Bringing them home

National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families

Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families

This report is a tribute to the strength and struggles of many thousands of Aboriginal and Torres Strait Islander people affected by forcible removal. We acknowledge the hardships they endured and the sacrifices they made. We remember and lament all the children who will never come home.

We dedicate this report with thanks and admiration to those who found the strength to tell their stories to the Inquiry and to the generations of Aboriginal and Torres Strait Islander people separated from their families and communities.

Commonwealth of Australia 1997

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Terms of Reference

I, MICHAEL LAVARCH, Attorney-General of Australia, HAVING REGARD TO the Australian Government's human rights, social justice and access and equity policies in pursuance of section 11(1)(e), (j), and (k) of the *Human Rights and Equal Opportunity Commission Act 1986*, HEREBY REVOKE THE REQUEST MADE ON 11 MAY 1995 AND NOW REQUEST the Human Rights and Equal Opportunity Commission to inquire into and report on the following matters:

To:

(a) trace the past laws, practices and policies which resulted in the separation of Aboriginal and Torres Strait Islander children from their families by compulsion, duress or undue influence, and the effects of those laws, practices and policies;

(b) examine the adequacy of and the need for any changes in current laws, practices and policies relating to services and procedures currently available to those Aboriginal and Torres Strait Islander peoples who were affected by the separation under compulsion, duress or undue influence of Aboriginal and Torres Strait Islander children from their families, including but not limited to current laws, practices and policies relating to access to individual and family records and to other forms of assistance towards locating and reunifying families;

(c) examine the principles relevant to determining the justification for compensation for persons or communities affected by such separations;

(d) examine current laws, practices and policies with respect to the placement and care of Aboriginal and Torres Strait Islander children and advise on any changes required taking into account the principle of self-determination by Aboriginal and Torres Strait Islander peoples.

IN PERFORMING its functions in relation to the reference, the Commission is to consult widely among the Australian community, in particular with Aboriginal and Torres Strait Islander communities, with relevant non-government organisations and with relevant Federal, State and Territory authorities and if appropriate may consider and report on the relevant laws, practices and policies of any other country.

THE COMMISSION IS REQUIRED to report no later than December 1996.

Dated 2 August 1995

MICHAEL LAVARCH

Warning: This document may contain images of deceased Aboriginal and Torres Strait Islander persons

Part 1 Introduction

Chapter 1 The Inquiry

So the next thing I remember was that they took us from there and we went to the hospital and I kept asking – because the children were screaming and the little brothers and sisters were just babies of course, and I couldn't move, they were all around me, around my neck and legs, yelling and screaming. I was all upset and I didn't know what to do and I didn't know where we were going. I just thought: well, they're police, they must know what they're doing. I suppose I've got to go with them, they're taking me to see Mum.You know this is what I honestly thought. They kept us in hospital for three days and I kept asking, 'When are we going to see Mum?' And no-one told us at this time. And I think on the third or fourth day they piled us in the car and I said, 'Where are we going?' And they said, 'We are going to see your mother'. But then we turned left to go to the airport and I got a bit panicky about where we were going ... They got hold of me, you know what I mean, and I got a little baby in my arms and they put us on the plane. And they still told us we were going to see Mum. So I thought she must be wherever they're taking us.

Confidential submission 318, Tasmania: removal from Cape Barren Island, Tasmania, of 8 siblings in the 1960s. The children were fostered separately.

The Inquiry

> **Our life pattern was created by the government policies and are forever with me, as though an invisible anchor around my neck. The moments that should be shared and rejoiced by a family unit, for [my brother] and mum and I are forever lost. The stolen years that are worth more than any treasure are irrecoverable.**
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> *Confidential submission 338, Victoria.*

Grief and loss are the predominant themes of this report. Tenacity and survival are also acknowledged. It is no ordinary report. Much of its subject matter is so personal and intimate that ordinarily it would not be discussed. These matters have only been discussed with the Inquiry with great difficulty and much personal distress. The suffering and the courage of those who have told their stories inspire sensitivity and respect.

The histories we trace are complex and pervasive. Most significantly the actions of the past resonate in the present and will continue to do so in the future. The laws, policies and practices which separated Indigenous children from their families have contributed directly to the alienation of Indigenous societies today.

For individuals, their removal as children and the abuse they experienced at the hands of the authorities or their delegates have permanently scarred their lives. The harm continues in later generations, affecting their children and grandchildren.

In no sense has the Inquiry been 'raking over the past' for its own sake. The truth is that the past is very much with us today, in the continuing devastation of the lives of Indigenous Australians. That devastation cannot be addressed unless the whole community listens with an open heart and mind to the stories of what has happened in the past and, having listened and understood, commits itself to reconciliation. As the Governor-General stated in August 1996,

> It should, I think, be apparent to all well-meaning people that true reconciliation between the Australian nation and its indigenous peoples is not achievable in the absence of acknowledgment by the nation of the wrongfulness of the past dispossession, oppression and degradation of the Aboriginal peoples. That is not to say that individual Australians who had no part in what was done in the past should feel or acknowledge personal guilt. It is simply to assert our identity as a nation and the basic fact that national shame, as well as national pride, can and should exist in relation to past acts and omissions, at least when done or made in the name of the community or with the authority of government …
>
> The present plight, in terms of health, employment, education, living conditions and self-esteem, of so many Aborigines must be acknowledged as largely flowing from what happened in the past. The dispossession, the destruction of hunting fields and the devastation of lives were all related. The new diseases, the alcohol and the new pressures of living were all introduced. True acknowledgment cannot stop short of recognition of the extent to which present disadvantage flows from past injustice and oppression …
>
> Theoretically, there could be national reconciliation without any redress at all of the dispossession and other wrongs sustained by the Aborigines. As a practical matter, however, it is apparent that recognition of the need for appropriate redress for present disadvantage flowing from past injustice and oppression is a pre-requisite of reconciliation. There is, I believe, widespread acceptance of such a need (Sir William Deane 1996 pages 19-21).

The Inquiry's recommendations are directed to healing and reconciliation for the benefit of all Australians.

Scope of the Inquiry

Tracing the history

Part 2 of this report traces the history of forcible removal of Indigenous children. The Inquiry's first term of reference requires the tracing of 'laws, practices and policies which resulted in the separation of Indigenous children from their families by compulsion, duress or undue influence'. Throughout this report, for ease of reference, we refer to 'forcible removal'. The term contrasts the removals which are the subject of this Inquiry with removals which were truly voluntary, at least on the part of parents who relinquished their children, or where the child was orphaned and there was no alternative Indigenous carer to step in.

Compulsion

'Compulsion' means force or coercion (Garner 1995 page 183). It encompasses both the officially authorised use of force or coercion and illegally exercised force or coercion. It clearly extends to the removal of a child by a government delegate such as a protector or police officer pursuant to legislative powers. These officers exerted 'compulsion' by virtue of their office and the power of the legislation under which they acted. The term clearly extends to removal of a child on a court order. Indeed a court is the ultimate power which can 'compel' the removal of children from their families.

A common practice was simply to remove the child forcibly, often in the absence of the parent but sometimes even by taking the child from the mother's arms. The law firm Phillips Fox advised the Inquiry that '[o]ne of our clients had instructed us that he was taken from his parents while his mother was in hospital having her fourth child. Another client was one of six children taken from their home by the police while their mother was in hospital having her seventh child' (Phillips Fox Melbourne submission 20 page 5, both clients named).

In a letter to the WA Commissioner of Native Affairs in November 1943, Inspector Bisley of Port Hedland wrote, 'I recommend that this child be removed when she is old enough as she will be probably handed over to some aged blackfellow at an early age'. With respect to the same child, Inspector Neill in Broome wrote to the Commissioner in December 1944, '[t]here may perhaps be an objection to the children being removed from the Hospital without first returning to the Station from which they came as it means breaking faith with the mothers who either left them at the Hospital or sent them in for treatment but knowing how hard it is to arrange for the removal of children such as these once they are back on the Station I consider it justified, the fact that they have been separated from their mothers for some time already will also make the removal easier for the children' (documents submitted with confidential submission 498, Western Australia: woman removed from hospital at the age of 4 years).

> **My mother told us that the eldest daughter was a twin – it was a boy. And in those days, if Aboriginals had twins or triplets, they'd take the babies away. Mum swore black and blue that boy was alive. But they told her that he had died. I only found out a couple of years ago – that boy, the nursing sister took him. A lot of babies were not recorded.**

Confidential evidence 450, New South Wales: woman removed at 2 years in the 1940s, first to Bomaderry Children's Home, then to Cootamundra Girls' Home; now working to assist former Cootamundra inmates.

… in the case of one of our clients, the decision to dispense with his mother's consent to adoption was based on 'inability to locate mother', although the file reveals very little attempt to locate her. This occurred during a 'temporary' placement of our client in a babies home, due to ill health. The next time our client's mother went to visit her son, she was faced with an empty cot. Her requests for her son's return were not met (Phillips Fox Melbourne submission 20 page 4).

I was at the post office with my Mum and Auntie [and cousin]. They put us in the police ute and said they were taking us to Broome. They put the mums in there as well. But when we'd gone [about ten miles] they stopped, and threw the mothers out of the car. We jumped on our mothers' backs, crying, trying not to be left behind. But the policemen pulled us off and threw us back in the car. They pushed the mothers away and drove off, while our mothers were chasing the car, running and crying after us. We were screaming in the back of that car. When we got to Broome they put me and my cousin in the Broome lock-up. We were only ten years old. We were in the lock-up for two days waiting for the boat to Perth.

Confidential evidence 821, Western Australia: these removals occurred in 1935, shortly after Sister Kate's Orphanage, Perth, was opened to receive 'lighter skinned' children; the girls were placed in Sister Kate's.

Duress

'Duress' differs from 'compulsion' in that it can be achieved without the actual application of force. However, we usually understand it to involve threats or at least moral pressure. One meaning of 'duress' is 'the infliction of hardship' (Garner 1995 page 300) while another encompasses the threat of such infliction (Mozley and Whiteley 1988 page 153). Definitions commonly refer to *illegally* applied compulsion, a feature which distinguishes duress from compulsion because compulsion can be either legal or illegal. The last feature of duress is that it does not exclude acceptance by those affected by it. Rather the individual submits to what is demanded.

The Inquiry heard evidence of a range of practices which in our view amounted to duress. For example, we were told that a large number of parents relinquished their children to the care of the Lutheran mission, Koonibba, in South Australia to protect them from being removed by the Protector and placed further away. At Koonibba the parents were permitted limited and supervised access (Dr Nick Kowalenko evidence 740, Lutheran Church SA submission 262).

I remember another friend of mine in St Ives. She wanted to adopt a little Aboriginal baby. And she was telling me when she got this little one that she went out to the mission and said she wanted a little baby boy. The mission manager said, 'Mrs J has a couple of boys [already], we'll take her third one'. So they adopted that child. If Mrs J would have objected, she said the welfare officer says, 'Well, if you don't give us that child, we'll take the other two'.

Confidential evidence 613, New South Wales.

I joined the [Victorian] Aborigines Welfare Board shortly after a most appalling episode in which a young woman aged 14 gave birth to a child in Gippsland. One of our Welfare Board officers went to her and said, 'Look, you're giving birth to this illegitimate child, fatherless

child. We'd like to take this baby from you and give it out in adoption to a white couple'. She had the baby. [She subsequently married the child's father.] She was approached a week later to sign the papers and she said, 'I've changed my mind. I want to keep my baby'. The welfare officer then said to her, 'If you change your mind and you renege on this particular deal, I'm going to have you charged with having carnal knowledge under the age of 14'. She succumbed to that pressure and the child was taken (Professor Colin Tatz, Centre for Comparative Genocide Studies, evidence 260).

The following story seems to fit the definition of duress, with elements of compulsion.

We were brought into this life without serious thought. My Aboriginal mother was thirteen years old when she had me and Laura at fourteen or fifteen. I know myself, as a young mum, how hard things can be bringing up kids. Faith, my mother had come from a large family and did not have much sense of direction. There were eighteen kid's in my mother's family … I feel they never new how to help my mother. Faith, my mum had met our father at thirteen he was about twenty five and they had me. My father knew this family, a white family and they took me there to stay, as I was told, I stayed there many times. Betty Sullivan who was the mother of the family loved Laura and I very much. I suppose the more we stayed there the more she loved us.

One day my father and mother asked the Sullivan family to look after us for awhile because they had no where to live, so that was OK, Mrs Sullivan said yes. From then on there was a fight for us. I can remember how bad things were for my mother. I can recall when I was young how my mother went through custody battles for my sister and I to keep us. One day I remember very clearly leaving the court. In the taxi I somehow knew we, Laura and I, were going back to the home. So I started kicking and screaming to get out of the taxi.

The driver stopped, got out, I saw him throw his hand's up over his eyes and said he couldn't take us, he didn't want to drive us kids away from our mother, so we then went in the police car with the lady police officer we knew. Our father was in gaol most of the time he wasn't there for her while she was at court.

I love the Sullivan family very much. Mrs Sullivan taught me how to love and what was right and what was wrong. I'm glad she taught me values because I know now what was wrong. It was wrong the way my natural mother was treated. Mrs Sullivan told my mother she should lock herself away. The Sullivan family told people my mother was crazy and the court gave us to the Sullivan family. My mother was not crazy she was only nineteen. She was the right one and shouldn't have killed herself but she knew no better as there was no one to help her keep her children. I can remember the day she died – that has haunted me for the rest of my life. I remember the police coming to Mrs Sullivan's place where we were and told her that mum Faith died I'm sure I heard that. I turned and said to Mrs Sullivan 'Mummy Faith can't take us away anymore.' The day she died we died.

Confidential submission 818, Victoria.

The extent to which Aboriginal parents who agreed to their children attending secondary school in distant locations were in fact submitting to duress is a vexed issue. The Inquiry has heard that in areas where no secondary education facilities were available, for example on Cape Barren Island in Tasmania, Central Australia and in the Torres Strait, the families of 'promising' students were asked if they wanted their children to be 'given the opportunity' of furthering their education by leaving home and going to live elsewhere. Submissions to the Inquiry emphasised that in making these offers it was never the intention to displace the family bonds or to deprive the families of the right to maintain contact with their children. Parents were

free to keep in touch with their children and the children sometimes went home for holidays. Realistically, however, there was no likelihood that Indigenous families would have the material resources to ensure continuous regular contact.

At the time these separations occurred Indigenous families may have expressed more regret about losing their children in this way than the children felt at the prospect of such an adventure during their adolescent years. The children reflected on the losses, as well as the gains, that their separation entailed only after leaving or much later.

One interpretation of these offers is that the families were simply being given the same opportunity to have their children educated as non-Indigenous families in Australia, in a country where remoteness and small populations limit the kind of educational facilities that can be offered to all children. Another focuses on the power relationships between the makers of these offers and the families. Viewed in that way there was clearly an element of duress. The offers were presented in such a way that families could not refuse them.

Where the offer of education was linked to a threat if the offer were not accepted then the ensuing separation was clearly forced. For example, some parents were told that if they did not 'consent' to their children undertaking study elsewhere, then their children would be removed on the ground of neglect. But generally the tenor and surrounding circumstances of the offers are not that clear. The approach of the Inquiry has been to include these removals where they were obviously connected with pressure of some explicit nature but not to assume they all occurred under duress.

Undue influence

The term 'undue influence' has a similar meaning to 'duress'. An 'influence' which is 'undue' is an influence 'by which [a] person is induced not to act of his own free will' (*Concise Oxford Dictionary*). At law the term means 'any improper pressure put on a person to induce him to confer a benefit on the party exercising the pressure' (Mozley and Whiteley 1988 page 483). This definition is not entirely appropriate unless surrendering one's child is viewed as 'conferring a benefit'. However, the essence of the legal meaning is relevant: putting improper pressure on the family to induce the surrender of the children.

The relationship between the family and the 'inducer' must be one of 'influence'. This criterion is readily satisfied in the case of the relationship between Indigenous people generally and government administrators and in the case of the relationship between closed settlement managers and residents because of the latters' dependence on the former for their maintenance. It is also present in the relationship between spiritual adviser, be it priest or other missionary, and convert.

There must be a question mark over the relinquishment of children to missions in the circumstances described to us by the Lutheran Church of South Australia.

> Now, the initial motivation for parents to put their children in the [Koonibba] home or entrust their children to the care of the home was fear that the children might soon be taken from them, and it's very evident that this very soon was replaced by a more positive outlook, that it was as they saw benefits accruing for their children through being entrusted to the care of the home, that they much more freely and gladly entrusted their children to the care of the home …

> The benefits that influenced the parents were not merely the benefits of being able to attend school but … that living for some years in their childhood in the children's home at Koonibba opened the door for these children to learn … a way of life that was better than they could themselves give to those children, bringing them up in the wurley, to use their phrase 'eating with their fingers'; that there was also an open door to a much richer and fuller way of life and a place of greater happiness and dignity in the new Australia that had grown up around their race through the participation in the life of the children's home (evidence 262).

Another strategy was the permanent retention of children who were voluntarily placed in respite care, in educational institutions or in hospital on the understanding that the placement was temporary and for a specific and defined purpose (for example confidential evidence 208, Victoria: boy placed in respite care by his grandmother and never returned). This kind of temporary placement was often induced by a false promise or a lie.

> The 'Harold Blair Holiday Schemes', which was basically run by Mr Killoran in Brisbane through the Queensland Aboriginal Affairs Department, would organise holiday homes over the Christmas holidays in Melbourne [for Queensland children]. After three weeks … the couple would say, 'I'd love to keep little Mary for a little longer'. 'Sure you can keep Mary a little longer.' No reference to the parents. Within a few months the next question, 'Could I adopt Mary?'. 'Yeah, you can adopt Mary.' This was not an AWB [Aborigines Welfare Board] Victorian adoption. It was done through the Queensland Native Affairs Department, direct adoption kind of by mail order and by phone call (Professor Colin Tatz, Centre for Comparative Genocide Studies and member of the Victorian Aborigines Welfare Board 1965-68, evidence 260. This was the experience of a girl retained by a Victorian family when her mother died, in spite of the fact that her father was still alive: confidential evidence 214, Victoria).

Link-Up (NSW) workers related the following accounts to the Fourth Australian Conference on Adoption (1990),

> A mother [single teenager] had a child in a home, and went out to provide some sort of basis for rearing the child. The child was left there, and when the mother came back, they told her that the child had died. And 25 years later we have a request from a person to find his mother, and we approached the mother, and she now has gone through the grieving of the person dying and now coming to terms with his resurrection.

> We also reunited a mother with her daughter recently who'd had 2 sons from a marriage and the marriage was in a mess, and the doctor and the family and the husband knew that if she had a girl she'd keep it, so they told her she had a boy. They never let her see it, and when I approached her and said your daughter wants to see you, she said; "But I didn't have a girl, I had a boy". And of course she was delighted to meet her and all she had wanted was a daughter (*Working Together in the 1990s* page 230).

Justification

The Inquiry is not limited to considering only those removals which could not be 'justified', for example, on the ground of protecting the child from injury, abuse or neglect. Due to the dispossession and dependence of Indigenous families, many children's physical and sometimes psychological well-being was endangered. These children are nevertheless within our terms of reference because they were separated from their Indigenous families and communities, typically by compulsion. In contrast with the removal of non-Indigenous children, proof of 'neglect' was not always required before an Indigenous child could be removed. Their Aboriginality would suffice. Therefore, while some removals might be 'justifiable' after the event as being

in the child's best interests, they often did not need to be justified at the time. Most witnesses refuted suggestions that they were neglected or abused by their parents, some making the contrast with their subsequent experiences in institutions or foster homes.

> The memories of our clients certainly do not tell the opposite story – of children 'saved' or 'rescued' from situations of misery and neglect, or of children who were lucky enough to be given a chance in life. In reality, many have felt their chances were taken away – chances given only by growing up in a loving environment, not by being institutionalised as a child! For example, one of our clients who was taken away along with her siblings, describes how, when her sister was grown up (most of the siblings had found each other at this stage) *'she didn't know how to hug her babies, and had to be shown how to do that'* (Phillips Fox Melbourne submission 20 page 6).

The issue of justification may be relevant to any remedy that might be contemplated.

Families

Term of reference (a) does not confine the Inquiry to dealing only with children removed from their parents. It refers to separation from their families. The socio-economic circumstances of most Indigenous families were such that many children lost one or both biological parents while they were still young. Most Indigenous communities, however, have retained broader kinship networks involving obligations of care and nurture of children. It was usually the case that an orphaned child could make a claim on another relative to take primary responsibility for his or her maintenance and rearing. These kinship obligations were misunderstood or ignored by most administrators, government and non-government. Alternative Indigenous carers were rarely permitted to perform their child-rearing obligations.

For Indigenous children their 'families' were constituted by their entire community. This is a point of some significance considering what the children lost when they were separated. However, the practices of relevance to us do not require us to distinguish 'families' from 'communities'. Children removed from their families were also removed from their communities. The almost invariable practice was that these children were placed in non-Indigenous institutions or foster and adoptive families.

A second level of separation was from siblings. Often the removed children of a family were placed separately or, where placed together, their identities and kinship were not divulged. A number of witnesses spoke of finding out much later that they had been in the same home as one or more siblings. One spoke, for example, of being introduced to his brother on the day that brother was departing the institution for a foster placement. Another wrote of having to leave her younger siblings behind in an orphanage when she was sent to work elsewhere at the age of 14.

> **So this meant the grieving took place again. The grief came for my younger sister and two brothers whom I thought I would never see again. The day I left the Orphanage – that was a very sad day for me. I was very unhappy, and the memories came back. There was nowhere to turn. You was on your own. I was again in a different environment … I had no choice but to stick it out. With the hardships going and thinking of my sister and brothers which I left at the Orphanage. My heart full of sorrows for them.**

Confidential submission 843, Queensland: woman removed at 11 years from an informal foster placement with an uncle and aunt arranged by her father due to his travelling for seasonal work and after the death of her mother and placed in an orphanage in the early 1940s.

The broad definition of the Indigenous family adopted by the Inquiry means that some experiences of separation from parents are beyond our terms of reference. Typically, too, these did not involve the application of laws, practices and policies of forcible removal. One example is the child reared by her maternal grandparents who now seeks to trace her father without assistance from her mother or her family (confidential evidence 216, Victoria). Another example is the child fostered by her half-sister upon the death of her mother (confidential evidence 159, Victoria). Another is the woman whose own mother has raised her children and refuses to return them to their mother (confidential evidence 144, Victoria).

The effects

Term of reference (a) further requires the Inquiry to detail the effects of the past laws, practices and policies traced. Part 3 of this report details the effects for children removed, their families left behind and their communities. The effects for the children removed ranged from psychological harm to loss of native title entitlements. Most suffered multiple and disabling effects.

> We may go home, but we cannot relive our childhoods. We may reunite with our mothers, fathers, sisters, brothers, aunties, uncles, communities, but we cannot relive the 20, 30, 40 years that we spent without their love and care, and they cannot undo the grief and mourning they felt when we were separated from them. We can go home to ourselves as Aboriginals, but this does not erase the attacks inflicted on our hearts, minds, bodies and souls, by caretakers who thought their mission was to eliminate us as Aboriginals (Link-Up (NSW) submission 186 page 29).

The bulk of the evidence to the Inquiry detailed damaging and negative effects. However, our terms of reference clearly are not confined to these. The Inquiry did receive some submissions acknowledging the love and care provided by non-Indigenous adoptive families (and foster families to a much lesser extent) or recording appreciation for a high standard of education. However, all of the witnesses who made these points also expressed their wish that they had not had to make the sacrifices they did.

> **… even though I had a good education with [adoptive family] and I went to college, there was just this feeling that I did not belong there. The best day of my life was when I met my brothers because I felt like I belonged and I finally had a family.**
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> *Confidential submission 384, Tasmania: woman removed in the 1960s and adopted by a non-Indigenous family; no contact with brothers for 35 years.*

> **I've got everything that could be reasonably expected: a good home environment, education, stuff like that, but that's all material stuff. It's all the non-material stuff that I didn't have – the lineage. It's like you're the first human being at times. You know, you've just come out of nowhere; there you are. In terms of having a direction in life, how do you know where you're going if you don't know where you've come from?**
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> *Confidential evidence 136, Victoria: man adopted into a non-Indigenous family at 3 months; still grieving that he was unable to meet his birth mother before she died.*

A three-year longitudinal study undertaken in Melbourne during the mid-1980s revealed the numerous differences between respondents removed in childhood (33%) and those who were raised by their families or in their communities (67%). Those removed were,

- less likely to have undertaken a post secondary education;
- much less likely to have stable living conditions and more likely to be geographically mobile;
- three times more likely to say they had no-one to call on in a crisis;
- less likely to be in a stable, confiding relationship with a partner;
- twice as likely to report having been arrested by police and having been convicted of an offence;
- three times as likely to report having been in gaol;
- less likely to have a strong sense of their Aboriginal cultural identity, more likely to have discovered their Aboriginality later in life and less likely to know about their Aboriginal cultural traditions;
- twice as likely to report current use of illicit substances; and
- much more likely to report intravenous use of illicit substances (Dr Jane McKendrick, Victorian Aboriginal Mental Health Network, submission 310 page 22).

A national random survey of Indigenous people conducted by the Australian Bureau of Statistics in 1994 allows us to compare further the life circumstances of the people who had been separated as children against those of the people raised by their families and communities. It shows no significant difference between the two groups with respect to their educational achievement.

Post-school qualifications for adults 20 years and above

Qualification	Taken away	Not taken away
Higher Education	1.9%	2.0%
TAFE	1.9%	1.8%
Other	0.6%	1.0%
None	95.6%	94.8%
Not stated	–	0.3%
Total	100%	100%

Source: 1994 ABS National Aboriginal and Torres Strait Islander Survey, tables supplied.

Similarly, the group removed from their families in childhood was no more likely to be employed. In fact there is a slight and non-significant tendency for this group to be less likely to be employed than people who were not removed.

Employment status of adults 20 years and above

Status	Taken away	Not taken away
Employed non-CDEP	22.8%	25.0%

Employed CDEP	8.2%	8.5%
Unemployed	22.2%	20.0%
Not in labour force	39.2%	38.3%
Not applicable	7.6%	8.2%
Total	100%	100%

Source: 1994 ABS National Aboriginal and Torres Strait Islander Survey, tables supplied.

