found that most Maori prisoners had, in fact, suffered this disease as a child. That is actually a documented research.*

---

<sup>6</sup> RCIADIC, *National Report*, Vol 2, p352-353

<sup>7</sup> *The Management of Children with Otitis Media*, Aboriginal and Islander Health Worker Journal, Vol 17, No 4, July/August 1993, p15

*There is no known reason or cause as to how it happens or why it happens. It does not appear to be related necessarily to housing conditions, although it may be. It appears that there is a different epidemiology for Aboriginal people than there is for non-Aboriginal people. That is about the extent of my medical knowledge of the problem. However, our group has identified it as one of our major priorities because it affects not only listening and therefore literacy acquisition but also language acquisition. It affects the way in which a young person gets through infant school and primary school without the basic education, probably resulting in exiting high school at the age of 14 or 15. What we are actually talking about is a massive health problem and a massive educational problem. I can guarantee you, although we have no proof of it, that it has got a lot to do with the high attrition rate of Aboriginal students.<sup>8</sup>*

12.10 In a submission to the Royal Commission, the then Commonwealth Department of Community Services and Health, National Acoustic Laboratories, estimated that between 25% and 50% of the 7,500 Aboriginal school children in Northern Territory Aboriginal Schools had a hearing loss caused by chronic Otitis Media. Based on evidence presented to the Committee, this would appear to be a conservative estimate, as it was often quoted that the incidence of Otitis Media was between 80% and 98%.

12.11 During the course of the Committee's inquiry into the effectiveness of the Commonwealth's Access and Equity Strategy in relation to Aboriginal and Torres Strait Islander peoples, the Committee received evidence from Sister Liz Wilmot from the Durri Aboriginal Corporation Medical Service in Kempsey, New South Wales. Sister Wilmot indicated that 95-98% of the children in the Kempsey area had hearing impairment due to Otitis Media.<sup>9</sup>

12.12 It is not within the scope of this report to deal with this issue in great detail. However, it is of serious concern to the Committee that the incidence of Otitis Media in Aboriginal and Torres Strait Islander children remains alarmingly high. At the same time, many schools are poorly prepared to expect hearing impairment, to arrange screening and to implement appropriate teaching methods. Primary screening for hearing impairment should take place prior to pre-school.

12.13 The nature of the disease will not be covered in depth in this report. The Committee is most concerned about the educational and welfare implications of the resultant hearing impairment for Aboriginal and Torres Strait Islander children.

---

<sup>8</sup> Evidence p 1108-1109

<sup>9</sup> Inquiry into the effectiveness of the Commonwealth's Access and Equity Strategy in relation to Aboriginal and Torres Strait Islander people. Exhibit 27, letter from Sister Liz Wilmot, Durri Aboriginal Corporation Medical Service, on hearing problems in children.

As Sherwood points out:

*Simply put, if children cannot hear well they are going to have difficulties in the classroom environment, as most learning in the classroom situation is based largely on being able to listen effectively.*

*Children must be able to understand the spoken word, which is standard English, in order to learn how to read and write. If children have not been able to develop listening skills, they will have difficulties in auditory processing and understanding where the information is coming from.*

12.14 Specific problems are listed by Sherwood, these including reduced audition (the power of hearing), impaired auditory acuity (sharpness of hearing) selective attention, reduced recall and comprehension and delayed speech development. Sherwood also points out the effects of hearing loss on a child at school:

*Children who have otitis media will probably suffer with a conductive hearing loss. This loss can fluctuate from one day to the next, from not hearing well to not hearing at all, and may be present in only one ear or both. For most children the hearing loss occurs for only a short time. Fortunately, the educational impact is only minimal, and easily remedied. Children who have losses that occur regularly will have affected language development, listening skills, thinking skills, and general communication and learning difficulties.*

*For those children who have suffered from chronic otitis media in their first year of life, there will be an interruption in the way that they develop the basic skills of localising sounds, discriminating important sounds from others, and how to use those sounds to communicate. They will respond by using incorrect sounds, or miss out on sounds altogether because they have not heard them. Thus, these children will be dealing with a language delay that will impact on normal language development.*

12.15 The Committee believes that there must be an integrated approach to prevention, screening, and treatment of Otitis Media at all levels of government. Further, education authorities need to be more proactive and expect that most Aboriginal and Torres Strait Islander students will have a hearing loss. Schools must be able to have affected children identified quickly so that teachers can minimise the disadvantage these children experience.

12.16 It should also be stressed that priority be given to the recognition and acceptance of Aboriginal and Torres Strait Islander methods of treating the disease. Too often 'European' ways are considered the only means of treatment with no consideration of 'traditional' methods.

12.17 The Committee also understands that a national conference on the education implications of Otitis Media and resulting hearing loss in Aboriginal and Torres Strait Islander children was held in Alice Springs in August 1994. The proceedings of this conference were unavailable at the time of printing this report, however the Committee welcomes a national approach to discussion on Otitis Media whereby states and territories can discuss different approaches to the identification and treatment of the disease.

12.18 The Committee recommends that:

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

- . develop an integrated approach to the prevention, screening and treatment of Otitis Media; (Recommendation 89)
- . have schools better prepared to deal with the hearing impairment of Aboriginal and Torres Strait Islander children. (Recommendation 90)

Garrie Gibson MP  
*Chairperson*

Marjorie Henzell MP  
*Sub-committee Chair*

17 November 1994



## APPENDIX 1

### Submissions

---

Submission No.	Body/Organisation
1	Far North Coast Regional Aboriginal Land Council Lismore, NSW
2	Ms Cherie Imlah Bardon, Qld
3	Yvonne & Jim Duffield Beechboro, WA
4	Attorney-General's Department Canberra, ACT
5	Michael Meadows Queensland University of Technology Brisbane, Qld
6	Department of Human Services and Health Canberra, ACT
7	Aboriginal Development Foundation for Sport & Recreation (WA) Inc., Perth, WA
8	International Commission of Jurists, Australian Section - WA Branch, Perth, WA
9	Jeremy Jones Darlinghurst, NSW

- 10                   Tharpuntoo Legal Service Aboriginal Corporation,  
Cairns, Qld
- 11                   National Committee to Defend Black Rights,  
Perth, WA
- 12                   Department of Tourism,  
Canberra, ACT
- 13                   Aboriginal and Torres Strait Islander Overview  
Committee - Aboriginal Deaths in Custody,  
Brisbane, Qld
- 14                   National Indigenous Media Association of Australia  
(NIMAA), Brisbane, Qld
- 15                   Aboriginal & Torres Strait Islander Commission  
Canberra, ACT
- 16                   Aboriginal Legal Service of Western Australia Inc.  
Perth, WA
- 17                   Aboriginal Arts Management Assoc Inc.  
Surry Hills, NSW
- 18                   Australian Institute of Criminology  
Canberra, ACT
- 19                   Aboriginal Hostels Limited  
Canberra, ACT
- 20                   Department of Foreign Affairs  
Canberra, ACT
- 21                   Aboriginal Education Consultative Group (AECG)  
NSW Inc.  
Sydney, NSW

- 22 Department of the Prime Minister and Cabinet  
Canberra, ACT
- 23 Ms Faff Chandler  
Yeppoon, Qld
- 24 Victorian Aboriginal Youth Sport and Recreational  
Co-operative Limited  
Collingwood, Vic
- 25 Trevor Close  
Bathurst, NSW
- 26 Department of Employment, Education and  
Training, Canberra, ACT
- 27 National Tertiary Education Industry Union  
South Melbourne, Vic
- 28 Department of Primary Industries and Energy  
Canberra, ACT
- 29 NSW State Government  
Sydney, NSW
- 30 PA & B Reader  
Armidale, NSW
- 31 D W McLeod, OAM  
South Guildford, WA
- 32 Aboriginal and Torres Strait Islander  
Social Justice Commissioner  
Canberra, ACT

