

## ABORIGINES AND POLICE

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### I. INTRODUCTION

#### A. A NEGLECTED FIELD

At the time England first settled Australia, it had no professional police; these came 40 years later with the formation of the London Metropolitan Police in 1829<sup>1</sup>. Australian police thus began with no professional traditions, and they also had a major role that had no counterpart in England, and which in North America had fallen to the military.<sup>2</sup> In Australia the suppression of Aboriginal resistance to white settlement, insofar as it was a state function, fell largely to the police. Their function was primarily to protect white settlers,<sup>3</sup> and, when they were called in, the

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1 M Sturma "Policing the Criminal Frontier in Mid-Nineteenth-Century Australia, Britain and America" in M Finnane (ed) *Policing in Australia: Historical Perspectives* (1987) p 16.

2 *Ibid* p 26.

3 CD Rowley *The Destruction of Aboriginal Society* (1970) p 153.

expectation was often not that they would identify and arrest suspects, but that they would conduct punitive expeditions and wipe out the troublesome blacks.<sup>4</sup> When Aboriginal resistance was overcome and policy changed from military style suppression to other forms of control, much of it under the banner of 'protection', police long remained the enforcing instrument of the dominant white society. They were often, for example, associated with the taking of children from their mothers to be brought up in institutions or foster homes. Today it is still difficult for many Aborigines and police to see each other in non-adversarial roles. For some - on both sides - violence is still anticipated as a likely concomitant of arrest.

Although relations between Aborigines and police have been a major part of our history, it is only in the last twenty years that historians have turned serious attention either to Aborigines or to police, and the same is largely true of sociologists.<sup>5</sup> One of the first works to incorporate Aboriginal-police relations in a general account of an Aboriginal community was Cowlshaw's 1988 study of Bourke in western New South Wales.<sup>6</sup>

The modest aim of this paper is to record and discuss some of the writer's observation and experience, which was mainly concentrated in two periods. From 1970 to 1973 in Sydney, I was the first President of the first Aboriginal legal service in Australia, and from 1988 to 1991 a Royal Commissioner into Aboriginal Deaths in Custody, inquiring into deaths in New South Wales, Victoria and Tasmania. For a short period in 1992 I conducted an inquiry in Alice Springs under s 10(4) of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) to which policing had some relevance.

But first a caveat. Across Australia there are six state police services and a territory and a federal service, each with significant variations of style, policy and tradition, and each accountable to a different government. Even within one service, attitudes and practices can vary from town to town, and Aboriginal communities also differ considerably. On both Aboriginal and police sides there are tremendous differences between individuals. Despite a considerable degree of resistance to change in both Aboriginal and police cultures, rapid change is remaking both. Any general statements about Aborigines or about police can at the most refer only to widespread or significant, not universal, characteristics or tendencies.

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4 *Ibid* p 155.

5 M Finnane "Writing about Police in Australia" in M Finnane (ed) note 1 *supra*.

6 G Cowlshaw *Black, White or Brindle* (1988).

## II. WITH THE ABORIGINAL LEGAL SERVICE 1970-73

### A. THE FIRST ABORIGINAL LEGAL SERVICE

The establishment of the first Aboriginal Legal Service (ALS) in 1970 came at the end of a decade of rapidly growing Aboriginal political consciousness and awareness of the possibilities of organised action and protest. It was only in 1963 that Aborigines without a special licence ('the dog collar') had been allowed into hotels in New South Wales. In the same year the Yirrkala people petitioned Federal Parliament to stop mining at Gove, and Victorian Aborigines marched through the streets of Melbourne in defence of Lake Tyers, and three years later the Gurindji went on strike at Wave Hill. The demand for 'land rights', although usually modestly defined, had become a widely unifying demand.

The idea of a 'Fourth World' of indigenous peoples had not emerged, and looking overseas Australian Aborigines were influenced mainly by Black American movements - the 'Freedom Rides' of 1961, the victories of the civil rights movement by both court actions and peaceful protest, and then the more radical advocacy of violence by 'Black Power' movements from 1966 on, the year the Black Panthers were formed.

All this was in the air, but the formation of the ALS was a direct response to a very specific problem, police treatment of Aborigines in Redfern. The concentrated Aboriginal community in Redfern, estimated at well over 12,000, was a relatively recent development, fed by post World War II Aboriginal migration from rural New South Wales and interstate as opportunities for employment dried up in rural areas.<sup>7</sup> Redfern became and has remained a staging post for Aborigines migrating to Sydney, a place where supportive company and cheap accommodation can be found until they are channelled by public housing programmes into other suburbs. It has also had a substantial nucleus of Aborigines who have made it a permanent home.

Among the migrants there in 1970 was a small number who had completed secondary education. Two of them, who were to play a major role in the establishment and administration of the ALS, were Paul Coe and Gary Williams. They were among a group of young Aborigines who did not see why Aborigines should continue to submit to a degree of police stereotyping and oppression which many older Aborigines had come to accept as part of being Aboriginal. This group thought that they should be able to obtain some protection from the law, and, in their search for some lawyers who might be willing to take some cases on a pro bono basis and 'teach the police a lesson', they enlisted the support of some Sydney University law students. The latter, including Eddy Neumann, who was to

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7 CD Rowley *Outcasts in White Australia* (1972) pp 367-8.

become the first Secretary of the ALS, approached me and invited me to meet the young Aborigines and their sympathisers. I had recently been appointed Dean of the University of New South Wales Law School, which was to take its first students in 1971, and some of the statements I had made about the aims of the new school led the students to hope for a sympathetic reception. Among the consequences of the meetings which followed were the establishment of Australia's first Aboriginal legal service and the University of New South Wales programme of special admission for Aborigines, which led to Paul Coe and Gary Williams enrolling among the first law students in 1971, and many other Aborigines following them in the next 20 years.<sup>8</sup>

Having had no experience of Aboriginal-police relations, I was initially bewildered when told of a police-imposed curfew, but was soon convinced when I visited Redfern and saw that any Aborigine on the streets of Redfern after 10.15 pm, even if quietly walking home, was bundled into a patrolling paddy wagon. The standard charge was public drunkenness, but naturally such treatment often led to reaction by an indignant Aborigine which escalated both to additional charges of resisting arrest and assault police, and to physical retaliation by police. In addition police regularly patrolled hotels frequented by Aborigines, particularly the Empress, and their heavy-handed treatment and oppressive scrutiny of Aborigines often led to violent incidents in and outside the hotel bars. One of the early activities of the ALS was a regular Friday and Saturday night roster of eminent legal and academic observers who spent the evenings with Aborigines in the Redfern hotels.

## B. PREEMPTIVE POLICE ACTION

It is doubtful that the police in Redfern had any awareness of the history of the Aboriginal community or the ferment it was going through. The reasoning by which they justified their actions in Redfern was highly logical, albeit in breach of the law and of human rights (a much less well known concept 20 years ago than today). There was a significant number of street thefts from the person, often accompanied by threats or assault, and in Redfern they were often committed by Aborigines who found themselves broke after an evening's drinking. Police reasoned that if all Aborigines could be removed from the streets of Redfern after closing time, there would be a drastic reduction in the incidence of these offences. Hence a curfew had a certain rationality. Moreover since an Aborigine was likely to react adversely to arrest, it was only sense to get in first and eliminate the possibility of resistance by firm handling.

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<sup>8</sup> At the time of writing the University of New South Wales Law School has 12 Aboriginal graduates and 31 Aboriginal students.

The same logic, although now officially disapproved, underlies many police actions which arouse Aboriginal resentment today. The *Cop it Sweet* television documentary showed Redfern police in 1992 stopping an Aborigine driving a newish red Laser, because it was unusual for an Aborigine to own or have lawful use of such a car. Again from a police point of view, the action was rational. Few Aborigines are sufficiently affluent to own such a car, so it may well be statistically more likely that such a car driven by an Aborigine is stolen than if it is driven by a white person. From an Aboriginal point of view, the police action was racially motivated harassment; an Aborigine who rises above what police consider his or her normal station in life will immediately be treated as suspect - even more suspect than other Aborigines, who, judging by police arrests, are in any event considered much more likely to commit offences than non-Aborigines.

These practices have compounding effects. Because of their visibility and police stereotyping, Aborigines who do commit offences are more likely to be caught, and those who have not committed them are more likely to be wrongly accused and, in some cases, convicted. Because of their resentment of such police practices, and the lingering imprint of the last 200 years on Aboriginal attitudes to police, Aborigines are more likely to react to police with resentment and hostility, so that the stage is set for offensive language, resist arrest and assault charges. This applies even to routine or well-intentioned police approaches; police who try to establish a friendly relationship with Aboriginal youth on routine beat patrols are likely to be accused of harassing them.

### C. MYTHS OF EQUAL TREATMENT

When as ALS President I initiated contact with the Commissioner of Police, the reaction was that police have to apply the law and cannot distinguish between races; if Aborigines obey the law they will not be in trouble with the police. Officers were taught to treat all citizens the same. This discourse has often been used as a protective screen, to justify a refusal to look at or even acknowledge the existence of Aborigines. Although it has been abandoned at policy and training levels in Police Services, it is still common at the grassroots level, and is being resurrected at a theoretical level by those opposed to special measures for Aborigines.<sup>9</sup>

People do not in fact get treated equally; all sorts of assumptions and stereotypes get built into day to day judgments. The policeman who stopped the red Laser would doubtless say that he stopped any driver who aroused his suspicions, irrespective of race. Those who exercise power are often influenced by prejudices or erroneous beliefs in ways of which they are unaware. You do not have equal

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9 R Brunton *Black Suffering, White Guilt?* (1993).

treatment if Aboriginal populations are policed more intensely than other groups, so that more of their peccadillos will be observed, and the pressure of more intense scrutiny will spark more frequent reaction. It is essential to get behind slogans and see what is happening in particular cases.