Neither are people removed as children significantly more likely to earn higher incomes in adulthood. The differential which can be noted in the table, with removed people more likely to be in the $8,000-$12,000 bracket while those not removed more likely to be in the $0-$3,000 bracket, suggests that removed people are more likely to enjoy the benefits of social security. This is probably attributable to the greater urbanisation of this group as compared with people not removed, the latter being more likely to live in their traditional and historical communities. Similar proportions (58% of those taken away, 63% of those not taken away) have annual incomes under $12,000.

Personal income for adults 20 years and above

Personal income	Taken away	Not taken away
$0-3,000	13.3%	21.5%
$3,001-5,000	1.9%	5.0%
$5,001-8,000	17.7%	18.2%
$8,001-12,000	24.7%	18.3%
$12,001-16,000	15.2%	9.6%
$16,001-20,000	5.7%	7.1%
$20,001-25,000	7.0%	7.4%
$25,001-30,000	5.7%	4.8%
$30,001-40,000	3.8%	3.8%
$40,001 +	1.9%	1.8%
Total	100%	100%

Source: 1994 ABS National Aboriginal and Torres Strait Islander Survey, tables supplied.

Those removed in childhood were twice as likely to have been arrested more than once in the last 5 years (22% as compared with 11% of those not taken away) (Australian Bureau of Statistics 1995 page 58). This tallies with the evidence the Inquiry heard of the very damaging effects of institutionalisation on personal emotional development and on the individual's sense of self-worth. The same factors also have an effect on health prospects.

Self-assessed health status of those 20 years and above

Status	Taken away	Not taken away
Excellent	13.3%	18.2%
Very good	22.8%	29.6%
Good	34.8%	36.7%

Fair	23.4%	13.0%
Poor	5.7%	2.4%
Not stated	–	0.2%
Total	100%	100%

Source: 1994 ABS National Aboriginal and Torres Strait Islander Survey, tables supplied.

The effects on the families left behind and on the entire Indigenous community must also be acknowledged. These are detailed in Part 3.

> Most of the Koori people I have met are aware of family members who were removed. It is also recounted how some were hidden from time to time by their parents so that they would not be found. This in itself is seen to have been a traumatic experience and to have had a significant effect on the person's view and experience of the world (Dr David Mushin, Victorian Koori Kids Mental Health Network, submission 769).

Services and procedures available

Term of reference (b) requires the Inquiry to 'examine the adequacy of and the need for any changes in current laws, practices and policies relating to services and procedures currently available to those [affected by forcible removal]'. All services and procedures available to the public generally or to Indigenous people in particular are available of course to those affected by forcible removal. This term of reference directs the Inquiry to those services and procedures especially available to those affected *by reason of* their experiences of forcible removal or *in order to* remedy in some way the effects on them of the forcible removal policies.

This interpretation is reinforced by the remaining phrases of term of reference (b) which direct particular attention to policies relating to access to personal and family records and to other reunion assistance. The Inquiry has investigated these subjects together with the extent to which the effects of forcible removal have been taken into account in the provision of mental health services for Indigenous people. Our findings and recommendations are set out in Part 5.

Term of reference (b) is not restricted to those people 'directly' affected by the policies. The Inquiry is entitled to consider the services and procedures available to all those affected by forcible removal.

Principles justifying compensation

Term of reference (c) requires the Inquiry to 'examine the principles relevant to determining the justification for compensation for persons or communities affected by such separations'. Our principal conclusion is that an appropriate and adequate response to the history and effects of forcible removals requires reparations which include, as one form of reparations, monetary compensation for defined victims. Measures of reparation will recognise the effects of forcible removal on Indigenous communities as a whole, the families of children forcibly removed and the children themselves. Our findings and recommendations are set out in Part 4.

Current placement and care

Term of reference (d) requires the Inquiry to 'examine current laws, practices and policies with respect to the placement and care' of Indigenous children and to 'advise on any changes required taking into account the principle of self-determination'. Our review of the extent, nature and causes of contemporary removals of Indigenous children from their families and communities is detailed in Part 6. Our principal finding is that self-determination for Indigenous peoples provides the key to reversing the over-representation of Indigenous children in the child welfare and juvenile justice systems of the States and Territories and to eliminating unjustified removals of Indigenous children from their families and communities.

The Inquiry process

Background

The Inquiry was established in 1995 by the former Attorney-General, the Hon. Michael Lavarch MP, in response to increasing concern among key Indigenous agencies and communities that the general public's ignorance of the history of forcible removal was hindering the recognition of the needs of its victims and their families and the provision of services. The Secretariat of National Aboriginal and Islander Child Care and Link-Up (NSW) campaigned for a national inquiry into the issue.

A key turning point was the 1994 *Going Home Conference* in Darwin. Representatives from every State and Territory met to share experiences, to bring to light the history and its effects in each jurisdiction and to devise strategies to meet the needs of those children and their families who survive. A determination to make governments accountable for their actions led to the initiation of two civil compensation claims (*Williams* in New South Wales and *Kruger and Bray* in the Northern Territory). Further claims are in preparation as the decisions in those already heard are awaited.

On 11 May 1995 the then Attorney-General referred the issue of past and present practices of separation of Indigenous children from their families to the Human Rights and Equal Opportunity Commission (HREOC), committed a budget of $1.5 million over two years and required a report by December 1996. On 2 August 1995 the terms of reference were extended by including new term of reference (c) requesting advice on principles relevant to compensation for people affected by separation. On 24 November 1996 the reporting date was extended to 31 March 1997.

Appointment of Commissioners

The HREOC President, Sir Ronald Wilson, and the Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Dodson, took primary responsibility for conducting the hearings of the Inquiry. They were assisted by other HREOC Commissioners and by the Queensland Discrimination Commissioner. In each region visited the Commission appointed an Indigenous woman as a Co-Commissioner (see acknowledgments).

A small secretariat was established to publicise the Inquiry, encourage contributions by way of evidence and submissions and organise the hearings (refer to acknowledgments). An information booklet, explanatory video and posters were produced and widely distributed.

Hearings

The terms of reference required the Commission 'to consult widely among the Australian community …'. The Inquiry undertook an extensive program of hearings in every capital city and in many regional and smaller centres (refer to hearing schedule). The Inquiry's limited resources precluded visits to every centre where Indigenous people and others wished to give evidence.

Public evidence was taken from Indigenous organisations and individuals, State and Territory Government representatives, church representatives, other non-government agencies, former mission and government employees and individual members of the community. Confidential evidence was taken in private from Indigenous people affected by forcible removal and from adoptive and foster parents. Many people and organisations made written submissions to the Inquiry, including many who also gave oral evidence (refer to list of submissions and evidence).

Support for witnesses

Indigenous witnesses giving confidential evidence of their experiences of forcible removal required personal and psychological support during that process and afterwards because of the traumatic nature of their memories and the inevitably confronting task of relating them to strangers.

> I know people who have become extremely distraught at the thought of this inquiry, because a lot of people psychologically have put that – a lot of what happened – to the back of their minds. Something like this inquiry, where it is expected that you will tell your story, means that it comes to the front of their minds, even if they do not want it to. I have had over the past few weeks, as the inquiry has become closer, many people getting in contact with me, some who are giving evidence, some who are not, who have been very, very distressed.

> If people have been traumatised and are still suffering from the effects of that trauma, they are re-traumatised every time something reminds them of the trauma, even people who have made some degree of recovery. And that is the case in any situation where there is a post-traumatic stress disorder. Things that remind people of the trauma will bring back memories of the trauma and severe distress (Dr Jane McKendrick, Victorian Aboriginal Mental Health Network, evidence 310).

An Indigenous social worker was appointed to the Inquiry's staff to provide support to witnesses before and during their evidence. In June 1996 the Centre for Aboriginal Studies at Curtin University in Perth was successful in obtaining funding to provide an Indigenous psychologist to offer follow-up counselling to Inquiry witnesses. We also acknowledge the counselling support offered by Aboriginal medical and health services during Inquiry visits.

In spite of the difficulties of giving evidence, most witnesses appreciated the opportunity and many said that giving testimony had contributed to their healing.

> There is some good news I would like to pass on to you. Everyone I have spoken to has said it is like the world has been lifted off their shoulders, because at last we have been heard. For me I have grown stronger and now am able to move forward. You have played a significant part in my journey back … (letter of thanks from a witness).

Indigenous Advisory Council

To provide advice on the hearing process, the solicitation of evidence and

submissions and the analysis of the material presented, the Inquiry appointed a representative Indigenous Advisory Council constituted by members from all the major regions of Australia (refer to acknowledgments). The Council was convened on seven occasions through telephone conferencing and met together on three occasions. On the last of these occasions the Council met over a day and a half to consider the Inquiry's draft report and provided detailed comments on proposed recommendations.

Summary report and video

In addition to preparing this report to the Commonwealth Attorney-General, the Inquiry recognised the importance of reporting directly and in an accessible form or forms to Indigenous Australians, particularly those who gave evidence or made submissions to the Inquiry. A summary report and video have been prepared for distribution free of charge to every Indigenous witness (individual and organisation) and others.

Evidence and submissions

Throughout this report we have remained faithful to the language used by the witnesses quoted. The names and other identifying details have been changed in the case of Indigenous witnesses who provided evidence or submissions in confidence to protect their privacy and that of the people of whom they spoke. Where witnesses have named institutions or other places, however, the names have generally been retained.

The nature of the Inquiry process and of the information sought and provided meant that evidence and submissions could not be tested as thoroughly as would occur in a courtroom. This applies to all the evidence. Indeed, as this report indicates, much supporting evidence including records has been destroyed. The submissions from individuals, organisations and governments are important. We carefully report what we have heard so that the community generally will know the different perspectives on what has occurred. We also sought out independent sources where possible and include them in this report. We have ensured that our findings, conclusions and recommendations are supported by the overwhelming weight of the evidence.

Under Commonwealth Archives legislation HREOC is obliged to archive all submissions and evidence to the Inquiry. These materials, other than confidential evidence and submissions, will be available to enquirers subject to Australian Archives application procedures. To assist those wishing to research the submissions and evidence to the Inquiry, file numbers are supplied for evidence and submissions quoted or referred to in the text.

Testimony

The Inquiry took evidence orally or in writing from 535 Indigenous people throughout Australia concerning their experiences of the removal policies. In this report we relay as many of those individual stories as possible.

Within the limited time and resources available to us we have been unable to take testimony from all who wished to provide it. The Inquiry was unable to visit every region, although extensive travelling was undertaken for the purpose of receiving testimonies (see Schedule of hearings). We are grateful to the law firms, Aboriginal legal services and other Indigenous organisations which recorded testimonies and forwarded them to the Inquiry. In Western Australia alone the Aboriginal Legal Service collected more than 600 testimonies.

The Inquiry is aware that many other people did not have the opportunity to tell their stories, were not ready to speak of their experiences or chose not to do so in the forum provided by the Inquiry. Healing and ultimately the reconciliation process require that testimonies continue to be received and recorded. This must be done in a culturally appropriate manner with recording and access determined in consultation with the person who wishes to provide his or her history.

The Aboriginal and Torres Strait Islander Commission (ATSIC) recommended to the Inquiry that, 'Support be provided for the collection and culturally appropriate presentation of the stories with the approval of those who experienced separation policies' (submission 684 page 18). Link-Up (NSW) called for the establishment of an Aboriginal Oral History Archive. This Archive would be 'modelled on the Shoah Foundation set up to record the oral histories of Jewish victims of the Nazi holocaust' and would 'fund and facilitate the collection of oral histories of Aboriginal survivors of our holocaust' (submission 186).

> The Aboriginal Oral History Archive will testify to the atrocities committed against our people through separation laws, policies and practices, and will ensure that the genocide against our people cannot be denied (submission 186).

The Inquiry supports the establishment of such a national archive. In the immediate future, however, the primary need is to enable people to tell their stories, to have them recorded appropriately and to enable the survivors to receive counselling and compensation. The experience of the Shoah Foundation and of this Inquiry is that giving testimony, while extraordinarily painful for most, is often the beginning of the healing process. For this reason the recording of testimonies needs to be done in or near each individual's community and by expert Indigenous researchers. Counselling or ready referral to counselling services must be available. Therefore appropriate agencies are likely to include Indigenous family tracing and reunion agencies and the language, culture and history centres proposed elsewhere in this report.

Recording testimonies

Recommendation 1: That the Council of Australian Governments ensure the adequate funding of appropriate Indigenous agencies to record, preserve and administer access to the testimonies of Indigenous people affected by the forcible removal policies who wish to provide their histories in audio, audio-visual or written form.

Implementation of the recommendations

The Inquiry was urged to make recommendations for monitoring the implementation of our recommendations.

> ATSIC believes it is important that the Inquiry recommend a process for monitoring the implementation of recommendations flowing from the Inquiry … The Council for Aboriginal Reconciliation recommended that there should be statutory avenues for monitoring implementation of RCIADIC [Royal Commission into Aboriginal Deaths in Custody], which will provide mechanisms for indigenous communities, organisation and individuals to drive the reform processes. ATSIC commends this approach to the Inquiry.

> Alternatively, ATSIC recommends that the Human Rights and Equal Opportunity Commission consider a role for itself in the monitoring of the recommendations of the Inquiry, including the capacity to reconvene the Inquiry, if and when necessary (ATSIC submission 684 page 9).

The procedure we recommend adopts ATSIC's second proposal. This process will ensure that information on the progress of implementation is collected from all interested parties, evaluated and publicly presented and capable of further independent evaluation as desired by COAG.

Procedure for implementation

Recommendation 2a: That the Council of Australian Governments establish a working party to develop a process for the implementation of the Inquiry's recommendations and to receive and respond to annual audit reports on the progress of implementation.

Recommendation 2b: That the Commonwealth fund the establishment of a National Inquiry audit unit in the Human Rights and Equal Opportunity Commission to monitor the implementation of the Inquiry's recommendations and report annually to the Council of Australian Governments on the progress of implementation of the recommendations.

Recommendation 2c: That ATSIC fund the following peak Indigenous organisations to research, prepare and provide an annual submission to the National Inquiry audit unit evaluating the progress of implementation of the Inquiry's recommendations: Secretariat of National Aboriginal and Islander Child Care (SNAICC), Stolen Generations National Secretariat, National Aboriginal Community Controlled Health Organisation (NACCHO) and National Aboriginal and Islander Legal Services Secretariat (NAILSS).

Recommendation 2d: That Commonwealth, State and Territory Governments undertake to provide fully detailed and complete information to the National Inquiry audit unit annually on request concerning progress on implementation of the Inquiry's recommendations.

Courtesy Bicentennial Copying Project, State Library of New South Wales.

Biddy, nursemaid to Mr & Mrs J S Gordon of Brewon Station, with John Gordon, Walgett, NSW, 1887

Part 2 Tracing the History

C h a p t e r 2 National Overview

Every morning our people would crush charcoal and mix that with animal fat and smother that all over us, so that when the police came they could only see black children in the distance. We were told always to be on the alert and, if white people came, to run into the bush or run and stand behind the trees as stiff as a poker, or else hide behind logs or run into culverts and hide. Often the white people – we didn't know who they were – would come into our camps. And if the Aboriginal group was taken unawares, they would stuff us into flour bags and pretend we weren't there. We were told not to sneeze. We knew if we sneezed and they knew that we were in there bundled up, we'd be taken off and away from the area.

There was a disruption of our cycle of life because we were continually scared to be ourselves. During the raids on the camps it was not unusual for people to be shot – shot in the arm or the leg. You can understand the terror that we lived in, the fright – not knowing when someone will come unawares and do whatever they were doing – either disrupting our family life, camp life, or shooting at us.

Confidential evidence 681, Western Australia: woman ultimately surrendered at 5 years to Mt Margaret Mission for schooling in the 1930s.

2 National Overview

In this Part we outline the laws, practices and policies of forcible removal of Indigenous children in each State and Territory. This chapter briefly outlines the national background and thinking behind those laws, practices and policies.

> The questions this history raises for us to contemplate today, at the very least, are what implications it has for relations between Aboriginal and white Australians, and what traces of that systematic attempt at social and biological engineering remain in current child welfare practices and institutions (van Krieken 1991 page 144).

Throughout this Part it is necessary in the interests of accuracy to quote the language of the times. Much of this language was and is offensive to Indigenous people. The terms 'full descent' and 'mixed descent' were not used. Instead categories of 'full blood', 'half caste', 'quadroon' and 'octoroon' were applied. However, we use the terms 'full descent' and 'mixed descent' to convey the policy and practice distinctions made at the time between what were perceived as quite different groups. The term 'Indigenous' was not used at the time either. We use that generic term throughout this report to include all Aboriginal groups and Torres Strait Islanders.

Colonisation

Indigenous children have been forcibly separated from their families and communities since the very first days of the European occupation of Australia.

Violent battles over rights to land, food and water sources characterised race relations in the nineteenth century. Throughout this conflict Indigenous children were kidnapped and exploited for their labour. Indigenous children were still being 'run down' by Europeans in the northern areas of Australia in the early twentieth century.

> … the greatest advantage of young Aboriginal servants was that they came cheap and were never paid beyond the provision of variable quantities of food and clothing. As a result any European on or near the frontier, quite regardless of their own circumstances, could acquire and maintain a personal servant (Reynolds 1990 page 169).

Governments and missionaries also targeted Indigenous children for removal from their families. Their motives were to 'inculcate European values and work habits in children, who would then be employed in service to the colonial settlers' (Ramsland 1986 quoted by Mason 1993 on page 31). In 1814 Governor Macquarie funded the first school for Aboriginal children. Its novelty was an initial attraction for Indigenous families but within a few years it evoked a hostile response when it became apparent that its purpose was to distance the children from their families and communities.

Although colonial governments in the nineteenth century professed abhorrence at the brutality of expansionist European settlers, they were unwilling or unable to stop their activities. When news of the massacres and atrocities reached the British Government it

appointed a Select Committee to inquire into the condition of Aboriginal people.

‘Protection’ and segregation of Indigenous people in the nineteenth century

The Select Committee Inquiry proposed the establishment of a protectorate system, noting that ‘the education of the young will of course be amongst the foremost of the cares of the missionaries; and the Protectors should render every assistance in their power in advancing this all-important part of any general scheme of improvement’ (quoted by Victorian Government final submission on page 25). The protectorate system was based on the notion that Indigenous people would willingly establish self-sufficient agricultural communities on reserved areas modelled on an English village and would not interfere with the land claims of the colonists.

By the middle of the nineteenth century the protectorate experiment had failed and the very survival of Indigenous people was being questioned. Forced off their land to the edges of non-Indigenous settlement, dependent upon government rations if they could not find work, suffering from malnutrition and disease, their presence was unsettling and embarrassing to non-Indigenous people. Governments typically viewed Indigenous people as a nuisance.

The violence and disease associated with colonisation was characterised, in the language of social Darwinism, as a natural process of ‘survival of the fittest’. According to this analysis, the future of Aboriginal people was inevitably doomed; what was needed from governments and missionaries was to ‘smooth the dying pillow’.

The government response was to reserve land for the exclusive use of Indigenous people and assign responsibility for their welfare to a Chief Protector or Protection Board. By 1911 the Northern Territory and every State except Tasmania had ‘protectionist legislation’ giving the Chief Protector or Protection Board extensive power to control Indigenous people. In some States and in the Northern Territory the Chief Protector was made the legal guardian of all Aboriginal children, displacing the rights of parents. The management of the reserves was delegated to government appointed managers or missionaries in receipt of government subsidies. Enforcement of the protectionist legislation at the local level was the responsibility of ‘protectors’ who were usually police officers.

In the name of protection Indigenous people were subject to near-total control. Their entry to and exit from reserves was regulated as was their everyday life on the reserves, their right to marry and their employment. With a view to encouraging the conversion of the children to Christianity and distancing them from their Indigenous lifestyle, children were housed in dormitories and contact with their families strictly limited.

Tasmania was the exception to this protectionist trend. By the turn of the century most Indigenous families had been removed to Cape Barren Island off the north coast of the Tasmanian mainland where they were effectively segregated from non-Indigenous people. Until the late 1960s Tasmanian governments resolutely insisted that Tasmania did not have an Aboriginal population, just some ‘half-caste’ people.

‘Merging’ and ‘absorption’

By the late nineteenth century it had become apparent that although the full descent Indigenous population was declining, the mixed descent population was increasing. ‘Most colonists saw them as being in a state of racial and cultural limbo’ (Haebich 1988 page 48). In social Darwinist terms they were not regarded as near extinction. The fact that they had some European ‘blood’ meant that there was a place for them in non-Indigenous society, albeit a very lowly one.

Furthermore, the prospect that this mixed descent population was growing made it imperative to governments that mixed descent people be forced to join the workforce instead of relying on government rations. In that way the mixed descent population would be both self-supporting and satisfy the needs of the developing Australian economy for cheap labour.

The reality that Indigenous people did not identify as Europeans, however much European ‘blood’ they had, was not taken into account. Nevertheless, the difficulties of permanently distancing mixed descent children from their Indigenous families was a matter of constant concern to government officials. Clearly they recognised the strength of the family bonds they were trying to break.

> Unlike white children who came into the state’s control, far greater care was taken to ensure that [Aboriginal children] never saw their parents or families again. They were often given new names, and the greater distances involved in rural areas made it easier to prevent parents and children on separate missions from tracing each other (van Krieken 1991 page 108).

Government officials theorised that by forcibly removing Indigenous children from their families and sending them away from their communities to work for non-Indigenous people, this mixed descent population would, over time, ‘merge’ with the non-Indigenous population. As Brisbane’s *Telegraph* newspaper reported in May 1937,

> Mr Neville [the Chief Protector of WA] holds the view that within one hundred years the pure black will be extinct. But the half-caste problem was increasing every year. Therefore their idea was to keep the pure blacks segregated and absorb the half-castes into the white population. Sixty years ago, he said, there were over 60,000 full-blooded natives in Western Australia. Today there are only 20,000. In time there would be none. Perhaps it would take one hundred years, perhaps longer, but the race was dying. The pure blooded Aboriginal was not a quick breeder. On the other hand the half-caste was. In Western Australia there were half-caste families of twenty and upwards. That showed the magnitude of the problem (quoted by Buti 1995 on page 35).

In Neville’s view, skin colour was the key to absorption. Children with lighter skin colour would automatically be accepted into non-Indigenous society and lose their Aboriginal identity.

Assuming the theory to be correct, argument in government circles centred around the optimum age for forced removal. At a Royal Commission in South Australia in 1913 ‘experts’ disagreed whether children should be removed at birth or about two years old.

The ‘protectionist’ legislation was generally used in preference to the general child welfare legislation to remove Indigenous children. That way government officials acting under the authority of the Chief Protector or the Board could simply order the removal of an Indigenous child without having to establish to a court’s satisfaction that the child was neglected.

In Queensland and Western Australia the Chief Protector used his removal and guardianship powers to force all Indigenous people onto large, highly regulated government settlements and missions, to remove children from their mothers at about the age of four years and place them in dormitories away from their families and to send them off the missions and settlements at about 14 to work. Indigenous girls who became pregnant were sent back to the mission or dormitory to have their child. The removal process then repeated itself.

Another method of forcing people of mixed descent away from their families and communities and into non-Indigenous society was to change the definition of ‘Aboriginality’ in the protection legislation to fit the government’s current policy in relation to Aboriginal affairs. People with more than a stipulated proportion of European ‘blood’ were disqualified from living on reserves with their families or receiving rations. This tactic of ‘dispersing’ Aboriginal camps was used in Victoria and New South Wales. An analysis of the definition of ‘Aboriginality’ has found more than 67 definitions in over 700 pieces of legislation (McCorquodale 1987 page 9).

However the notion that people forced off the reserves would merge with the non-Indigenous population took no account of the discrimination they faced. Unable to find work and denied the social security benefits that non-Indigenous people were granted as of right, they lived in ‘shanty’ towns near the reserves or on the edges of non-Indigenous settlement.

In New South Wales, Western Australia and the Northern Territory many children of mixed descent were totally separated from their families when young and placed in segregated ‘training’ institutions before being sent out to work. In South Australia, where there was an uneasy relationship between the government and missionaries in relation to the care of Indigenous children, government officials sent Indigenous children to institutions catering for non-Indigenous children while missionaries took in Indigenous children and operated their own schools.

As the ultimate purpose of removal was to control the reproduction of Indigenous people with a view to ‘merging’ or ‘absorbing’ them into the non-Indigenous population, Indigenous girls were targeted for removal and sent to work as domestics. Apart from satisfying a demand for cheap servants, work increasingly eschewed by non-Indigenous females, it was thought that the long hours and exhausting work would curb the sexual promiscuity attributed to them by non-Indigenous people.

A common feature of the settlements, missions and institutions for Indigenous

families and children was that they received minimal funding. In 1938-39 the jurisdictions with the largest Indigenous populations – the Northern Territory, Western Australia and Queensland - spent the least per capita on Indigenous people. The Commonwealth's spending of £1 per person per annum compared to £42.10s per annum on non-Indigenous pensioners and £10,000 on the Governor-General's salary (Markus 1990 pages 9-10). The lack of funding for settlements, missions and institutions meant that people forced to move to these places were constantly hungry, denied basic facilities and medical treatment and as a result were likely to die prematurely.

By contrast to this degree of intervention in the lives of Indigenous people, Indigenous families living on and near Cape Barren Island in Tasmania were left relatively undisturbed until the 1930s. From then on, however, the general child welfare legislation was used to remove Indigenous children from the Islands. These children were sent to non-Indigenous institutions and later non-Indigenous foster families on the ground that they were neglected. Alternatively, Indigenous families were threatened with the removal of their children if they did not consent to the removal of their children.

This interest in removing Indigenous children from their families followed growing concern on the part of the Tasmanian Government in the 1920s and 1930s that the Islanders were refusing to adopt a self-sufficient agricultural lifestyle and would become permanently dependent upon government support.

'Merging' becomes 'assimilation'

In 1937 the first Commonwealth-State Native Welfare Conference was held, attended by representatives of all the States (except Tasmania) and the Northern Territory. Although States had been influenced by each others' practices to that time, and even sought the views of other Chief Protectors as to what should be done about their 'Aboriginal problem', this was the first time that Aboriginal affairs had been discussed at the national level.