- 33 Danila Dilba Medical Service  
Darwin, NT
- 34 Australian Education Union  
Melbourne, Vic
- 35 Tharpuntoo Legal Service Aboriginal Corporation  
Cairns, Qld  
*Supplementary Submission (1)*
- 36 South Australian Government  
Adelaide, SA
- 37 Elizabeth Gordon  
Kowanyama, Qld
- 38 Richard Buchhorn  
West End, Qld
- 39 Aboriginal Deaths in Custody Watch Committee  
Broadway, NSW
- 40 Central Land Council  
Alice Springs, NT
- 41 Northern Territory Government  
Darwin, NT
- 42 State Government of Western Australia  
Perth, WA
- 43 Dr Morris Weltman  
Smithfield Heights, Qld
- 44 Aboriginal and Torres Strait Islander Commission  
Canberra, ACT  
*Supplementary Submission (1)*

- 45 Aboriginal and Torres Strait Islander  
Overview Committee  
Brisbane, Qld  
*Supplementary Submission*
- 46 Attorney-General's Department  
Canberra, ACT  
*Supplementary Submission*
- 47 Department of Human Services & Health  
Canberra, ACT  
*Supplementary Submission*
- 48 North Australian Aboriginal Legal Service  
Darwin, NT  
*Supplementary Submission*
- 49 Aboriginal Legal Service Ltd  
Redfern, NSW
- 50 Aboriginal Legal Service  
Wagga Wagga, NSW
- 51 Central-Southern Aboriginal Corporation  
for Management and Accounting Services  
Wagga Wagga, NSW
- 52 Sansbury Association Inc.  
Adelaide, SA
- 53 Aboriginal Sobriety Group of SA Inc.  
Adelaide, SA
- 54 Aboriginal and Torres Strait Islander Commission  
Canberra, ACT  
*Supplementary Submission (2)*

- 55 Department of Administrative Services  
Canberra, ACT
- 56 Australian Capital Territory Government  
Canberra, ACT
- 57 The Watch Committee  
Brisbane, Qld
- 58 Ms J Crawshaw  
Menzies School of Health Research  
Darwin, NT
- 59 Department of Housing and Regional Development  
Canberra, ACT
- 60 Raffaella Galati-Brown &  
Gary Foley  
Northland Secondary College Supporters  
Melbourne, Vic
- 61 NSW Aboriginal Justice Advisory Committee  
Sydney, NSW
- 62 Lin Morrow & Andrew Dunstone  
Brisbane, Qld
- 63 FATSIL  
Aboriginal and Torres Strait Islanders Corporation  
of Languages  
Brisbane, Qld
- 64 Institute of Aboriginal Development Inc.  
Alice Springs, NT
- 65 *Confidential Submission*

- 66 Tharpuntoo Legal Service Aboriginal Corporation  
Cairns, Qld  
*Supplementary Submission (2)*
- 67 NSW Police Service  
Sydney, NSW
- 68 NSW State Government  
Sydney, NSW  
*Supplementary Submission*
- 69 Queensland Police Service  
Brisbane, Qld
- 70 Mookai Rosie-Bi-Bayan  
(Aboriginal & Torres Strait Islanders Corp.)  
Smithfield, Qld
- 71 Deakin University  
Geelong, Vic
- 72 John Walker  
Canberra, ACT
- 73 NSW Department of Courts Administration  
Sydney, NSW
- 74 National Aboriginal Youth Law Centre  
Darwin, NT
- 75 ACT Government  
Canberra, ACT  
*Supplementary Submission*
- 76 Human Rights & Equal Opportunity Commission  
Canberra, ACT  
*Supplementary Submission*

- 77 National Committee to Defend Black Rights,  
Perth, WA  
*Supplementary Submission*
- 78 ATSIIC  
Canberra, ACT  
*Supplementary Submission (3)*
- 79 ATSIIC  
Canberra, ACT  
*Supplementary Submission (4)*
- 80 Western Aboriginal Legal Service Ltd  
Broken Hill, NSW
- 81 *Confidential Submission*

## APPENDIX 2

### Public Hearings Held and Witnesses Heard

---

5 MAY 1994 - CANBERRA, ACT

#### Aboriginal and Torres Strait Islander Commission

HANRAHAN, Mr A	Manager, Legal Aid and Social Justice Branch
KENT, Mr R	Assistant General Manager, Health and Community Development Branch
PLOWMAN, Mr C	Assistant General Manager, Community Services Branch
RAMSAY, Mr J	Assistant General Manager, Economic Development Policy Branch
REES, Mr G	Deputy Chief Executive Officer
SCHNIERER, Mr P	Assistant General Manager, Strategic Development Unit
SHERGOLD, Dr P	Chief Executive Officer
STOREY, Ms H	Assistant General Manager, Economic Programs Branch
WHITE, Mr M	Assistant General Manager, Social Justice Branch
WISDOM, Mr S	Manager, Royal Commission Government Response Monitoring Unit

#### Attorney-General's Department

McDONALD, Mr G	Acting Senior Adviser, Criminal Law Reform Unit
----------------	---

REABURN, Mr J

Deputy Secretary

**Department of Human Services and Health**

ALLNUTT, Mr R

Director, Projects, Administration  
Section

HALTON, Ms S

Assistant Secretary, Strategic  
Development Branch

KENNEDY, Mr J

Director, Health Development  
Section

LIPSCOMBE, Mrs J

Assistant Secretary, Workforce  
Policy Branch

LOY, Dr J

First Assistant Secretary, Health  
Advancement Division

MATHERS, Dr C

Head, Health Monitoring Division,  
Australian Institute of Health and  
Welfare

POWALL, Ms M

Assistant Secretary, Health  
Development Branch

SCOTT, Ms M

Principal Adviser, Public and  
Environmental Health Branch

**23 MAY 1994 - BROOME, WA**

**Aboriginal Legal Service of WA Inc.**

ARCHER, Mr P

Solicitor

CLEMENTS, Mrs F

Court Officer

STAGG, Mr K

Court Officer

**Kimberley Aboriginal Medical Services Council**

COOK, Ms K

Health Educator, Milliya Rumurra  
Alcohol Rehabilitation Centre

COX, Mr K Director

MELLICK, Mr R Script Writer and Theatre Director,  
Health Promotions Unit

MURRAY, Dr R Medical Director

Broome Aboriginal Media Association

WEST, Ms D Broadcaster Trainer/Manager

24 MAY 1994 - KARRATHA, WA

Aboriginal Legal Service of WA Inc.

DWYER, Mr D Solicitor

KENNEDY, Ms M Court Officer

Roebourne Workers Aboriginal Corporation

SIMMONS, Mr D Coordinator

25 MAY 1994 - KALGOORLIE, WA

Aboriginal Legal Service of WA Inc.

BURKENHAGEN, Mr A Court Officer

COOKE, Mr G Tjukurla Aboriginal Community

HUNTER, Mr D Solicitor

STUBBS, Mr M Court Officer

THOMAS, Mrs D Court Officer

**Aboriginal Health Service**

DUNN, Mr D	Medical Director, Bega Garnbirringu Health Service
SHAW, Mr A	Acting Director

**Aboriginal and Torres Strait Islander Commission**

FOWLIE, Mr M	Senior Project Officer
FORREST, Mr I	Chairman, Wongatha Regional Council
GRAY, Mr G	Manager, Field Operations
KENNEDY, Mr D	Coordinator, Aboriginal Employment Development Policy
LVERTY, Mr D	Regional Manager
TUCKER, Ms P	Regional Council Support Officer
WAHLERT, Mr A	Senior Project Officer, Western Desert Region

**26 MAY 1994 - PERTH, WA**

**Aboriginal Legal Service of WA Inc.**

AYERS, Miss R	Solicitor
CRAWFORD, Ms C	Principal Legal Officer
RILEY, Mr R	Acting Chief Executive Officer

**Deaths in Custody Watch Committee**

COOKE, Mr A	Chair
JOHNSON, Mr B	Member
MALLOTT, Ms K	Executive Officer

Private citizen

ISAACS, Mr C

Koondoola, WA

27 MAY 1994 - PERTH, WA

Aboriginal and Torres Strait Islander Commission

BACHMAN, Mr R

Manager, Social Policy and  
Coordination

HANSEN, Mrs L

Principal Policy Officer, Community  
and Youth Support, Women's Issues  
and Sport and Recreation

JONES, Mr H

Senior Project Officer, Law and  
Justice and Royal Commission into  
Aboriginal Deaths in Custody