Moreover, to treat in a similar manner people who are different or unequal does not necessarily produce equality.<sup>10</sup> When the vagrancy law made it an offence to be without visible means of support, it did not operate equally on rich and poor. Not only are Aborigines typically the poorest of the poor, they are culturally different, and the application of a policy which does not recognise cultural difference will be unfair, particularly if the policy incorporates norms from one culture. Many Aborigines, for example, speak in a way very different to what is regarded as decorous by white Australians, and have different attitudes to drinking in public, sleeping in parks, and otherwise using public space. They are used to a less hierarchical society, and may treat people in authority differently. Many think it rude to look other people in the eye, while many whites regard avoidance of eye contact as shiftiness, and suspicious. All these things affect the operation of street offences legislation, which is often applied to the detriment of Aborigines.

#### D. PEACEKEEPING OR LAW ENFORCEMENT

To the not inconsiderable extent that police have, as the equal treatment discourse claims, rejected discretion in policing Aborigines and proceeded automatically to arrest for breaches of the law, they have acted both in a discriminatory manner, (because other groups are not similarly policed),<sup>11</sup> and in breach of good police practice. In his book *Police - Force or Service?*<sup>12</sup> John Avery, who was later to become New South Wales' Commissioner of Police, discusses a distinction between the "law enforcer" and the "peace-keeper", the contacts made with the public by the former being "more of a punitive and inquisitive nature, while the latter is more concerned with assisting citizens". "[P]eacekeeping also involves the attempt to control a situation, to achieve the police objective of quiet and good order and the absence of trouble, by means other than the formal processes of arresting or reporting for the purposes of having summonses issued."<sup>13</sup> He also refers to the distinction between "humanitarian" and "authoritarian" officers, the former believing that "words are generally more effective than physical force in conflict situations", whereas the latter "are the

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10 Malcolm CJ "Opening Address" in RH Bartlett (ed) *Resource Development and Aboriginal Land Rights in Australia* (1993) p 5.

11 For a specific example, see JH Wooten, Royal Commission into Aboriginal Deaths in Custody *Report of the Inquiry into the Death of Mark Quayle* (1991) p 119.

12 J Avery *Police - Force or Service?* (1981)

13 *Ibid* p 41.

traditionalists believing in the efficacy of force, are quick to pass judgments and are often formal and inflexible during their conflict interventions".<sup>14</sup> Avery treats it as obvious that the approach of humanitarian peace-keeping is desirable (although of course not always appropriate)<sup>15</sup> and that it involves "the use of a considerable amount of discretion".<sup>16</sup> "Police cannot enforce all the laws all the time, even if they tried, nor does anyone expect them to do so".<sup>17</sup> The typical arrest figures for many Aboriginal areas make it clear that police usually operate there primarily as authoritarian law enforcers rather than humane peace keepers.

## E. POLICE COOPERATION

The officially expressed attitude of the ALS was that:

...while it will defend Aborigines strongly against any interference with their rights, whether by Police or anyone else, it considers that the long term interests of both Police and Aborigines, and of the community, are best served by the growth of mutual understanding and respect between the two groups. While the Service has provided legal representation for Aborigines in conflict with Police, it has also looked for opportunities to promote cooperation, and has pursued these in preference to public criticism of Police activities which might prejudice such cooperation.<sup>18</sup>

The Police Commissioner reacted in a proper, if not enthusiastic, manner to the establishment of the ALS. He circularised police informing them about the ALS and agreed to the display in all police stations of a notice giving information about contacting the ALS, and some officers actively referred Aborigines to the ALS. The Commissioner nominated a liaison officer, and he was helpful on occasions. Soon after the ALS started, the situation in the Redfern hotels seemed explosive, and we asked that a conference be held between five Aborigines and five police officers and myself to discuss the conflict. It proved a useful meeting and, for a time at least, there was a lowering of tension.

Although the insistence on the equal treatment hypothesis and a defensive attitude to complaints limited discussion with the top levels of the Police Force, there were some officers who were more interested in realities. Inspector Fred Longbottom, the head of the Special Squad which was concerned with political and potentially subversive issues, was a remarkable man to find in such a position at that time, having a genuine belief in the right of peaceful protest and respect for those who were willing to protest against injustice. For example, he was keen to

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14 *Id.*

15 *Ibid* pp 58-9.

16 *Id.*

17 *Ibid* p 65.

18 ALS Annual Report 1971-72.

cooperate with the ALS to ensure that Aboriginal marches and demonstrations could be held and carried off effectively and peacefully. Had he not been there, the actions of other officers with a more heavy-handed approach might well have triggered violent reactions. Certainly there were some, both Aboriginal and non-Aboriginal, who were ready for such a response, and were concerned that the ALS was a device to turn Aborigines away from more radical and extra-legal activities.

When the ALS learnt that Redfern was to come under a new inspector who had been responsible for handling demonstrations against the Springbok tour, which had erupted into violence between police and Aborigines on several occasions, there was considerable foreboding. However he turned out to be, as he claimed, a professional policeman, and a very realistic one, without other axes to grind. From the beginning his attitude to the ALS was: "You want peace and good relations in Redfern, so do I. Let us work together to achieve it". Today such willingness to unbend and negotiate would be widely acknowledged as good police practice. In 1970 it was rare. The ALS was able to negotiate with him ways of avoiding incidents between police and Aborigines, and he continued to be helpful when he was transferred to Dubbo.

One of Inspector Beath's professional precepts was that he was responsible for the police under him and did not want them to get hurt. This made him keen to avoid trouble, not exacerbate it. I found the same precept operative with the Commissioner of the Federal Police, when at the request of Paul Coe I went to Canberra on the weekend of 29-30 July 1972, when there was to be a large Aboriginal gathering at the Tent Embassy, and fears were held that there would be a repetition of a violent struggle that had occurred between police and Aborigines the previous weekend. On that occasion there had been no less than a pitched battle. The Commissioner assured me that he did not want his men to get hurt, and I was able to assure him that those organising the Aboriginal demonstration did not want their people to get hurt, particularly because so many women and children were there. I believe that this common interest, and the negotiation that grew out of it, had a lot to do with the day going off peacefully. Had this peaceful outcome not eventuated, there might well have been a serious long term deterioration in Aboriginal-police relations.

## F. ABORIGINAL ORGANISATIONS

The Aboriginal Legal Service introduced me to the empowering potential of organisations for Aborigines. It enabled Aborigines to do what they could never have done acting as individuals - provide a general legal service for Aborigines, including legal advice, representation in court, and the making of representations to and negotiation with police forces and other arms of government. Originally professional legal work was done by lawyers who agreed to be on a panel to do

free work, but the possibilities on this basis, though valuable at the time, were limited. Many Aborigines lived in areas where there were many Aborigines and few lawyers, insufficient (even if they had been willing) to provide the needed service on a voluntary basis. Moreover lawyers acting ad hoc in individual cases could only rarely establish the rapport with, and build up the knowledge and expertise to communicate with, understand and effectively represent, their very different clients. Nor could they provide the basis of experience and accumulated knowledge to identify common Aboriginal problems and seek solutions to them.

But, more fundamentally, submitting oneself as an object of charity to a lawyer, who acted simply as an expert in using the dominant legal system of which his client was often ignorant, but to which the client had to submit, was a completely disempowering experience for an Aborigine. By contrast the ALS model provided an empowering experience for many. From the beginning a major part of the controlling Council was Aboriginal, and this rapidly became a majority, and before long the Council was totally Aboriginal, although dependent for legal advice on non-Aboriginal lawyers. The employment of salaried lawyers, and Aboriginal support staff, became possible with Government funding, initially on a modest basis through the support of a Liberal Minister for Aboriginal Affairs, Bill Wentworth in 1970, and then on a fully funded basis promised by Gough Whitlam in the 1972 election.

The ALS provided an important and empowering experience for Aborigines in controlling part of their affairs. The Council and a Management Committee were elected, and any Aborigine could join the ALS without fee and stand for office. Those elected obtained experience in management, budgeting and decision-making, hitherto rare experiences for Aborigines. They determined the priorities and the practices and attitudes for the organisation. So far as possible Aboriginal staff were employed, and where Aborigines were not available, as in professional areas, those employed were responsible to the elected Aboriginal Council. Aboriginal clients came not for white charity, but on a basis of entitlement to a community-based Aboriginal organisation.

So attractive was this early experience in self-determination that the model was followed in the establishment not only of other legal services across Australia, but in other fields. An immediate reaction of Aborigines who had been involved in the ALS was to establish the first Aboriginal Medical Service, which still operates successfully in Redfern, and has become a model for many other health services. In view of some recent theoretical criticism of the funding of Aboriginal organisations,<sup>19</sup> it should be noted that the alternative to the Aboriginal-controlled organisations was not some imaginary independent, individual provision of

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19 Note 9 *supra*.

services, but 'mainstreaming', that is the delivery of services by bureaucracies over which Aborigines had no control, either as individuals or as communities.

Naturally the road has not been easy or smooth for these exercises in self-determination, modest as they were, amongst a people whose initiative had so often been crushed or denied in the past. The organisation is a concept with no counterpart in small scale face-to-face Aboriginal society, where the slow pace of technological, demographic and natural change, and the limited contact with outsiders, meant that few challenges were posed to the notion of a timeless law regulating human affairs, and few opportunities were presented for social engineering. Decisions within a stable framework could be made by consensus or influenced by persons of traditional authority. There were no funds to account for. In using the Western concept of an accountable, democratic organisation, there have been failures as well as successes, and ups and downs within the organisations that have survived, but I believe that the establishment of the ALS began one of the great steps forward for Aborigines.