Discussion was dominated by the Chief Protectors of Western Australia, Queensland and the Northern Territory: A O Neville, J W Bleakley and Dr Cook respectively. Each of them presented his own theory, developed over a long period in office, of how people of mixed descent would eventually blend into the non-Indigenous population. The conference was sufficiently impressed by Neville's idea of 'absorption' to agree that,

> … this conference believes that the destiny of the natives of aboriginal origin, but not of the full blood, lies in their ultimate absorption by the people of the Commonwealth, and it therefore recommends that all efforts be directed to that end.

In relation to Indigenous children, the conference resolved that,

> … efforts of all State authorities should be directed towards the education of children of mixed aboriginal blood at white standards, and their subsequent employment under the same conditions as whites with a view to their taking their place in the white community on an equal footing with the whites.

From this time on, States began adopting policies designed to ‘assimilate’ Indigenous people of mixed descent. Whereas ‘merging’ was essentially a passive process of pushing Indigenous people into the non-Indigenous community and denying them assistance, assimilation was a highly intensive process necessitating constant surveillance of people’s lives, judged according to non-Indigenous standards. Although Neville’s model of absorption had been a biological one, assimilation was a socio-cultural model.

Implicit in the assimilation policy was the idea current among non-Indigenous people that there was nothing of value in Indigenous culture.

> Nobody who knows anything about these groups can deny that their members are socially and culturally deprived. What has to be recognized is that the integration of these groups differs in no way from that of the highly integrated groups of economically depressed Europeans found in the slums of any city and in certain rural areas of New South Wales. In other words, these groups are just like groups of poor whites. The policy for them must be one of welfare. Improve their lot so that they can take their place economically and socially in the general community and not merely around the periphery. Once this is done, the break-up of such groups will be rapid (Bell 1964 page 68).

Removal of Indigenous children under child welfare legislation

New South Wales was the first jurisdiction to reshape its Indigenous child welfare system according to the assimilationist welfare model. After 1940 the removal of Indigenous children was governed by the general child welfare law, although once removed Indigenous children were treated differently from non-Indigenous children. State government institutions and missions in which removed Indigenous children were placed received a financial boost after 1941 with the extension of Commonwealth child endowment to Aboriginal children. The endowment was paid to them rather than to the parents.

Under the general child welfare law, Indigenous children had to be found to be ‘neglected’, ‘destitute’ or ‘uncontrollable’. These terms were applied by courts much more readily to Indigenous children than non-Indigenous children as the definitions and interpretations of those terms assumed a non-Indigenous model of child-rearing and regarded poverty as synonymous with neglect. It was not until 1966 that all eligibility restrictions on Indigenous people’s receipt of social security benefits were fully lifted. Before that time Indigenous families in need could not rely on the financial support of government which was designed to hold non-Indigenous families together in times of need. Moreover, ongoing surveillance of their lives meant that any deviation from the acceptable non-Indigenous ‘norm’ came to the notice of the authorities immediately.

From the late 1940s the other jurisdictions followed New South Wales in applying the general child welfare law to Indigenous children while still treating removed Indigenous children differently. State government child welfare practice was marked more by continuity than change. The same welfare staff and the same police who had

previously removed children from their families simply because they were Aboriginal now utilised the neglect procedures to remove just as many Aboriginal children from their families. 'Aboriginal parents were left on the margins of Australian society while attempts were made to absorb their children into non-Aboriginal society' (Armitage 1995 page 67).

> The children were still being removed in bulk, but it wasn't because they were part white. They had social workers that'd go around from house to house and look in the cupboards and things like that and they'd say the children were neglected (Molly Dyer evidence 219, speaking of the practice of the Victorian Aborigines Welfare Board in the 1950s).

At the third Native Welfare Conference held in 1951 the newly appointed federal Minister for Territories, Paul Hasluck, vigorously propounded the benefits to Aboriginal people of assimilation and urged greater consistency in practice between all the States and the Northern Territory. Hasluck pointed out that Australia's treatment of its Indigenous people made a mockery of its promotion of human rights at the international level (Hasluck 1953 page 9).

The conference agreed that assimilation was the aim of 'native welfare measures'.

> Assimilation means, in practical terms, that, in the course of time, it is expected that all persons of aboriginal blood or mixed blood in Australia will live like other white Australians do (Hasluck 1953 page 16).

During the 1950s and 1960s even greater numbers of Indigenous children were removed from their families to advance the cause of assimilation. Not only were they removed for alleged neglect, they were removed to attend school in distant places, to receive medical treatment and to be adopted out at birth.

As institutions could no longer cope with the increasing numbers and welfare practice discouraged the use of institutions, Indigenous children were placed with non-Indigenous foster families where their identity was denied or disparaged. 'A baby placed with white parents would obviously be more quickly assimilated than one placed with black parents. So ran the official thinking, but more importantly, so also ran the feelings of the majority of honest and conscientious white citizens' (Edwards and Read 1989 page xx).

While Indigenous children were being removed from their families at a young age, child welfare practice in relation to non-Indigenous children was being influenced by the work on maternal deprivation conducted by John Bowlby for the World Health Organisation and by a 1951 United Nations report which stressed that child welfare services should be focussed on assisting families to keep their children with them (Keen 1995 page 35).

By the early 1960s it was clear that despite the mandatory way in which the assimilation policy had been expressed, Indigenous people were not being assimilated.

Discrimination by non-Indigenous people and the refusal of Indigenous people to surrender their lifestyle and culture were standing in the way. Consequently the definition of assimilation was amended at the 1965 Native Welfare Conference to include an element of choice.

> The policy of assimilation seeks that all persons of Aboriginal descent will choose to attain a similar manner of living to that of other Australians and live as members of a single community (quoted by Lippmann 1991 on page 29).

Following the successful 1967 constitutional referendum the Commonwealth obtained concurrent legislative power on Aboriginal affairs with the States. Since at least the 1930s Aboriginal and humanitarian groups had been urging the Commonwealth to display leadership on Aboriginal affairs. Although the Commonwealth did not have constitutional power until 1967 to legislate in respect of Aboriginal people it could have influenced State policies by making grants of aid conditional on policy change. However the Commonwealth had been consistently wary of upsetting State sensitivities as well as committing itself to extra funding.

This position changed after 1967. A federal Office of Aboriginal Affairs was established and made grants to the States for Aboriginal welfare programs.

> 'Assimilation' was discarded as the key term of Aboriginal policy in favour of 'integration', though precisely what this signified was somewhat unclear … Although these were significant changes, they continued to operate through the established structures and organizations of Aboriginal policy, rather than in any way directly challenging them (Altman and Sanders 1995 page 211).

Self-management and self-determination

The election of the Whitlam Labor Government in 1972 on a policy platform of Aboriginal self-determination provided the means for Indigenous groups to receive funding to challenge the very high rates of removal of Indigenous children. Aboriginal legal services began representing Indigenous children and families in removal applications, which led to an immediate decline in the number of Indigenous children being removed. In Victoria the first Aboriginal and Islander Child Care Agency (AICCA) was started offering alternatives to the removal of Indigenous children.

In 1976 a paper delivered at the First Australian Conference on Adoption directed the attention of social workers to the large numbers of Indigenous children who were being placed by non-Indigenous welfare workers with non-Indigenous families. The paper drew on the experience of Indigenous services with children who had been removed and placed away from the Indigenous community. This practice was inconsistent with the policy of self-determination and harmful to the Indigenous children concerned.

> For the Aboriginal child growing up in a racist society, what is most needed is a supportive environment where a child can identify as an Aboriginal and get emotional support from other blacks. The supportive environment that blacks provide cannot be assessed by whites and is not quantifiable or laid down in terms of neat identifiable criteria.

> Aboriginal people maintain that they are uniquely qualified to provide assistance in the care of children. They have experienced racism, conflicts in identity between black and white and have an understanding of Aboriginal life-styles (Sommerlad 1976 pages 163 and 164).

The activism of Indigenous organisations and the growing awareness of welfare workers of the ways in which government social welfare practice discriminated against Indigenous people forced a reappraisal of removal and placement practice during the 1980s. In 1980 the family tracing and reunion agency Link-Up (NSW) Aboriginal Corporation was established. Similar services now exist in all States and the Northern Territory. In 1981 the Secretariat of National Aboriginal and Islander Child Care (SNAICC) was formed and there are now approximately 100 Aboriginal community-run children's services under its umbrella (Butler 1993 page 8).

These Indigenous services formulated the Aboriginal Child Placement Principle (discussed in Chapters 21 and 22) and lobbied for it to be adopted by State and Territory welfare departments as a mandatory requirement. It has now been incorporated into the child welfare legislation and/or the adoption legislation in the Northern Territory, the ACT and all States other than Tasmania and Western Australia where it takes the form of administrative guidelines.

Estimating the numbers removed

It is not possible to state with any precision how many children were forcibly removed, even if that enquiry is confined to those removed officially. Many records have not survived. Others fail to record the children's Aboriginality.

Researchers have assisted the task by counting numbers of children in particular placements or in record series over particular periods. For example, historian Peter Read used official records to number Indigenous children removed in New South Wales between 1883 and 1969 at 5,625, warning as he did so that some of the record series were incomplete (1981 pages 8-9). South Australian researchers Christobel Mattingley and Ken Hampton found records relating to over 350 children entering Colebrook Home in the 54 years to 1981 (1992 page 219).

Another method is to survey adults and ask whether they were removed in childhood. Professor Ernest Hunter surveyed a sample of 600 Aboriginal people in the Kimberley region of WA in the late 1980s. One-quarter of the elderly people and one in seven of the middle-aged people reported having been removed in childhood (evidence 61).

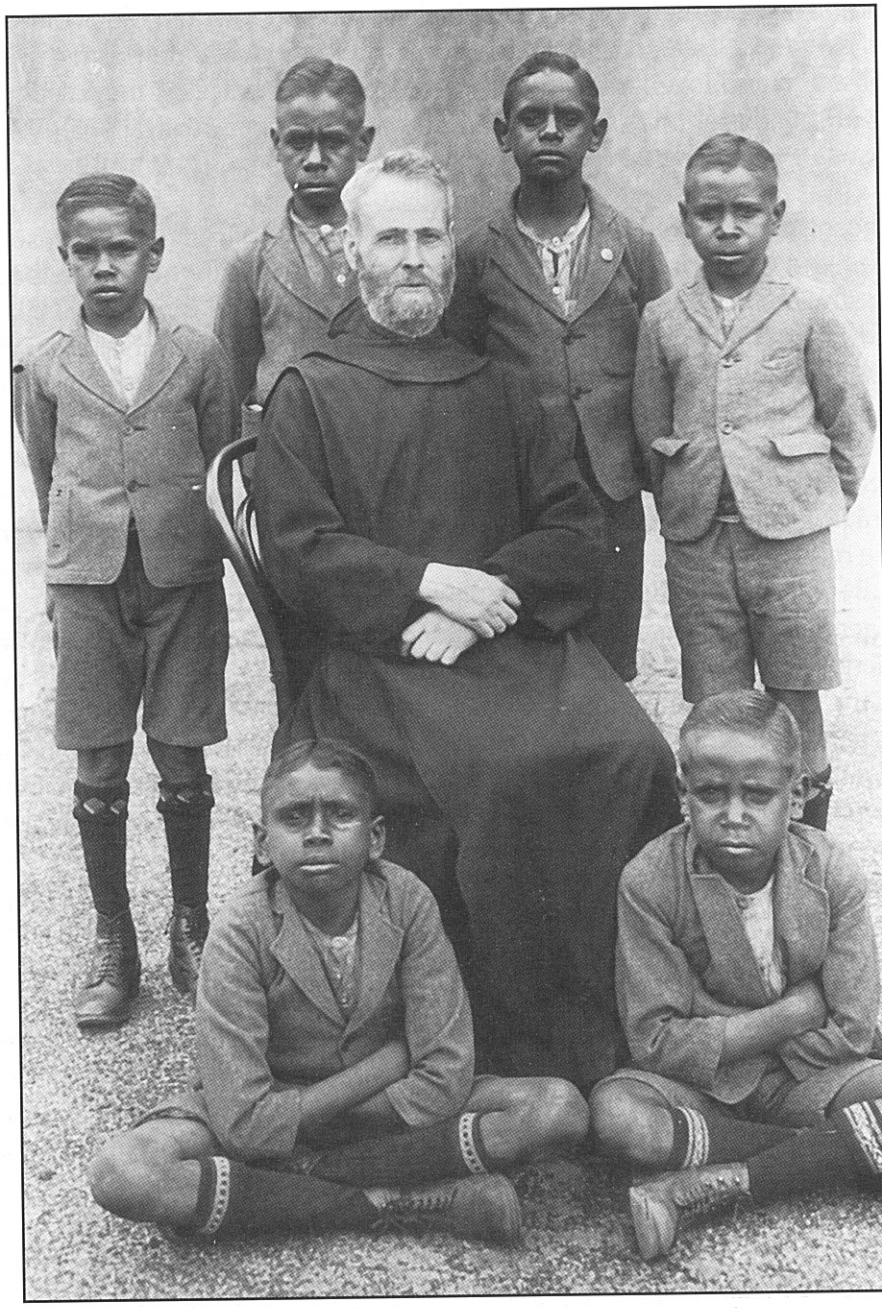
Dr Max Kamien surveyed 320 adults in Bourke NSW in the 1970s. One in every

three reported having been separated from their families in childhood for five or more years (cited by Hunter 1995 on page 378). Dr Jane McKendrick's findings are almost identical. She surveyed Victorian Aboriginal general medical practice patients in the late 1980s, 30% of whom reported having been removed: 20% to children's homes and another 10% to foster and adoptive families (cited by Hunter 1995 on page 378).

A national survey of Indigenous health in 1989 found that almost one-half (47%) of Aboriginal respondents of all ages had been separated from both parents in childhood. This very high proportion, which contrasted with a figure of only 7% for non-Indigenous people, must be read with some caution. Separation here includes hospitalisation and juvenile detention in addition to removal. It may also include living with family members other than parents for a period (National Aboriginal Health Strategy Working Party 1989 page 175).

More recent surveys are likely to understate the extent of removal because many of those removed during the early periods of the practice are now deceased. The 1994 Australian Bureau of Statistics survey of Aborigines and Torres Strait Islanders revealed 10% of people aged 25 and above had been removed in childhood (1995a page 2). Such surveys cannot capture the experiences of those people whose Aboriginality is now unknown even to themselves.

A further complicating factor is that although forcible removal affected every region of Australia it seems to have been more or less intense according to the period, the available resources and the 'visibility' of, in particular, children of 'mixed descent'. Nationally we can conclude with confidence that between one in three and one in ten Indigenous children were forcibly removed from their families and communities in the period from approximately 1910 until 1970. In certain regions and in certain periods the figure was undoubtedly much greater than one in ten. In that time not one Indigenous family has escaped the effects of forcible removal (confirmed by representatives of the Queensland and WA Governments in evidence to the Inquiry). Most families have been affected, in one or more generations, by the forcible removal of one or more children.



Courtesy Battye Library 74561P.

Brother Luis Arrufat and students, St. Mary's Orphanage New Norcia, WA, c1930.

3 New South Wales and the ACT

> At Darlington Point I have heard an aborigine, who was highly educated, explaining in the best of English how the aborigines were plundered of their rations, robbed of their lands, and reduced to the position of slaves. I do not say the man was right in all his contentions, but when you meet men who understand all these things, you cannot expect them calmly to submit to an order to take from them their girls or boys and to place them in a Government institution (Mr Scobie MP during parliamentary debate on the *Aborigines Protection Bill 1915* quoted by Link-Up (NSW) submission 186 on pages 53-4).

Early policies and practices

Within months of the 'First Fleet' arrival at Sydney Cove in 1788 there was 'open animosity' as Indigenous people protested against 'the Europeans cutting down trees, taking their food and game, and driving them back into others' territories'. Bitter conflict followed as Aboriginal people engaged in 'guerilla warfare – plundering crops, burning huts, and driving away stock' to be met by 'punitive expeditions of great ferocity in which bands of Aborigines encountered were indiscriminately killed' (Bickford 1988 page 57).

The Native Institution at Parramatta, the first of many such schools for Aboriginal children, was opened by Governor Macquarie in 1814. Designed to distance the children from their families and communities, provide them with the 'benefit' of a European 'education' and inculcate the diligent subservience thought desirable in servants and the working class, it was quickly boycotted by Indigenous families. By 1820 it had closed and other attempts were similarly short-lived.

Early missionary activity similarly failed to attract the support of Aboriginal people to whom a settled agricultural lifestyle and study of the Bible had little relevance. In the meantime, as the non-Indigenous occupation extended throughout New South Wales, Indigenous people were forced from their lands to the fringes of European settlements.

In the 1870s the destitution and vulnerability of Aboriginal people moved the missionaries to renewed efforts. They successfully lobbied the government to reserve lands for their use and appealed for public support resulting in the establishment of missions at Maloga and Warangesda. In 1881 a Protector of Aborigines was appointed. He recommended that reserves be set aside throughout the State to which Aboriginal people should be encouraged to move.

In 1883 the Aborigines Protection Board was established to manage the reserves and control the lives of the estimated 9,000 Aboriginal people in NSW at that time. The Board took over the reserves at Maloga and Warangesda. After the Australian Capital Territory was established in 1911 the Board compelled all Aboriginal people in the Territory (including those who had been granted land for farming) to move to the Egerton Mission Station at Yass. When that mission closed two years later the residents became fringe-dwellers on the outskirts of Yass until another forced move to Hollywood Mission in 1934. The few Aboriginal children who lived in the ACT came under the control of the

NSW Protection Board.

By 1939 there were over 180 reserves in NSW. 'In most cases they were small with housing consisting of humpies made from iron roofing' (*Learning from the Past* 1994 page 14). They were of two kinds. 'Managed reserves', also called stations, were usually staffed by a teacher-manager and education of a sort, rations and housing were provided. Unmanaged reserves provided rations but no housing or education and were under the control of the police.

Segregation and 'merging'

By about 1890 the Aborigines' Protection Board had developed a policy to remove children of mixed descent from their families to be 'merged' into the non-Indigenous population.

> The Board reasoned that if the Aboriginal population, described by some as a 'wild race of half-castes' was growing, then it would somehow have to be diminished. If the children were to be de-socialised as Aborigines and re-socialised as Whites, they would somehow have to be removed from their parents (Dr Peter Read submission 49 page 11).

In 1893 a dormitory for girls was built on Warangesda station. From then until 1909 approximately 300 Aboriginal children were removed from their families and placed there. Local Aboriginal people were offered free railway tickets to vacate the area leaving their female children behind (Read 1981 page 5).

The Board relied on persuasion and threats to remove the children. But it wanted the legal power to take them and to control the movement of Aboriginal adults and children. Its lobbying resulted in the *Aborigines Protection Act 1909* which gave the Board power 'to assume full control and custody of the child of any aborigine' if a court found the child to be neglected under the *Neglected Children and Juvenile Offenders Act 1905*. It also allowed the Board to apprentice Aboriginal children aged between 14 and 18 years.

In 1914 the Board instructed all station managers that all mixed descent boys 14 years and older must leave the stations to find employment and all girls 14 and over must go into service or to the Cootamundra Training Home for girls which had opened in 1911.

> The Board thus acted as a father figure and in so doing denied the Koori parents their rights in the rearing of their children. For example, it was common for a white child to be apprenticed out to a master. But it was the child's father who made the arrangements. If this child failed, then he would be sent back to his father's care. However the Board decided when and to whom a Koori child would be apprenticed and when a Koori child failed in his apprenticeship duties, he would be placed under the Board's control and would be punished for his misconduct by a Board official (Miller 1982 page 140).

Full control and custody

The Board was not satisfied with having to seek the consent of a court to remove

Indigenous children from their families. Its 1912 Annual Report declared, 'To allow these children to remain on the Reserves … would be … an injustice to the children themselves and a positive menace to the State' (quoted by Link-Up (NSW) submission 186 on page 47). As the Colonial Secretary complained,

> … it is very difficult to prove neglect; if the aboriginal child happens to be decently clad or apparently looked after, it is very difficult to show that the half-caste or aboriginal child is actually in a neglected condition, and therefore it is impossible to succeed in the court (quoted by NSW Government submission on page 26).

The Board's efforts to remove children were also inhibited by the 'cumbersome and ineffective' procedures involved. 'For instance, after learning that action is intended, parents have removed children across the border into Victoria, and thus defeated the objects of the board' (*Parliamentary Debates 1914-15* quoted by Link-Up (NSW) submission 186 on pages 49-50).

> Although great care has been taken to explain at length the many advantages a child would derive from such an opportunity, the almost invariable experience has been that the parents or relatives have raised some frivolous objection and withheld their consent. Consequently the children have perforce had to be left amidst their most undesirable surroundings (Colonial Secretary, 1915, quoted by Miller 1982 on page 141).

The Board's concerns were addressed by the *Aborigines Protection Amending Act 1915* which gave it total power to separate children from their families without having to establish in court that they were neglected.

> No court hearings were necessary; the manager of an Aboriginal station, or a policeman on a reserve or in a town might simply order them removed. The racial intention was obvious enough for all prepared to see, and some managers cut a long story short when they came to that part of the committal notice, 'Reason for Board taking control of the child'. They simply wrote, 'For being Aboriginal' (Read 1981 page 6).

Apart from just 'being Aboriginal' other commonly cited reasons for removal were 'To send to service', 'Being 14 years', 'At risk of immorality', 'Neglected', 'To get her away from surroundings of Aboriginal station/Removal from idle reserve life' and 'Orphan'.

The only way a parent could prevent the removal was to appeal to a court.

> We are told that the parents have an appeal. What does an appeal mean? Suppose a poor Aboriginal woman goes into court, who will listen to her? (*Parliamentary Debates 1914-15* page 1953).

The 1915 amendment also abolished the minimum age at which Aboriginal children could be apprenticed.

Some Parliamentarians of the day such as the Hon P McGarry strongly opposed the 1915 amending Act. According to McGarry it allowed the Board 'to steal the child away from its parents'. This 'act of cruelty' was a scheme to take the children 'prisoners' and 'to gain absolute control of the child and use him as a slave without paying wages'. Another Member of Parliament assessed the amending Act as tantamount to the 'reintroduction of slavery in NSW' (*Parliamentary Debates 1914-15* pages 1951, 1953, 1957).

Rather than appeal removal decisions, Indigenous parents protested by leaving the stations 'with a view to escaping supervision and to evade having their children removed to domestic employment' (1922 Board circular quoted by Link-Up (NSW) submission 186 on page 56).

Extending official control

From 1905 the Board was under pressure to relinquish reserved land in eastern NSW for non-Indigenous settlement. This pressure became 'irresistible' in 1917 with the Returned Servicemen's Settlement Scheme whereby returned soldiers could select a block of agricultural land (Goodall 1996 page 124). At the same time changes in the pastoral industry were forcing Indigenous communities off pastoral stations as the stations were broken up into smaller family-based operations. Communities moved onto reserves or to the outskirts of towns where work might be found.

Coping with this influx of people put demands on the Board's budget. Its response was to persuade the government to amend the 1909 Act to narrow the definition of 'Aborigine'. Children who did not fall within this definition were not entitled to remain on the reserves with their families. According to the then acting Premier,

> … quadroons and octoroons will be merged in the white population, and the camps will merely contain the full-blooded aborigines and their descendants … By this means, considerable savings will be effected in the expenditure of the Aborigines Protection Board … There is hope … in years to come, the expenditure in respect of Aborigines will reach vanishing point (quoted by NSW Government submission on page 28).

The 1918 strategy to force 'lesser castes' from dependence on the Board and into the wider community to make their own way did not take account of the discrimination they would encounter. They were said to be 'a great annoyance' to the European population and there was a public demand that they be supervised more closely. In 1936 the Board regained control over these people by yet another change to the definition of Aboriginality.

The effect of this change was to extend the Board's control to Aboriginal children living away from the reserves and stations, then estimated at half the Aboriginal population. If a child refused to enter employment on the terms laid down by the Board, he or she could be admitted to an institution. Families who refused to move to reserves or from one reserve to another as reserve land was resumed were threatened with the removal of their children. This happened to families who moved to the Darling River at Wilcannia to escape being forcibly removed to the Menindee Mission after it opened in

1933 and to those resisting removal from Menindee when it closed in 1949 to Murrin Bridge.

> It is ironic therefore that very often the Welfare Board would use the poor conditions of the river bank houses as a justification for subsequent removals. It was the neglect of the Welfare Board with the tacit approval of the Shire Council which had forced such appalling conditions on the Aboriginal community in the first instance (Western Aboriginal Legal Service (Broken Hill) submission 775).

As the Board had very limited resources it relied on local police to administer its child removal policy, 'protect' Indigenous people, distribute rations and prosecute offenders.

> The policeman, who no doubt was doing his duty, patted his handcuffs, which were in a leather case on his belt, and which May [my sister] and I thought was a revolver … 'I'll have to use this if you do not let us take these children now'. Thinking that the policeman would shoot Mother, because she was trying to stop him, we screamed, 'We'll go with him Mum, we'll go' … Then the policeman sprang another shock. He said he had to go to the hospital to pick up Geraldine [my baby sister], who was to be taken as well. The horror on my mother's face and her heartbroken cry! (Tucker 1984 pages 92-3).

Training institutions

The Board expressed particular concern about the prospects of young Aboriginal women and girls. To 1921 81% of the children removed were female. That proportion had decreased only slightly by 1936 (Goodall 1990 page 44).

Girls were sent to Cootamundra Girls' Home until the age of 14 then sent out to work.

> During any one year in the 1920s there would have been between 300 and 400 Aboriginal girls apprenticed to white homes. Aboriginal wards thus represented approximately 1.5% of the domestic workforce at the time (Walden 1995 page 12).

Many girls became pregnant in domestic service, only to have their children in turn removed and institutionalised. Generations of Aboriginal women passed through Cootamundra Girls' Home until it closed in 1969.

> **When the girls left the home, they were sent out to service to work in the homes and outlying farms of middle class white people as domestics … On top of that you were lucky not to be sexually, physically and mentally abused, and all for a lousy sixpence that you didn't get to see anyway. Also, when the girls fell pregnant, their babies were taken from them and adopted out to white families, they never saw them again.**
>
> *Confidential submission 617, New South Wales: woman removed at 8 years with her 3 sisters in the 1940s; placed in Cootamundra Girls' Home.*

In 1918 the Board established the Kinchela Training Institution in northern NSW for

Aboriginal boys. Kinchela moved to Kempsey in 1924. The Board also contributed to the United Aborigines Mission home at Bomaderry on the NSW south coast where younger children and babies were placed.