MACKIN, Mr P

State Manager

MAGILL, Mr M

Manager, Economic Branch

SANTEN, Mr R

Commercial Officer, State  
Commercial Unit

WILLIAMS, Mr R

Acting Regional Manager

Western Australian State Government

DAUBE, Mr M

Chairman, Task Force on Aboriginal  
Social Justice

FITZGERALD, Dr R

Executive Director, Strategic and  
Specialist Services, Ministry of  
Justice

GRANT, Mr D

Director General, Ministry of Justice

HUNT, Ms S

Principal Policy Officer, Aboriginal  
Affairs Planning Authority

KATICH, Mr V	Acting Chief Superintendent Community Services, Police Force of Western Australia
LARKINS, Mr K	Chief Executive Officer, WA Alcohol and Drug Authority
WYATT, Mr C	Chief Executive, Commissioner, Aboriginal Affairs Planning Authority

**2 JUNE 1994 - CANBERRA, ACT**

**Department of Employment, Education and Training**

BOEKEL, Mr C	Acting Director, Policy and Coordination, Aboriginal Employment Strategies Branch
BUCKSKIN, Mr P	Assistant Secretary, Postcompulsory and Aboriginal Education
DOBOV, Ms R	Assistant Secretary, Student Assistance Branch
BUTLER, Ms S	Assistant Secretary, Employment Assistance Australia
DOUGLAS, Mr K	Acting Assistant Secretary, Aboriginal Employment Strategies Branch
HARVEY, Mr B	Assistant Secretary, Youth Bureau
LINDENMAYER, Mr I	Deputy Secretary
McCANN, Mr D	Acting Director, Innovations, Access and Equity Section

**Australian Institute of Criminology**

McDONALD, Mr D	Senior Criminologist and Head, National Deaths in Custody Monitoring and Research Unit
WALKER, Mr J	Senior Criminologist

WARDLAW, Dr G

Acting Director

Department of Primary Industries and Energy

HITCHENS, Mr M

Assistant Secretary, Primary  
Industries and Environment Branch

KINGMA, Dr O

Assistant Secretary, Rural Policy  
Branch

McNEE, Mr A

Senior Executive Officer, Aboriginal  
Rural Resources Initiative Program,  
Bureau of Resource Sciences

NOTHROP, Mr L

Director, Community Landcare  
Initiatives Section

WALKER, Mr R

Assistant Secretary, Community and  
Regional Landcare Policy Branch

20 JUNE 1994 - CAIRNS, QLD

Aboriginal and Torres Strait Islander Commission

CONNOLLY, Mr W

Councillor

LEO, Mr P

Regional Councillor

NICOL, Ms N

Chairperson

Cairns City Council

LAWRENCE, Mr R

Manager, Environmental Health

McKAY, Mr V

Director, Health and Community  
Services

Far North Queensland Families and Prisoners Support Inc.

JACOBS, Miss K

Cell Visitor

OTTO, Mrs V

Coordinator/Administrator

**Peninsula Health Authority**

HUNTER, Dr E

Psychiatrist

PATON, Dr M

Training Fellow in Rural and Remote  
Psychiatry

**Tharpuntoo Legal Service**

BRENNAN, Mr S

Research Officer, Deaths in Custody  
Unit

LAVERY, Mr D

Consultant Coordinator, Deaths in  
Custody Unit

VILLAFLO, Mrs B

Administrator

**21 JUNE - CAIRNS, QLD**

**Njiku Jowan Legal Service**

BULLER, Mr A

Director-Treasurer

HOOLIGAN, Mr D

Director

SINGLETON, Ms E

Administrator

**22 JUNE 1994 - BRISBANE, QLD**

**Brisbane Indigenous Media Association**

HART, Mr V

Librarian

NIDDRIE, Mr N

News Editor

WATSON, Mr R

Manager

WATSON, Mr C

Board representative

**Murrie Watch Committee**

ARNOLD, Mrs J	Board Member
CHAMBERS, Mr C	Coordinator

**National Indigenous Media Association of Australia**

BAYLES, Mr T	Secretary
LEAVY, Mr B	Senior Administration Officer

**Piabun Aboriginal Corporation**

BLACKMAN, Ms V	Board Member
BROWN, Mr N	Member
BUDBY, Ms J	Member
COLLINS, Pastor H	Member
COX, Mr M	Project Coordinator
FISHER, Mr C	Member
JOHNSON, Mr M	Operations Manager
JOHNSON-WALKER, Mrs R	Member
NIELSEN, Mr R	Member
SANDY, Mr L	Member
WHARTON, Mrs B	President

**The Watch Committee (Qld)**

COLEMAN, Ms A	Committee Member
WOODS, Mr C	Interim Chairperson

23 JUNE 1994 - BRISBANE, QLD

**Aboriginal and Torres Strait Islander Commission**

GOODA, Mr M	Acting Deputy State Manager
RICHARDSON, Mr G	Acting State Manager

**Aboriginal and Torres Strait Islander Legal Service**

CARBERRY, Mr T	Senior Solicitor
FINNEY, Mr R	Solicitor and Financial Manager
FOGARTY, Mr L	Member
FOGARTY, Miss N	Member
WATSON, Mr S	Vice President

**Murrie Watch Aboriginal and Torres Strait Islander Corporation**

ARNOLD, Mrs J	Member
BLAIR, Mr N	Acting Manager
CHAMBERS, Mr C	Coordinator

**Queensland Government**

BANHAM, Mr J	Acting Deputy Commissioner, Queensland Police Service
BELL, Mr R	Acting Assistant Divisional Head, Aboriginal and Islander Affairs Division, Dept of Family Services and Aboriginal and Islander Affairs
BYRNES, Mr P	Principal Legal Consultant, Dept of Justice and Attorney-General
EVANS, Mr K	Director, Alcohol and Drug Branch, Queensland Health



PATON, Ms S Senior Adviser, Commonwealth-State Relations, Office of Indigenous Affairs

WILLIAM-MOZLEY, Mr J Special Projects

19 JULY 1994 - ADELAIDE, SA

Aboriginal and Torres Strait Islander Commission

PAXTON, Mr M State Monitoring Officer, Royal Commission into Aboriginal Deaths in Custody Implementation

PREECE, Mr R Acting Deputy State Manager

RIGNEY, Mr M Chairperson

South Australian State Government

AGIUS, Mr T Chief Executive Officer, Aboriginal Health Council, South Australian Health Commission

MARSHMAN, Chief Inspector Acting Officer in Charge, Public Affairs Branch, South Australian Police Department

McHUGH, Mr R Regional Manager, Dept of Environment and Natural Resources

RATHMAN, Mr D Chief Executive Officer, Dept of State Aboriginal Affairs

SMITH, Mrs T RCIADIC Monitoring Officer, Dept of State Aboriginal Affairs

THEWLIS, Mr G Manager, Aboriginal Offenders and Recreational Services, Dept of Correctional Services

WUNDERSITZ, Ms J Principal Researcher, Dept of Family and Community Services

20 JULY 1994 - DARWIN, NT

Karu Aboriginal and Islander Child Care Agency

BURNS, Ms C	Link-up Coordinator, and spokesperson for Aboriginal Preventative Juvenile Justice Advisory Body
-------------	---

National Aboriginal Youth Law Centre

FRIELS, Ms M	Director
--------------	----------

21 JULY 1994 - DARWIN, NT

Aboriginal and Torres Strait Islander Commission

ALLMARK, Mr R	State Manager
DOBLE, Mr W	Senior Project Officer, Royal Commission into Aboriginal Deaths in Custody

Northern Territory Government

ANDERSON, Mr D	Director, Legal Services Management and Special Projects NT Dept of Law
HENDY, Dr S	Director, Alcohol and Other Drugs Programs, NT Dept of Health and Community Services
JONES, Mr N	Director, Office of Aboriginal Development
MAKEPEACE, Mr C	Director, Schools Policy, NT Dept of Education
MARTINS, Ms C	Manager, Planning Review, Dept of Correctional Services
MOORE, Mr R	Deputy Commissioner, NT Police
SYMONS, Mr G	Acting Secretary, NT Dept of Health