The establishment of Aboriginal Legal Services fundamentally altered relations with police, who could no longer assume that Aborigines would plead guilty to whatever they were charged with, or that complaints about police conduct would never be made or pressed. Initially most police seemed to resent the change, but today it is usually accepted as part of the natural order of things.

One thing that has largely disappeared is the old paternalistic activity of the local policeman, who exercised a personal discipline, particularly over young Aborigines who would be given 'a boot up the backside' and taken home to their parents. Some older, conservative Aborigines mourn the change, saying that when they were young they would never have been allowed to get away with what young people do today. In some Aboriginal communities there are warm memories of police who were paternalistic but put much effort into genuinely beneficial welfare activities.<sup>20</sup>

### III. A DISTANT OBSERVER 1973-1988

#### A. CHANGING POLICE POLICIES

I resigned the Presidency of the ALS in 1973 when I became a Supreme Court judge, mainly in civil jurisdictions where I saw little either of Aborigines or police. In the years 1970 to 1973 the ALS had been primarily concerned with getting into operation a system to provide legal advice and representation for Aborigines in

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20 For example, Sergeant Feltham in Echuca, JH Wooten, *Royal Commission into Aboriginal Deaths in Custody Report of the Inquiry into the Death of James Archibald Moore* (1990).

conflict with the criminal law, and with building support and participation in the Aboriginal community. These were big tasks carried out with limited resources, and little time or energy was available for proactive measures to influence police policies and attitudes. Nor was the time ripe on the police side. The New South Wales Force remained locked in its 'equal treatment' discourse, which effectively refused to acknowledge Aboriginality. It was not until 1980, when it established an Aboriginal Liaison Unit, that the Force moved away from that position. Originally consisting of one police officer, the Unit had reached a staff of 11, including one public servant, when it was disbanded in the process of regionalisation in 1988. Another special measure was the introduction of Aboriginal Community Liaison Officers (ACLOs), first introduced as a pilot project in Bourke and Walgett in 1986.

Other police forces had also abandoned the notion that they could ignore Aboriginality, and attempted to develop relations with Aboriginal communities and organisations. In Victoria a considerable degree of cooperation had developed between the Victorian Aboriginal Legal Service (VALS) and the Victoria Police, embodied in a joint Aboriginal/Police Liaison Committee established in 1983, and reflected in an arrangement that Police notified VALS whenever an Aborigine was arrested. Nothing similar has developed even today in New South Wales, a situation for which both sides might have to take some responsibility.

The changing police policies towards Aborigines in the 1980s were in some degree a response to major changes in federal and state policies to Aborigines across the board, to great changes in Aboriginal communities themselves, and to the growing sense of a national Aboriginal identity that had been dramatically expressed in the 1971 Tent Embassy, and more recently in the Aboriginal response to Australia Day 1988 and other Bicentennial celebrations.

## B. COMMUNITY POLICING

But even more important were changes internal to police forces themselves, nowhere more strikingly expressed than in John Avery's appointment as Police Commissioner in New South Wales in 1984. In 1981, when an Inspector, he had published a book entitled *Police - Force or Service?*<sup>21</sup> He saw a critical situation in which "[t]he criminal justice system continues to lose ground wherever urbanisation intensifies",<sup>22</sup> but considered that attempting to achieve social peace "by increasing legislation and coercive forces" was an expensive mistake.<sup>23</sup> His

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21 Note 12 *supra*.

22 *Ibid* p 1.

23 *Ibid* p 2.

solution was "to bring the people into the functions of social control".<sup>24</sup> Notwithstanding their sometimes more dramatic functions, "by far the largest area of police functions lies in routine peace-keeping activities". He argued that "it is the police function to assist the public with social control".<sup>25</sup> He commended the view that "what the police chief must do is to focus the entire institutional effort around one job, that of the police officer closest to the community",<sup>26</sup> and advocated a change of name from 'Force' to 'Service'.<sup>27</sup>

Today 'community policing' is a well accepted philosophy of police services in Australia. I have encountered police who see this as a reason for denying recognition to specifically Aboriginal issues - the police deal with 'the community', not with particular groups, who are expected to submerge their viewpoint under a general community umbrella. Fortunately this is not the dominant view, and was certainly not the view of Avery, who wrote with considerable perceptiveness of the Aboriginal situation:

The police image with Aboriginals is lamentably poor for a number of reasons, particularly the differing perspectives on life or what has been described as 'the great cultural gap'. It has been suggested that police are the grinding edge of the white society on the black. Police, in common with other members of non-aboriginal racial groups in Australia, must come to recognise the significance of aboriginality. With indifferent arrogance, the white people have carelessly endeavoured to force this people to become like unto our own flawed racial image. The relations between police and Aboriginals will improve when other residents on this continent allow them to rediscover the dignity and pride which were once theirs, and assist them to preserve their heritage.<sup>28</sup>

By 1988 'community policing' had been widely embraced by Australian Police 'Forces', which were engaged in changing into Police 'Services'.

#### IV. THE ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY 1988-1991

##### A. HOW ABORIGINES DIED IN POLICE CUSTODY

It was not until my appointment as one of the Royal Commissioners into Aboriginal Deaths in Custody that I again saw Aboriginal-police relations at close quarters. My particular responsibility was the investigation of deaths in New South Wales, Victoria and Tasmania. The establishment of the Commission was itself an expression of concern about those relations. The demand for a royal

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24 *Ibid* p 1.

25 *Ibid* p 3.

26 *Ibid* p 4.

27 *Ibid* p 5.

28 *Ibid* p 86.

commission went back at least to John Pat's death in the hands of police in Roebourne, Western Australia, in 1983, but was largely ignored by governments until 1987, when a spate of Aboriginal deaths by hanging in police custody around Australia aroused widespread public concern. In just six weeks between 24 June 1987 and 6 August 1987 there were five Aboriginal deaths in custody, all by hanging, and four in police cells. This followed 11 deaths earlier in the year, five by hanging.

Many people found it difficult to believe that such a large number of young Aborigines would voluntarily take their own lives, or would be able to hang themselves without assistance in the austere surroundings of a police cell. On the other hand they found it hard to believe that police in so many separate places in Australia would be killing Aborigines.

It is a sad commentary on the state of Aboriginal-police relations, and testimony to the enduring power of oral history in Aboriginal communities, that many Aborigines found no difficulty in believing that Aborigines were being deliberately killed by police around Australia. Had not the police been the instruments of genocide since 1788?

In the result the findings of the Commission, after the detailed investigation of 99 deaths (two thirds in police custody and one third in prison), exonerated police of deliberate killing, or even of brutality causing unintended death.<sup>29</sup> However many of the deaths were due to unsatisfactory care of prisoners, including conduct which was negligent or in breach of instructions. As a result the Commission made many recommendations for improved care of prisoners generally.

The available prison statistics confirmed that Aborigines had not been dying in gaols at a faster rate than other prisoners: they had provided 13 per cent of the deaths from 1980 to 1988, and at 30 June 1987 were 15 per cent of the prison population.<sup>30</sup> The similar rate of death once in prison did not suggest foul play. Indeed a smaller percentage of Aboriginal deaths were violent than non-Aboriginal: 30 per cent of Aboriginal deaths were by hanging as against 42 per cent of non-Aboriginal deaths. Correspondingly 40 per cent of Aboriginal deaths were by natural causes, compared with 27 per cent of non-Aboriginal, figures consistent with the lower health status and shorter life expectancy of Aborigines in the community.<sup>31</sup>

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29 In one case I found that, because of the failure of police to give truthful evidence, it was impossible to say how the deceased had suffered the skull fracture of which he died, and whether he had sustained the injury before being taken into custody or afterwards. JH Wooten, Royal Commission into Aboriginal Deaths in Custody *Report of the Inquiry into the Death of Bruce Thomas Leslie* (1990)

30 JH Muirhead, Royal Commission into Aboriginal Deaths in Custody *Interim Report of the Royal Commission into Aboriginal Deaths in Custody* (1988) p 92.

31 *Ibid* p 93.

## B. HANGING

It is worth saying something about hanging in custody, as some suspicion of police involvement still lingers on. Many people found it hard to imagine how so many persons could hang themselves in custody. But hanging is a classic form of suicide, in Australia and overseas, among prisoners, Aboriginal and non-Aboriginal, who often have reason for despair but no other means of taking their own lives.

A hanging in custody rarely involves, as many imagined, a body swinging freely by a rope, suspended from some point above the victim's head. That naturally seemed a difficult and unlikely method of taking one's own life, and it seemed strange that the means should be so readily available in a police cell. In fact the typical death by hanging in custody is not like this at all. It was common in the cases I investigated to find that the deceased's feet were touching the ground, his<sup>32</sup> knees were bent, but the weight of his upper body rested on a noose made from a strip torn from a cell blanket or sheet, or made by using an article of clothing such as a sock or jumper. Evidence showed that "only a few pounds of pressure on the neck is needed to occlude the jugular vein which drains blood from the brain, skull and face to the heart. A greater degree of pressure occludes the carotid arteries delivering blood to the brain from the heart, and still further pressure is required to occlude the windpipe. At any stage the vagus nerve may be stimulated and this will slow and sometimes stop the beating of the heart. Although death may take three to five minutes (less if the vagus nerve is stimulated), unconsciousness may occur in 15 to 30 seconds".<sup>33</sup>

The reason for the great upsurge of deaths by hanging in 1987 was never satisfactorily explained. However it was established that it was not a peculiarly Aboriginal phenomenon - in that year there were 31 non-Aboriginal hangings in custody.<sup>34</sup>

Some people talk of 'copy cat' suicides, a term which I find obnoxious, because it belittles the terrible psychological stress that goes with a decision to end one's life. I do not believe that people kill themselves just to copy others. On the other hand, if persons are in the state of desperation where they are capable of taking their own lives, the example of another may no doubt tilt the balance in favour of action and suggest a means.