The Board regularly received complaints about the conditions in these institutions. A 1937 Board inquiry into allegations of extreme cruelty by the Kinchela manager led to him being transferred to the station at Cumeragunja. In response to his actions there Cumeragunja families walked off the station, crossed the Murray River and established communities in Victoria. These communities were later subjected to the child removal policies of the Victorian Government.

Under arrangements with the Commonwealth Government the NSW Board also placed Aboriginal children from the ACT who had been removed from their families under the *Neglected Children and Juvenile Offenders Act 1905* (NSW).

While Indigenous children were being institutionalised, removed non-Indigenous children were being fostered or 'released back' into the care of their mothers. An 1874 Public Charities Commission inquiry had stressed that institutional life,

> … is prejudicial to a healthy development of character and the rearing of children as good and useful men and women. The one fatal and all-sufficient objection to the massing of children together under the necessary conditions of barrack life is, its utter variance from the family system recognized by nature in the constitution of human society as the best suited for the training of the young (page 40).

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Resistance and dissent

During the late 1920s and the 1930s Aboriginal resistance to the operations of the Board organised at the political level. In 1925 the Australian Aborigines Progressive Association (AAPA) was formed in New South Wales and immediately called for an end to the forcible removal of Aboriginal children from their families (Markus 1990 page 176). In 1928 the Association wrote,

> … girls of tender age and years are torn away from their parents … and put to service in an environment as near to slavery as it is possible to find (quoted by Markus 1990 on page 177).

Fred Maynard, an Aboriginal activist, wrote to the Premier in 1927 demanding 'that the family life of Aboriginal people shall be held sacred and free from invasion and interference and that the children shall be left in the control of their parents' (quoted by *Learning from the Past* 1994 on page 44).

The Member of Parliament for Cobar, a supporter of the AAPA, raised the management problems then existing at Brewarrina Station in Parliament which resulted in a Parliamentary Select Committee into the Aborigines Protection Board, followed by a further inquiry in 1938.

Aboriginal activists continued to campaign against the actions of governments

towards their people since the time of the invasion. At a 1938 protest meeting held on the 150th anniversary of the British occupation of Australia, William Ferguson and John Patten forcefully denied the myth of white benevolence in their manifesto *Aborigines Claim Citizen Rights.*

> You have almost exterminated our people, but there are enough of us remaining to expose the humbug of your claim, as white Australians, to be a civilised, progressive, kindly and humane nation. By your cruelty and callousness towards the Aborigines you stand condemned … If you would openly admit that the purpose of your Aborigines Legislation has been, and now is, to exterminate the Aborigines completely so that not a trace of them or of their descendants remains, we could describe you as brutal, but honest. But you dare not admit openly that what you hope and wish is for our death! You hypocritically claim that you are trying to 'protect' us; but your modern policy of 'protection' (so-called) is killing us off just as surely as the pioneer policy of giving us poisoned damper and shooting us down like dingoes! (quoted by Markus 1990 on pages 178-9).

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Assimilation 1937-1975

New South Wales responded to the national consensus on assimilation at the 1937 Commonwealth-State conference by reconstituting the Board around the new goal and renaming it the Aborigines Welfare Board in new legislation introduced in 1940.

> The problem that the Government has to meet and the community has to face in regard to the Aborigines can be estimated by realising the fact that there are some 10,000 people of full or mixed aboriginal blood … About 50% of the aborigines are camped on stations and reserves which are controlled by the Government. The remainder are living independently of the board … It has no effective control under the present law. They are quite independent and free to live according to their own wishes. In many cases, they are living in close proximity to towns, in much the same way as the unemployed lived during the worst years of the depression, and in that regard they are a great annoyance to the community (Parliamentary debates on the 1940 Act quoted by NSW Government submission on pages 37-8).

The 1940 Act did not give the new Board the same administrative removal powers. To remove a child the Board now had to proceed under the *Child Welfare Act 1939* and establish to the satisfaction of a Children's Court that the child was 'neglected' or 'uncontrollable'. Once removed, however, the child became a ward of the Board (which was not the same as a ward under the *Child Welfare Act*) and subject to even greater control by the new Board. Two systems of regulation and administration thus operated side by side: one for non-Indigenous wards under the control of the Child Welfare Department and one for Aboriginal wards under the control of the Board.

The Board was given explicit power to 'establish … homes for the reception, maintenance and training of wards'. Aboriginal children who left their employment or a 'home' were guilty of an offence and punishable by the Children's Court. Punishment could include forfeiture of rewards, isolated detention, corporal punishment and fatigue duties. In the pursuit of assimilation Aboriginal parents were prevented by law from contacting their institutionalised children. It was an offence to try to communicate with any ward 'who is an inmate of such home' or to enter the home.

The new Board also placed Indigenous children from the Australian Capital Territory, although their removal continued to be governed by the 1905 *Neglected Children and Juvenile Offenders Act* until 1954, even though that Act had been repealed for NSW. From 1954 until 1968 Indigenous children in the ACT were removed under Commonwealth legislation, the *Commonwealth Child Welfare Ordinance 1954*, but placed in institutions or foster care in New South Wales. 'Given the Territory's location in regional NSW and the continuation of NSW administration, there was no real distinction between the ACT and the rest of NSW' (ACT Government interim submission page 15).

'The welfare'

In theory at least the court process in the *Child Welfare Act 1939* provided safeguards against the kinds of discretionary separations that the Board had previously engaged in. However, since the Children's Courts were located far from most Aboriginal communities and no legal assistance was available to parents, they were effectively prevented from contesting removal applications.

> In that time we had nobody. No-one to talk for us or anything … We had to just go there … and … if we wanted to say something then, in court, it was too late. They said it was already finished. And then, bang, they're gone. That was it (quoted by Wootten 1989 on page 15).

In any event the definition and interpretation of 'neglected' and 'uncontrollable' in the *Child Welfare Act* impacted adversely on Indigenous families. 'Neglect' was defined to include destitution and poverty was a constant feature of most Aboriginal people's lives. Aboriginal lifestyles, adopted from choice or necessity, such as frequent travelling for cultural activities or seeking employment, resistance to non-Indigenous control and child-rearing by extended family members were regarded by courts as indicative of neglect. Aboriginal children who refused to attend school were labelled 'uncontrollable' as were Aboriginal girls running away from situations of sexual abuse or becoming pregnant. Yet until 1972 school principals could and did exclude Aboriginal children from schools on the ground of 'home condition' or 'substantial (community) opposition' (NSW Government submission page 57).

If parents could be 'persuaded' to consent to the removal of their children the Board did not have to show that a child was neglected or uncontrollable.

> **Because [my mother] wasn't educated, the white people were allowed to come in and do whatever they wanted to do – all she did was sign papers. Quite possibly, she didn't even know what she signed … The biggest hurt, I think, was having my mum chase the welfare car – I'll always remember it – we were looking out the window and mum was running behind us and singing out for us. They locked us in the police cell up here and mum was walking up and down outside the police station and crying and screaming out for us. There was 10 of us.**
>
> *Confidential evidence 689, New South Wales: woman removed in the 1960s and placed in Parramatta Girls' Home.*

By the late 1930s it was clear the Board's institutions could not cope with the number of children being removed. As the Board did not have the funds to establish new institutions but remained firmly committed to its policy of child removal, alternative arrangements had to be made. From 1943 Aboriginal children deemed 'uncontrollable' by the Children's Court became the responsibility of the Child Welfare Department. They were usually sent to a State Corrective Institution such as Parramatta Girls' Home or Mt Penang.

During the 1940s and 1950s the Aborigines' Welfare Board and the Child Welfare Department worked closely together to place Indigenous children. A child's skin colour often determined the type of placement made. Lighter coloured children were sent to institutions for non-Indigenous children or fostered by non-Indigenous families.

In 1950 the Board advertised for 'foster parents … for 150 Aboriginal children'. By 1958 116 wards had been fostered, 90 of them with non-Indigenous families (Read 1983 quoted by Link-Up (NSW) submission 186 on page 65). In 1960 over 300 Aboriginal children were in foster homes and another 70 or so were in Cootamundra and Kinchela (Link-Up (NSW) submission 186 page 65).

Until 1963 the Board was still exploring the possibility of constructing more institutions to house all its removed children. In that year it was finally decided not to proceed with another institution because they encouraged segregation and, moreover, they were too expensive.

Adoption was another method of removing Indigenous children from their families. Mothers who had just given birth were coerced to relinquish their newborn babies. Those whose children had already been forcibly removed were pressured by Board officials to consent to adoption. The Child Welfare Department processed the adoption but relied on Board officials to obtain the mother's consent. The Child Welfare Department did not check to ensure that Indigenous mothers understood they were being asked to agree to the permanent removal of their child.

> **Most of us went to Crown St. Hospital. That's where my son was born, and then we went back to the hostel with the baby. Once we were there, we had the Welfare coming in, asking you what you was going to do – telling you most of the time that your parents didn't want you, the father of the baby didn't want you … they said to me they couldn't find anyone that wanted me, and they couldn't find anywhere for me, like a live-in job where I could take the baby. And then they said the only one they could find that was willing to take me was my eldest sister, who I'd never seen since I was a little girl – she'd gone before us: she went away with some white people that were supposed to take her away for a good education – and they said she was the only one who was willing to take me, but she didn't want the baby. So they brought the papers in and told me to sign and that was it.**
>
> *Confidential evidence 689, New South Wales: woman removed in the 1960s and placed in Parramatta Girl's Home.*

The powers of the NSW Board differed from those in some other States in that it

never had guardianship of Indigenous children and therefore could not consent to the adoption of one of its wards. However the *Adoption of Children Act 1965* allowed for the consent requirement to be waived if 'that person is, in the opinion of the Court, unfit to discharge the obligations of a parent or guardian by reason of his having abandoned, deserted, neglected or ill-treated the child'. Rather than endeavour to contact the mother of a child whose foster parents wanted to adopt him or her, the Board applied to the Children's Court to waive the consent requirement.

In 1968 responsibility for placing Indigenous children from the ACT was transferred to the Commonwealth Department of the Interior. This marked a shift in policy for foster care. Previously the practice had been to place children with an unrelated foster family in NSW. Restricted contact with their natural family and continued foster care arrangements meant that these placements, in effect, often became pseudo-adoptions. From 1967, the practice of Commonwealth Departments was to place children in residential care in the ACT and attempt to reunite the child with their family (ACT Government interim submission page 16).

Abolition of the Board

In 1969 the NSW Aborigines' Welfare Board was abolished 'leaving over a thousand children in institutional or family care. Almost none of them was being raised by Aborigines, still less by the child's own extended family' (Dr Peter Read submission 49 page 14). Wards of the Board were transferred to the Department for Child Welfare and Social Welfare which set up the Aborigines' Advisory Council in 1971. Although the abolition of the Board meant that Indigenous children were, in theory, treated the same as non-Indigenous children, 'the child welfare approach was, in effect, overt denial but covert recognition and denigration of Aboriginality' (historian Dr Heather Goodall quoted by Wootten 1989 on page 26). Kinchela and Cootamundra closed shortly after the Board was abolished but the home at Bomaderry was still functioning until 1980.

> **I was taken off my mum as soon as I was born, so she never even seen me. What Welfare wanted to do was to adopt all these poor little black babies into nice, caring white families, respectable white families, where they'd get a good upbringing. I had a shit upbringing. Me and [adopted brother who was also Aboriginal] were always treated different to the others … we weren't given the same love, we were always to blame. … I found my mum when I was 18 – she was really happy to hear from me, because she didn't adopt me out. Apparently she did sign adoption papers, but she didn't know [what they were]. She said to me that for months she was running away from Welfare [while she was pregnant], and they kept finding her. She remembers being in – it wasn't a hospital – but there were nuns in it, nuns running it. I was born at Crown Street. They did let her out with her brother one day and she run away again. Right from the beginning they didn't want her to have me.**
>
> *Confidential evidence 657, New South Wales: woman taken from her mother at birth in 1973 and adopted by a non-Aboriginal family.*

The Broken Hill office of the Western Aboriginal Legal Service informed the Inquiry that it was clear from its research that 'there were children removed from Wilcannia in the 1970's in much the same way that children were being removed in the 1960's' (submission 775). Once Cootamundra and Kinchela had closed, Indigenous children who rebelled against their removal and foster placements could be sent to a detention centre.

> Mt Penang Training Centre [in the early 1970s] was described to me by a former deputy superintendent as a para-military institution which followed the tradition of treatment of young offenders which commenced in the early days of colonisation … The atmosphere was one of absolute regimentation with very strict practices and procedures throughout the centre.

> Attitudes to Aboriginals were described by the former deputy superintendent as 'appalling' … There are no figures on the number of Aboriginals who were at Mt Penang but there is no reason to think it was less than 25-30% … The regime would have been very harsh for any young person but must have been particularly oppressive for Aboriginals like Malcolm, having regard to the relative freedom with which he had lived his early years, and the racist attitudes (Wootten 1989 pages 25-6).

Towards self-management

From the mid-1970s the NSW Department of Youth and Community Services began involving Aboriginal workers in the process of placing Indigenous children.

> It is the deep and natural desire of Aboriginal people, particularly the young adolescents, to be housed and cohabit with those of their own race and foster placement within the Aboriginal community would help to resolve this situation (Annual Report 1977, quoted by NSW Government submission on page 64).

In 1978 12 Aboriginal caseworkers started working with the department on the placement of Indigenous children. However, Aboriginal submissions for separate legal consideration of Indigenous children in the *Community Welfare Bill 1981* were rejected by the department (Milne 1982 page 31). Indigenous organisations such as the Aboriginal Children's Service and Link-Up (NSW) pressured the department to change its stance in relation to making specific provision for Indigenous children.

In 1980, the department's Aboriginal Children's Research Project reported that '17.2% of children in corrective institutions are Aboriginal'. Of these children, '81% … are not in their home regions [and] 34% had no contact with either parents or relatives'. In addition, '10.2% of children in non-government children's homes are Aboriginal [and] 15.5% of children in foster care are Aboriginal' (quoted by Select Committee of the Legislative Assembly upon Aborigines 1981 on page 293). The Aboriginal population of NSW at the time was about 1% of the total.

A conference of Aboriginal Community Workers in 1983 proposed changes to the adoption process to ensure that Aboriginal mothers were advised of alternatives. Departmental policy changed in 1985-86 with the development of policies for adoption and fostering that recognised that Aboriginal children who have been removed should be placed with Aboriginal families whenever possible. Following this policy change there was a 12% reduction in the number of Aboriginal wards from the previous year (NSW Government submission page 65).

The Aboriginal Child Placement Principle, under which an Aboriginal family must

be the preferred option for an Aboriginal child needing out-of-home care, was incorporated into the *Children (Care and Protection) Act 1987*. In that year a survey of government and non-government foster parents found that only 51% of the families with Aboriginal foster children were also Aboriginal and that Aboriginal children tended to be over-represented among children in very long-term foster care (Link Up (NSW) submission 186 page 89).

There is no similar principle in the *Children's Services Act 1986* (ACT) although there is in the *Adoption Act 1993* (ACT). The ACT Government informed the Inquiry that it intends to review the 1986 Act and 'is committed to the inclusion of this principle' (ACT Government interim submission page 5).

Until 1968 the placement of ACT children was undertaken by the NSW Board. It was then transferred to the Commonwealth Department of the Interior. Following self-government in 1989 responsibility for the placement of Indigenous children from the ACT passed to the ACT Department of Family Services.

Jennifer

My grandmother, Rebecca, was born around 1890. She lived with her tribal people, parents and relations around the Kempsey area. Rebecca was the youngest of a big family. One day some religious people came, they thought she was a pretty little girl. She was a full blood aborigine about five years old. Anyway those people took her to live with them.

Rebecca could not have been looked after too well. At the age of fourteen she gave birth to my mother Grace and later on Esther, Violet and May. She married my grandfather Laurie and at the age of twenty-three she died from TB.

Grandfather took the four girls to live with their Aunty and Uncle on their mother's side. Grandfather worked and supported the four girls.

Mum said in those days the aboriginals did not drink. She often recalled going to the river and her Uncle spearing fish and diving for cobbler. Mum had eaten kangaroo, koala bear, turtles and porcupine. She knew which berries were edible, we were shown by her how to dig for yams and how to find witchetty grubs. My mother also spoke in several aboriginal languages she knew as a small girl. The aboriginals had very strict laws and were decent people. They were kind and had respectable morals. Even though the girls fretted for their mother they felt secure with their own people.

Years later Grandfather told my mother a policeman came to his work with papers to sign. The girls were to be placed in Cootamundra Home where they would be trained to get a job when they grew up. If grandfather didn't sign the papers he would go to jail and never come out, this was around 1915.

My grandfather was told he was to take the four girls by boat to Sydney. The girls just cried and cried and the relations were wailing just like they did when Granny Rebecca

had died.

In Sydney my mother and Esther were sent by coach to Cootamundra. Violet and May were sent to the babies' home at Rockdale. Grace and Esther never saw their sister Violet again. She died at Waterfall Hospital within two years from TB.

My mother was to wait twenty years before she was to see her baby sister May again.

Cootamundra in those days was very strict and cruel. The home was overcrowded. Girls were coming and going all the time. The girls were taught reading, writing and arithmetic. All the girls had to learn to scrub, launder and cook.

Mum remembered once a girl who did not move too quick. She was tied to the old bell post and belted continuously. She died that night, still tied to the post, no girl ever knew what happened to the body or where she was buried.

Aunty Esther was a big girl for her age, so she was sent out as a cook to work at twelve years of age. Mum being of smaller build was sent out as children's nurse at fourteen. She had responsibility for four young children; one only a baby for 24 hours a day. Mum said they used to put girls ages up if they were big for their age and send them out to work on properties. Some girls were belted and sexually abused by their masters and sent to the missions to have their babies. Some girls just disappeared never to be seen or heard of again.

Eventually after several years Mum was sent to Rose Bay to work. Whilst in Sydney she met her sister Esther who was working in the Chatswood area. As far as I know neither Mum or Aunt Esther ever got paid for those hard working years under the Board.

My mother often recalled the joyous time Aunty May came to Kempsey to see her sisters and father. The three young women hugged one another and cried with happiness and sadness for their sister and their mother.

Early one morning in November 1952 …

Early one morning in November 1952 the manager from Burnt Bridge Mission came to our home with a policeman. I could hear him saying to Mum, 'I am taking the two girls and placing them in Cootamundra Home'. My father was saying, 'What right have you?'. The manager said he can do what he likes, they said my father had a bad character (I presume they said this as my father associated with Aboriginal people). They would not let us kiss our father goodbye, I will never forget the sad look on his face. He was unwell and he worked very hard all his life as a timber-cutter. That was the last time I saw my father, he died within two years after.

We were taken to the manager's house at Burnt Bridge. Next morning we were in court. I remember the judge saying, 'These girls don't look neglected to me'. The manager was saying all sorts of things. He wanted us placed in Cootamundra Home. So we were sent away not knowing that it would be five years before we came back to Kempsey again.

Mum used to write to us every week. Sometimes it would be 2 months before we received the letters, of course they were opened and read first. Sometimes parts would be torn out of the letters by matron or whoever was in charge.

Cootamundra was so different from the North Coast, it was cold and dry. I missed the tall timbers and all the time I was away there was this loneliness inside of me. I had often thought of running away but Kate was there and I was told to always look after her. I had just turned eleven and Kate was still only seven. I often think now of Cootamundra as a sad place, I think of thousands of girls who went through that home, some girls that knew what family love was and others that never knew; they were taken away as babies.

Some of the staff were cruel to the girls. Punishment was caning or belting and being locked in the box-room or the old morgue. Matron had her pets and so did some of the staff. I look back now and see we were all herded together like sheep and each had to defend themselves and if you didn't you would be picked on by somebody that didn't like you, your life would be made a misery. I cannot say from my memories Cootamundra was a happy place.

In the home on Sundays we often went to two different churches, hymns every Sunday night. The Seventh Day Adventist and Salvation Army came through the week. With all the different religions it was very confusing to find out my own personal and religious beliefs throughout my life.

My mother sent us a new outfit every change of season, we only received one parcel. The matron kept our clothes and distributed them to her pets. In winter it was icy cold and for the first time in my life I didn't have socks to wear to school.

One day the matron called me to her office.

One day the matron called me to her office. She said it was decided by the Board that Kate and myself were to go and live with a lady in a private house. The Board thought we were too 'white' for the home. We were to be used as an experiment and if everything worked out well, more girls would be sent later on.

We travelled all day long. We didn't know what place we were going to, all I knew was we were going further and further away from home. Late afternoon we stopped at this house in Narromine. There lived Mrs S., her son and at weekends her husband Lionel.

The twenty months Kate and I spent at Narromine were honestly the worst time of my childhood life. I often thought I would not survive long enough ever to see my mother again.

The Scottish woman hated me because I would not call her 'Mum'. She told everyone I was bad.

She made us stay up late sewing, knitting and darning that pillowcase full of endless socks. Often we weren't allowed to bed 'till after 11 p.m. I was always late for school, the headmaster used to greet me with 'Good afternoon Jennifer'. Mrs S. did not allow me to do homework, therefore my schoolwork suffered and myself – a nervous wreck.

When I was thirteen years old Mrs S. called this middle-aged male doctor to the house and said she wanted an internal examination of me. That was terribly shameful for me, I will not say anymore. During the time [with her] I was belted naked repeatedly, whenever she had the urge. She was quite mad. I had to cook, clean, attend to her customers' laundry. I was used and humiliated. The Board knew she was refused anymore white children yet they sent us there.

Near the end of our stay she got Mr F. from Dubbo to visit. She tried to have me put in Parramatta Girls' Home. By this time I knew other people had complained to the Board. Mr F. asked me if I wanted to go to a white home or back to Cootamundra. So a couple of days later we were back in the Home. It was hard to believe we had gotten away from that woman.

It wasn't long after we were back at the Home and Matron called me to her office. She wanted to know what had happened at Narromine. I told her everything. She said the experiment did not work and she would write to the Board for fear they would send more girls out. It did not do any good though because more than half the girls were fostered out over the next three years. Some of the girls were sexually abused, belted and called names by their foster parents. Of course the brainwashing continued about Aboriginals being lazy, dirty and of low intelligence going nowhere.

In December 1957 our mother finally got us home.

In December 1957 our mother finally got us home. She was the first Aboriginal to move into a Commission house. My mother died four years later, she suffered high blood pressure, she was 54 years old. It was fight all the way to survive because she was born an Aboriginal.

I still can't see why we were taken away from our home. We were not neglected, we wore nice clothes, we were not starving. Our father worked hard and provided for us and we came from a very close and loving family.

I feel our childhood has been taken away from us and it has left a big hole in our lives.

Confidential submission 437, New South Wales.

Six o'clock … Outa bed

She entered Coota a young girl

about eleven / twelve but already

mature for her years.

She knew how to look after her

younger brothers and sister, keep house

and herself, her mother made sure of that.

Her life was forcefully changed.

She was parted from her brothers.

White washed in a ‘new alien’ white

way of thinking.

She never really had a childhood,

she went from baby clothes to

Government uniforms, controlled by the

times of day.

Six o’clock, out of bed, wash, dress, work, breakfast,

work, inferior schooling, home, change clothes, work,

wash, tea, bed, nightmares, worry, little sleep,

cry.

Six o’clock, out of bed, wash …

Talk like whites, behave like whites,

pray like whites. Be white.

She new her family for she was part of one,

where she grew up, the things she did,

the strong family she had, the old people,

the stories of long ago, her own

identity. Her mother.

…

She was rebellious, she never

conformed, they never broke her spirit,

her family background made sure of that

and they were always in her thoughts.

Six o’clock, out of bed, wash .....

she endured many years of this spirit

breaking torture, punished, bashed, humiliated,

starved.

…

James Miller 1994

Extract from the poem Six o’Clock…Outa bed

4 Victoria

> Informal and formal foster care arrangements and holiday placements supposedly for a temporary period, were frequently the beginning of a permanent separation of Aboriginal children from their family and community. Some children placed informally, were passed from one foster home to another, names were changed and the child's whereabouts 'lost' to their parents and unknown to welfare authorities. Some of these placements may have led to the granting of an adoption order with parents' consents being dispensed with on the ground of whereabouts unknown, particularly as there was no restriction prior to the 1964 legislation as to who could arrange adoptions (Adoption Legislation Review Committee Report 1983 page 59).

Segregation – 1835-1886

From 1835, when the European occupation of Victoria commenced, until the 1880s government policy was one of segregation of Indigenous people on reserves. These were mainly controlled by missions.

Between 1838 and 1849 Victoria was the site of an unsuccessful 'Protectorate' experiment in which government appointed protectors attempted to persuade Indigenous people to 'settle down to a life of farming' (Rowley 1970 page 56). From 1837 missions established schools, attempting to wean the children away from 'tribal influences'. Protectors and missionaries alike had Aboriginal 'orphans' living with them.

In 1860 a 'Central Board Appointed to Watch over the Interests of Aborigines', the first of its kind in Australia, was appointed to consider how the government should deal with its Indigenous population. The Board commissioned reports which,

> … disclosed a state of affairs almost everywhere which could only be described as appalling. Torn from their way of life by advancing settlement, they lived under wretched conditions, drunkenness, prostitution, and begging being apparently almost universal. Tuberculosis and other diseases were rife, and the early extinction of the race was freely predicted … The census indicated that at that time they numbered about 2,341 (McLean 1957 page 4).

The Board was given the task of overseeing the establishment of reserves to which Aboriginal people were to be confined. By 1867 it was managing reserves at Framlingham and Coranderrk, had indirect control of a number of missions which received some government assistance and administered a number of small reserves and ration depots. A school was constructed on the Coranderrk reserve with separate living quarters for the children. The manager of Coranderrk travelled around the Indigenous communities removing 'neglected' children for the school although he had no lawful power to do so until 1869.

The *Aborigines Protection Act 1869* established the Aborigines Protection Board and set the pattern for subsequent laws applying to Indigenous people in Victoria. It contained very few substantive provisions but instead authorised the making of regulations on a wide range of subjects including 'the care, custody and education of the children of aborigines'. As regulations do not attract the kind of Parliamentary scrutiny

and publicity that occurs with proposed statutes, major decisions about the treatment of Indigenous children could go unnoticed.