WILLARD, Mr R

Superintendent, Investigations and  
Review, Dept of Correctional Services

11 AUGUST 1994 - SYDNEY, NSW

**Aboriginal Deaths in Custody Watch Committee**

CAMPBELL, Mr A

DARRELL, Mr A

JACKSON, Mr R

Treasurer and Public Officer

JUROTTE, Mr K

MURRAY, Mrs L

Management Committee Member

MURRAY, Mr A

Vice-President

RUSSELL, Mr E

**New South Wales Aboriginal Education ConSultative Group**

BURNEY, Ms L

President

FRENCH, Mr D

Field Officer

PARBURY, Mr

Research Officer

**Private Citizens**

JUROTTE, Mr K

Grafton, NSW

JUROTTE, Mrs L

Grafton, NSW

12 AUGUST 1994 - SYDNEY, NSW

**Aboriginal Legal Service**

CRAIGIE, Mr B	Acting Administrator
JAUNCEY, Mr G	Staff Coordinator/Research Officer

**Aboriginal and Torres Strait Islander Commission**

ELLA, Mr G	Assistant State Manager
SCOTT, Mr G	State Manager

**ATSIC Sydney Regional Council**

DAYLIGHT, Mrs G	Councillor
DELANEY, Mr J	Chairperson
ELLIS, Miss T	Councillor
FLOWER, Ms D	Councillor
KENDALL, Mr B	Councillor
PHILLIPS, Mr S	Councillor
SHIPLEY, Mrs D	Councillor
TAYLOR, Ms E	Member
WELDON, Mrs A	Deputy Chairperson
WILLIAMS, Mrs C	Commissioner

**New South Wales State Government**

BROWN, Dr P	Chief Executive Officer, Corrections Health Services, Long Bay Hospital
BROWN, Mr D	Director, Legal and Legislative Services, Dept of Courts Administration

GRANT, Mr W	Deputy Director-General, Attorney-General's Dept.
LAY, Mr R	Program Development Officer, Dept of Courts Administration
MARONEY, Mr N	Assistant Commissioner, Operations Support, NSW Police Service
MONAGHAN, Mr M	Senior Policy Officer, Dept of Courts Administration
REID, Sergeant V	Operations Support, NSW Police Service
ROSE, Mr D	Director, Aboriginal Health Branch, NSW Health Dept.
SULMAN, Mr L	Deputy Commissioner, NSW Dept of Corrective Services
SUTHERLAND, Ms C	Senior Policy and Projects Officer, NSW Dept of Corrective Services
WHELAN, Mr T	Acting Director-General, NSW Office of Aboriginal Affairs
WOODHAM, Mr R	Assistant Commissioner, NSW Dept of Corrective Services

22 AUGUST 1994 - CANBERRA, ACT

Australian Capital Territory Government

BLIZZARD, Commander, D	Commander Resources and Services, Australian Federal Police
BOYLE, Ms M	Acting Executive Director, School Programs Branch, Dept of Education and Training
DERKLEY, Mr M	Director, Alcohol and Drug Service, Dept of Health

FOREMAN, Ms L	Acting Assistant Secretary, Social Policy Branch, Chief Minister's Dept
FREUDENSTEIN, Ms C	Executive Officer, Aboriginal Students Unit, Dept of Education and Training
GAGALOWICZ, Mr A	Acting Director, Corrective Services, Bureau of Corrective Services
IRELAND, Mr J	Assistant Secretary, General Policing Policy, Australian Federal Police
MILLS, Mr A	In Charge Investigations, Australian Federal Police
NORRIS, Ms L	Acting Director, Corporate and Business Support, Dept of Health
SIMPSON, Mr K	Director, Police Affairs and Law Enforcement, Attorney-General's Dept
YOUNG, Mr R	Director, Juvenile Services

South Eastern NSW Indigenous Regional Council

COLLINS, Mrs I	Regional Councillor
GRANT, Mr S	Chairperson
HOUSE, Mrs M	Regional Councillor
JOHNSON, Miss D	Regional Councillor

25 AUGUST 1994 - CANBERRA, ACT

Department of Administrative Services

PEEL, Mr W	Acting General Manager, Policy and Development, Purchasing Australia
------------	--

SEMMENS, Mr G

Acting General Manager, Corporate  
Policy and Government Relations

Department of Housing and Regional Development

BLAKE, Mr A

Director, Local Government Finances

CALVERT, Mr R

Assistant Secretary, Office of Local  
Government

FRAZER, Mr P

Director, Aboriginal Housing Section

TAYLOR, Mr P

Director, Program and Development  
Section, Office of Local Government

26 AUGUST 1994 - MELBOURNE, VIC

Australian Education Union

WOODS, Ms D

Federal Education Officer

Federated Teachers Union

GALATI-BROWN, Ms R

Spokesperson

Melbourne Aboriginal Education Association Inc.

FOLEY, Mr G

President

National Tertiary Education Industry Union

GALE, Ms L

National Industrial Officer

WEELS, Dr R

Research Officer

Northland Secondary College

BUX, Ms D

Koori Educator

**Victorian Aboriginal Legal Service**

BARING, Ms A

Solicitor

MUIR, Mrs J

Office Manager

YARRAM, Mr N

Field Officer



Exhibits

---

- 1 Kimberley Aboriginal Medical Service's Council
  - i Issues Paper - March 1994
  - ii Structure Profile - June 1990
- 2 Milliya Rumurra  
Five Year Corporate Plan - October 1992
- 3 ATSIC Regional Office - Kalgoorlie
  - i 1992/93 Annual Reports of the former Wongi & Warburton Regional Councils
  - ii Deloitte Touche Tohmatsu report concerning Kalgoorlie Youth Bail Hostel
  - iii Expenditure Report
  - iv Letter to ATSIC State Manager, WA
  - v Briefing paper prepared for the Committee on participation of ATSIC Kalgoorlie staff on local committees overseeing the implementation of the Royal Commission recommendations
  - vi Letter to Ninga Mia Community
- 4 Yorganop Child Care Aboriginal Corporation  
Background Information
- 5 Deaths in Custody Watch Committee (WA)
  - i Objectives and membership of the Committee
  - ii Public Interest Unit's Briefing Document of Human Rights
- 6 Clarrie Isaacs
  - i Copy of letter written to the Royal Commission into Aboriginal Deaths

in Custody

- 7 **Perth Aboriginal Medical Service**  
Letter addressed to the Committee, signed by Ted Wilkes, Director
- 8 **Aboriginal Affairs Planning Authority**  
Letter addressed to the Committee, signed by Cedric Wyatt,  
Commissioner for Aboriginal Planning, & information papers
- 9 **Queensland Police Service - Far North Region**  
Copy of letter from Lockhart River Aboriginal Council to  
the Department of Family Services (5May94), & List of Recommendations
- 10 **Cherie Imlah**
  - i Copy of memo re: Aboriginal Police Liaison Officers Evaluation  
(16Jul94),
  - ii Copy of letter re: Justice Studies Recruit Training Programme  
(17Jun94)
- 11 **Bama-Ngappi-Ngappi Aboriginal Corporation**  
Information sheets
- 12 **Piabun Aboriginal Corporation**  
Information sheet, and copy of letter to Piabun from the Aboriginal & Torres  
Strait Islander Overview Committee (21Mar94)
- 13 **Aboriginal and Islander Community Health Service Brisbane Ltd**  
Response to the Committee's Inquiry
- 14 **Aboriginal & Torres Strait Islanders Corporation (QEA) for Legal Services**  
Outline of services, prepared for the Committee, covering letter, and  
statistics for January-April 1994
- 15 **Aboriginal & Torres Strait Islander Commission**  
Additional information & papers, further to public hearing 5 May 1994

- 16 **Peninsula Health Authority**  
Paper entitled, *Prisms of Memory: Aboriginal Resentment and the Persistence of Pain*, Dr Ernest Hunter, covering letter
- 17 **Aboriginal and Torres Strait Islander Overview Committee**  
Copy of letter to the Committee from Piabun
- 18 **Cec Fisher**  
Paper: *Aboriginal Australia - 200 Years of White Australia*
- 19 **Aboriginal Justice Advisory Committee**  
1994 Conference - Address by the Minister for Aboriginal Affairs,  
Hon Kevin Prince LL.B MLA
- 20 **Eastern Goldfields Aboriginal Corporation Resource Agency**  
*The Five Year Plan for the Eastern Goldfields Aboriginal Corporation  
Resource Agency*, Discussion Paper for Executive Council, November 1992
- 21 **Ministry of Justice - WA State Government**  
Briefing notes compiled for the Committee, 27 May 1994
- 22 **Aboriginal Legal Service - Broome, WA**  
Information sheet - *Charter of Youth Rights in Police Custody*
- 23 **Menzies School of Health Research - Darwin, NT**  
Outline of response to *Implementation of NT Government Responses to the  
Recommendations of the Royal Commission into Aboriginal Deaths in  
Custody*
- 24 **North Australian Aboriginal Legal Aid Service**  
Copy of a crime report
- 25 **Northern Territory Government**  
*Living with Alcohol Program: Progress to July 1993*, NT Department of  
Health and Community Services, February 1994