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32 All the deaths I investigated were of men.

33 JH Wooten, *Royal Commission into Aboriginal Deaths in Custody Regional Report of Inquiry in New South Wales, Victoria and Tasmania* (1991) p 76.

34 D Biles, D McDonald, and J Fleming, *Research Paper No 7 of the Royal Commission into Aboriginal Deaths in Custody Aboriginal Deaths in Custody 1980-1988* (1989).

### C. DISPROPORTIONATE ARREST AND IMPRISONMENT

What then was the reason for the extraordinarily large number of Aboriginal deaths? It was easy to see that the explanation of the prison figures lay in the gross overrepresentation of Aborigines in the prison population; they were only about 1.5 per cent of the population but 15 per cent of prisoners.

But this applied to prisons, and the area of greatest Aboriginal suspicion, and the scene of the recent explosion of hangings, was police custody. Whereas only 32 per cent of all non-Aboriginal deaths in custody had been in police custody, the figure for Aboriginal deaths was 60 per cent.<sup>35</sup> No comparison of rates of black and white deaths was possible, as there were no figures available of the number of people, black or white, who passed through police custody. There had been an attempt by Charles Rowley in 1965 to get some idea of the scale of police apprehension of Aborigines in sample police areas in New South Wales, Victoria and South Australia. No precise comparisons could be made because there were no figures for Aboriginal population in the particular areas, but it was clear that the Aboriginal arrest rate was very high.<sup>36</sup> A similar conclusion could be drawn from Elizabeth Eggleston's "Ten Towns" study.<sup>37</sup>

The Commission's Criminology Research Unit set out to plug the statistical gap by enlisting the cooperation of all police services to record every movement in and out of police cells, with Aborigines separately recorded, over a set period. This exercise was ultimately carried out in August 1988, and the results were not available until early 1989. It showed that in Australia as a whole, Aboriginal people were arrested at 28 times the rate of non-Aboriginal people. There were big differences between the states: the disproportion was 43 times in Western Australia, 26 times in South Australia, 17 times in Queensland, 15 times in New South Wales, 13 times in Victoria, and 11 times in the Northern Territory. The comparison between the States is distorted by their different treatment of public drunkenness. Where it remains an offence, or where non-police facilities for receiving drunks are inadequate, substantial numbers come into police custody, and there are corresponding increases in the custody rate. Leaving out of the figures custodies resulting from public drunkenness, the disproportion ran at the rate of 29 times in Western Australia, 21 times in South Australia, 13 times in New South Wales, 12 times in Victoria, 10 times in Queensland and 5 times in the Northern Territory. Aboriginal women made up nearly 50 per cent of the female custodies, although they comprised less than 1.5 per cent of the national female population.

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35 *Ibid* p 91.

36 Note 7 *supra* pp 354-56.

37 E Eggleston *Fear, Favour or Affection* (1974).

#### D. WHY THE HIGH ARREST RATE?

What was the explanation? Many police would say it simply means that Aborigines commit more offences than non-Aborigines and the solution lies in the hands of Aborigines - they should obey the law. Some Aborigines would say that it is due to police racism - Aborigines commit no more offences than other people but police discriminate against them. Other commentators extend this argument to include not just police but the criminal justice system generally, although acknowledging poverty as well as race as a factor. "[T]he main cause of this over-representation is the discrimination, probably based on poverty as well as race, that permeates that system".<sup>38</sup> The suggestion that Aborigines commit more offences than non-Aborigines is rejected on the grounds that researchers doubt (although they have no evidence) that this is so, and that an explanation which indulges in 'blaming the victim' "deflects attention away from the inadequacies of the *system* where the problems really lie".<sup>39</sup>

These grounds, avowedly without empirical basis, reflect a widespread tendency to allow ideology to affect conclusions; it is not ideologically or politically correct to admit the plain fact that in many areas Aborigines as a group do commit offences at a greater rate than the community average. So to admit is evidence of racism, naivety, or class bias. Commissioner Johnston took this issue head on in the *National Report*, saying:

[I]t is a mistake, in my view, to pretend that because Aboriginal people are disproportionately policed with regard to some laws it must follow that either the laws are unjust or that the policing of those laws is discriminatory. There seems to be a great reluctance among some commentators to recognize this fact. There is, perhaps, a fear that to acknowledge the legitimacy of police conduct in some instances is to take sides against Aboriginal people. To me, this approach serves no-one's interest and leads to greater, and unproductive division within the community, rather than to resolution of the very real problems which must be addressed.

It must be recognised that much of the behaviour which leads to detention of Aboriginal people by police is equally unacceptable to Aboriginal people as it is to non-Aboriginal. The assumption that public drunkenness is not something which disturbs Aboriginal people is a myth. The tragedy of lives wasted under the influence of liquor is well appreciated by the many Aboriginal people with whom I consulted. And Aboriginal people equally appreciate that the person drunk in a public street will in all probability find his or her way back to their camp or house with the result too often being uproar or even violence against family or friends.<sup>40</sup>

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38 H McRae, G Netheim, and L Beacroft *Aboriginal Legal Issues* (1991) p 240.

39 *Ibid* p 245.

40 E Johnston, Royal Commission into Aboriginal Deaths in Custody *Report of the Royal Commission into Aboriginal Deaths in Custody* (1991) vol 2 pp 196-97.

## E. OVERPOLICING

On the other hand there are also police practices and attitudes that contribute markedly to the high arrest rate. Look at the western New South Wales town of Wilcannia, for example:

Wilcannia, with a population of 1,000 of whom some 800 are Aboriginal, is serviced by 11 police, a police population ratio nearly six times that of the State as a whole. Aboriginal people often ask 'Why are there so many police?'. The facts are that the State-wide police/population ratio is 1:432. In Chatswood it is 1:926, in Redfern 1:353, in Bourke 1:142, and in Wilcannia 1:77. The bill for policing in Wilcannia was \$816,581.00 for 1989-90, with other costs, including the cost of the court, bringing the cost of 'justice' in Wilcannia conservatively to \$1,143,381.00 per annum. Some observers see this massive police presence as a cause of, rather than a limitation on crime. A major offence in Wilcannia is swearing at the police. Arrests for swearing at police often arise as police constantly drive up and down the main streets of the town obviously scrutinising the Aboriginal population. Eventually some Aboriginal calls abuse at the police, who seek to make an arrest. Charges of resisting arrest and assaulting and hindering police are likely to follow.<sup>41</sup>

It is not surprising to find that whereas in Sydney Aboriginal people are seven times more likely to be in police custody than non-Aboriginal people, in the North West the figure is 67 times, and, in the Far West (which includes Wilcannia), 223 times.<sup>42</sup> Commenting on these figures a police officer said solemnly, and no doubt with much truth, that the reason for the high rates in the Far West was that there were so many police for Aborigines to swear at.

Overpolicing of Aboriginal communities is given as an example of practices leading to higher arrest rates, and is one that does not depend for its effects on any racist attitudes in individual police. It is of particular interest in the light of new ways of policing Aboriginal communities being pioneered in the Northern Territory, as described below. The New South Wales Police Service reacted somewhat differently when the spotlight was turned on the overpolicing of Wilcannia. It was argued that a major factor in the high rate of offending was the almost total lack of employment opportunities in Wilcannia, a proposition which has much force. Therefore, it was reasoned, the prerequisite to reducing the police numbers was a reduction in unemployment, and police funds were used to bring in a consultant to devise means of creating employment. However the consultant, like others who had looked at Wilcannia, could find no simple solutions and the project lapsed. The major source of employment in Wilcannia continues to be policing the unemployed.

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41 Note 33 *supra* p 301.

42 *Ibid* p 299.

As in so many matters, the basic issues were clearly seen by John Avery, who had written in 1981:

If more law and heavier penalties are not the answer, no more is the notion that effective social control can be achieved by providing more and more police. If a community is not amenable and co-operative an occupation army would not subdue its inclination to deviate... We therefore need to take positive steps to reconstruct our processes of social control to allow for a very comprehensive involvement of the people in the task...<sup>43</sup>

The ill-fated attempt by police to tackle unemployment in Wilcannia may have been an attempt "to reconstruct our processes of social control", although in an indirect way for which police had neither the expertise nor the resources, and which should have been the responsibility of others.<sup>44</sup> However it overlooked Avery's crucial point that the reconstruction should "allow for a very comprehensive involvement of the people in the task".

## F. UNDERLYING CAUSES

The Royal Commission was not able to accept that the high rate of Aboriginal custody was due exclusively either to discrimination or to a greater rate of offending. It would seem that both operate, and indeed fuel each other. The Commission made many recommendations aimed at procuring fairer treatment of Aborigines at the hands of police and other agents of the criminal justice system, but the *National Report* went on to say:

[C]hanges in the operation of the criminal justice system alone will not have a significant impact on the number of Aboriginal persons entering into custody or the number of those who die in custody; the social and economic circumstances which both predispose Aboriginal people to offend and which explain why the criminal justice system focuses upon them are much more significant factors in over-representation.<sup>45</sup>

For that reason a great deal of the *National Report* and its recommendations were directed at the social and economic factors involved in the generally disadvantaged position of Aborigines in the community. This was traced primarily to the history of dispossession and the effect of subsequent governmental policies towards Aborigines. The position of Aborigines in the criminal justice system paralleled disadvantages in life expectancy, health, housing, education, employment, income, command of resources, alcoholism - indeed almost any indicator one chose.

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43 Note 12 *supra* p 77.

44 Indeed the future of Aboriginal communities in remote areas which provide them today with no adequate economic base, but to which they are traditionally bound, is a major challenge to Government policies. see note 33 *supra* pp 197-98.