One of the regulations allowed for 'the removal of any Aboriginal child neglected by its parents or left unprotected, to any of the places of residence specified in Regulation 1 [the missions or stations] or to an industrial or reformatory school'. Another provided that,

> Every aboriginal male under 14 years of age, and also all unmarried aboriginal females under the age of 18 years, shall, when so required by the person in charge of any station in connection with or under the control of the [Board], reside, and take their meals, and sleep in any building set apart for such purposes.

These provisions were used to separate Aboriginal children from their parents and house them in dormitories on the Lake Hindmarsh, Coranderrk, Ramahyuck, Lake Tyers and Lake Condah reserves.

'Merging' and 'dispersing' – 1886-1957

The Aborigines' Protection Board was chronically short of funds. In the early 1880s it proposed that it devote its budget and attention to 'full bloods' who were thought to be dying out and 'merge' the half-castes into the non-Indigenous community where they would have to find employment to survive.

The *Aborigines Protection Act 1886* and its regulations provided that at the age of 13 years 'half-caste' boys were to be apprenticed or sent to work on farms and girls were to work as servants. Having left, they were not allowed to return to their families on reserves without official permission for a visit. Orphaned 'half-caste' children were to be transferred to the care of the Department for Neglected Children or an institution for neglected children. All 'part-Aborigines' aged 34 and younger were to leave the stations and their families although they remained under the control of the Board until 1893. At that time the government estimated there were about 833 Indigenous people remaining in Victoria, of whom 233 were classed as 'half-castes', including 160 children.

Subsequent regulations extended the Board's removal power further to allow it to send children of mixed descent, whether orphaned or not, to the Department for Neglected Children or the Department of Reformatory Schools for their 'better care and custody'. Families refusing to consent to the removal of their children were told they would have to leave the stations and would be denied rations.

> The Board cannot grant rations to Henry Albert and family, as they are half castes, but every assistance will be given to place their children into the Industrial Schools and get them boarded out to respectable families (letter from Rev. Hagenauer, General Inspector of the Board, dated 9 September 1897, quoted by Chesterman and Galligan 1995 on page 20).

Many people of mixed descent continued to reside near the stations, visiting their

relatives in secret.

Between 1886 and 1923 the number of Aboriginal stations in Victoria declined from six to one. All Aboriginal people who wished to receive assistance from the Board had to move to Lake Tyers, the only staffed institution after 1924. The number of people there fluctuated, with a maximum of about 290 in the 1930s.

By 1957 fewer than 200 Aboriginal people were under Board control at Lake Tyers. Those who were lived a highly regulated life. Their homes were inspected, they had to seek permission to leave the station and they could be expelled for misconduct or if thought able to earn a living elsewhere. Residents received low cash wages in return for work and were supplied instead with rations as late as 1966 (Long 1970 page 20). Although the Board continued to have power over Indigenous children generally, it was only concerned with the people at Lake Tyers. Adhering to this policy the Victorian Government refused to attend the 1948 and 1951 Commonwealth/State conferences, maintaining that the Indigenous population of Victoria was too small to justify any special attention.

During the 1940s and 1950s humanitarian and religious groups made repeated representations to the government about the inactivity of the Board. The Board's response was to demolish or remove the houses on Lake Tyers station and offer the residents housing in nearby towns.

Indigenous people who had been forced off the Board's reserves or who chose to leave faced continuing hostility in non-Indigenous society. They were denied government welfare assistance available to non-Indigenous people. Suffering the effects of dispossession and facing discrimination in employment, access to accommodation and other fields of life, the only form of government assistance provided to them was rations distributed by the police. Although the Board regained power over 'half-castes' in 1910, it refused assistance to anyone not living at Lake Tyers.

Although legislation from 1919 made it possible for a 'destitute' mother to seek financial assistance to maintain her children at home, the process involved going to court. Given Indigenous people's unfamiliarity with and distrust of courts this was not a realistic option.

In the face of these difficulties, Indigenous people moved into shanty towns on the edges of country towns, on the sites of former missions and settlements and in areas that offered employment, such as seasonal fruit picking work. Indigenous communities grew up in the Goulburn Valley, East Gippsland and along the Murray River. They were joined by others from NSW, particularly from the station at Cumeragunja on the NSW-Victoria border, fleeing the removal policy of the NSW Protection Board. From the 1930s onwards Indigenous people also moved to Melbourne.

Assimilation – 1957-1970

In 1955 the newly elected Premier Henry Bolte commissioned Charles McLean to review and recommend changes to Victoria's Aboriginal affairs policy. McLean reported

on the conditions under which Indigenous people lived.

> On these two areas [at Mooroopna] live about 59 adults and 107 children, in most squalid conditions. Their 'humpies' are mostly constructed of old timber, flattened kerosene tins, and hessian, usually with some kind of partition to separate bedroom from living room. They are not weatherproof, have earthen floors, very primitive cooking arrangements, and no laundry or bathing facilities except the river, from which all water is drawn by buckets and carted for distances of up to half a mile.

> As might be expected in these surroundings, many of the children are dirty, undernourished and neglected, and very irregular in attendance at school. Shortly after my visit there, twenty-four of the younger children were, at the instance of the police, taken from these 'homes' and committed to the care of the Children's Welfare Department by the Children's Court (McLean 1957 pages 6 and 7).

The Aborigines Advancement League had petitioned McLean expressing fears for the physical and cultural extinction of Aboriginal people and advocating self-government for the communities. McLean rejected these claims and recommended instead a 'helpful but firm policy of assimilation' with emphasis on rehousing projects and improved educational and employment opportunities consistent with the assimilation policy that the other States had agreed to at the 1951 conference.

McLean found that the policy of segregating full descent people at Lake Tyers and dispersing those of mixed descent had failed, noting that most of the people remaining at Lake Tyers were of mixed descent. He recommended the establishment of an Aborigines Welfare Board with an assimilationist objective, modelled on the NSW Board.

McLean felt that the provisions of the *Child Welfare Act 1954* were generally adequate to deal with the welfare of Aboriginal children. He failed to appreciate the support networks within Indigenous communities to care for children. Shortly afterwards Barwick described a distinct culture and sense of community that existed among Indigenous people living in Melbourne. The community held weekly dances, had a strong sense of kinship and supported each other. 'Few women refuse to foster the children of close kin or to help unemployed relatives and friends for short periods' (Barwick 1964 page 27).

The Aborigines Welfare Board

Most of McLean's recommendations were reflected in the ensuing *Aborigines Act 1957*. The Act established the Aborigines Welfare Board 'to promote the moral, intellectual and physical welfare of aborigines … with a view to their assimilation in the general community'. However, for the first time in Victoria's Aboriginal affairs legislation, the Board was given no specific power in relation to Aboriginal children.

Nevertheless, comments were made in debate on the Bill on the desirability of separating Aboriginal children from what were regarded as the degenerate influences of

their family. The best hope for these children was seen to lie in making them believe they were part of non-Indigenous society.

Although the Aborigines Welfare Board had no power to remove children, it could notify the police that it was concerned about a particular child and thereby initiate forcible removal action. Generally its role in relation to removed children was to examine placement options for them including 'home release' whereby children were allowed to return home and the home situation monitored.

Housing was a major focus of the Board's activities. Ironically the provision of public housing for Indigenous families brought them into conflict with government authorities and thereby at increased risk of having their children taken. For example, strict limits on visitors staying in public housing and restrictions on the number of family members that could live together took no account of Indigenous family and community relationships.

By 1961 six government institutions had been opened to cope with the increasing numbers of children removed. Until then most Indigenous children had been referred to non-government agencies.

Role of police

Until 1985 the Victorian police were empowered to forcibly remove children under the child welfare laws. Until the mid-1950s, this power does not seem to have been used to a great extent against children in Indigenous communities.

However, while the McLean inquiry was underway, police suddenly took action to remove children from Indigenous communities in Gippsland, the Western District and the Goulburn Valley under the newly passed *Child Welfare Act 1954*. Shortly after McLean visited Mooroopna, 24 of the 107 children noted by him were taken. Many of these children were taken to Ballarat Orphanage. According to Barwick,

> During 1956 and 1957 more than one hundred and fifty children (more than 10 per cent of the children in the Aboriginal population of Victoria at that time) were living in State children's institutions. The great majority had been seized by police and charged in the Children's Court with 'being in need of care and protection'. Many policemen act from genuine concern for the 'best interests' of Aboriginal children, but some are over-eager to enter Aboriginal homes and bully parents with threats to remove their children. Few Aboriginal families are aware of their legal rights, and accept police intrusion at any hour of the day or night without question. This ignorance of legal procedure has also prevented parents from reclaiming children committed as Wards of State when their living standard has improved (quoted by Victorian Government final submission on page 52).

In 1969 the *Aboriginal Affairs Act* was amended to provide that the Victorian police were to notify the Ministry whenever an Aboriginal child was brought before a Children's Court. Thereafter the Aborigines Advancement League would be notified enabling the children to be legally represented. Prior to 1969 Children's Court care and protection cases were not usually defended, there were no duty solicitors at court and it

was rare for legal representation to be provided.

Informal and private removals

Until the 1957 Act was passed and the Aborigines Welfare Board established, the main source of outside assistance available to Indigenous people in Victoria was non-government welfare agencies. The government had long relied upon non-government agencies and private individuals to tend public welfare.

Between 1887 and 1954 private welfare agencies and individuals were authorised to apprehend children they suspected were neglected, assume guardianship of them and keep them in institutions or in other forms of care. Children who had been removed by the police and made State wards were also placed in these privately-run institutions. In 1957 there were at least 68 institutions managed by 44 different non-government agencies (Leonard Tierney quoted by Victorian Government final submission on page 50) and it was not until 1956 that the first two government institutions for children were opened. Minimum standards of conduct and treatment by non-government agencies were not imposed until the *Child Welfare Act 1954*.

The lack of welfare regulation meant that offers of temporary assistance accepted by Indigenous families from non-government agencies or individuals could be the start of an irreversible removal process. Although legislation required the registration of houses in which children under the age of five years had been 'privately placed', this requirement was largely ignored in relation to Indigenous children.

> **We left Lake Tyers [because the station was being closed down] – I think it was the early 1960s – and we went to Ararat and lived there for quite a while … And [my parents] are sort of thinking it's a new world. We can cope. But unbeknown to them they couldn't cope. I mean they weren't taught how to manage money or even live in a white society, because they only knew how to live the way that they had lived at Lake Tyers … There was a lady that came to the vestry. I was forever going to the vestry and seeking help up there because of the problems that were happening … She befriended me and said, 'Would you like to come and stay with me for a holiday'. When we were at Lake Tyers we were billeted out to people in Melbourne and went for holidays, then went back home again. Then when I met this lady and she came down and met my mum and dad … they didn't want me to go with her. But she just sort of said, 'You'll be seeing her. We only want her for a holiday'. And they sort of kept to that. And we were coming from Melbourne up to Ararat to see mum and dad all the time, and then my brother had left and lived with people that my foster parents knew, and he came down and stayed with them and my other sister M-, she came and stayed with us for a little while but then went back. And then I think it was in 1970 the government sort of stepped in and said, you know, the problems were there and mum and dad couldn't look after the kids. And they ended up taking the kids – the three of them – away.**
>
> *Confidential evidence 213, Victoria: woman removed at about 12 years. When she was 16 her father was killed in a road accident while he was hitchhiking to see one of the children.*

The informality of these 'private placements' has made it very difficult for removed children to discover how they were taken.

Adoption

The Victorian *Adoption Act 1928* allowed anyone to arrange an adoption. The process involved the mother signing a consent form and thereafter losing all rights in relation to her child. In a wide variety of situations the consent requirement could be waived. The child would then be matched with an adoptive couple by the agency or individual making the arrangements. In the meantime the child would be cared for by the arranger of the adoption, often in an institution associated with the adoption agency. To finalise the process the adoptive parents would go before a judge to seek the formal adoption order. The emphasis in the Act was on 'secrecy, safety and stability' (Jaggs 1986 page 125).

> **My Mum became pregnant in Alice Springs. She knew a minister in Ballarat. They brought her to Baxter House. She was about 16 when she had me. My adoptive Mum knew Mum was upset. My adoptive Mum was a nurse at Geelong Hospital and knew of it. My Mum signed papers. My adoptive mum says the minister told the doctor that she couldn't look after me because she was a single mother and not working … My adopted parents are fantastic. But it would be nice to know my cousins. I would have liked to know about my Dad … I don't think Mum had any options. I don't know where I'd have ended up.**
>
> *Confidential submission 667, Victoria.*

In the 1960s police officers routinely investigated reports of girls under the age of 16 years giving birth. Young mothers, whether Indigenous or non-Indigenous, were told that if they did not consent to the adoption of their babies the father of the child would be prosecuted for carnal knowledge.

Under the *Adoption Act 1964* adoptions were more regulated. Adoption agencies had to be approved by the Chief Secretary of the Social Welfare Department. The Aborigines Welfare Board was one of the 'private' agencies approved under the 1964 Act.

> Adoption wasn't one of the … major functions [of the Aborigines Welfare Board] but the Board was one of 23 adoption agencies in Victoria at the time. If you really wanted a baby and you were struggling and couldn't get a baby through a normal adoption agency, you went to the Aborigines Welfare Board and you could get yourself a baby (Professor Colin Tatz evidence 260 page 15).

Although adoptions were more regulated after 1964, many procedures are still unclear. Some adoptive families simply returned children they no longer wanted. Some Indigenous parents found out that they had unknowingly agreed to relinquish children when they believed they were placing them in temporary care. Still others simply could not locate children who had been fostered or adopted by the agency.

> **See what happened was, [my adoptive] dad served up near Darwin during the Second World War, and he seen how bad black fellas got treated up there. So he decided if he could he would do something to help Aboriginal people. Now, back in the sixties obviously, the way society was then, they felt the best thing was, you know, adopting kids and stuff like that … On the adoption forms it's got written there in somebody else's handwriting – not [my mother's], because it just doesn't match her signature and stuff like that – reason for giving up the child is 'no visible means of support'. Now, generally that could be accurate, but in the case of [the] Aboriginal community and kids, that's on nearly every form or**

whatever. Considering I come from a big family – my mother had lots of brothers and sisters who could've looked after me … So, I mean, why was I different?

Confidential evidence 136, Victoria: man adopted at 3 months when his mother was 22. At the time his mother had 2 sons and 2 daughters who remained with her. She died two years later at 24.

The low level of financial support that non-government agencies received to keep children in their institutions meant that the agencies were keen to find permanent homes for these children as quickly as possible. Non-Indigenous parents have told the Inquiry that they responded to appeals that stressed the unwanted nature of these children and how they faced a lifetime in an institution. They feel they were deceived by not being told the circumstances under which the children were removed from their families. Some are still suffering grief and shock from unwittingly being part of a process of forcible removal.

In 1960 my wife and I applied to adopt an Aboriginal baby, after reading in the newspapers that these babies were remaining in institutionalised care, going to orphanages, as no one would adopt them. Later that year we were offered a baby who had been cared for since birth in a Church run Babies Home in Brunswick. We were delighted! We had been told, and truly believed that his mother was dead and his father unknown. Where we lived there seemed to be no Aboriginals around. We knew some were grouped in Northcote and in Fitzroy but the stories told about them were so negative, we felt we should avoid them at least until Ken was much older. [By the time Ken was a teenager] he was in fact an isolated individual, alienated from the stream of life with no feeling for a past or a future, subject to racism in various forms day in and day out. No wonder he withdrew to his room, and as he told me later, considered suicide on occasions. When Ken was eighteen he found his natural family, three sisters and a brother. His mother was no longer living. She died some years earlier when Ken was four. Because of the long timespan, strong bonds with his family members could not be established.

Confidential submission 266, Victoria.

Children from inter-State

Victoria was also a destination for holidays arranged by welfare organisations and government departments in other States. One of those schemes was the 'Harold Blair Aboriginal Children's Holiday Project' which brought groups of children from Queensland settlements, and later the Dareton area of NSW, to Melbourne for up to three months.

Well, I was fostered when I was 7. I was staying with my foster parents and they rang up one day and said that my mother had died and would they consider fostering me. That was over the phone. I know there was nothing signed for me and that, and I want to know why because my father was still alive, and he didn't die until I was 10. [I was with these people] through the 'Harold Blair Scheme' for Christmas holidays and when I come down me and my two sisters got split up. We used to live in Coomealla on the mission, across the border from Mildura. They just rang me up and said that my father had died, that's all …

Confidential evidence 214, Victoria: woman removed at 7 years in the late 1960s having come to Melbourne for a holiday. She never saw her parents again.

Abolition of the Welfare Board

Dissension within the Board and the entry of the Commonwealth Government into the field of Aboriginal Affairs following the 1967 referendum led to another reassessment of its Aboriginal affairs policy by the Victorian Government.

The *Aboriginal Affairs Act* 1967 gave the newly appointed Minister for Aboriginal Affairs very broad powers including the 'coordination of voluntary organizations concerned with the welfare and interest of aborigines'. The Act also made provision for regulations concerning 'conditions regulating the entry of aborigines to training and other institutions on aboriginal reserves and the conditions under which such aborigines may remain in or be required to leave such training or other institution'.

In its first Annual Report in 1968, the Ministry expressed concern about 'unauthorised fostering arrangements of Aboriginal children' and stated that about 300 Aboriginal children were known to have been informally separated from their parents, with possibly many more unknown. At that time the Aboriginal population in Victoria was estimated to be about 5,000.

> [An informal placement] takes place when some person, usually with a working relationship and knowledge of Aboriginal people as well as some credibility in the wider community, considers that there are Aboriginal children in the area who are at risk. Contact is then made with some resource person who may have contact with a group of people who will accept care and responsibility for these children at a minute's notice … the children are placed informally with various other people and as has happened on many occasions, when parents request the return of their children, some cannot be traced. It is not until the children reach early adolescence that they re-appear – usually through the court scene. It is often difficult to identify these children as it is not uncommon for the 'foster parents' to change the name of the child (Victorian Aboriginal Child Care Agency, late 1970s, quoted by Victorian Government final submission on page 72).

Despite the apparent recognition in government reports that the interests of Indigenous children were best served by keeping them in their own communities, the number of Aboriginal children forcibly removed continued to increase, rising from 220 in 1973 to 350 in 1976 (Victorian Government final submission page 72).

Self-management

Real change came with the establishment of Indigenous community-based services. From the early 1970s the Victorian Aboriginal Legal Service Cooperative Ltd (VALS) appeared for Aboriginal children in the Children's Court. VALS reported in 1975 on the high number of Aboriginal children in institutions, the number of 'adoption' breakdowns and that 90% of its clients in criminal matters had been removed from their families as children (Sommerlad 1976 page 161).

The Victorian Aboriginal Child Placement Agency, later renamed the Victorian

Aboriginal Child Care Agency (VACCA), was established in 1976. The efforts of VACCA and other Aboriginal organisations had resulted in a 40% reduction in the number of Aboriginal children in children's homes in Victoria as early as 1979 (Palamara quoted by Victorian Government final submission on page 73). Even so, 270 Aboriginal juveniles were wards of the State, comprising 6.5% of the total ward population.

VACCA was instrumental in starting the 'Ghubbariginals', a group of non-Indigenous families who had adopted or fostered Indigenous children. The group provides support and counselling for non-Indigenous people in a similar position to enable them to better care for the Indigenous children with them. These families are also available to VACCA if it has no choice but to place an Indigenous child with a non-Indigenous family. An Indigenous child placed with them will be in touch with other Indigenous children and the foster carers will have an understanding of the needs of the child.

In 1979 the Victorian Social Welfare Department adopted policy guidelines on Aboriginal adoption and foster care. A decade later the Aboriginal Child Placement Principle was incorporated into the *Children and Young Persons Act 1989*.

Paul

For 18 years the State of Victoria referred to me as State Ward No 54321.

I was born in May 1964. My Mother and I lived together within an inner suburb of Melbourne. At the age of five and a half months, both my Mother and I became ill. My Mother took me to the Royal Children's Hospital, where I was admitted.

Upon my recovery, the Social Welfare Department of the Royal Children's Hospital persuaded my Mother to board me into St Gabriel's Babies' Home in Balwyn … just until Mum regained her health. If only Mum could've known the secret, deceitful agenda of the State welfare system that was about to be put into motion - 18 years of forced separation between a loving mother and her son.

Early in 1965, I was made a ward of the State. The reason given by the State was that, 'Mother is unable to provide adequate care for her son'.

In February 1967, the County Court of Victoria dispensed with my Mother's consent to adoption. This decision, made under section 67(d) of the Child Welfare Act 1958, was purportedly based on an 'inability to locate mother'. Only paltry attempts had been made to locate her. For example, no attempt was made to find her address through the Aboriginal Welfare Board.

I was immediately transferred to Blackburn South Cottages to be assessed for 'suitable adoptive placement'. When my Mother came for one of her visits, she found an empty

cot. With the stroke of a pen, my Mother's Heart and Spirit had been shattered. Later, she was to describe this to me as one of the 'darkest days of her life'.

Repeated requests about my whereabouts were rejected. All her cries for help fell on deaf ears by a Government who had stolen her son, and who had decided 'they' knew what was best for this so-called part-Aboriginal boy.

In October 1967 I was placed with a family for adoption. This placement was a dismal failure, lasting only 7 months. This family rejected me, and requested my removal, claiming in their words that I was unresponsive, dull, and that my so-called deficiencies were unacceptable. In the Medical Officer's report on my file there is a comment that Mrs A 'compared him unfavourably with her friends' children and finds his deficiencies an embarrassment, eg at coffee parties'.

Upon removal, I was placed at the Gables Orphanage in Kew, where I was institutionalised for a further two years. Within this two years, I can clearly remember being withdrawn and frightened, and remember not talking to anyone for days on end.

I clearly remember being put in line-ups every fortnight, where prospective foster parents would view all the children. I was always left behind. I remember people coming to the Gables, and taking me to their homes on weekends, but I would always be brought back. Apparently I wasn't quite the child they were looking for.

My dark complexion was a problem.

The Gables knew my dark complexion was a problem, constantly trying to reassure prospective foster parents that I could be taken as Southern European in origin.

In January 1970, I was again placed with a foster family, where I remained until I was 17. This family had four natural sons of their own. I was the only fostered child.

During this placement, I was acutely aware of my colour, and I knew I was different from the other members of their family. At no stage was I ever told of my Aboriginality, or my natural mother or father. When I'd say to my foster family, 'why am I a different colour?', they would laugh at me, and would tell me to drink plenty of milk, 'and then you will look more like us'. The other sons would call me names such as 'their little Abo', and tease me. At the time, I didn't know what this meant, but it did really hurt, and I'd run into the bedroom crying. They would threaten to hurt me it I told anyone they said these things.

My foster family made me attend the same primary and secondary school that their other children had all previously attended. Because of this, I was ridiculed and made fun of, by students and teachers. Everyone knew that I was different from the other family members, and that I couldn't be their real brother, even though I'd been given the same surname as them. Often I would run out of class crying, and would hide in the school grounds.

The foster family would punish me severely for the slightest thing they regarded as

unacceptable or unchristian-like behaviour, even if I didn't eat my dinner or tea. Sometimes I would be locked in my room for hours. Countless times the foster father would rain blows upon me with his favourite leather strap. He would continue until I wept uncontrollably, pleading for him to stop.

My Mother never gave up trying to locate me.

Throughout all these years – from 5 and a half months old to 18 years of age, my Mother never gave up trying to locate me.

She wrote many letters to the State Welfare Authorities, pleading with them to give her son back. Birthday and Christmas cards were sent care of the Welfare Department. All these letters were shelved. The State Welfare Department treated my Mother like dirt, and with utter contempt, as if she never existed. The Department rejected and scoffed at all my Mother's cries and pleas for help. They inflicted a terrible pain of Separation, Anguish and Grief upon a mother who only ever wanted her son back.

In May 1982, I was requested to attend at the Sunshine Welfare Offices, where they formerly discharged me from State wardship. It took the Senior Welfare Officer a mere twenty minutes to come clean, and tell me everything that my heart had always wanted to know. He conveyed to me in a matter-of-fact way that I was of 'Aboriginal descent', that I had a Natural mother, father, three brothers and a sister, who were alive.

He explained that his Department's position was only to protect me and, 'that is why you were not told these things before'. He placed in front of me 368 pages of my file, together with letters, photos and birthday cards. He informed me that my surname would change back to my Mother's maiden name of Angus.

The welfare officer scribbled on a piece of paper my Mother's current address in case, in his words, I'd 'ever want to meet her'. I cried tears of Relief, Guilt and Anger. The official conclusion, on the very last page of my file, reads:

'Paul is a very intelligent, likeable boy, who has made remarkable progress, given the unfortunate treatment of his Mother by the department during his childhood.'

> *Confidential submission 133, Victoria. When Paul located his mother at the age of 18 she was working in a hostel for Aboriginal children with 20 children under her care. She died six years later at the age of 45.*

- Allambie Reception Centre
- Bayswater Boys' Home
- Berry Street Babies' Home
- Box Hill Boys' Home
- Catherine Booth Memorial Home
- Royal Park Receiving House/Reformatory
- St. Josephs, Abbotsford
- Tally Ho Boys' Farm
- Winlaton Youth Training Centre

5 Queensland

> … the Government is not going to allow white and near white children whether their parents are black or white to remain on the Settlements at the cost of the tax payer. You have to educate coloured people to make the sacrifice to have their children adopted and so give them the chance to enjoy the privileges of the white community (Cornelius O'Leary, Director of Native Affairs, speaking at a Superintendents' Conference in October 1960, quoted by Kidd 1994 on page 529).

Colonial policies and practices

The colony of Moreton Bay was established as a penal outpost of New South Wales in 1825. Extreme violence accompanied the rapid expansion of European settlers, particularly in the north. This violence and the spread of introduced diseases resulted in a rapid decrease in the Indigenous population. Kidnapping Indigenous women and children for economic and sexual exploitation was common.

> … the aboriginal inhabitants are treated exactly in the same way as the wild beasts or birds the settlers may find there … Their goods are taken, their children forcibly stolen, their women carried away, entirely at the caprice of the white men (the *Queenslander* newspaper, 1883, quoted by Kidd 1994 on page 83).

While officially deploring the activities of the settlers, the government left the protection of Indigenous people to the missions, reserving land for their use and providing them with limited subsidies.