- 26 Karu Aboriginal & Islander Child Care Agency  
Letter & associated papers re: Follow up to the 1993 Juvenile Crime Workshop
- 27 Women's Shelter - Darwin  
*Aboriginal Education Through Aboriginal Eyes*, Inaugural Indigenous Teachers Conference Report, April 1993
- 28 Queensland Police Service  
Custody Awareness Project - Lecture Package (incl. 2 videos)
- 29 Yalata Sport & Recreation Program  
Letter to ATSIC Regional Manager
- 30 ATSIC State Office - South Australia  
Letter to Committee re: SA RCIADIC Expenditure
- 31 Aboriginal Rights Movement of South Australia  
*Regulations under the Police Act, 1952*, Government Gazette, 26 April 1990, p1188
- 32 ATSIC Regional Office - Ceduna  
Regional Profile
- 33 Yalata Maralinga Health Service Inc.  
Briefing notes
- 34 South Australia Police Department  
Letter to Penong Police re: Ambulance Response to Nundroo
- 35 Yatala Labour Prison, Adelaide  
Briefing material re: meeting between the Committee and the Sansbury Association Inc.
- 36 ATSIC Regional Office, Ceduna  
i Letter to the Committee incorporating:  
Transcript corrections; additional information

- ii *Economic Empowerment: The Way Ahead - A Strategy Paper*
  - iii *Review of the AEDP*
  - iv ATSIC/DEET/TAFE/Regional Council Draft Protocol Agreement and Service Action Plan
- 37 **Aboriginal Justice Advisory Committee (NSW)**
- i Background material
  - ii Statistical information
- 38 **Victorian Aboriginal Youth, Sport & Recreation Cooperative**
- i Background material
  - ii *Recreation in the Aboriginal Community, A Report to the Department of the Arts, Sport, the Environment, Tourism and Territories*
- 39 **Katherine Regional Aboriginal Legal Aid Service Inc.**
- Letter & background material sent to NAALAS (Dated 7 July 1994)  
re: Establishing an Aboriginal Justice Advisory Committee
- 40 **Aboriginal Deaths in Custody Watch Committee, Sydney**
- i Letter to Department of Corrective Services (Dated 20 July 1994)
  - ii Statistics re: Deliberate Self Harm 1994
  - iii Press Clipping, *The Australian*, 15 June 1994
  - iv Letter from Milton Curnock
  - v Statement from Aaron Darrell
- 41 **Sergeant Fred Loneragan, NSW Police Service, Wagga Wagga**
- i Letter to Committee from John Blackler (Dated 9 October 1994)
  - ii Article, *Delinquency and Deviant Social Behaviour, The British Journal of Criminology*, Vol 33, No. 1, Winter 1993
  - iii Article, C Alder & J Wundersitz, *Family Conferencing & Juvenile Justice: The Way Forward or Misplaced Optimism?*, AIC, Canberra, 1994

- iv *Wagga Wagga's Communitarian Response to the Juvenile Justice Advisory Council's Green Paper: Future Directions for Juvenile Justice in New South Wales, July 1993*
  - v Workshop manual: Initial meeting for Re-offenders
  - vi Workshop manual: Crime Prevention Workshops
  - vii Wagga Wagga Police & Community Juvenile Justice Initiative: A Victim Centred Approach
- 42 **Western Aboriginal Legal Service**
- Copy of newspaper article
- 43 **NSW Department of Corrective Services**
- i Itinerary for Committee's visit to Bathurst Gaol, 10 August 1994
  - ii Bathurst Correctional - Aboriginal Programmes Summary
  - iii *The Corrective Services Bulletin*, 4 August 1994, Issue 286
  - iv Department of Corrective Services, RCIADIC Recommendations Relevant to the Department
- 44 **Trevor Close, Bathurst**
- i NSW Department of Corrective Services, Budget - Programs for Aboriginal people 1992/93
  - ii Letter from Gouburn Correctional Centre to the Governor, Bathurst Correctional Centre, re: Aboriginal Inmate Committee - Bathurst Gaol (Dated 30 May 1994)
  - iii Copy of address to Committee re: Recommendation 171, and a petition signed by Koorie inmates supporting the provision of this recommendation
  - iv Implementation of the Recommendations of RCIADIC - Status Report June 1994
- 45 **South Coast Aboriginal Medical Service, Nowra**
- Architectural plan for Multi-purpose Health Service building

- 46 Department of Primary Industries and Energy
- i Bureau of Rural Resources, *Wild Animal Resources - their use by Aboriginal communities*, AGPS, Canberra, 1992
  - ii ATSIC, *Commonwealth Programs for Aboriginal and Torres Strait Islander People in Rural Industries*, 1994
  - iii Bureau of Resource Sciences, *Commercial Use of Wild Animals*, AGPS, Canberra, 1994
  - iv Bureau of Resource Sciences, *Developing Management Plans for Aboriginal Owned Pastoral Properties in the Northern Territory: Working Paper*, 1993
- 47 NSW Government
- i NSW Government, *Programs for Aborigines - Statement by Hon Jim Longley MP - 1993-94*
  - ii Juvenile Justice Advisory Council of NSW, *Green Paper: Future Directions for Juvenile Justice in New South Wales*, February 1993
  - iii NSW Social Policy Directorate, *Supporting Young People in their Communities - July 1993*
  - iv Opening statement by Office of Aboriginal Affairs made to the Committee
  - v National Committee to Defend Black Rights, National Family Counselling Consultation Conference: paper
- 48 Link-Up, NSW
- Press Release by NSW Minister for Health & Community Services, John Hannaford - *Link-Up to be Official Information Source* (Dated 27 August 1991)
- 49 Tjutjunaku Worka Tjuta Inc.
- i SA State Government Expenditure on Royal Commission Implementation
  - ii Map of proposed Emu farm



## APPENDIX 4

### List of Informal Discussions and Field Visits

---

#### WESTERN AUSTRALIA

##### Broome

Broome Aboriginal Legal Service	23.5.94
Kimberley Aboriginal Medical Service	23.5.94
Milliya Yumurra	23.5.94
Broome Aboriginal Medical Association	23.5.94
Mamabulangin Aboriginal Corporation	23.5.94
Jarndu Yawuru Aboriginal Corporation	23.5.94
ATSIC Regional Council in Broome	23.5.94

##### Roebourne

Mawarnkarra Health Service Corporation	24.5.94
Ieramugadu	24.5.94
Nugurin Aboriginal Corporation	24.5.94
Roebourne Sobering-up Shelter	24.5.94
Roebourne Workers	24.5.94
Roebourne Police Station	24.5.94

##### Karratha

Kaipa Torres Strait Islander Corporation	24.5.94
Karratha Regional Police Headquarters	24.5.94

## Kalgoorlie

The Eastern Goldfields Aboriginal Advancement Council 25.5.94

ATSIC Regional Council in Kalgoorlie 25.5.94

## Perth

The Perth Aboriginal Medical service 26.5.94

Yorganop Child Care Aboriginal Corporation 26.5.94

## QUEENSLAND

### Cairns

Bama Healing Centre 20.6.94

Queensland Police Service 20.6.94

Yarrabah 21.6.94

Wu Chopperen Medical Service 21.6.94

### Surfers Paradise

The South East Queensland Indigenous Regional Council 22.6.94

### Brisbane

National Indigenous Media Association of Australia 22.6.94

Brisbane Indigenous Media Association 22.6.94

Piabun 23.6.94

Aboriginal and Islander Community Health  
Service Brisbane 23.6.94

## SOUTH AUSTRALIA

### Yalata

Yalata-Maralinga Health Service	18.7.94
Yalata Community Inc.	18.7.94

### Ceduna

ATSIC Regional Offices	18.7.94
ATSIC Regional Council	18.7.94
Ceduna Koonibba Aboriginal Medical Service	18.7.94
CDEP/Tjutjanaku Worka Tjuta Inc.	18.7.94