45 Note 40 *supra* vol 4 p 1.

Of the 339 recommendations of the Royal Commission, about 20 per cent dealt with the care of persons in custody, 10 per cent with diversion from custody, 10 per cent with the investigation of deaths in custody, and 10 per cent with other aspects of the treatment of Aborigines in the criminal justice system. Most of the remaining 50 per cent of the recommendations dealt with the position of Aborigines in the community and were directed to tackling the many forms of social disadvantage which characterise the Aboriginal community in Australia.

### G. EMPOWERMENT AND SELF-DETERMINATION

Many recommendations were made "for the elimination of the social, economic and cultural disadvantages which Aboriginal people suffer. But running through all the proposals... is the proposition that Aboriginal people have for two hundred years been dominated to an extraordinary degree by the non-Aboriginal society and that the disadvantage is the product of that domination."<sup>46</sup> Underlying what had happened was non-Aboriginal Australia's "racist assumption of an ingrained sense of superiority that it knows best what is good for Aboriginal people".<sup>47</sup>

The *National Report* was the responsibility of the National Commissioner, Commissioner Johnston, but the five Commissioners substantially agreed with the 339 recommendations and the general thrust of the report, which was that the empowerment and opportunities for self-determination of Aborigines were crucial. This conviction was based not on abstract theorising but on the concrete study of the lives and deaths of 99 Aborigines, and extensive contact with their families and communities. In a joint preface signed by all Commissioners they wrote:

As with indigenous peoples in other countries, it is a matter of great difficulty to work out ways in which, within the framework of the larger society, they can retain their identity as a people and exercise a significant degree of control over their lives and futures. If other Australians can, in a spirit of justice and humanity, accord Aboriginal people this recognition, give them freedom to determine their own future and find their own place as a distinct people in Australian society, and provide them with the resources that are necessary to overcome the handicaps they suffer as a result of what has happened in the past, there can be hope of a freely negotiated reconciliation between Aboriginal and non-Aboriginal Australians. Then there may be an end to the situation where so many Aboriginal people live and die in custody.<sup>48</sup>

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46 *Ibid* vol 1 p 15.

47 *Ibid* vol 1 p 9.

48 *Ibid* vol 1 p xix.

## H. CRITICISM OF THE ROYAL COMMISSION'S APPROACH

There has been surprisingly little discussion of this central part of the Commission's report. In March 1993 a broadside attack on it was launched in an Institute of Public Affairs (IPA) publication *Black Suffering, White Guilt?* written by its Environmental Director.<sup>49</sup> The title is indicative of the publication's orientation. The Royal Commission had appealed to justice and humanity, not guilt, which is an 'Aunt Sally' much used by those who wish to undermine support for Aboriginal policies.

The IPA's declared objective is to encourage appreciation of the free society and free enterprise by classical economic and political analysis,<sup>50</sup> so it is no surprise that the booklet advocates that governments dismantle the whole structure of Aboriginal policies, departments and institutions, repeal all legislation that distinguishes between Aborigines and other Australians, and ignore Aboriginal status in funding organisations. The aim of policy should be that individuals become "independent economic and legal agents".<sup>51</sup>

From this standpoint it criticised the 'collectivist' tendencies of the Commission, that is its support for self-determination, which involves the giving to Aboriginal communities or groups the greatest feasible control over their own affairs. A corollary is support for strong Aboriginal organisations which are the machinery for community or group action, particularly in relation to the outside world. As I pointed out in discussing the early years of the ALS, the organisation provided Aborigines with a means of negotiating their relations with police in a way which could never have been undertaken by individual Aborigines, or by mainstream legal aid organisations.

Whereas the IPA support for individualism is primarily ideological, the Commission's emphasis on the empowering possibilities of group action was based on three years close interaction with Aborigines. It reflects not only the fact that for most Aborigines a group identity is of great importance, but also the fact that many Aborigines live in remote communities where the choice is not between individual and group enterprise, but between group self-determination and dependence on bureaucratic decision making and service delivery coming from the dominant community. Individual Aborigines who want to strike out on their own and seek education or training, or to start individual enterprises, are not only free to do so but are eligible for considerable assistance under government programmes supported by Commission recommendations.

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49 Note 9 *supra*.

50 *Ibid* inside cover.

51 *Ibid* p 62.

## I. IMPLICATIONS FOR POLICING

The Commission's emphasis on recognition, empowerment and self-determination, and the role of organisations, have implications for policing. The *National Report* identified the presence of strong Aboriginal organisations as a key element in significant improvements in relations between Aboriginal people and police.<sup>52</sup> The recommendations supported the concept of community policing but advocated greater emphasis on "the involvement of Aboriginal communities, organisations, and groups in devising appropriate procedures for the policing of public and private locations where it is known that substantial numbers of Aboriginal people gather or live".<sup>53</sup> Recommendation 215 advocated *negotiation* at the local level:

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

- a. The methods of policing used, with particular reference to police conduct perceived by the Aboriginal community as harassment or discrimination;
- b. Any problems perceived by Aboriginal people; and
- c. Any problems perceived by police.

Such negotiations must be with representative community organisations, not Aboriginal people selected by police, and must be frank and open, and with a willingness to discuss issues notwithstanding the absence of formal complaints.<sup>54</sup>

The word 'negotiation' was deliberately chosen as the Commission had seen many examples of 'consultation', a process seldom productive, and usually infuriating to Aboriginal people. This is not confined to police by any means, but is a very common feature of official contact with Aborigines in all spheres. The ability and willingness to listen to the other person do not come easily to most people, particularly those in official positions. Most people tend to assume, often unconsciously, that they know best, and that it is more important for the other person to listen to them than for them to listen to the other. It is particularly hard for white people to learn to listen to Aborigines, because for 200 years white people have held the power, made the laws, given the orders, made the policies, and looked down from positions of power and privilege on an Aboriginal people who were poor, landless, less well educated by white standards, and alienated from a frequently racist society.

That is why those in the white community have to make the greater effort to listen and to respect and take on board viewpoints that in the past they have

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52 Note 40 *supra* vol 4 pp 83-5.

53 *Ibid* Recommendation 214, vol 4 p 84.

54 *Ibid* Recommendation 215, vol 4 p 85.

ignored. Aborigines have to be willing to listen and cooperate too, but those in the white community have to be prepared to go a lot more than half way.

(i) *Learning to negotiate*

If white people generally find it hard to listen to Aborigines, police find it even harder. They are used to laying down the law, to wielding authority, and in particular to trying to force Aborigines into conformity with white ideas of decorum. They are used also to dealing with Aborigines in situations which are not the best for reasoned discourse and listening, situations shaped by alcohol and anger. So police have to make a special effort to listen to Aborigines, and they have to be willing to seek out and create situations in which real discussion, listening and negotiation are possible.

I was struck, as I went around eastern Australia as a Royal Commissioner, by how often I found police officers who were well motivated, anxious to improve relations with the local Aborigines, but disillusioned and frustrated. They would tell me how they had had great plans but Aborigines would not cooperate, how they had called meetings but Aborigines would not come. Then I would talk to leaders of the Aboriginal community and find them equally anxious for constructive change, but equally disillusioned and frustrated. "The police will not listen to us", they would say. "They call meetings at times that suit them in places where they are comfortable; they are *their* meetings, not ours. If we go, they do not want to listen to us, they just want to tell us about their ideas."

It is because of the inability to listen that much well-intentioned effort and goodwill goes to waste. The Royal Commission therefore stressed *negotiation* at the local level.

(ii) *Negotiations with whom?*

Where police do decide to listen to Aborigines or to take their advice, they often show a very human desire to select the people they listen to, or whose advice they take. Rather than undertake the difficult task of talking to organisations which may have strong (and sometimes highly critical) leadership, it is easier to deal with in-house advisers, either Aboriginal police officers or civilian employees. Inevitably such persons, whose jobs or careers are constantly on the line, are unlikely to be as free with advice that their superiors do not want to hear, as Aborigines who are not so dependent, or who are accountable only to an Aboriginal community or organisation.<sup>55</sup>

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<sup>55</sup> Such advisers have a valuable role to play, and their employment was supported by the Commission. But they need real independence, and should be used to further police exposure to Aboriginal input, not shield them from it.

When machinery of consultation (negotiation is still a rarity) is established, again there is often a manifest desire to handpick those who will be consulted, rather than let them be nominated by representative Aboriginal communities or organisations. The trouble is that those whom the local police commander regards as the responsible worthwhile Aborigines may be regarded by many other Aborigines as 'Uncle Toms', or representative only of the more assimilated or 'successful', and they may be more useful in confirming the police prejudices than in opening effective communication with the Aboriginal community.

(iii) *Resistance to negotiation*

The resistance of police culture to change is well illustrated by the reaction, even at government level, to Recommendation 215. In 1992 all Australian Governments except Tasmania published their responses to all of the 339 recommendations of the Royal Commission.<sup>56</sup> For each recommendation each Government gave its 'Position/Comment' and its 'Action'. All Governments expressed their position as one of unqualified support for Recommendation 215. However when 'Action' was detailed, there was often grave reason to doubt that the Recommendation was understood, much less supported.

New South Wales boldly claimed that the Recommendation had been 'implemented'. However the details of implementation were these: "Patrol Commanders involve Aboriginal community liaison officers and community consultative groups in the community policing of each patrol. The issues raised in this Recommendation have been referred to Patrol Commanders."<sup>57</sup> The liaison officers referred to were full time police employees, and the community consultative groups have historically often been white dominated, with Aborigines selected by the local Police Commander.