The *Industrial and Reformatory Schools Act 1865* allowed Indigneous children to be sent to industrial schools or reformatories on the ground of 'neglect'. Simply being Aboriginal was proof of neglect and for the purposes of the Act missions were declared to be industrial schools or reformatories to which Indigenous children could be sent.

Segregation – 1897-1965

In 1896 Archibald Meston was commissioned to report on the 'working conditions of the various Mission stations and various other stations where food is supplied to the aboriginals by the Government'. Meston's report focussed on the need to protect Indigenous children from contact with non-Indigenous society.

> Kidnapping of boys and girls is another serious evil … Boys and girls are frequently taken from their parents and their tribes, and removed far off whence they have no chance of returning; left helpless at the mercy of those who possessed them, white people responsible to no one and under no supervision by any proper authority … Stringent legislation is required to prevent a continuance of abuses concerning the women and children (Meston 1896 page 4).

Meston urged the 'principle of isolation on reserves, and total exclusion of whites' which had 'long been adopted by the Canadian and American Governments towards the Indians of both nations' (Meston 1896 page 4). His report laid the foundations of

government policy until at least 1965: Indigenous people, including children, were to be isolated on missions and government settlements well away from non-Indigenous society.

The protectionist policy proposed by Meston was put into effect by the *Aboriginal Protection and Restriction of the Sale of Opium Act 1897*, replaced in 1939 by the *Aboriginals Preservation and Protection Act* and the *Torres Strait Islanders Act*. These Acts allowed government officials under the control of the Chief Protector and, after 1939, the Director of Native Affairs to 'remove' Indigenous people to and between reserves and to separate children from their families. All that was required under the Act of 1897 was an administrative decision authorised by the Minister. There was no court hearing.

Although families were generally removed together this did not always happen. Children of mixed descent were targeted for removal from their communities. The 1897 Act also provided that 'orphaned' and 'deserted' 'half caste' children could be removed to an orphanage.

> In the case of half-caste children, especially girls, already living in camps, it is desirable that these, where old enough, should be removed at once to the mission station or reformatory: on no account should they be allowed to be given into private hands. The State takes upon itself the responsibility – a serious one to my mind – of taking such children from their aboriginal environments, but at the same time hands them over to the various mission stations, which are now under direct Government supervision and control (1902 Annual Report of the Northern Protector of Aboriginals page 10).

After 1939 use of the removal power was even easier and more unchecked because the Director of Native Affairs was made the guardian of all Indigenous children under 21. The power of removal was vested in him rather than the Minister. He had virtually total control of the lives of Indigenous children.

The influence of Chief Protector Bleakley

J W Bleakley, Chief Protector and Director of Native Affairs from 1913 to 1942, exercised a major influence over Queensland policy and the practices of officials and the missions. He believed firmly in the segregation of Indigenous people from non-Indigenous people.

> It is only by complete separation of the two races that we can save him ('the Aborigine') from hopeless contamination and eventual extinction, as well as safeguard the purity of our own blood (Chief Protector Report 1919 page 7 quoted by Long 1970 on page 97).

Bleakley was a strong supporter of the missions.

> Few realise the value of work done by missions. Not only do they protect the child races from the unscrupulous white, but they help to preserve the purity of the white race from the grave social dangers that always threaten where there is a degraded race living in loose condition at its back door (Bleakley 1961 on page 124).

His annual reports record large numbers of people removed to missions and settlements for protection or discipline (Long 1970 page 96). By the early 1930s he was agitating for the 1897 Act to be extended.

> [It should] include the illegitimate children of half caste mothers, the children of parents both half castes, and the crossbreed element of aboriginal or Pacific Island strain which were reported … to be living in low conditions and a menace to health and discipline (memorandum to Home Secretary, 10 April 1933, quoted by Kidd 1994 on page 362).

The Act was amended in 1934 to bring more people under his control and effectively disenfranchise them. In the replacement Acts of 1939 the definition of 'half blood' was narrowed again, partly in response to Indigenous protests such as those of Thursday Islanders. This left fewer people under the Director's control. However, his power over those people was expanded.

Conditions on the missions and government settlements

During his period in power Bleakley unsuccessfully urged the government to provide more funds to the missions and government settlements. At the settlement at Barambah (later called Cherbourg),

> There were no cots or beds in the children's dormitories … and the protectress described how children slept on a single blanket on the ground with another blanket for warmth. Clothing was allocated only twice a year and was too limited to keep clean. Children were underfed, and a recent scheme to provide one meal a day of soup and bread had been discontinued … Normal sanitation facilities were non-existent on the settlement … Indeed the facilities there were so bad that … [the doctor there] considered the common usage of the bush as a toilet as the safest practice (Kidd 1994 page 304).

Malnutrition, lack of clothing and protection and disease led to very high morbidity and mortality rates, with death rates frequently exceeding birth rates (Kidd 1994 page 272).

The missions in the remote north have been described as 'total institutions' where 'there is a basic split between a large managed group, conveniently called inmates, and a small supervisory staff' (Long 1970 page 6). Every aspect of life for the inmates was regulated so that '[a]ny difference from a prison farm was not marked' (Rowley 1970 page 248). In 1934 one-third of Indigenous people in Queensland were living on missions and settlements (Kidd 1994 page 487).

People were moved among the missions and settlements as punishment for failure to conform to the discipline and lifestyle demanded. As a result children could easily be separated from their families.

> **My mother did a terrible crime – she spoke back to the authority and she was sent to Woorabinda settlement as punishment. It was there that she met and married my father, two years later I was born. They were married in 1933 and my mother and I went back to Palm Island as told to me by my mother.**
>
> *Confidential submission 756, Queensland: woman removed to Palm Island in the 1930s.*

Forcible separation through the dormitory system

On the missions and settlements many children were separated from their family by the rigid operation of a dormitory system.

> The young require not only isolation from the outside world, but what proved still more difficult, separation from their own people. When the latter was possible a marked difference is noted in the manners, ways and point of view, as contrasted with those who were not so fortunate (a missionary in 1916, quoted by Harrison 1974 on page 37).

> **When we got to Palm Island we stayed with our mother in the women's dormitory. The day we turned five years old we were taken off our mother. Girls were put in another dormitory with other girls, some of them were orphans and some of them were children of unmarried mothers.**

> **After about a year or couple of years, our mother got a job at the Palm Island Hospital as a night nurse. She was allowed to live there … and my brother and I, when we got up to school age, we were allowed to go down and visit her at the hospital and then spend about an hour together every Friday afternoon. That is the only contact I had with my mother and brother.**
>
> *Confidential submission 109, Queensland: woman removed to Palm Island at 12 months in the 1940s.*

A medical survey in 1950 declared the dormitory system to be,

> [P]ernicious … [it] must be broken down if these coloured women are to become properly adjusted to normal life. It is completely futile and artificial and unnatural to enclose, or rather encage, women, and to expect any sort of normal psychological balance on their release (quoted by Kidd 1994 on page 461).

Despite condemnations, dormitories were still functioning in the 1970s on some missions and settlements. In 1966, for example, 70 children were living in the dormitory at Aurukun, 58 at Doomadgee, around 70 at Cherbourg, 34 at Woorabinda and 71 at Palm Island (Long 1970 pages 106, 113, 123, 146 and 152). The Inquiry was told of the practice in the Torres Strait Islands of sending children born to Islander mothers and non-Islanders to mission dormitories on the Islands (such as at Thursday Island) or to mainland institutions up until the late 1970s. The Queensland Government estimates that between 1908 and 1971 2,302 Indigenous children were removed to missions and settlements. Almost all would have been removed to dormitories.

Forcible removal through employment

Children were sent away from the missions and settlements at an early age to work.

> The sending of young people to employment not only fitted the rhetoric of retraining and independence but was a double economic advantage to the government, saving the cost of support as well as accumulating income. This was especially the case with the increased number of young girls and women 'rescued' from camp environments and sent to government settlements (Kidd 1994 page 292).

> **My mother came from Fraser Island. My father was originally put on Yarrabah reserve. I was about seven years old when we got [to Palm Island]. When I was thirteen I left school and the Department arranged a job. I had to leave my family and friends. I was really home sick. I was there for two years. I could not go home. There were no Aboriginal people or people of my age to mix with. Until a cyclone hit and blew my little shack up, I lived and ate on my own in the shack.**
>
> *Confidential submission 275, Queensland: man removed to Palm Island at 7 years in the 1920s; sent out to work at 13.*

These children were vulnerable to physical and sexual abuse. In 1899 a protectress was appointed to supervise girls sent to work as domestics in and around Brisbane. By 1914 she was supervising 137 Aboriginal girls, 'many of them fresh from leaving school, some as young, even, as ten years of age' (Bleakley 1961 page 295). Twenty of these girls were soon returned to their home settlements including 13 who were pregnant. Archbishop Donaldson, visiting Barambah in 1915, noted that of the girls sent out to service 'over 90% come back pregnant to a white man' (quoted by Kidd 1994 on page 273). Girls who contracted venereal disease could find themselves labelled 'immoral' and removed yet again as punishment.

Mothers, too, were sent away from missions and settlements to work, forced to leave their children behind.

> **One day the Superintendent [of Palm Island] sent for my mother and told her she would have to go and work on a cattle station. Arrangements were already made for me and my brother to live with another Aboriginal family who had no children of their own. I was four years old and my brother was 4 months old at the time. Later we were put in the dormitory when I was five years old and my brother one year old.**

> **My mother had written several letters to the Superintendent on Palm Island to have my brother and I sent out to her on the station but to no avail it fell on deaf ears. She also wrote to the Superintendent to make arrangements for us to live with our grandmother in Ingham as she was getting a job there. But they wrote back to her and said my grandmother was a drunk and unfit person to be in charge of two young children and living in a gunyah was out.**

> **Mother felt isolated, depressed and very upset and it affected her work. Because of this her bosses tried to have her removed back to Palm Island but the Superintendent would not hear of it so he ignored it. Mother finally had permission to come home to visit us after one year was up. When she finally came home to Palm Island I was five and my brother one year old. Our mother had become a stranger to us and we cried and cried because we had**

become very frightened of her. We clung to the skirts of our foster mother but our mother took us gently in her arms and kissed our tear stained face and cradled us close to her breast.

Confidential submission 756, Queensland: 1940s.

With regard to Torres Strait Islanders, government policy was to restrict their movement to ensure their availability for employment in the marine industry, enabling the Island communities to be self-supporting. 'Even their visits to Thursday Island were to be limited to daylight hours' (Beckett 1987 page 47).

Removal of children not living on missions and settlements

Away from the missions and government settlements some Indigenous people lived in camps, trying to survive on the subsistence rations earned in the pastoral industry or casual work for which they were paid far less than non-Indigenous workers. In 1933 an inquiry into the living conditions of the families of pastoral station workers in the Boulia protectorate found that they were starving because they were not being given the rations to which they were entitled.

Following that inquiry, the local protector recommended to Chief Protector Bleakley that the two 'half-caste' children be removed 'as they are living in a state of filth and have no accommodation'. Bleakley responded that he would prefer not to separate the children but as it would be too expensive to remove all the family members to a government settlement he agreed to remove only the two children to Woorabinda.

mapinsert

Assimilation from 1956

In 1956 Cornelius O'Leary, Director of Native Affairs from 1942 to 1963, announced for the first time in Queensland that the government's policy was now one of assimilation, based around 'sound education' and 'suitable housing'. He referred to the pre-1956 policy as 'pre-assimilation' (1956 Annual Report of the Director of Native Affairs pages 3 and 5). Legislation to implement the new policy was finally passed in 1965. Until then assimilation was implemented by forcing people off the missions and settlements. The 1939 guardianship power was still used to control the lives of Indigenous children.

Expulsion from missions and settlements

In the mid-1950s the Queensland missions were pleading with government for more funding to address the derelict housing, constant food shortages, unsafe water supplies and high rates of sickness and death common to most. On the missions and settlements infant mortality and rates of disease were much higher than for non-Indigenous children in the State.

The protests of Indigenous people forced to live under these conditions were also creating a management crisis on some of the missions such as Mapoon, Aurukun and Yarrabah. One tactic for dealing with dissenters at Yarrabah was to force them and their

families to leave the mission, with most joining a shanty camp at Bessie Point near Cairns (Kidd 1994 page 532). In the face of these difficulties control of Yarrabah was handed to the government in 1960.

There was growing dissension, too, on government settlements. Palm Islanders demanded adequate payment for work they did on the settlement. They were told,

> … to get off the Settlement and stay off it … they will be told that they are not going back on the pretext of seeing their wives and children but can make arrangements for their dependants off the Settlement with them … whether they can [maintain themselves] or not is for them to demonstrate (Director O'Leary, 1957, quoted by Kidd 1994 on page 539).

By the early 1960s the economic value of Torres Strait Islanders as workers to be held in the Islands had vanished with the collapse of the marine industry. The adoption of the policy of assimilation coincided with this change and Torres Strait Islanders were freed to leave the Islands and settle on the mainland.

Repeal of 'protectionist' legislation

Under pressure from the Commonwealth, Queensland finally repealed its 'protectionist' legislation in 1965. The dual objectives of the new legislation were in line with the national affirmation of the assimilation policy.

> The first is the continuation of the development and progress of Aboriginal communities for the benefit of the people who wish to live there. The second is an increase in the scope of social welfare programs which will benefit all Aboriginal people throughout the State (Queensland Government, 1965, quoted by Nettheim 1981 on page 6).

Under the *Aborigines and Torres Strait Islanders Act 1965* Indigenous people, in theory, regained the guardianship of their children. However the Director could still order the compulsory removal of people, including children, between reserves. This power was finally repealed by the *Aborigines Act 1971* and the *Torres Strait Islanders Act 1971* although the government's power to expel people from reserves was not abolished until 1979. Until then family members could be prevented from living together by the use of this power.

The 1965 Act introduced the concept of an 'assisted' person, defined so as to widen the potential application of the Act. Every Aborigine or Torres Strait Islander resident on a community or mission was proclaimed 'assisted' at the date of the commencement of the Act. It was mandatory for people on reserves to hold a 'certificate of entitlement' to remain there. The certificate was liable to be cancelled at any time.

105 regulations were made under the Act to deal with all forms of behaviour control. Regulation 70 allowed the use of dormitories as places of detention for any male or female who 'commits an offence against discipline … leaves or escapes or attempts to

leave or escape from such reserve or community … is guilty of any immoral act or immoral conduct' or fails 'to carry out instructions in hygiene, sanitation or infant welfare'. '[The] references to "escape" fortified the "prison camp" impression of reserves given by the disciplinary code generally' (Nettheim 1973 page 135).

'The welfare'

Rather than accede to the missions' requests for more funding, the government explored ways to reduce expenditure on Indigenous affairs. One proposal discussed in 1960 to reduce the financial cost of the missions and settlements was to put as many 'light skinned children as possible' up for adoption and force 'eligible people' into the non-Indigenous community.

The State Children's Department refused to handle these adoptions claiming it was a matter for the Department of Native Affairs. However, it did deal with some Indigenous children who had been committed to State care by placing them in foster homes with non-Indigenous foster parents and in its institutions for non-Indigenous children. Here the children were subject to discrimination and vilification.

> Claims by the inmates that there was discrimination by the Superintendent against the coloured inmates were fairly frequent. In effect, the inmates state that the coloured inmates receive a greater number of strikes which were inflicted with greater force than would be applied to a white inmate guilty of a similar breach of the rules.

> [R]emembering the 3 additional strikes to boy 28, the general opinion and the expressions used of coloured inmates in the punishment book, which were not only descriptive but contemptuous, such as 'darkies', 'poor type of darky', 'aboriginal of poor colour', 'bad poor type of aboriginal', 'typical nigger', 'black waster', and 'black mongrel', neither am I prepared to hold beyond reasonable doubt that there was not discrimination in punishment against the coloured inmates (Schwarten 1961 pages 44 and 45).

Until the 1970s church representatives in the Torres Strait Islands would notify the Department of Native Affairs of pregnancies and parentage and the Department would then arrange for girls to be placed in the Catholic Convent dormitory on Thursday Island while boys were often adopted out to Islander families.

From 1965 the primary power of removal of Indigenous children from their families was the *Children's Services Act 1965*. This provided that children found to be 'in need of care and protection' or 'in need of care and control' could be removed from their families and placed in an institution or fostered.

In Parliamentary debate on this Bill it was said,

> No group of children is more neglected than those who are living with their coloured parents in the fringe-dwelling areas of many of our country towns.

> I want that unfortunate group of people to be included in the children and youth of the State whose well-being it is proposed to promote, safeguard and protect by the introduction of this Bill (quoted by Stephanie Gilbert submission 577 on page 23).

As in preceding decades, a number of the missions and settlements including Woorabinda and Palm Island were registered as industrial schools under the *Children's Services Act 1965* to receive children sent by the Department of Native Affairs and the State Children's Department.

In the name of assimilation a program was established in 1967 to employ liaison officers to monitor hygiene practices and social habits by inspecting Indigenous homes, policing truancy and interceding with the police or children's services departments in the case of child neglect or crime. Although it meant some assistance in holding families together, it was at the expense of increased surveillance of the lives of Indigenous families.

People living away from missions and settlements were not free from government surveillance and intrusion. In 1959 Director O'Leary declared,

> [W]e know the name, family history and living conditions of every aboriginal in the State (quoted by Kidd 1994 on page 525).

Indigenous people were paid much lower wages than non-Indigenous people under the award for workers in the pastoral industry and so lived in destitute circumstances, unable to afford adequate rented accommodation. Local councils reacted to the presence of camps in their area by demolishing huts and forcing people to scatter and regroup elsewhere where the process repeated itself. Many children suffered poor health in these conditions. They were then at risk of being declared neglected and removed. Growing numbers of the children in care were Indigenous. By the early 1970s one-half of children in welfare institutions in the north of the State were Indigenous children (O'Connor 1993 page 17).

A Commission of Inquiry into Youth in 1975 noted the detrimental effects of placement in non-Indigenous institutions and other forms of non-Indigenous care and recommended that Indigenous staff be employed and that alternative programs be developed. This was finally achieved in 1984 when concern that the Commonwealth Government would pass overriding federal legislation requiring adherence to the Aboriginal Child Placement Principle led the Queensland Government to approve its 'Draft Statement of Policy in Relation to the Fostering and Adoption of Aboriginal and Islander Children' containing the Aboriginal Child Placement Principle.

In the same year the *Aborigines Act 1971* and the *Torres Strait Islanders Act 1971* were replaced by the *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984*. The 1984 Acts established incorporated Community Councils to govern trust areas, formerly reserves, and gave them greater administrative

and financial responsibilities.

In 1987 the draft policy containing the Aboriginal Child Placement Principle was formalised. The following year the *Adoption Act 1964* was amended to require an adoptive parent to have 'a similar indigenous or ethnic and cultural background' to the child being adopted.

Peggy

My family went to Cherbourg. They volunteered to go there during the Depression. So I would have been about 6 months old when grandfather, who was, I mean, he was independent. He had eight kids all birthed out in the trees you know, under the stars. My mother spoke her own language. She had me with the promise to marry my father. And then when the Depression came they talked to the policeman. He said go to Buramba. When things get better come back out again. He was the Protector so he sent them there. The thing is though, when we got there you got caught up in the system. You weren't allowed out anymore.

The decision that my grandfather made at the time, he didn't know that that would split his whole family up.

My Dad was away. He thought we had died. He didn't know what had happened. No-one else seemed to know where we had disappeared to. The whole family went to Cherbourg. Mum said when they got there they were immediately split up. Mum said the superintendent said, 'Agnes, you can't live in the camp with your small baby and you have to go into the dormitory'.

Mum thinks that's just … She won't talk about it. She's in denial. She said they did it for our good because there was no room in the camp. But I said, 'You lived in Ayumba with your old people when you was outside. Why would it now be different that you didn't want to live with them?'

She said, 'Well, they offered the dormitory to me, so I took you there'. I was 6 months old. Because the dormitory is such a big place and it's made up, you know … it's split that way [in half] downstairs with your women that side, your girls that side.

I stayed with my Mum for 4 years on that side with the other mothers. The boys went into the boys' home – my grandfather's sons. And he had Mum's younger sister and younger brother – they stayed with the old people. But the rest of them – the boys – were put in a home. Mum was put in the dormitory.

I stayed with her until I was 4 years of age. You slept with your mother because there was basically no room for a cot or anything and for the 4 years you're there living with her.

But when I turned 4, and because I was such an intelligent child, sneaking off to school because all the other kids are going … matron made the decision that, ' Peggy has to go to school'. And so immediately that decision was made, I was transferred over to this section. I was taken away from her. Separating her from me was a grill. There was

chicken wire across there. That was the extent of how far you could go to this [other] side.

Once you were separated from your Mum, you're not to go back to her again. Absolutely no interaction. You have a bed on your own. No contact during the day. I'm out of her control. She is no longer actually my mother type of thing. So you go under the care and control of the Government. That's what happened.

No-one said anything to me. No-one said anything to her but everybody else in that section knew that this is what happened. And most of those women, my mother tells me, kept their children on the breast for a long, long time, because that bonding was going to be broken at some stage and so keeping their children close to them was the only thing that they had. I've always been an angry child. Very angry. I don't remember much about this section with my mother. I remember nothing. It embarrasses me when she talks of me running to her for cuddles and she'll say, 'I fed you on my titties'. And I get rather embarrassed because I don't remember that time with her.

I can remember sitting here at this grill…

But I can remember sitting here at this grill on that side waiting for her to come out of the door of one of these wards here so that I can just see her. She wouldn't come out because it hurt her to see me over this side. I turned 5 around about July. I went to school, but then she had to go to work. So we had that removal from our grandparents, her family, then I was removed from her and I then became the victim.

She ate on this side and I ate on that side. Birthdays were arranged. No, I never saw her on birthdays. I got a cake every birthday that was arranged by the Government – only because she fought for it.

I didn't get to know her. To me she was just the woman who comes and goes. When I was 5 she went again. They sent her out to work. I remember the night the taxi pulled up to take her.

Again, there was nothing emotional because if you were a little girl on this side you got into trouble for crying. You couldn't show emotion. Here at this wire grill I could just hear the director of the management call out to me, 'Is that you Peggy?'. They could just see my little form there sitting at the wire grill.

'You don't get to bed, you'll be punished!' And so, go to bed. If I'm crying at night, 'Is that you Peggy, crying again?'. And so it just went on. You've got about 60 or 70 other kids there, so why cry for your mother because kids are going to look after you and think 'she's crying for her mother'. You got to show your anger some place.

I remember that night. We had to sing prayers at night, and I could catch up, I mean, it didn't take me long to know what the system is all about. You're better off living within that system rather than out of it. You go with it. I remember singing prayers that night:

Now the day is over

Night is drawing near

This always upsets me because at the end of singing that prayer, I couldn't remember the words. 'Cause I've got a very high voice – a lot higher than a lot of the kids – they'd hear me first.

Meadows of the evening

Creep across the sky

La la la la la la la la

Getting higher and higher

Four and twenty blackbirds

Baked in a pie.

That ended the prayer and the old lady called out, 'Is that you, Peggy? Get out here'. And I had to kneel on the floor till everyone went to sleep.

It was all about control, reform. The bald head was part of the dormitory system for punishment. If you had lice, you had your head shaved. But you could have your hair cut off for being naughty, doing anything naughty. It didn't matter what it was: speaking back, not doing your chores. Cold baths, getting your hair shaved off if you didn't go for wood in the afternoon so you could warm the baths up.

You also got the strap and you got put into jail. There was three components of the punishment that you got. You could even be left without any food. Go without your meal. Stand in the middle of the dining room there while everybody else finished. Many times I stood there. Humiliation, because when you got your head shaved we were not allowed to put a beret or anything on our heads. Not allowed.

So you walked to school like this and the camp kids made fun of you and that would bring us closer together as a group. As a group [dormitory kids] we were able to fight off the other kids and their insults to us.

We were called the dormitory girls. But the kids who slept out on the verandah – they break my heart and it still upsets me: they were the pee-the-beds. They were called nothing else but pee-the-beds. Maybe you'd pee the bed one night because you were upset tummy, fear, no electric light just a flickering light of an old hurricane lamp. It would scare you because old people have the habit of telling you there's people walking around here at night time. All these 'woop-woops' around the place. And you didn't want to go to the toilet and you may wet the bed. It may only have been a one night occurrence, but you transferred from your bed out onto the verandah. You slept on a mattress on the floor and all you were called was pee-the-beds. 'Tell the pee-the-beds they've gotta get their mattresses in off the line.' 'Tell the pee-the-beds they've gotta put their blankets out.' 'Tell the pee-the-beds it's time to get up.' No identity at all. Absolutely

nothing. These kids were just grouped together.

I was talking to a young girl the other day. I said, 'Your mother never peed the bed but her sister did. She had to go down there to sleep with her sister because the kid was crying. She needed her sister with her'.

I could see them on a morning, a winter's morning. No ceiling. Just when the sun hit the tin roof. 'All you pee-the-beds gotta get up!.' And they would get up out of their wet clothing and all you see is steam coming off them. It was absolutely dreadful and I grieve for those kids, honestly. We were cruelly treated.

Confidential evidence 404, Queensland, 1930s.

Building listed for demolition: interior girls' dormitory.
Moore River Settlement, WA, 1949

The one thing that really, really sticks in my mind is being put into this cold bed with white cold starchy sheets and having to sleep on my own and looking down the room and just seeing rows of beds and not knowing where my brothers and sister were.

Confidential evidence 227, Victoria.

Penny & Murray

In 1958, whilst our family [Penny aged 10, her brother Trevor 11, Murray 7, sister Judy 6 and baby Olive was five or six weeks old, their mother and step-father] were all resident at a house situated in Cairns, my mother's capacity to look after her children in a fit and proper manner became the subject of challenge within the Cairns District Children's Court. This action was initiated by Sgt Syd Wellings, then attached to the nearby Edmonton Police Station.

At the end of those proceedings, it was determined by the court that we be made wards of the State and as such we were to be placed under the care and protection of the Queensland State Children's Department [shared with the Department of Native Affairs]. We were transferred via train to the State Children's Orphanage at Townsville.

It was as though someone had turned the lights out – a regimented existence replacing our childhood innocence and frolics – the sheer snugness, love, togetherness, safety and comfort of four of us sleeping in one double bed – family! Strange how the bureaucracy adopts the materialistic yardstick when measuring deprivation/poverty/neglect.