### Adelaide

Aboriginal Justice Advisory Committee	19.7.94
Professor Elliot Johnston QC	19.7.94
Aboriginal Community Centre of SA Inc.	19.7.94
Sansbury Prisoners Association	19.7.94

## NORTHERN TERRITORY

### Darwin

Danila Dilba Medical Service	20.7.94
Darwin Aboriginal and Islander Women's Shelter	20.7.94
Northern Australian Aboriginal Legal Aid Service	20.7.94
Mr Ah Mat, Chairperson - Yilli Rreung Regional Council	20.7.94
Top End Aboriginal Coalition	20.7.94
The Menzies School of Health Research	20.7.94

<b>Alice Springs</b>	
Tangentyere Council	21.7.94
Central Australian Aboriginal Legal Aid Service	21.7.94
Youth Bail Hostel	22.7.94
Central Australian Aboriginal Child Care Assoc.	22.7.94
Alice Springs Women's Shelter	22.7.94
Central Land Council	22.7.94
Alice Springs ATSIC Regional Council	22.7.94

**NEW SOUTH WALES**

**Nowra**

Doonooch Self-Healing Aboriginal Corporation	8.8.94
South Coast Medical Service Aboriginal Corporation	8.8.94
Wamina-South Coast Women's Health and Welfare Aboriginal Corporation	8.8.94
South Coast Youth Movement Aboriginal Corporation	8.8.94

**Wagga Wagga**

Wagga ATSIC Regional Office	8.8.94
Aboriginal Legal Service	8.8.94
Wagga Advancement Aboriginal Corporation	9.8.94
Police and Citizens Youth Club	9.8.94
Central/Southern Aboriginal Corporation for Management and Accounting Services	9.8.94
Wagga Local Aboriginal Land Council	9.8.94

## Wilcannia

Ngarrapaana CDEP	9.8.94
Central Darling Shire Council	9.8.94

## Dubbo

Dubbo Police Station	10.8.94
Central Regional Land Council	10.8.94
Dubbo-Ga Local Aboriginal Land Council	10.8.94
Western Aboriginal Legal Service	10.8.94
Family Violence Education Aboriginal Corporation	10.8.94
Dubbo Aboriginal Medical Cooperative	10.8.94

## Bathurst

Bathurst Correctional Centre	10.8.94
Aboriginal Inmate Committee	10.8.94

## Sydney

Aboriginal Medical Service	11.8.94
Mr John McDonald	11.8.94
Aboriginal Justice Advisory Committee	11.8.94
Mr Jason Behrendt	12.8.94
Link-up New South Wales	12.8.94

## VICTORIA

### Melbourne

Victorian Aboriginal Youth, Sport and Recreation Cooperative Ltd	26.8.94
--	---------



**ABORIGINAL EXPECTATIONS ABOUT THE ACTIONS  
WHICH THE COMMISSION MIGHT TAKE**  
- Extract from the Royal Commission's Report<sup>1</sup>

---

This question presented a number of problems for the Commission. The function of a Royal Commission is to inquire into a matter and report to government. This is, of course, quite clear but is not well understood by many people in the community. Many Aboriginal people considered that if Commissioners were to find dereliction of duty on the part of a custodian or custodians that the Commission would then take action against such person or persons, including the laying of charges. Many Aboriginal people spoke to officers of the Commission in terms that made it clearly apparent that they assumed that the Commission had power to take such action and that the Commission would take such action in any and every appropriate case. It became quite apparent that this was a widely held opinion and expectation amongst Aboriginal people.

This matter was forcibly brought to the attention of Commissioners by Aboriginal field staff in early 1989. In consequence, Commissioner Muirhead, who was then the National Commissioner, produced a document which set out to explain certain matters relating to Royal Commissions in general and to this particular Royal Commission. The document was intended to assist Aboriginal field staff in dealing with this matter and others. It was used throughout the country for this purpose by field staff and later by staff of Aboriginal Issues Units when appointed.

I reproduce below three sections of the document as indicating the way these matters were attempted to be explained to those who raised such questions:

**Why do we need a Royal Commission to make such inquiries?**

Because only if there is a Royal Commission can all witnesses be subpoenaed and required to give evidence. One of the problems was that in some of the inquests following such deaths, witnesses including police and prison officers had refused to give evidence. In some cases no inquests were held. A Royal Commission can require a witness to give evidence, but should the witness be later prosecuted for an offence, his or her evidence before the Royal Commission cannot (unless he or she agrees) be put before the Court. At least a Royal Commission can require all witnesses to give their accounts of the deaths or happenings that led to such deaths. It is more likely to find out the truth than a simple inquiry, such as a Coroner's Inquiry or a Committee of Inquiry or Police Inquiry set up by Governments.

---

<sup>1</sup> RCIADIC, *National Report*, Vol 1, pp102-6

What are the powers of the Royal Commission?

Simply to inquire into each death and then report to Governments. In their reports the Commissioners will state (if they can) not only how people died, but why they died. This enables the Commission to examine what we call underlying causes. Why do Aboriginal people, who form about 1.5% of the Australian population, have twenty times the risk of dying in police custody and ten times the risk of dying in prisons? Why are so many arrested and put in cells and prisons? Are they treated fairly by law? Why are so many Aboriginals unemployed, poorly housed, poorly educated? Why is their health poor? Why is their life expectancy shorter than other Australians? These are what we call 'underlying issues'. The Commissioners are empowered in reporting to Governments to consider 'social, cultural and legal factors' which contribute to the deaths.

Can the Royal Commission punish those they find responsible for the deaths by criminal conduct or lack of care?

No. The Australian Courts alone can convict and punish wrongdoers. Commissioners have no power to punish anybody except those who disrupt proceedings, harass witnesses. Even in those cases its powers are limited and such matters would generally be referred to State Governments for action.

However, there is no doubt that despite the explanation, many Aboriginal people and some non-Aboriginal people remain unclear about the functions of a Royal Commission.

Individual Commissioners, were, by their Letters Patent, authorised to make recommendations in respect of a death into which they inquired. All Commissioners were of the view that it was inappropriate for any Commissioner to recommend that proceedings be instituted against persons in respect of whom adverse findings had been made by Commissioners in their reports of their inquiries into particular deaths.

There are good reasons for this decision and these were outlined by Commissioner Wootten in his report on the death of Paul Kearney:

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

*action be by way of legislation, policy changes, funding of services or institutions, recognition of rights, or prosecution or disciplinary action. The Commission has no power to do any of these things itself.*

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

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

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

*a guilty person who 'got off'. On the other hand it may erroneously be thought that the Commission's findings are unjustified.*

*Some of the Considerations I have mentioned are noted in Hallett Royal Commissions and Boards of Inquiry pp 48, 328-331. Some are relied on by the High Court in support of its construction of the Independent Commission Against Corruption Act 1988 in Balog v. Independent Commission Against Corruption (20 June 1990).*

(I mention that Commissioner Wootten reserved for further consideration, cases of deliberate or malicious harm if they should arise.)

In my opinion, the matters mentioned amount to compelling reasons why recommendations for the laying of charges should not be made. However, additionally, there are some other very good reasons particular to this Royal Commission why, in my opinion, it was particularly undesirable that recommendations should not be made for prosecution or other action against individuals:

- . the deaths were inquired into by five different Commissioners and there exists the possibility that individual Commissioners might differ in their views as to the degree of seriousness of any particular breach that might be found;
- . the deaths were spread over almost a ten year period. There is no doubt that, in some respects, views changed over the period as to what were considered to be appropriate standards of care: action taken in 1980 might well be regarded differently from exactly the same action taken in 1989; and
- . the deaths occurred in all parts of the country. Prison regulations and Police standing orders are particular to States and Territories. An act which constituted a breach of standing orders, for example, in one place might not be a breach in another.

It was also open to Commissioners to recommend to government that the report of any particular inquiry should be drawn to the attention of prosecuting authorities or to persons authorised to institute disciplinary proceedings. This has already been done in some cases.