Victoria claimed that "Community Justice Panels, Aboriginal/police liaison committees and now Police Community Consultative Committees set up under the Public Safety and Anti-Crime Strategy, all work to improve the understanding between Police and local Aboriginal communities".<sup>58</sup> There was however no indication that any of these bodies acted in accordance with Recommendation 215 rather than in the manner of traditional police 'consultation'.<sup>59</sup> A similar ambiguity permeated the responses of the Commonwealth (in regard to Wreck Bay), Queensland, and the Australian Capital Territory. The only Government

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56 Australian Government Publishing Service *Aboriginal Deaths in Custody: Response by Governments to the Royal Commission* (1992).

57 *Ibid* pp 827-28.

58 *Ibid* p 827.

59 As noted below, however, the Commission commented very favourably on Victoria's Community Justice Panels.

which actually used the word "negotiation" in its response was Queensland, and then only to refer to negotiation within the Police Service between its Aboriginal liaison officers and local police, and between its Aboriginal liaison officers and Aboriginal community police.<sup>60</sup>

Although South Australia claimed implementation, its comment suggested that it had not appreciated the thrust of the Recommendation. It said: "It is recognised that adequate consultation [sic] mechanisms at the local level are crucial in maintaining harmony".<sup>61</sup> Although Western Australia claimed to support the Recommendation, its detailed response suggested that it had understood but rejected it.

Consultation with local Aboriginal and Torres Strait Islander communities is encouraged and presently occurs as a matter of course, and consideration will be given to a means of formalising this process. However, the involvement of communities in the determination of policing policies and practices at the local level is not considered appropriate.<sup>62</sup>

While the response of the Northern Territory, which claimed implementation, did not spell out its understanding of the Recommendation, it had previously given evidence of its willingness to go down the road of negotiation with local communities. Indeed the *National Report* of the Royal Commission had praised the achievements resulting from negotiation between strong Aboriginal organisations and police in the Northern Territory, which had in some degree inspired Recommendation 215.<sup>63</sup>

Another inspiration for the Recommendation was the evidence of successful working of some Community Justice Panels in Victoria, particularly that at Echuca. Originally established by negotiation between the Victorian Aboriginal Legal Service and Victoria Police, these were panels of Aborigines who, on a roster basis, were on call, and were contacted by police whenever they had a problem with an Aborigine. Very often the panel member was able to find a solution to the problem, for example by taking a person affected by liquor home, by quietening a rowdy party, or by finding care for a child or young person. In some areas the panels expanded their influence and were consulted by courts about sentences and worked with probation and parole services.<sup>64</sup>

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60 Note 56 *supra*.

61 *Ibid* p 828.

62 *Ibid* p 827.

63 Note 40 *supra* vol 4 p 28. See below under Part V.

64 Note 33 *supra* pp 321-25.

## J. OVERALL RESPONSE TO ROYAL COMMISSION

The nature of the response to Recommendation 215 unfortunately gives rise to reservations which one must have generally about the high level of declared support for recommendations claimed by Governments. It is all too easy to give lip service to recommendations; it is another matter to embrace them and implement them whole-heartedly. Sometimes the contradiction between claimed support and proposed action is apparent even in the terms of the response, as has been shown. Another very simple example is in relation to Recommendation 141, which recommended that no person be detained in a police cell unless a police officer is in attendance at the watch house and is able to perform duties of care and supervision of the detainee. All Governments expressed unqualified support, except Western Australia which gave qualified support. But when one reads on one finds that the Northern Territory is implementing the Recommendation "over many years", and that Queensland will continue to hold prisoners in "one-man stations" without arranging such supervision.<sup>65</sup>

Even where a Government has responded in terms which indicate an appreciation of the intent of the Recommendation, and an unqualified commitment to implementing it, there remains the gap between intention and action, and the gap between instructions issued from headquarters and understanding and implementation on the ground. Conscious of this problem, the National Commissioner devoted his first three recommendations to machinery for monitoring the implementation of recommendations.<sup>66</sup>

One important Commonwealth response to the Commission's report and to the *Report of the National Inquiry into Racist Violence* has been the establishment of an Aboriginal and Torres Strait Islander Social Justice Unit within the Human Rights and Equal Opportunity Commission to perform a broad watchdog role in relation to human rights. One of its functions is to produce an annual "State of the Nation" Report on Aboriginal and Torres Strait Islander issues.<sup>67</sup> The Unit is headed by an Aboriginal Commissioner, a position taken up in May 1993 by Mick Dodson, an Aboriginal lawyer who was one of the counsel assisting the Royal Commission, and more recently Director of the Northern Land Council. How adequate the resourcing of this function will be remains to be seen.

## K. POLICE VIOLENCE AND OTHER MISTREATMENT

The *National Report* recognised the existence of a problem of police violence against Aborigines but did not seek to quantify it. The Commission had no

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65 *Ibid* pp 527-29.

66 Note 40 *supra* vol 1 pp 29-31.

67 Note 56 *supra* p 5.

particular brief to investigate the subject except in so far as it was incidental to the deaths in custody which were the subject of its inquiry. The direct evidence of police violence during the hearings was very slight, but such complaints were heard in a number of jurisdictions by the Commission's Aboriginal Units, which sought input from Aboriginal communities.<sup>68</sup> The Commission was also aware of evidence before the Human Rights and Equal Opportunity Commission's *National Inquiry into Racist Violence*, although the Report of that Inquiry did not appear in time to be used by the Commission.

One of the great difficulties in assessing the issue of police violence or other mistreatment is getting reliable information about what happens in police cells or dark back streets. It is not often that an incident is captured on videotape, like the arrest of Rodney King in Los Angeles. Even then it was possible to raise sufficient doubts about the interpretation of what was seen to secure a jury acquittal. Often the people who allege violence have credibility problems and a motive for inventing allegations against police, which of course does not necessarily mean that they are not telling the truth. They are indeed the most likely to suffer. Violence can be inflicted without leaving clear signs, and even the origin of clear signs may be susceptible of a plausible innocent explanation.

Incidents of bad treatment will be remembered while normal treatment will not. This is in one way quite fair, because everyone is entitled to proper treatment. On the other hand it is unfair when all police are bracketed with those who behave badly, or police today have to wear a no longer accurate image handed down from the past. Where past violence has created great bitterness, it may be hard to acknowledge change. People who give police credit for change are likely to find themselves regarded as ideologically unsound, naive, or prejudiced by their race or class.

On one occasion during the Royal Commission I spent a long time in a Victorian Aboriginal cooperative listening to two women narrate a series of incidents of police mistreatment of people in the local community. When pressed as to the time of each event, they invariably admitted that it was several years old. But despite their inability to produce recent examples, they maintained that nothing had changed. Finally an Aboriginal man who was sitting listening could contain himself no longer. He turned on the women and said, "Of course things have changed", and went on to describe in detail how well the police and the cooperative had worked together for the previous year to bring about the change.

On the other hand there are powerful disincentives to Aborigines who might be disposed to complain against police treatment. The formal complaints system with its onus of proof, the fact that the complainant usually has a record to be used

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68 Note 40 *supra* vol 2 p 219.

against his or her credibility, the common situation that the complainant is alone against several police witnesses, and the fear of retaliation against the complainant or a witness, or their families, combine to discourage all but the rare person from pursuing complaints.

There are those who dismiss Aboriginal complaints of violence by police as a myth. In one sense it may become a myth, as the last example shows, but it is not a myth in the sense of being non-existent. Even if one never manages to see it, in real life or even on audio or videotape, every now and then one gets an overwhelmingly convincing glimpse of what has happened. I once asked an Aborigine who was complaining about police conduct in a country town, whether there was police violence against prisoners. Without hesitation he replied, "Oh, no, that sort of thing stopped when Sergeant So-and-so came here". And a Canadian police officer, who was telling me about relations with Indian people, said how impressed he was with the New South Wales Police he had met. "We had a woman Police officer visiting here, and she was so ashamed of having been involved in the bashing of Aborigines in the past". I have heard more than one Aborigine, concerned about the conduct of Aboriginal youths today, say nostalgically that if he had behaved that way in his youth, he would soon have had the local sergeant's boot up his backside.

At any given time there can be great local variation in police practice. A former solicitor in Alice Springs told me how at one time Aborigines who sought his assistance after arrest very frequently complained of violent treatment. But when he started to act for Aborigines just across the border in South Australia he received no such complaints, and clients usually looked surprised if asked. He was acting for people from the Pitjatjantjara Homeland, where police are screened for service, and it does not follow that all of South Australia would have had such a benign reputation. On the other hand the Royal Commission, some years later, found that in Alice Springs, where Aboriginal-police relations had not long before been so bad, the Northern Territory police were (as in several other towns) successfully applying some of the most successful policies of cooperation with Aborigines that the Commission encountered.

One body that did have a brief to investigate police violence against Aborigines was the Human Rights and Equal Opportunity Commission's *National Inquiry into Racist Violence* (the Inquiry), and its finding in its 1991 report was that "Aboriginal-police relations have reached a critical point due to the widespread involvement of police in acts of racist violence, intimidation and harassment."<sup>69</sup> In assessing this it is important to note that the Inquiry "defined racist violence in

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69 Human Rights and Equal Opportunity Commission *Report of the National Inquiry into Racist Violence* (1991) p 213.

such a way as to include not only physical attack upon persons and property but also verbal and non-verbal intimidation, harassment and incitement to racial hatred".<sup>70</sup> The Inquiry did not conduct the kind of inquiries which would have been necessary to support specific findings in a court of law, but to a considerable extent relied on complaints. It justified this process by pointing to the extensive and widespread nature of the evidence, the similarity of the complaints which gave an "internal consistency" to the evidence, and "most importantly, those who presented the evidence to the Inquiry were generally poor and disadvantaged people who have difficulty in formally proving a legal case or pursuing an official complaint...the chance that the legal demands for adequate evidence would be met are slim indeed".<sup>71</sup>

My own conclusions at the end of the Royal Commission were that "at various times and at many places police 'bashing' of Aborigines has been a serious problem and has left a major barrier to Aboriginal trust of police... To what extent such violence continues it is not possible to say, but it does seem reasonable to conclude that it is nowhere near so widespread and frequent as it once was. Today it is not usually at the forefront of Aboriginal complaints about police..."<sup>72</sup> This assessment was recently confirmed by an Aborigine who returned to a rural Aboriginal settlement in New South Wales after some years absence and commented that when he went away everyone ran away if they saw the police coming; now they were frequently sending for the police to complain about each other. On the other hand he expressed concern that a decline in physical violence to persons in custody may have been balanced by greater use of psychological weapons.