[Baby] Olive was taken elsewhere – Mr L (Children's Department official) telling me

several days later that she was admitted to the Townsville General Hospital where she had died from meningitis. In 1984, assisted by Link-Up (Qld), my sister Judy discovered that Olive had not died in 1956 but rather had been fostered. Her name was changed. Judy and Trevor were able to have a reunion with Olive in Brisbane during Christmas of 1984. I was reunited with Olive sometime during 1985 and Murray had his first meeting with Olive two months ago.

Murray

I do remember my mother showing up for visits, supervised visits. We used to get excited. I just wanted her to take us away from there. Then the visits suddenly stopped. I'm told the authorities stopped them because she had a destabilising effect on us.

That didn't deter my mother. She used to come to the school ground to visit us over the fence. The authorities found out about those visits. They had to send us to a place where she couldn't get to us. To send us anywhere on mainland Queensland she would have just followed – so they sent us to the one place were she can't follow 'Palm Island Aboriginal Settlement'. By our mother visiting us illegally at that school ground she unknowingly sealed our fate. I wasn't to see my mother again for ten nightmare years.

I remember when I learnt to write letters, I wrote to my mother furiously pleading with her to come and take us off that island. I wrote to her for years, I got no reply then I realised that she was never coming for us. That she didn't want us. That's when I began to hate her. Now I doubt if any of my letters ever got off that island or that any letters she wrote me ever stood a chance of me receiving them.

Penny

Early in 1959, under a 'split the litter approach', the State Children's Department bureaucracy sanctioned Judy's being fostered to a European family resident in Townsville, Trevor's being 'shipped off' or 'deported' to Palm Island Aboriginal Settlement.

Trevor's file reveals he was transferred to Palm Island because he was 'a great trouble' to the Orphanage. *'He has given us no serious trouble, although inclined to be somewhat disobedient at times. We find that physical punishment has little or no effect on him and that the best way to punish him is by depriving him of privileges.'*

Murray and myself were to follow Trevor some time later. I recall our being driven to the landing at Hayles Wharf at 4.30 – 5.00 am – given two small ports and being told to 'catch that boat to Palm Island over there' then leaving us there. Bewilderment – scared – where was Palm Island? What was Palm Island? Why were we going there?

State Children Department, Townsville to Superintendent, Palm Island October 1958

'As you will realize, it is almost impossible to find suitable Foster Homes for such children and they do not fit in very well with white children in institutions, such as are conducted by this Department. It would be greatly appreciated if you could advise whether it would be possible to admit all, or some of these children to Palm Island.'

State Children Department, Townsville to Superintendent, Palm Island, June 1960

'These two children have been in our home in Townsville for more than two years, and in view of their very dark colouring, have not been assimilated in the white race. Every effort has been made to place them in a foster home without success because of their colour.'

Penny

I can't remember much about when or why it was decided that Murray and I should leave the Orphanage and be sent to Palm Island – Just know that I came home from school one afternoon and walked in on two other girls. They were both crying and then told me that Murray and I were going to be sent to Palm Island – it was where Trevor had been sent.

Prior to that information – didn't know what the hell had happened to Trevor – Matron told me that he was going on a picnic – he never came back on that day and we never saw him again until we were reunited with Trevor on Palm Island some time later.

After awhile you just give up asking and learn acceptance of situations even though you don't fully understand the whys and wherefores.

State Children Department, Townsville to Superintendent, Palm Island, July 1960

'We will notify some responsible person on the boat as to the circumstances concerning these children and no doubt you will arrange to have them met on arrival at Palm Island.'

Penny

Upon arrival at Palm Island – we were lost – we went to the Police Station – the sergeant advised as we were white children that we must have caught the wrong boat and maybe should have been on the one that went to Magnetic Island. He also said that no one was allowed onto Palm Island without the Superintendent's permission. I informed the sergeant that my brother Trevor was already on Palm Island. After meeting with Trevor over at the school – we were taken into the Superintendent's office (Mr B) and he said that we shouldn't have been sent to the island – that there must have been some mistake. He said that he would have to look into matters and in the meantime that I would be taken to the young girls' dormitory and that Murray would be with Trevor in the boys' home. Mr B lost the battle to have us returned to the Orphanage at Townsville.

Murray

At that time Palm Island was regarded by many both black and white as nothing more

than an Aboriginal Penal Colony. Our only crime was coming from a broken home. Palm Island was ruled with an iron fist by a White administration headed by a Superintendent whose every word was law which was brutally enforced by Aboriginal Policemen who were nothing more than a group of thugs and criminals in uniform.

If I were to write a book of my childhood experiences, I would write of my arrival as an eight year old boy. I would write of how I was spat on by Aboriginal adults, all complete strangers. Of being called a little White bastard and names much too vile to mention. It didn't matter to those people that I was just a kid. The colour of my skin and eyes were enough to warrant their hostile attentions.

I would write of regular beatings and of being locked in a cell on many occasions on the whim of a Black Woman who was a female guardian of that home.

I would tell of a White headmaster belting the living daylights out of me because he overheard me tell a Black classmate not to crawl to White teachers; of how I felt his hot stinking breath on my face as he screamed 'how dare I say such a thing being White myself'.

That island was seething with hatred for the White Man and his System so why in Gods name were three fair skinned children condemned to such a place?

Eventually, my siblings and I got off that terrible place. Towards the end of our unpleasant stay on that island the populace finally accepted us. The harsh treatment subsided and eventually ceased as did the swearing and suspicious looks. Today many people from that island are our closest and dearest friends. But I'll never go back to visit, it holds too many painful memories for me.

Penny

Judy had the resources to seek psychiatric care. Murray's got psychiatric care. Trevor's still under psychiatric care and been diagnosed as paranoid schizophrenic. His psychiatrist says he attributes all the things that happened to him in his childhood to bring him to that state he is in today. Sometimes he gets suicidal. He rings up and wants to kill himself. And I say, 'Don't let your life pass into nothingness'.

People probably see on the surface that we've lead successful lives. But that's on the surface. Nobody knows that Trevor, who until six year ago has never been out of a job in his life, owns his own home, got his own car. They look at that and say, 'He's achieved the great Australian dream'. And they don't look behind that. Is that what it's all about. They look at us and say, 'Well, assimilation worked with those buggers'. They see our lives as a success.

Confidential submissions 191 and 776, Queensland.

Homes Are Sought For These Children

A GROUP OF TINY HALF-CASTE AND QUADROON CHILDREN at the Darwin half-caste home. The Minister for the Interior (Mr Perkins) recently appealed to charitable organisations in Melbourne and Sydney to find homes for the children and rescue them from becoming outcasts.

I like the little girl in centre of group, but if taken by anyone else, any of the others would do, as long as they are black

Courtesy 'Between Two Worlds' Australian Archives.

We was bought like a market. We was all lined up in white dresses, and they'd come round and pick you out like you was for sale.

Confidentialsubmission 695, New South Wales: woman fostered at 10 years in the 1970s; one of a family of 13 siblings all removed; raped by foster father and forced to have an abortion.

I clearly remember being put in line-ups every fortnight, where prospective foster parents would view all the children. I wasn't quite the child they were looking for.

Confidentialevidence 133, Victoria: man removed at 6 months in the 1960s; institutionalised for 3years before being fostered by a succession of white families.

> … there does not appear to be any likelihood in the immediate future for further [voluntary] … admissions being effective as a method of assimilation of children. Firstly, there appears to be a close bond between children and parents and they are naturally reluctant to let them go (report of child welfare officer to the Director of Child Welfare on the officer's visit to Cape Barren Island in 1961, quoted by Tasmanian Government final submission on page A-28).

Policies and practices

The forcible removal of Indigenous children from their families occurred during two periods in Tasmania. The first commenced with the European occupation of Van Dieman's Land (as Tasmania was called until 1856) in 1803 and lasted until the middle of the nineteenth century. The second commenced in the 1930s with the forcible removal of Indigenous children from Cape Barren Island under general child welfare legislation and continues into the present. However in recent times the Tasmanian Aboriginal Centre has been successful in intervening in potential removal situations to keep Indigenous families together and welfare practice in Tasmania now regards removal as a last resort.

The colonial period

Van Dieman's Land was occupied in 1803 as a penal colony. Bitter conflict ensued. Many Indigenous people were shot and Indigenous children taken to be used for their labour. By 1818 the Aboriginal population had fallen from an estimated 4,000 to somewhere below 2,000 (Ryan 1981 page 79).

In 1814 Governor Davey issued a proclamation expressing his 'utter indignation and abhorrence' about the kidnapping of Aboriginal children (quoted by Reynolds 1995 on page 90) but by 1816 'kidnapping had become widespread' (Ryan 1981 page 78). Governor Sorrell made a similar declaration in 1819 and ordered the Resident Magistrates and District Constables to list all the children and youths held by 'Settlers or Stock-keepers, stating from whom, and in what manner, they were obtained' (quoted by Rowley 1970 on page 44). He ordered that those who had been taken without parental consent were to be sent to Hobart where they would be maintained and educated at government expense.

Removal to Flinders Island

By the late 1820s the conflict between Aboriginal people and the non-Indigenous population had escalated to the 'Black War' as it was known at the time. After a spate of attacks on settlers in 1830, Colonel George Arthur decided 'to deliver the knock-out blow that would bring the conflict to an end once and for all' (quoted by Reynolds 1995 on page 117). It was known as the 'Black Line'. Over 2,000 men moved in a line across the Island for six weeks with the aim of driving the Aboriginal population onto two peninsulas in the far south-east. This costly plan was an utter failure.

Warfare continued and the government looked for other strategies to deal with 'the

Aboriginal problem'. George Augustus Robinson, a local building contractor who had travelled unarmed among Aboriginal people and gained their trust, suggested to the government that he negotiate with them and offer them protection, food, clothing and shelter away from the mainland. This plan received official sanction and it was agreed that they would be removed to Flinders Island. By 1835 more than 200 Aboriginal people had been moved to the Wybalenna settlement on Flinders Island. Shortly after arriving the 14 Indigenous children aged between six and 15 years were sent to live with the storekeeper and the catechist.

On the Island the combination of inadequate shelter, insufficient rations, disease and loss of freedom proved fatal to the Aboriginal population. By 1843 only about 50 remained. In 1847 the 48 survivors were moved again, this time to another reserve at Oyster Cove. The children were forcibly removed to the Orphan School in Hobart to 'adjust' to non-Indigenous society. In 1855 all the people of mixed descent at Oyster Cove were made to leave. By 1876 everyone left had died.

Apart from the Indigenous people taken to Wybalenna, there was another community of Indigenous people resident on Flinders Island and other islands in the Furneaux Group. These people were the descendants of Aboriginal women and about 12 non-Indigenous sealers. The sealers and their families worked the sealing grounds of Bass Strait between about 1803 and 1827 when the seals became virtually extinct. Thereafter they remained on the islands and turned to other sources of income, notably mutton birding.

When Robinson established Wybalenna he tried to remove the sealers and their families from Flinders Island but had little success. Robinson referred to the descendants of the Aboriginal women and sealers as 'half-castes' – presumably to distinguish them from the mainland Aboriginal people under his charge. By 1847 this community numbered about 50 people (Ryan 1981 page 222).

By the end of the 1870s most of the people had moved to Cape Barren Island. In 1881 the Cape Barren Reserve was formally established. By then this Indigenous community was in its third generation. The community received regular missionary visits and in 1890 a missionary school teacher was appointed. By 1908 the island population, called 'half-castes' by the government, numbered some 250 people. In time, the term 'Cape Barren Islander' came to be used synonymously with 'half-caste' regardless of the place of origin of the person concerned.

The government sought to control the lifestyle of the people on Cape Barren and force the Island to become self-sufficient. The *Cape Barren Island Reserve Act 1912* provided that unless the residents of the Island constructed dwellings and fenced and cultivated land they would lose their right to occupy that land. It also stated that 'in order to encourage the settlement of the half-castes in other parts of Tasmania outside the Reserve' the Minister for Lands could authorise an applicant for a licence to occupy Crown land elsewhere in Tasmania.

Ten years later few of the Islanders had complied with the Act. The Secretary of Lands wanted to remove the children and appoint a manager to oversee the land. However he received a legal opinion that it was against the common law to remove children from their parents without their consent (Ryan 1981 page 244).

mapinsert

Assimilation

In the late 1920s proposals to remove Indigenous children from their families started to appear in government reports. A 1929 report lamented the impoverished living conditions of the Islanders and found that many of the children were suffering from sickness, including malnutrition. Despite the hardships under which they lived, the Islanders had no intention of moving.

> [The Act of 1912] has given [the Islanders] … the belief that they have a claim on the State, and that it was passed in recognition of their claim that their country has been taken away from them by the whites (A W Burbury, Attorney-General's Department, quoted by Tasmanian Government final submission on page A-15).

This report recommended that the federal government be encouraged to take over responsibility for the Island reserve, that a missionary society take over responsibility for the welfare of the Islanders and that children be encouraged to leave the Island and the influence of their family once they had finished school. The Australian Board of Missions was approached but declined because the Islanders were not 'fullbloods' (Ryan 1981 page 246).

'The welfare'

Although the Tasmanian Government did not formally adopt a policy of removing Indigenous children from the Island, the *Infants Welfare Act 1935* was used to remove these children from their families. From 1928 until 1980 the head teacher on Cape Barren was appointed a special constable with the powers and responsibilities of a police constable, including the power to remove a child for neglect under the child welfare legislation. A shed at the back of the school sometimes served as a temporary lock-up.

Poverty, alcohol abuse, the refusal of the Islanders to adopt an agricultural lifestyle as specified in the 1912 Act and the surveillance of their lifestyle that Act entailed put Indigenous families at risk of losing their children. The reliance of community members upon each other to care for their children in times of difficulty was regarded not as a strength but as an indication of neglect. Fearful of losing their children, some families moved to the mainland and settled in Invermay on the outskirts of Launceston.

Encouragement to leave the Island

In 1944 an inquiry was held into the future of Cape Barren Island. The Aboriginal population there had fallen to 106.

The inquiry noted that the health of the Islanders was deteriorating, particularly because they were dependent upon outside supplies of food. The subsequent *Cape Barren Island Reserve Act 1945* was similar to the 1912 Act but it imposed more rigorous conditions on the lessees in return for a free land grant. The intention of the Act was to force the Islanders to become self-sufficient agriculturists by 1950 and end their dependence upon social welfare.

Another inquiry the following year recommended that,

> … the Government offer every encouragement to half-caste families to leave the Reserve and settle in Tasmania, the objective being a gradual but eventually a total absorption of the half-castes into the white population. It is suggested that incentives such as homes and employment be offered to families in various parts of the State as an inducement for them to leave the Reserve (quoted by Tasmanian Government final submission on page A-16).

This shift in approach was influenced by the decision of the Commonwealth statistician in relation to the 1944 census not to count as Aboriginal anyone who was less than 'octoroon'. Tasmania determined it had no Aboriginal people left.

> If they were not Aboriginal then there was no need for a special Reserve. The Cape Barren Islanders had been defined as white people, after having been defined as non-white for the previous 70 years (Tasmanian Government final submission page A-16).

Ironically, although their Aboriginality was denied, Indigenous families were known and targeted because their lifestyle was not 'acceptable', they lived on Cape Barren and nearby islands and they usually had surnames which marked them as 'half-castes'.

By the time the Cape Barren reserve land reverted to the Crown in 1951, only one lessee was eligible for a land grant. Rather than assist families living in poverty, the government demanded they move to the mainland or risk having their children taken.

As late as 1968 the Director of Social Welfare expressed the view that if 15-20 houses were acquired on the mainland 'the Cape Barren Island problem which has been with us for well over a hundred years would virtually disappear in a decade … adequate housing may lead to the return of children [who had been removed] to their parents' (quoted by Tasmanian Government interim submission on page 11).

From the 1950s officials increasingly removed Aboriginal children to the mainland under child welfare legislation.

> We never ever questioned the right of any white person, whether they had a blue uniform or not, to come into our homeland more or less to do what they liked. That was just part of life and I grew up and people of my generation grew up in an environment where we had no rights other than the rights within our community … If the teacher called us half-castes in the school there was nothing wrong with that. If the police would come into our homes and take people away because there was some offence committed somewhere in the vicinity there was nothing wrong

with that. It was just the way of life and we grew up accepting that white people had some greater right than we did (Michael Mansell evidence 325).

Removal for 'neglect'

Between 1937 and 1970 Indigenous children were taken into care under the *Infants Welfare Act 1935* and the *Child Welfare Act 1960* on the ground of neglect 'because of their circumstances' (Tasmanian Government interim submission page 9). Indeed, circumstances were hardly propitious given the lack of fresh food, including milk and other perishables, which had to be brought to the Island by boat. After surveys by the Health Department in 1956 and 1960, children were finally provided with food supplements by the Health and Education Departments and the Save the Children Fund.

> Documentation shows that families with Aboriginal ancestry on the Islands from time to time experienced difficulty in obtaining relief payments, particularly single women responsible for the care of children. It is also evident that inadequate housing and living conditions led to the removal of some children (Tasmanian Government interim submission on page 9).

> **I remember when I was very young though, that there was a big thing going around the community then that the government wanted to get the people off the island. I remember them saying, 'Well, I'm not going'. And next thing you see families going off. And one of the ladies … she had a little girl out of wedlock, and the welfare came in and threatened her. They said to her she either had to marry the father of that baby or they would come and take the child, so she married. She was very young, and she married.**
>
> *Confidential evidence 329, Tasmania: woman who grew up on Cape Barren Island.*

Not only could children be taken away from their families if they were judged by a court to be 'neglected', a parent could be charged with the criminal offence of neglecting that child and sentenced to imprisonment. Once the parents were imprisoned, their other children would also be removed.

> **Welfare just took the lot, no reason – just took us. They took mum and dad to court here for no reason. But there was no neglect. We was happy kids, you know. We just – we lived in the bush all our lives. Dad never believed in bringing his family to the city, he just loved the bush and that's where we stayed. We were always fed and happy there but I suppose they were looking for this other family and when they came to take them they just decided, 'Well, we'll take these as well'.**
>
> *Confidential evidence 321, Tasmania: man removed at 11 years in the 1950s along with his younger brother and sister and 4 children from another family who were staying with them at the time.*

Although a parent was entitled to appear at court to argue that the child was not neglected, this theoretical possibility took no account of the remoteness of mainland and non-Indigenous legal processes from the Island communities, the speed with which removals occurred, the parents' lack of knowledge of their rights under the law, their financial inability to get to the court in Launceston in time and the fact that no legal assistance was available to them. It was not until the early 1970s that solicitors began to

appear on behalf of Indigenous children and parents.

On their removal siblings were often placed separately and had little contact with each other. This occurred even though the Department of Community Welfare Manual 1966 specified that siblings should keep in touch with each other.

> **I wasn't allowed to go to the same school where my natural siblings were attending school. I knew my siblings' names but I didn't know what they looked like. I was told not to contact my natural family … My foster family and the Welfare Officer said to me that I shouldn't get in touch with my natural family because they were not 'any good'.**
>
> *Confidential submission 314, Tasmania: woman removed at 18 months with 5 siblings in the 1960s; placed in several foster homes before being adopted by the last of her foster families, where she was physically and sexually abused.*

Usually children were fostered although some Indigenous children were sent to children's homes where most of the other children were non-Indigenous.

> **We seemed to have a lonely existence at the Home. They had children there who were under Legacy and things like that. Sadly, we didn't have any relatives to come and see us and, you know, we used to get a bit upset when other children could have relatives come, their mothers, and bring them toys and things, perhaps some fruit.**
>
> *Confidential evidence 56, Tasmania: man removed at 2 months from grandmother's care on Cape Barren Island in the 1930s; placed in a group home in Launceston where only he and his siblings were Aboriginal.*

The Department's manual also specified that removed children should be kept in contact with their family. However,

> Information from personal files indicates that the Government and the non Aboriginal community's attitude towards Cape Barren Island people may have influenced foster carers in discouraging children in care from having contact with their families during this period (Tasmanian Government interim submission page 11).

Indigenous children continued to be removed under the 1960 Act in the 1970s and 1980s, although a number of initiatives were taken during this period to assist families to stay together. The availability of federal funding and the government's acknowledgement during this period that Tasmania has an Indigenous population entitled to assistance to overcome the trauma of colonisation have allowed these programs to develop.

Separation for schooling

Although there has been a primary school on Cape Barren Island since 1889, there are no secondary education facilities on the Island. In 1965 the government began exploring the possibilities of 'providing scholarships, and adequate hostelling, for the most suitable [Cape Barren Island children], to induce them to seek secondary education

in Tasmania. The idea being to eventually work towards apprenticeships for the children' (quoted by Tasmanian Government final submission on page A-34). Islander children could also obtain Education Department bursaries or charity sponsorship to board on the mainland and receive a secondary education.

By 1970 20 Island children were in receipt of study grants and living on the mainland in accommodation approved by their families although Indigenous families remained concerned about the separation of their children that schooling involved.

Self-management

The Aboriginal Information Service, established in 1973, arranged legal representation of Indigenous children and parents in neglect cases and juvenile justice matters, thereby reducing the likelihood of Indigenous children being removed from their families. The Tasmanian Aboriginal Centre now incorporates the Tasmanian Aboriginal Legal Service.

At the 1980 Australian Aboriginal Affairs Council Meeting of Ministers held in Hobart, the Tasmanian Government indicated its acceptance of the nationally agreed policy guidelines developed in 1977 relating to the fostering and adoption of Aboriginal children and the principle of Aboriginal participation in the planning and delivery of welfare services. The combination of pressure from the Tasmanian Aboriginal Centre, Indigenous involvement in departmental committees and the Tasmanian Government's participation in national discussions about Aboriginal child welfare led to the incorporation of the Aboriginal Child Placement Principle into the practice of the Social Welfare Department in 1984.

Greg

I was born on Cape Barren. At the time I was taken the family comprised mum, my sister and [my two brothers]. And of course there was my grandmother and all the other various relatives. We were only a fairly small isolated community and we all grew up there in what I considered to be a very peaceful loving community. I recall spending most of my growing up on the Island actually living in the home of my grandmother and grandfather. The other children were living with mum in other places.

Until the time I was taken I had not been away from the Island, other than our annual trips from Cape Barren across to Lady Baron during the mutton bird season.

The circumstances of my being taken, as I recollect, were that I went off to school in the morning and I was sitting in the classroom and there was only one room where all the children were assembled and there was a knock at the door, which the schoolmaster answered. After a conversation he had with somebody at the door, he came to get me. He took me by the hand and took me to the door. I was physically grabbed by a male person at the door, I was taken to a motor bike and held by the officer and driven to the

airstrip and flown off the Island. I was taken from Cape Barren in October 1959 [aged12].

I had no knowledge [I was going to be taken]. I was not even able to see my grandmother [and I had] just the clothes I had on my back, such as they were. I never saw mum again.

To all intents and purposes, I guess my grandmother was looked upon as my mother in some respects because of my association with her and when I was taken there are actual letters on my file that indicate that she was so affected by the circumstances of my being removed from the Island that she was hospitalised, and was fretting and generally her health went on her. A nursing sister on the Island had my grandmother in hospital and she was in fact writing letters to the Welfare Department to find out, you know, how I was getting on and that sort of thing, and asking if I could go back to the Island for holidays. That was refused. My grandmother was removed from the Island and placed in an aged-care hospital, and I was taken to see her and when I did she had basically lost her mind and she did not know who I was.

It is fairly evident from reading my welfare file that [the teacher] was the eyes and ears of the Welfare Department and that he was obviously sending reports back to them about the conditions on the Island.

There is a consent form on [my] file that mum signed and it did include [my sister and my two brothers] – and their names were crossed out and mine was left. I do not know whether it was because I was at the top or not. I might add that most people that I have spoken to said that mum, whilst she could read her name, could not read or write, and obviously would not have understood the implications of what she was signing. [It] has been witnessed by the schoolmaster.

I was flown off the Island and … I was flown to where the small planes land at Launceston. I was eventually placed with some people in Launceston. I have some recollection of going to school at some stage. I noted from my file that I was transported to Hobart in 1960 – my recollection of that was being put into a semi-trailer and picked up on the side of the road by some welfare officers down there. I was placed with some people in [Hobart], and I guess, fortunately for me, I could not have been in better hands because I still maintain a relationship with them; they look on me as their son. They had one daughter but Mrs — used to care for other foster children and the house was full of other non-Aboriginal children.

I had always wanted to return to the Island but I could never bring myself to hopping on a plane and returning. [It was] thirty years before I went back. [The night I returned] I could not settle. I think I had a cup of tea and I decided I would go in a different direction and I walked around the sand spit and - I do not know, something just made me turn around and look back and I looked to the school and - I just looked back to where we used to live as kids. My whole life flashed before me and I just collapsed in the sand and started crying … And when I composed myself as best I could I just sort of reflected on things and my whole life was just racing through my mind and I guess I just wanted to be part of a family that I never had. I just wanted to be with my mum and my grandmother

and my brothers and sisters.

Confidential evidence 384, Tasmania. The consent form signed by Greg's mother states the reason for his removal: 'I am a widow, in poor health'. After Greg was taken his mother had another daughter but Greg was not aware of her existence until 1994. One of Greg's brothers states that after Greg went their mother 'was in total despair'. They lived in conditions of extreme poverty in 'a run down shanty'. One afternoon their mother went drinking and suffered a fatal accident. Later the police came with a warrant to collect the children and flew them to Launceston. The boys were fostered together but each of the girls went to a different family. The first time the five children were all together was in 1995.

7 Western Australia

> In many things the white people mean well, but they have so little understanding. My experience has convinced me that, psychologically, the Native Department is working on wrong lines … The same law that applies to the white race should apply to the native races in that particular. I think that is most essential. Our native mothers have all the natural feelings of mothers the world over, and to many of them the administration of the Native Department, by men only, is stark tragedy (Gladys Prosser, a Noongar mother, in an interview to Perth's *Sunday Times*, later quoted in a speech to the Legislative Council by Hon. H Seddon *Hansard* 22 November 1938 page 2246).

Initial contact

Following the founding of the Swan River Colony in 1829 relations between the British settlers and local Indigenous peoples in Western Australia became characterised by conflict. As a result of fierce fighting,

> … on the Swan and Canning Rivers all opposition by the Aborigines had ceased by 1832, while the Murray River tribe gave no further trouble after it had been decimated by posses of settlers and soldiers in what became known as the battle of Pinjarra (Biskup 1973 page 7).