The terms of my Letters Patent are such that I could at this stage make recommendations as to the bringing of charges or the drawing of matters to the attention of prosecuting or other authorities. I do not do so for the reasons stated and also for the additional reason that it is inappropriate for me to do so in respect of inquiries conducted by other Commissioners. It would be invidious to deal with those inquiries which I conducted on a different basis. I, therefore, make no such recommendations.

However, I strongly suggest that the reports of all ninety-nine deaths should be carefully studied with a view to the appropriate authorities deciding whether any action should be taken against any person.

**ABORIGINAL JUSTICE ADVISORY COMMITTEE (AJAC)  
- NATIONAL CONFERENCE OUTCOMES**

---

**KEY ISSUES AND RECOMMENDATIONS ARISING FROM THE NATIONAL  
AJAC CONFERENCE (24-26 MAY 1994 - PERTH)**

Session with the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (Thursday, 26 May 1994).

**1 Implementation and Monitoring Processes**

Central to the successful outcomes from the Royal Commission into Aboriginal Deaths in Custody Recommendations is that Aboriginal and Torres Strait Islander people should drive the implementation and monitoring of the recommendations.

This was identified by the Commissioners in their report and it's been acknowledged by most governments in the establishment of Aboriginal Justice Advisory Committees. Views expressed by conference delegates is that Aboriginal and Torres Strait Islander people and communities are subjected to the underlying issues outlined in the Royal Commission on a daily basis. Aboriginal and Torres Strait Islander peoples and communities, if given the right support by government and its agencies, have the ability to develop and implement strategies to improve their current disadvantage.

**2 Aboriginal Justice Advisory Committees (AJACs)**

- . That AJACs be properly funded with chairs of such committees to be appointed on a fulltime basis.
- . That AJACs be appropriately placed in a Department like Attorney's-General or Ministry of Justice to ensure that they have the support and direct input in the development of policy in relation to the criminal justice system.
- . That there be a secretariat to all AJACs in every state/territory that is accountable to the committees and responsive to the directions of the AJAC.
- . That the funding provided enables the AJACs to have an ability to undertake independent research and to report on the implementation of RCIADIC Recommendations on an annual basis.

. That there be a national body of AJACs established with a national spokesperson to speak on behalf of all AJACs on issues of concern. In the interim, the Chairpersons of those states/territories that have AJACs are to be the key contacts. Due to the fact that the Northern Territory does not have an AJAC a nomination is required, and because of the absence of Tasmania at the conference, they should not be excluded from any national developments regarding AJACs.

### **3 Bi-Annual National Conference**

. That a bi-annual conference or a body of AJACs be convened at a national level to draw together the experiences of the states/territories to consider and address the implementation and monitoring process of the RCIADIC recommendations and to develop best practices as identified throughout the various jurisdictions.

. That the bi-annual conferences be jointly funded by the state/territory and Commonwealth Attorneys-General, which also allows for the various AJAC's to feed in to the twice yearly meetings of state and Commonwealth Attorneys-General, or the SCAG conferences.

. That the next conference be held in Brisbane within twelve months of this conference, (May 1995) or to coincide with the meeting of the Attorneys General or SCAG meetings. It was indicated at the conference that SCAG meetings are scheduled three times a year and often take place in February, June, July or October and November. Until such time as a national body of AJACs is established it was recommended that HREOC and ATSIC take responsibility for convening the next conference.

. That a copy of the conference report be put to the next meeting of Attorneys-General for consideration.

### **4 Ministerial attendances at AJAC meetings**

. That there is a need for regular attendance at state/territory AJAC meetings by relevant Ministers, and departmental and government agency Chief Executive Officers, to explain to the AJACs the policies and programs that are designed to implement the recommendations and of progress being made.

### **5 Development of Draft Bills**

. That AJACs be involved in the development of Draft Bills, rather than the present practice where the AJACs are invited to comment on bills, once they have been finalised.

**6 Independent Reporting by AJACs**

. That AJACs have an independent reporting capacity. For example, although not exclusively, the AJACs could have devoted to them, a section of state and territory annual reports on implementation and monitoring.

**7 Access by AJACs to state/territory government reports on monitoring and implementation of RCIADIC recommendations**

. That the report on the monitoring and implementation of the RCIADIC Recommendations of SCAG, the state/territory and Commonwealth Attorneys-General meetings should be made available to all Aboriginal Justice Advisory Committees (AJACs).

**8 Lack of Government action to implement RCIADIC Recommendations relating to the following**

. Disproportionate number of indigenous Australians in Police custody;  
. Juvenile justice;  
. Failure to implement non-custodial sentencing options;  
. Failure to recognise customary law in court processes and sentencing;  
. Failure to improve police and corrective services practices, complaints and investigations;  
. Family violence;  
. Bail procedures, particularly to the Northern Territory and Western Australia; and  
. Pre-release and post-release support for Aboriginal and Islander prisoners, with a particular emphasis on the question of rehabilitation.



APPENDIX 7

DEATHS IN CUSTODY, CORONIAL STATUS AND BREACHED RECOMMENDATIONS - 1989-1991<sup>1</sup>

NAME	RECOMMENDATIONS BREACHED
New South Wales	
Kitson	Coronial Report unavailable
Pidgion	(IR) 28, (NR) 150, 151, 152, 156, 157, 167
Naylor	Insufficient information in Coronial Report
Leslie	(IR) 36, (NR) 152, 157
Coppini	Insufficient information in Coronial Report
Beck	Coronial report unavailable
Nichols	(NR) 152, 157
Dixon	Insufficient information in Coronial Report
Brown	(NR) 130, 150, 152, 153, 154, 155, 157, 247, 251, 252, 263
May	(NR) 92, 126, 127, 133, 137, 148, 144
Webb*	Coronial Report unavailable
Campbell	Inquiry incomplete
Cain	(NR) 133, 160 - Inquiry incomplete
Hammond	Inquiry incomplete
Kemble	Inquiry incomplete

<sup>1</sup> Source: Aboriginal and Torres Strait Islander custodial deaths between May 1989-January 1994, *Report to the National Committee to Defend Black Rights*, C Cunneen & J Behrendt, Submission No. 11, pS404-409

(cont.)

NAME	RECOMMENDATIONS BREACHED
Perry	Inquiry incomplete
Ceiley	Inquiry incomplete
Queensland	
Sailor	(IR) 15 (NR) 126, 127, 137
Seaton	(IR) 3, 4, 5, 6, 8, 9, 12, 13, 14 (NR) 79, 80, 81, 84, 87, 126, 127, 133, 135, 136, 137, 144
Dick*	Coronial Report Unavailable
Lawton	(IR) 28 (NR) 155, 152
Hopkins	(IR) 28, (NR) 124, 155, 152
Sandy	(IR) 3, 4, 5, 6, 8, 9, 12, 13, 14, 15, 28, 40 (NR) 79, 80, 81, 87, 126, 127, 133, 135, 136, 141, 159, 160, 162
Barry	(IR) 1, 28 (NR) 92, 94, 126, 154, 155, 168, 181, 182
Punch	(NR) 86, 92, 121, 125, 126, 127, 133
Tomachy	(NR) 60, 79, 80, 81, 87, 126, 127, 133 Inquiry incomplete
Hill	(NR) 95, 150, 151, 152, 153, 155, 156, 164
Armstrong	(NR) 79, 80, 81, 87, 126, 127, 133, 135, 136, 138, 159, 160, 162
Docherty	Inquiry incomplete
Turbane	(NR) 25, 35, 60, 127, 130, 145, 146, 150, 151, 154, 155, 170 Inquiry incomplete
Yock	(NR) 60, 127, 133, 135, 136, 161 Inquiry incomplete

(cont.)

NAME	RECOMMENDATIONS BREACHED
<b>Western Australia</b>	
Scott	Coronial report unavailable
Prosser	Insufficient information in coronial report
Garlett	Insufficient information in coronial report
Cotterill	Insufficient information in coronial report
Isaacs	(IR) 28, 32, 36 (NR) 150, 152, 154
Edmunds	Insufficient information in coronial report
Cameron	Insufficient information in coronial report
Chadd	Coronial report unavailable
<b>South Australia</b>	
Peel	(IR) 28 (NR) 126, 127, 133, 137, 144
Abdullah	nil
Bonny (aka Wanganeen)	(IR) 36 (NR) 152, 157
Lennon	(IR) 12, 13, 14 (NR) 127, 133, 135, 136
Name Supplied	(IR) 32 (NR) 92, 150, 152, 154, 168
Webster	(NR) 60 Coronial report unavailable

(cont.)