However gratifying it is that police violence has significantly decreased, there can be no acceptance of any degree of unnecessary violence. The *National Report* reflected this view in Recommendation 60:

That Police Services take all possible steps to eliminate:

- a. Violent or rough treatment or verbal abuse of Aboriginal persons including women and young people, by police officers; and
- b. The use of racist or offensive language, or the use of racist or derogatory comments in log books and other documents, by police officers.

When such conduct is found to have occurred, it should be treated as a serious breach of discipline.<sup>73</sup>

As one might expect, this Recommendation received unanimous support from all Governments, but the responses were mainly smug and few expressed any intention

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70 *Ibid* p 15.

71 *Ibid* p 119.

72 Note 33 *supra* p 279.

73 Note 40 *supra* vol 2 p 223.

to do anything new. Despite the Commission's recommendations to "take all possible steps", several Governments took the attitude that all that was necessary was to have the right words in the Police Instructions. Thus South Australia replied: "This is addressed through general orders; disciplinary provisions of the *Police Act 1952* apply to any breaches". For Western Australia "such issues" were "adequately covered by current procedures, policy and legislation".<sup>74</sup> It would seem that television programmes like *Cop it Sweet* and the exposure of the Bourke police videos are more likely to have an impact on police practice than Royal Commission recommendations.

#### L. IS IT RACISM?

Not surprisingly many Aborigines interpret police conduct of which they disapprove as racism, particularly when they see themselves getting a degree of attention not received by other groups. Often this is a justified conclusion; the police force not only reflects attitudes common in the rest of the community but also has a lot of historical baggage in the form of entrenched attitudes and practices that may be reproduced without any particular feeling or malice, but is nonetheless damaging. A light skinned Aboriginal woman in a Victorian country town told me how she was initially treated and spoken to by police more politely than her darker sister, indeed in the same way as the members of the white community. However after their relationship became known to the police, she received the same brusque treatment as her sister.

This was a simple example, but a telling one. The *National Inquiry into Racist Violence* asked itself the question whether the police violence against Aborigines which it found to exist was racist, and produced compelling reasons for seeing it as "part of an institutionalised form of racist violence."<sup>75</sup> The diagnosis of racism is important, not for the purpose of allotting blame, but because once it is recognised something can be done about it. Even making the unconscious conscious may help, and it is possible to devise educational programmes that will help to undermine racist attitudes.

There is a need for change of attitudes on both sides. For this reason programmes that bring police and Aborigines together in ways in which they can get to know each other outside the official context can be very productive. During the Royal Commission I spent a weekend at a live-in conference at the Dharnya Centre near Echuca which brought together Aborigines and police from all over Victoria to discuss Aboriginal-police problems. Towards the end one senior

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74 Note 56 *supra* pp 203-07.

75 Note 69 *supra* pp 12-122.

Aborigine was heard rebuking another for referring to police as 'pigs', saying: "That's like them calling us coons".

There are no doubt other factors at work as well as racism. In white Australia - as indeed in Great Britain and the United States - the introduction of professional police in the mid-nineteenth century industrial towns produced many of the effects that police have in areas of concentrated Aboriginal population today. There was a change in perceptions of what constituted criminal or illicit behaviour, with "an upsurge in such petty offences as drunkenness, disorderly conduct, breaches of the peace, 'corner lounging', vagrancy and prostitution". New standards of decorum and order were enforced on the public, and in particular on the working class. These 'public order' offences were easily visible, arrests served to justify the existence of the police, and many arrests were made in "an attempt to coerce respect from those the police considered lacked the proper attitude or demeanour". Interference and apprehensions for minor offences created great animosity towards the police and led to 'riots'.<sup>76</sup> This account of mid-nineteenth century policing of working class white communities has many parallels to the policing which still continues in many Aboriginal areas today. Antipathy to the police can hardly be considered a uniquely Australian, let alone Aboriginal, characteristic.<sup>77</sup>

## M. BLACK POLICE

As the *National Report* noted, there is fairly general support for the recruiting of Aboriginal men and women into the police services, and this is despite the fact that there are known difficulties. Commissioner Johnston recommended that there be particular emphasis on recruiting women, and that where possible recruits should be inducted in groups.<sup>78</sup> Writing in 1981, Avery had noted that black youths were disinclined to join the police force because they tended to be regarded as 'Uncle Toms' by their own people.<sup>79</sup> This remains a problem in some areas. Another problem is that recruits often face real difficulty in continuing to assert an Aboriginal identity within the powerful police culture with which they are also expected to identify.

One factor in the situation is that programmes of recruitment are likely to attract people of Aboriginal descent who have not grown up as members of an Aboriginal community, whether because they have grown up in institutions, or with a parent or parents who have adopted a fully white lifestyle, or been fostered or adopted by a white family. While some of these establish excellent rapport with Aborigines

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76 Note 1 *supra* pp 21-2.

77 *Ibid* p 23.

78 Note 40 *supra* vol 4 pp 151-2.

79 Note 12 *supra* p 86.

whom they are policing, others may from an Aboriginal point of view be no different to white police, and may make little impact on the police culture. Indeed such persons may provoke the comment from white police: "If he (or she) can be like us, why can't the rest of them?", and the subject of the comments may even take the same attitude.

#### N. POLICE PARANOIA

Any paranoia that Aborigines may be accused of feeling towards police was more than counterbalanced by evidence of police paranoia that came to light during the investigation of a death in Brewarrina. To show the stressful conditions under which they had to work, counsel for the police rather injudiciously produced 'intelligence' reports solemnly prepared and submitted to headquarters by the local police in 1987, during the run-up to the Bicentennial year. One brief and entirely unsourced report read as follows:

Information has been received that aboriginals within the Bourke, Brewarrina, Walgett and Moree areas have come into possession of a large number of firearms. Informant stated that these firearms were purchased in a crate through *M. Mansell* by use of Government funding. Believed to be hidden for use in 1988.

On another occasion an Aboriginal Legal Service vehicle with two field officers ran out of petrol on a back road and one officer walked back to town and found someone to drive him back to the car with petrol. A police officer who observed the Legal Service car in the bush "with the motor of the vehicle turned off" and one of the field officers sitting on the bonnet, and later saw the other field officer approaching in another car, suggested that meetings were being held on a regular basis to plan disturbances for the Bicentennial Year. One of the suspicious circumstances was that the two Aboriginal field officers were people who made it obvious that they were "pro-aboriginal".<sup>80</sup>

This paranoia involves an extreme form of stereotyping.

Our ability to impose increasingly anonymous and general characteristics grows as people become socially removed from us. Social distance dehumanises our typing of people and when social distance is combined with poverty of information the typifications are not only simplified but also tend to express something of the fears and anxieties of the typifier.<sup>81</sup>

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80 JH Wooten, Royal Commission into Aboriginal Deaths in Custody *Report of the Inquiry into the Death of Lloyd James Boney* (1991) pp 162-5.

81 Note 12 *supra* p 88.

## O. POWERLESSNESS AND ACCOUNTABILITY

A lasting impression of the Royal Commission was how in the face of police Aborigines often feel powerless and vulnerable. Powerlessness begets fear, loss of self respect and angry and resentful hostility. They see police as being unaccountable. One of the recurring reactions of Aborigines to the Commission was surprise and delight at the novelty of seeing police in the box having to answer questions and account for their actions. Normally it is the police who ask all the questions and the Aborigines who have to do all the explaining and submitting.<sup>82</sup>

Making police more effectively accountable emerged as a major issue in improving relations with Aborigines. Some of the reasons why Aborigines have regarded it as a waste of time to make complaints against police have been mentioned earlier in discussing the problems of assessing the incidence of police violence. It is important to work towards a system where Aborigines can feel that they get a fair and realistic hearing and can pursue complaints without fear of retaliation.

Since the Commissionship of John Avery, the New South Wales Police Service has placed great emphasis on investigating corruption amongst police officers and producing a 'clean' police force. This reflects his earlier expressed view that "[i]f police desire co-operation from the public, it is essential that corruption among police is attacked and eliminated as far as is possible in a greedy society."<sup>83</sup> This is of vital importance and one can only applaud enthusiasm in pursuing this objective. However, as Avery recognised, this may be the easier part of reform. "Where police become involved in bribery and criminality the overwhelming majority of police will want to see the uniformed criminals sacked. It is the more subtle areas involving deceit, abuse, assaultive conduct and rule-bending which causes anguish to the new and highly motivated police officer."<sup>84</sup> He made a similar point in discussing the effect of training which attempts to inculcate new values in young recruits who must then function as junior members of teams of older officers:

Unused to the violence, the seaminess and degradation which are ingredients of the lifestyle in some of the segments of society in which police work, the use of what they see as undue force and abusive language and other types of malpractice causes some drastic self-evaluation about their position, whether they should report their matters to a superior or confront the officer responsible, but their junior status inhibits either possibility.<sup>85</sup>

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82 JH Wooten, *Royal Commission into Aboriginal Deaths in Custody Report of the Inquiry into the Death of Harrison Day* (1991) p 61.