NAME	RECOMMENDATIONS BREACHED
<b>Victoria</b>	
Duggan	(IR) 3, 4, 5, 6, 8, 9, 15, 28, 42 (NR) 79, 80, 81, 84, 87, 126, 127, 133, 144, 247, 252, 255, 257, 263
Roberts (aka Walsh)	(NR) 79, 80, 81, 84, 87, 127, 133, 158, 159
Blundell	(NR) 133 Coronial report unavailable
Walton	Inquiry incomplete
Hughes	Inquiry incomplete
<b>Northern Territory</b>	
Stevens	Insufficient information in coronial report
Name supplied	(IR) 32 (NR) 60,61
Wingrove	Inquiry incomplete
<b>Tasmania</b>	
Kelly	(NR) 154, 158
Young	(NR) 60 Inquiry incomplete

Note : \*Some dispute as to person's Aboriginality

## The Frequency of Breached Recommendations

### *The Interim Report*

There were a total of 26 breaches of recommendations from the Interim Report as shown below.

Recommendation No.	Frequency Breached
1	1
3	1
4	1
5	1
6	1
8	1
9	1
12	1
13	1
14	1
42	1
15	2
32	3
36	3
28	7
<b>Total</b>	<b>26</b>

The most frequently breached of the interim recommendations was No. 28 which states that police and prison officers involved in apprehension and/or detention of persons in custody should receive training to enable them to identify persons in distress or at risk of death through illness, injury or suicide.

*The National Report*

There were a total of 169 breaches of recommendations from the National Report as shown below. The recommendations are listed in order of the frequency with which they were breached.

Recommendation No.	Frequency Breached
25	1
35	1
61	1
86	1
94	1
95	1
121	1
124	1
125	1
138	1
141	1
145	1
146	1
148	1
161	1
164	1
167	1
170	1
181	1
182	1
251	1
255	1
257	1
84	2
130	2
153	2
156	2
158	2
162	2
168	2
247	2
252	2
263	2

(National Report cont.)

Recommendation No.	Frequency Breached
151	3
159	3
160	3
92	4
137	4
144	4
79	5
80	5
81	5
135	5
136	5
157	5
60	6
87	6
150	6
154	6
155	6
126	10
152	10
133	12
127	13
Total	169

As can be seen from the above, Recommendation 127 was the most frequently breached. Recommendation 127 requires that police services 'move immediately' to examine the delivery of medical services to persons in police custody. There are 6 sections and 9 subsections to this recommendation elaborating on how this recommendation should be implemented. Ironically all governments have supported this recommendation.<sup>2</sup> Other frequently breached recommendations included 133, 152 and 126. Recommendation 133 relates to police training in identifying distress and risk factors (see also interim Recommendation 28). Again all governments have supported this recommendation.<sup>3</sup> Recommendation 126 states that in every case of a person being taken into custody a screening form should be completed and a

---

<sup>2</sup> *Response by Governments to the Royal Commission, Aboriginal Deaths in Custody, Vol 2, AGPS, Canberra, 1992, p473*

<sup>3</sup> *Response by Governments to the Royal Commission, Vol 2, pp571-2*

risk assessment completed. All governments have supported this recommendation.<sup>4</sup>

Recommendations 150, 154 and 155, each of which were breached 6 times, all relate to various aspects of the provision of health services. Recommendation 87, which was also breached 6 times, refers to the use of arrest as a sanction of last resort and the need to eliminate unnecessary police custodies. This recommendation was supported by all governments.<sup>5</sup> Recommendation 60, breached 6 times, refers to the need for police forces to eliminate violent or rough treatment and verbal abuse of Aboriginal people. This recommendation was also supported by all governments.<sup>6</sup>

---

<sup>4</sup> *Response by Governments to the Royal Commission*, Vol 2, p467

<sup>5</sup> *Response by Governments to the Royal Commission*, Vol 1, pp306-7

<sup>6</sup> *Response by Governments to the Royal Commission*, Vol 1, p203

EXTRACT FROM POLICE SERVICE CUSTODY MANUAL<sup>1</sup>

---

8.0 Bail

8.1 Diversion of prisoners arrested for drunkenness

*Policy* The Queensland Police Service supports the use of diversionary facilities for the removal of prisoners arrested for drunkenness from watchhouses.

*Order* Where a diversionary facility is available to release prisoners arrested for drunkenness from a watchhouse the officer in charge of the watchhouse will develop:

- . standing orders for the watchhouse; and
- . a protocol with the facility.

*Procedure* Where a diversionary facility exists and the person agrees to go with a responsible person to that facility, that person may be released on cash bail at any time during the detention.

---

<sup>1</sup> *Queensland Police Service Custody Manual*, June 1993, p53



**Principal Duties of an Aboriginal Liaison Officer in the New South Wales Police Service with Examples of Activities that Relate to those Duties<sup>1</sup>**

---

**Principal Duty:** With an emphasis on the corporate policy of customer service, perform all duties efficiently and cost-effectively consistent with the values and strategies of the Police Service.

**Activity:** Provide support to community members in dealing with other Statutory Bodies, eg. assisting with RTA testing, licence testing, Department of Social Security inquiries, etc.

**Principal Duty:** Establish effective communication between police and the local Aboriginal community.

**Activity:** Patrol streets with particular emphasis on shopping centres, hotels, clubs, schools, hospitals and other locations where Aborigines, particularly juveniles, congregate.

Attend Blue Light Discos.

Attend sporting fixtures and events involving Aboriginal participants and spectators.

Meet with community members, providing information and advice on issues of interest and concern.

Provide input to juvenile cautioning programmes (Aboriginal and non-Aboriginal), eg. C.A.P.S.

Attend community crime prevention workshops/programmes.

Initiate, participate and/or coordinate Koori community meetings.

---

<sup>1</sup> This appendix comprises Annexures A & B from the submission of the New South Wales Police Service, evidence, ppS2020-2

- Principal Duty:** Act as a mediator in disputes involving police and Aborigines.
- Activity:** Act as a communications channel for both parties in resolving problem issues before they get out of hand.
- Accompany police with 'at risk' (ie. those considered likely to self-injure or suffering a chronic medical or psychological condition) - to assist the detainee, not to perform the escort in place of police.
- Liaise with police when they respond to incidents of domestic violence.
- Principal Duty:** Establish and maintain close personal rapport with Aboriginal organisations and groups within the community.
- Activity:** Develop a network of contacts within the Aboriginal community to strengthen cooperation and communication.
- Activity:** Assist community members in their dealing with policing issues and their contact with statutory bodies.
- Principal Duty:** Assist Relatives concerning procedures for visiting Aboriginal prisoners.
- Activity:** Facilitate prisoner visits.
- Develop 'lay visitor' schemes.
- Principal Duty:** Actively market the functions and aims of the Police Service to the Aboriginal community.
- Activity:** Attend Patrol Education days providing information and awareness to police on the culture, behaviour and tradition of the Aboriginal community.
- Attend Aboriginal and other community groups providing information and awareness of the operation, expectations and obligations of the NSW Police Service.
- Principal Duty:** Liaise with Patrol Commander, Tactician and shift supervisors on a daily basis.

**Activity:** Liaise with members of the Aboriginal community with respect to persons who have outstanding warrants etc.

**Principal Duty:** Contribute to the training and development of Patrol personnel.

**Activity:** Attend crime prevention workshop/programmes.

Assist police in explaining procedures to members of the Aboriginal community.

#### **ACTIVITIES NOT TO BE PERFORMED BY ABORIGINAL COMMUNITY LIAISON OFFICERS**

There are a number of activities which are not to be undertaken by Aboriginal Community Liaison Officers and which clearly fall outside of the Statement of Duties and Accountabilities of the position.

The following are examples of activities that should not be performed by Aboriginal Community Liaison Officers:

- . Random Breath Testing
- . Execution of Warrants
- . Radar duties
- . Arrest of offenders/suspects
- . Attending interviews involving Aboriginal juveniles as the independent representative
- . 'Front line' involvement in domestic violence, riots and siege situations
- . Searching prisoners