83 Note 12 *supra* p 39.

84 *Ibid* p 62.

85 *Ibid* p 61.

The experience of the Commission in reviewing police investigation and disciplinary action following deaths in custody confirmed the truth of Avery's observations. In my *Regional Report* I commented:

In cases where the challenged conduct arises out of the attempted performance of duties as a police officer, rather than deliberate wrongdoing or criminal conduct under cover of or unrelated to the performance of duties, there is often a defensive or protective, rather than a rigorous, probing approach. The problem may in part be that if criticism is to be made, and wrongdoing uncovered, arising out of an officially sanctioned police operation, then it is not merely a matter of the reputation of individual police officers suffering, but the reputation of the service generally.<sup>86</sup>

## V. ALICE SPRINGS 1992

I did not have the opportunity to visit the Northern Territory during the Royal Commission, but observed the enthusiasm of Commissioner Johnston for a number of initiatives negotiated between the Northern Territory Police and Aboriginal community organisations. In his *National Report* he noted that protocols had been signed in Katherine, Alice Springs, and Tennant Creek detailing agreed procedures for such matters as the safety of Aboriginal people in detention, the attendance of legal staff and families when a person is detained, and the provision of medical care to detainees.<sup>87</sup>

Particularly striking were the community policing arrangements which had been introduced in Tennant Creek and Elliott. In Tennant Creek the Julalikari Council had established a programme of community patrols which attended disturbances in the town camps during the night. Generally police did not attend the scene of a disturbance unless requested to do so by members of the Council patrol. The Council then attempted to resolve the disputes at meetings the next morning. The presence of the patrol was also believed to act as a deterrent to incidents.<sup>88</sup>

In April 1992 I spent some time in Alice Springs preparing a report for the Minister for Aboriginal Affairs under s 10(4) of the *Aboriginal and Torres Strait Heritage Protection Act* 1984, and this required me to learn of the role played by the Tangentyere Night Patrol (the Patrol) in the town. Tangentyere is an Aboriginal organisation that began as a service organisation for the 'town camps', that is the various settlements in and around the town where Aborigines lived, and it now carries on a wide range of activities for the benefit of the Aboriginal residents. The primary object of the Patrol was to introduce Aboriginal community

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86 Note 81 *supra* p 338.

87 Note 40 *supra* vol 4 p 84.

88 *Ibid* pp 90-91.

policing to the town camps, and it has been very successful in reducing and defusing incidents. It started modestly at the end of 1990, and there were also some foot patrols of the Mall in the central business district (CBD) of the town. From October 1991 the Mall and the CBD were patrolled on a more regular basis, although this was limited to a few nights a week. After 3 January 1992, when the Patrol was able to move into a headquarters and radio base in the CBD with the support of the business community, it was able to recruit more volunteers and patrol the Mall four or five nights a week.

The police have given the Patrol great credit for a marked and steady decline in many offences, particularly street offences and car thefts, which has coincided with its activities. This applies to the CBD in particular and to Alice Springs in general. The commercial community was so pleased with the reduction in property damage that a bank, which is said to have saved \$35,000 a year in repairing broken windows, has provided premises at a greatly reduced rent, and that rental is being paid by the Mall Marketing Committee, and individual businesses helped equip the base.

All this has been possible only because of the very good relations and high degree of trust that have been built up between Alice Springs Police and Tangentyere Council, by hard work and common sense on both sides. The striking thing is the willingness of the Northern Territory Police to move over and make room for self-policing by Aboriginal communities, while standing ready to assist when called on. The result has been to give real meaning to self-determination at the local level, to make a great improvement in race relations in the town, and to reduce crime and enhance law and order.<sup>89</sup> I was tempted to say "I have seen the future and it works".

The particular model of a night patrol is suitable for areas where there are concentrated and relatively discrete Aboriginal communities, and would require adaptation or a different approach in other circumstances. However the Redfern community in Sydney is experimenting with the idea.

## VI. AFTER THE ROYAL COMMISSION

### A. RESPONSE TO THE ROYAL COMMISSION

People often ask how I feel about the response to the Royal Commission, a question which is not susceptible of a simple answer. One reason is that it is not easy to know what is happening; the nature of the recommendations in many cases call for action at a variety of levels, mostly through state or territory agencies, and

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<sup>89</sup> JH Wootten *Aboriginal Sites and the Junction Waterhole Dam* (1992) p 113.

in the end what happens on the ground is what counts. It is very difficult to know how things work out there. The Commonwealth has expressed very strong support and allocated substantial sums of money. The evidence of a sincere personal concern on the part of the Prime Minister to make a real impact on Aboriginal issues is very encouraging.

While all Governments have expressed a high degree of support for the individual recommendations, the earlier discussion of their proposed action in relation to some recommendations shows that not too much comfort should be drawn from such general statements. Much will depend on the effectiveness of monitoring mechanisms, the continued attention of the media, and public sentiment as it is brought to bear on political leaders.

## B. POLICE CUSTODY RATES

One of the monitoring agencies is the Australian Institute of Criminology. In March 1993 it published preliminary results of a *National Police Custody Survey* made during the month of August 1992.<sup>90</sup> This was designed to provide a direct comparison with the survey carried out by the Royal Commission during August 1988, and it implemented Recommendation 43 of the Royal Commission. It contained good news and bad news. The total number of people, of all races, who came into custody in Australia in the month of August had declined from 28,566 in 1988 to 25,654 in 1992, a decrease of 10.2 per cent. This was particularly impressive in view of the fact that the population had increased by 6.3 per cent over the period, and that there were five weekends (periods of high custody) in 1992 as against four in 1988. A decrease occurred in all jurisdictions except New South Wales, where there was an increase of 0.6 per cent.

However, although the total number of Aboriginal custodies also fell, from 8,055 to 7,209, the percentage of the custodies which were Aboriginal increased by 0.7 per cent, from 28.6 per cent in 1988 to 28.8 per cent in 1992. In New South Wales the percentage rose from 14.3 per cent to 16.3 per cent, reflecting an actual increase in the number of Aboriginal police custodies from 774 to 859. It was the only jurisdiction to have an actual increase in numbers. The proportion of Aborigines coming into custody dropped in Victoria by 7.3 per cent, Queensland by 18.4 per cent, South Australia by 10.6 per cent, Tasmania by 28 per cent, Western Australia by 5.7 per cent and the Northern Territory by 4.8 per cent.

Perhaps the easiest figures to consider are those showing the rates of over-representation of Aborigines in police custody. These are obtained by taking the Aboriginal custody rate (ie the number of Aborigines in custody relative to the

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90 D McDonald, Australian Institute of Criminology No 2 *National Police Custody Survey 1992: Preliminary Report* (1993).

Aboriginal population), and comparing it with the non-Aboriginal custody rate (ie the number of non-Aborigines in custody relative to the non-Aboriginal population). Thus to say that the level of overrepresentation of Aborigines in custody Australia wide is 26 means in effect that an Aborigine is 26 times more likely to be taken into police custody than a non-Aborigine. The levels of overrepresentation shown by the two police custody surveys are:

	1988	1992
New South Wales	15	15.8
Victoria	13	10.2
Queensland	17	13.3
Western Australia	43	51.9
South Australia	26	20.9
Tasmania	5	3.0
Northern Territory	11	14.3
ACT	11	4.4
Australia	27	26.2 <sup>91</sup>

### C. THE WAY AHEAD

The Royal Commission produced no simple or novel solutions to problems of Aboriginal-police relations, but it emphasised a series of possible measures:

1. Measures to make police more sensitive to Aboriginal issues and less prejudiced in relation to Aborigines, and to promote understanding between the two groups. These included training initiatives, the refusal to countenance racist violence or language, the recruitment of more Aboriginal police, the employment of more Aboriginal liaison officers (under whatever title), better communication with Aboriginal communities and organisations, and the greater use of Aboriginal advisers;
2. The development by negotiation of local protocols which made policing less oppressive to Aboriginal communities, and gave them more control over what happened in their communities;
3. Making police accountability more effective.

The whole package of recommendations directed to removing Aboriginal disadvantage, including the educational measures, are likely to impact on Aboriginal attitudes, as would changes on the police side produced by the three sets

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91 The fact that the rate of overrepresentation went down slightly while the percentage of custodies which were Aboriginal went up slightly no doubt reflects the faster rate of growth of the Aboriginal population.

of measures listed. The last of these has a direct impact on all citizens and has long been a battleground between those who wish to keep a large measure of police control of accountability and those who seek to make it more open and independent. Evolution is continuing, although without much obvious Aboriginal input. In relation to the second heading, the Northern Territory and Victoria are continuing programmes which attracted commendation from the Royal Commission, but little has been heard from other jurisdictions. Most, if not all, Police Services have some programmes under the first heading, but there does not appear to have been any general account or assessment of them published.

One gets the impression that in most, perhaps all, Services there are officers working seriously to improve Aboriginal-police relations, against varying degrees of apathy, lack of drive or imagination, and prejudice. At least in the Northern Territory there appears to be enlightened and energetic support at Commissioner level. There is a general tendency for neutrality and even goodwill to replace the hostility to Aborigines that was once widely associated with police. The process is slow, and there is a long way to go, but there is much to be said for the view underlying Commissioner Johnston's writing of his *National Report*, that it is much more profitable to encourage police by commending their progress and understanding their difficulties, than by putting them on the defensive by harsh and unsympathetic criticism.

Police come from, live in and serve local communities and are heavily influenced by the standards and expectations of the usually white establishments in those communities. It is not easy for them to take a liberal and enlightened lead, but sometimes they do, and they deserve encouragement rather than the scepticism they so often encounter. The best advice to them is to learn to listen to Aboriginal communities, and be willing to move over and make room in which Aboriginal community organisations can take increasing responsibility for themselves.