Following the report of the 1837 British Select Committee into the condition of 'natives' in all British colonies, protectors were appointed in Perth and York. By 1850 the protectors had become firmly aligned with the colonists against the Aboriginal population. So successful were they in securing the settlers' interests that the office of protector was abolished and not revived until 1886. In the interim police and magistrates were assigned the protective role. In reality settlers took the law into their own hands.

From the 1860s the pastoral frontier expanded northwards and eastwards, with the Kimberley region reached in the 1880s. A ban on the employment of convicts north of the Murchison River made pastoralists dependent upon Indigenous labour for which rations were provided instead of wages. In the south, the pattern was different. Indigenous communities developed in camps on the outskirts of towns and supported themselves by hunting and working casually for local farmers and businesses. Some became farmers themselves until their properties were resumed in the early twentieth century.

In the 1840s several church-run schools for Indigenous children opened with government financial assistance. By 1847 all but one had closed because of financial constraints and because children had been reclaimed by their parents following the deaths of some pupils from disease. The remaining school was at the Roman Catholic mission at New Norcia where Indigenous families settled near the mission while their children were housed in dormitories within the mission complex.

In the late nineteenth century two institutions opened in the south for Indigenous children. Although they were run as orphanages, many of the children sent there had living parents (Haebich 1988 page 8). The children were schooled and trained for

domestic and farm work. Under the *Industrial Schools Act 1874* children who were voluntarily surrendered to a school, orphanage or institution would remain under its authority until the age of 21 regardless of the parents' wishes. The manager of the institution could apprentice children over the age of 12.

Responding to atrocities committed against Indigenous people in Western Australia the British Parliament passed the *Aborigines Protection Act 1886* establishing the Aborigines Protection Board. Among the Board's functions was 'the care, custody and education of Aboriginal children'. Resident Magistrates, acting on the Board's instructions, were empowered to apprentice any Aboriginal or 'half-caste' child of a 'suitable age'. Under the 1874 Act applying to non-Indigenous children the minimum age at which children could be apprenticed was 12 years.

> In reducing the age of Aboriginals against whom contracts shall have force, your committee considers that ten years is not too young, as Aboriginal children mature so much more quickly than civilised ones, and it is at that age that habits of thrift and honesty are most easily inculcated. Should they be at liberty to roam about without employment until 16 they would be useless afterwards (comments of the Parliamentary Select Committee which reviewed the Bill prior to its enactment, quoted by Dr Neville Green submission 341 on page 6).

Concern about the treatment of Indigenous people in WA led the British Government to retain control of Aboriginal affairs until 1897 when the *Aborigines Act 1897* was passed. This Act created the Aborigines Department with the same functions as the Board. Henry Prinsep, who had experience in colonial administration in India, was appointed Chief Protector.

Prinsep believed that Aboriginal children of mixed descent who grew up with their Aboriginal families would become 'vagrants and outcasts' and 'not only a disgrace, but a menace to society' (quoted by Haebich 1988 on page 57). Lacking any legislative power to forcibly remove these children to the existing institutions and missions (which were not under his control), he endeavoured to 'persuade' the parents to part with their children. In a circular letter to all Protectors and Government Residents in WA dated February 1902 Prinsep requested information on any 'half-caste' children in their districts who could be induced to enter one of the existing institutions for their care and eduction.

Not surprisingly, most mothers refused to part with their children. For the few that agreed, hasty arrangements were made for the child's removal in case the mother changed her mind (Dr Christine Choo submission 385 page 7). Referring to his very limited success in this exercise, Prinsep complained in 1902 that 'the natural affections of the mothers … stood much in the way' (Aborigines Department Annual Report 1902 quoted by Haebich 1988 on page 67).

Prinsep proposed the extension of his powers to enable him to remove children forcibly and without parental consent.

The 1905 Act

In 1904 the WA Government established an inquiry into Aboriginal administration

headed by Dr W E Roth, the Chief Protector of Aborigines in Queensland. Although he was asked to inquire into 'the treatment of the aboriginal and half-caste inhabitants of the State' as well as the administration of Aboriginal affairs generally, he limited his inquiry to conditions in the north-west and far north. His findings of 'a most brutal and outrageous state of affairs' in which Aboriginal people were exploited, brutally controlled and malnourished caused a public furore. He recommended 'proper legislation, combined with firm departmental supervision' (quoted by Leaming 1986 on page 4).

Although Roth did not investigate conditions in the south-west he supported Prinsep's concerns about the increasing numbers of 'half-castes' there, then numbering about 750. He noted that pastoralists who fathered 'half-caste' children made little attempt to educate or support them. The appropriate course, according to Roth, was for the Chief Protector to assume guardianship of these children, to remove them from their Aboriginal families and place them in institutions. To prevent the problem arising again in the future there should be prohibitions against 'mixed marriages' and 'miscegenation'.

Roth's recommendations were implemented by the *Aborigines Act 1905* making the Chief Protector the legal guardian of 'every Aboriginal and half-caste child' under 16 years.

> [A] half-caste, who possesses few of the virtues and nearly all of the vices of whites, grows up to be a mischievous and very immoral subject … it may appear to be a cruel thing to tear an Aborigine child from its mother, but it is necessary in some cases to be cruel to be kind (J M Drew, WA Parliamentary Debates 1904, quoted by Biskup 1973 on page 142).

It was claimed that it was 'wrong, unjust and a disgrace to the State' to leave children to be cared for by their mothers. More generally, the 1905 Act

> … laid the basis for the development of repressive and coercive state control over the state's Aboriginal population. It set up the necessary bureaucratic and legal mechanisms to control all their contacts with the wider community, and to enforce the assimilation of their children and to determine the most personal aspects of their lives (Haebich 1988 page 83).

Missions

In the north of WA a Catholic mission was established at Beagle Bay in 1890. Another four followed in the next 20 years with the help of government subsidies. The missions shared Prinsep's objectives of removing the children from their families.

> As soon as possible, children can be removed from the adult camp and the nomadic ways of their parents, and be housed in dormitories on mission premises to be educated at school and in trades (Father George Walter, Superior at Beagle Bay, 1906, quoted by Dr Christine Choo submission 385 on page 6).

In 1906 the Pallottines at Beagle Bay requested that the police round up the Indigenous children living in and around the north-west towns, now wards of the Chief Protector, and send them to the mission.

> If the police sent me only the most obvious cases, the number of children on the mission would be about 200 (Father George Walter, Superior at Beagle Bay, 1906 letter to Chief Protector, quoted by Dr Christine Choo submission 385 on page 11).

The local protector, James Isdell, supported the mission's concern to rescue 'waifs and strays from the bad contaminating influence of natives' camps'.

> The half-caste is intellectually above the aborigine, and it is the duty of the State that they be given a chance to lead a better life than their mothers. I would not hesitate for one moment to separate any half-caste from its aboriginal mother, no matter how frantic her momentary grief might be at the time. They soon forget their offspring (quoted by Dr Christine Choo submission 385 on page 14).

In the south of the State little use of the removal power was made before 1909. In that year a regulation dispensed with the need for the Chief Protector's permission to remove any mixed descent child under the age of eight. The number of forcible removals increased and the children were taken to New Norcia, the Swan Native and Half-Caste Home and the Dulhi Gunyah Orphanage in Perth. To put pressure on parents to send their children to the missions the Aborigines Department refused to assist orphaned or needy children away from the missions.

Mapinsert

'Native settlements'

Protests from non-Indigenous people in the south about the presence of Aboriginal camps on the edges of towns led the government to revise its approach. The new plan was to establish isolated self-contained 'native settlements' run by the government. Chief Protector A O Neville who was appointed in 1915 and who remained in the position until 1940, was firmly committed to the new plan.

Neville saw the settlements as a means of integrating children of mixed descent into the non-Indigenous society. They were to be physically separated from their families on the settlements, receive a European education, be trained in domestic and stock work and then sent out to approved work situations. Between jobs they would return to the settlements. Neville theorised that this process would lead to their acceptance by non-Indigenous people and their own loss of identification as Indigenous people.

> My [wife's] father died when she was eleven, so Rose was left an orphan, and was placed in the New Norcia home for Aboriginal girls … Rose left her life in New Norcia mission when she turned fourteen, to work as a housemaid. But before she could go out to work, she had to come to the Moore River Native Settlement … Rose had no trouble being placed in service to a white woman. In between she had to return to the settlement … All those who went out to work had to return to Moore River when their terms of employment were finished: to do otherwise meant to be hounded by the authorities and made to return. Again, no options! No choice! (van den Berg 1994 pages 88-89).

Neville began by taking control of the mission at Carrolup and expanding its size to

be self-supporting. In 1918 a second settlement was opened, at Moore River. In the north, too, Neville wanted to take control of the missions and turn them into self-supporting cattle stations. Moola Bulla in the Kimberley was his model. It had opened in 1910 as a ration depot and government-run cattle station. It was intended to be an alternative to the more expensive option of imprisoning large numbers of Aboriginal people for cattle spearing as well as 'raising beef to feed them and … training men for work on the stations' (Long 1970 page 192).

There would be considerable savings to the government as it would no longer have to subsidise the missions.

> Generally the recommendations are made on the score of economy, combined with the knowledge that the Missions are not performing the useful work which might be expected of them. A large number of natives and half-castes are growing up in idleness instead of being employed on the various stations in the Northern portions of the State … scores of the children are growing up without any prospect of a future before them, being alienated from their old bush life, and rendered more or less useless for the condition of life being forced upon them (A O Neville quoted by Jacobs 1990 on pages 77-78).

Two former pastoral stations were acquired: Munja in 1926 and Violet Valley in 1935. On purchasing Munja Neville commented that 'the purpose of establishing the stations was to pacify the natives and accustom them to white man's ways and thus enable further settlement' (quoted by Kimberley Land Council submission 345 on page 11). Although no other missions were established in the north during Neville's time in office the United Aborigines Mission founded a mission at Mount Margaret in the Goldfields in 1921.

Indigenous families did not willingly move to these settlements. In the south most were able to find employment in their local area, receiving wages which were preferred to the payment in kind offered at settlements. The living conditions at the settlements were not significantly better yet they were highly regulated. The parents rightly feared that their children would be placed in segregated dormitories if the family moved to a settlement.

> **We were locked up at night. All the boys, young girls. Married girls and women what had no husbands and babies, they had one room. Another dormitory was for young girls had no babies. But we was opposite side of that, see? The boys' dormitory. I'm not going to complain about it because, you know, I survived. A lot of kids died. Depression time it was pretty hard.**
>
> *Confidential evidence 333, Western Australia.*

The missions attracted families whose children would otherwise be taken from them.

> Even when at the mission the children still took every precaution. The women discussed in the raffia room what to do with their children if the police should take them on the hop. Where could they hide them? – inside the cupboard perhaps? … The children however took matters into their own hands. They continually kept their ears cocked for horses' hooves.

> [In 1926] came a visit from A.J. Neale, new manager of Moore River Settlement, representing the Aborigines Department. Dicky Wingulu, Doris's tribal father, talked to Mr Neale and pleaded for his little girls that they not be sent away to Moore River. Finally he persuaded Mr Neale that Mount Margaret would be a good place to send them, as he had heard they were starting a school (Morgan 1991 pages 83 and 94).

As in the past, to compel people to move the Aborigines Department refused rations or other assistance to people living away from the settlements. In response to complaints from local police about the camps on the outskirts of non-Indigenous towns, Indigenous people were 'rounded up' by police and sent to the settlements. Aborigines convicted of alcohol related offences were also sent to Moore River for their 'rehabilitation'. Between 1915 and 1920 at least 500 people, about a quarter of the Indigenous population in the south, had been removed to settlements. Moore River expanded quickly. In January 1919 there were 19 inmates at Moore River, in June 1919 93 inmates, by June 1927 330 inmates and by 1932 500 (Choo 1989 page 45).

In the north, travelling inspectors kept a watch for mixed descent children on pastoral stations and in communities. Warrants were then prepared for their forcible removal to the government settlements in the north or far south to Moore River.

> **When I was about twelve or thirteen years old I was taken to Moola Bulla. That's where I lost my Aboriginal ways. The Police came one day from Halls Creek when they were going on patrol to Lansdowne and found me, a half-caste child. The manager … took me down to Fitzroy Crossing to wait for the mail truck from Derby to take me to Moola Bulla. When [the manager's wife] told my people, mum and dad, that they were taking me to Fitzroy Crossing for a trip, they told her 'you make sure you bring her back'. They did not know that I would never see them again.**
>
> *Quoted by Kimberley Land Council submission 345 on page 66.*

> **The welfare just grabbed you where they found you. They'd take them in threes and fours, whatever. The Native Welfare blokes used to come to every station and see where our half caste kids were. They used to drive right down to Port Hedland. Our people would hide us, paint us with charcoal. I was taken to Moola Bulla. The Welfare bloke … sent his son … to pick up me and Colin Swift. We were about 5-6 years old, and my mother was allowed to come with us in the manager's car and then he took her away.**
>
> *Quoted by Kimberley Land Council submission 345 on page 60.*

Work placements

At the age of 14 children of mixed descent were sent out from the settlements to work. A large proportion of the young women returned pregnant. Though annoyed that the burden of maintaining these children fell upon the government, Neville did not feel that the high rate of pregnancies reflected adversely on his department's policies.

> The child is taken away from the mother and sometimes never sees her again. Thus these children grow up as whites, knowing nothing of their own environment. At the expiration of the period of

> two years the mother goes back into service so that it doesn't really matter if she has half a dozen children (quoted by Choo 1989 on pages 49-50).

'Biological absorption'

By the 1930s Neville had refined his ideas of integrating Indigenous people into non-Indigenous society. His model was a biological one of 'absorption' or 'assimilation', argued in the language of genetics. Unlike the ideology of racial purity that emerged in Germany from eugenics, according to which 'impure races' had to be prevented from 'contaminating' the pure Aryan race, Neville argued the advantages of 'miscegenation' between Aboriginal and white people.

The key issue to Neville was skin colour. Once 'half-castes' were sufficiently white in colour they would become like white people. After two or three generations the process of acceptance in the non-Indigenous community would be complete, the older generations would have died and the settlements could be closed.

Neville claimed that the settlements prepared Indigenous children to be 'absorbed' into non-Indigenous society. He argued that for the absorption process to work properly his powers needed to be extended to all children with any Indigenous background. The grandiose nature of his 'vision' contrasted starkly with the reality of life in the chronically under-funded settlements.

> I visited the Moore River Settlement several times [in the 1930s]. The setting was a poor one with no advantage for anyone except isolation. The facilities were limited and some of them were makeshift. The staff were inadequate both in numbers and qualification. The inmates disliked the place. It held no promise of a future for any of them and they had little or no satisfaction in the present. It was a dump (Hasluck 1988 page 65).

Opposition and dissent

Public reaction to Neville's ideas was mixed. The segregation of Aboriginal people had been actively supported by non-Indigenous people. Neville's support for 'miscegenation' was in a different category. '[A] variety of harsh words were expressed about the Chief Protector's outrageous suggestion that marriages between black and white (because if it was out in the open it would have to be marriage) should be condoned' (Jacobs 1990 page 195).

In the early 1930s allegations of slavery, mistreatment of Aborigines and abuse of Aboriginal women appeared in the local and international press. Among them was a series of articles by Mary Bennett attacking the administration of Aboriginal affairs. The pressure of this publicity forced the government to establish a Royal Commission into the conditions of Aborigines, headed by a Perth magistrate, H D Moseley. In evidence to the Commission, Bennett attacked the practice of removing children from their mothers.

> They are captured at all ages, as infants in arms, perhaps not until they are grown up, they are not safe until they are dead (quoted by Jacobs 1990 on page 234).

Bessie Rischbieth also gave evidence to the Moseley Commission arguing that

'neglect' was not a justification for removing Aboriginal children to the settlements. 'In most instances I should prefer to see the children left with their parents … the system of dealing with the parents should be improved in order that they might keep their children.' (quoted by Paisley 1995 on page 266). In her opinion government administrations were forcibly removing children 'because it was cheaper than providing the same system of support which operated for neglected white children' (Paisley 1995 page 266).

Aboriginal women from Broome sent a petition to the Commission in which they asked 'would you like to think that when you send your children to school that you would never see them again?' (quoted by Paisley 1995 on page 267).

Neville's response to these attacks on his policies was to argue that removal was in the best interests of children.

> I say emphatically there are scores of children in the bush camps who should be taken away from whoever is looking after them and placed in a settlement … If we are going to fit and train such children for the future they cannot be left as they are … I want to give these children a chance … Unless those children are removed, social conditions in those places will go from bad to worse … I want to teach them right from wrong. How are the children to fight against these conditions? The conditions in the absence of teaching, are going to become infinitely worse than they are now (quoted by Jacobs 1990 on page 235).

Moseley was sufficiently impressed by Neville's views to recommend the extension of his powers to all people of Aboriginal descent. The *Native Administration Act 1936* defined 'natives' to include nearly all people of full and part descent regardless of their lifestyle and expanded restrictions on movement and lifestyle.

> Virtually any child of Aboriginal descent could now be taken forcibly from his or her family and placed in a government institution to be trained in the ways of 'white civilisation' and 'society'. The Commissioner of Native Affairs, not their parents, had total control over their lives until they reached the age of twenty-one. From this age any person of 'quarter-caste' or less was prohibited by law from associating with persons deemed to be 'natives'. In this way they were to be forced to live in the white community, although no measures were introduced to force white people to accept them (Haebich 1988 on page 351).

Sister Kate's

In the early 1930s Kate Clutterbuck, an Anglican nun, offered to open a home in Perth for 'half-caste' children if government funding were provided. She informed Neville that 'we should of course like to have the poorest and most neglected children not those who have mothers who love and care for them, but those who are most unwanted in the State' (quoted by Jacobs 1990 on page 218). Neville took advantage of the offer to put his ideas into practice. Once the home commenced operations in 1933 he began to supply Sister Kate with the lightest skinned children.

> **Some kids who were brought to Moola Bulla and who were too white would be sent to Sister Kate's in Perth and some of them who were too dark for Sister Kate's were sent to Moola Bulla. There was a half-caste boy who was at Moola Bulla, his mother was half-caste and his**

father white, and I suppose they couldn't bear to see him down the camp with all these Aboriginal people so they sent him to Sister Kate's.

Confidential evidence 814, Western Australia.

Sister Kate's Home operated until 1974 with an average of 85 children staying there at any one time (WA Government submission page 19).

Assimilation

In 1940 Neville retired. He was succeeded by Francis Bray and then, in 1948, by Stanley Middleton. Just prior to Middleton taking office, an inquiry by F E A Bateman had recommended the abandonment of the policy of government settlements. By then, the language of 'welfare' and 'social assimilation' had started to replace that of 'absorption' and 'miscegenation'.

In Middleton's view, isolating children of mixed descent on run-down government settlements was not the way to achieve assimilation. In 1951 Carrolup (Marribank) and Moore River (Mogumber) were transferred to mission control, followed by Sister Kate's Home in 1956, and financial arrangements were made with them for the placement of removed children.

In the north financial support was offered to the existing missions and whole communities were forced to move, sometimes several times, as the smaller missions were closed. In 1955 Moola Bulla was sold. Although it was a condition of the sale that the new owners would look after the interests of the Aboriginal inhabitants of the area, the new owners arranged for the Department of Native Affairs to transport them to Fitzroy Crossing and Halls Creek (WA Government submission, Appendix 2 page 9).

I can't remember anything much about the day we were evicted from Moola Bulla [in July 1955] because they just came and told us to go. There was no explanation, we don't know what happened. We were stunned. There were four kids and no money to feed them. A transport contractor, took all the people into Halls Creek.

We camped around the race course for a few days, whilst asking for jobs on other stations … The welfare gave us some rations, that's all. It was July and pretty cold and we camped, waiting, just like a refugee camp.

We were brought to Moola Bulla as children without our consent nor our mother's and the later kicked off the land after living there for so long. It caused us a lot of pain inside. We were displaced and lost with no sense of belonging.

Quoted by Kimberley Land Council submission 345 on pages 64-5.

Another aspect of the assimilation policy was that Indigenous children were to be

accepted into the state schools. From the early 1950s the schools were opened to them. Children in the north were encouraged to attend schools in Derby, Wyndham and Broome while they stayed in government and mission-run educational hostels for most of the year. They were allowed home during holidays if they had a 'suitable home' to go to.

> In the Kimberley, during this period, a 'suitable home' was difficult to provide for people who had limited employment opportunities, no housing and limited access to Welfare services. In any case, not all parents could afford to pay for airfares or other means for their children to travel long distances across the Kimberley (Kimberley Land Council submission 345 page 18).

As in other remote regions of Australia, Indigenous children were effectively separated for very long periods from their families, communities and cultures by their need to relocate for schooling. In 1958 it was estimated that 25% of Kimberley children were living in missions (Dr Anna Haebich submission 342).

'The welfare'

From 1951 in WA Aboriginal children were more likely to be removed under the *Child Welfare Act 1947* by the Child Welfare Department than by the Department of Native Welfare acting under the 1936 Act. This practice was formalised when the *Native Welfare Act 1954* was passed revoking the removal power of the Commissioner for Native Affairs. The Commissioner remained the legal guardian of all Aboriginal children except State wards until the *Native Welfare Act 1963* was passed.

Although the child welfare legislation required a court to be satisfied that the child was destitute or neglected, the requirement made little impact on the numbers removed in practice. The definition of destitution could be applied to the situation of many Aboriginal families with few material resources whose lifestyle was the subject of constant surveillance by government officials.

> **… all of a sudden the Welfare just came and took them, they didn't say anything to me, just picked up the boys coming back from the shop and the Welfare made them wards of the State. I used to work at the hospital nursing, keeping my little family together. If the Welfare wanted to help they could have given money every fortnight like they do now … They weren't helping taking [them] away or splitting us up, that was the most terrible thing that they done to my family, my sons and myself.**
>
> *Confidential submission 197, Western Australia: mother of two boys removed in the late 1950s.*

> A thorough examination was not made as the father was not present. From what I saw however, I am satisfied that the children are 'neglected', if for no other reason than the shack they live in (welfare officer's file note dated 11 January 1968, quoted by *Telling Our Story* 1995 on page 76).

The definition of neglect was also interpreted in a climate of assimilation which denigrated the worth of Aboriginal lifestyles. Aboriginal families who had moved to towns and cities following the closure of some of the missions and settlements and had to re-establish themselves were particularly vulnerable to action under the 1947 Act.

In 1958 the Special Committee on Native Matters warned that ‘removal of a child from his mother at an early age can cause serious psychological and mental disturbances’. This warning was ignored (WA Government submission page 26). Between 1958 and 1961 the number of Aboriginal children committed to government care more than doubled (Marron 1994).

In 1966 the award for pastoral workers was extended to Aboriginal people, meaning that from 1968 Aboriginal workers in the pastoral industry were entitled to equal pay. This decision led to the eviction of whole communities from pastoral stations. These families settled on the outskirts of towns in conditions of dire poverty and were extremely vulnerable to intervention by ‘the welfare’.

During this period Native Welfare Department publications increasingly stressed the need to keep families together. However, as records on the numbers of Aboriginal children in care were not kept, it is almost impossible to assess the impact of this change in emphasis. Overall the number of children committed to care between 1971 and 1973 halved and over half of those committed were returned home or placed with their extended family (WA Government submission page 51).

Towards self-management

In 1972 the Department of Native Welfare was abolished and its welfare responsibilities were absorbed by the Department of Community Welfare. At the time there were 3,099 Aboriginal people in institutions, almost one in every ten Aboriginal people in the State. The majority of these people were children.

The *Child Welfare Act 1947* was amended in 1976 to repeal ‘destitution’ and ‘neglect’ as grounds for removal and to introduce the concept of being ‘in need of care and protection’. Aboriginal children, however, remained dramatically over-represented among WA children in State care. In the period 1979-81 57% of children in care were Aboriginal and 66% of them had been placed with non-Indigenous families (*Children in Limbo* 1981 page 157).

In 1980 an Aboriginal Child Care Agency was established in Perth. It was replaced in 1991 by the Yorganop Child Care Corporation.

The Aboriginal Child Placement Principle became the policy of the Department of Community Services in 1985. A review of the department in 1989 showed that there had been a 58% reduction over the previous five years in the number of Aboriginal children in departmentally subsidised foster care and that most Aboriginal children were placed with Aboriginal caregivers, including 66% with relatives (WA Government submission page 58).

Courtesy Bicentennial Copying Project, State Library of New South Wales.

Afternoon tea at the Benson residence, Ruby Jones – maid – at left, Wanaaring, NSW, 1906

I never received any money from my employers or the Protection Board. I did not know what money was.
Confidential submission 331, Queensland: child removed at 3 years in 1915.

When anybody come to pick up a worker they used to line us up and they'd make you flex your muscles. If you were big and strong they'd pick you – like a slave market. I was sent out at 11. I worked there for seven and a half years, never got paid anything, all that time. We used to bring the cattle in ... we didn't get nothing. So I had to join the army to survive.

Confidential evidence 549, Northern Territory: man removed in the 1930s.

Millicent

At the age of four, I was taken away from my family and placed in Sister Kate's Home – Western Australia where I was kept as a ward of the state until I was eighteen years old. I was forbidden to see any of my family or know of their whereabouts. Five of us D. children were all taken and placed in different institutions in WA. The Protector of Aborigines and the Child Welfare Department in their 'Almighty Wisdom' said we would have a better life and future brought up as whitefellas away from our parents in a good religious environment. All they contributed to our upbringing and future was an unrepairable scar of loneliness, mistrust, hatred and bitterness. Fears that have been with me all of life. The empty dark and lonely existence was so full of many hurtful and unforgivable events, that I cannot escape from no matter how

hard I try. Being deprived of the most cherished and valuable thing in life as an Aboriginal Child – love and family bonds. I would like to tell my story of my life in Sister Kate's home – WA.

My name is Millicent D. I was born at Wonthella WA in 1945. My parents were CD and MP, both 'half-caste' Aborigines. I was one of seven children, our family lived in the sandhills at the back of the Geraldton Hospital. There was a lot of families living there happy and harmonious. It was like we were all part of one big happy family.

In 1949 the Protector of Aborigines with the Native Welfare Department visited the sandhill camps. All the families living there were to be moved to other campsites or to the Moore River Aboriginal Settlement. Because my parents were fair in complexion, the authorities decided us kids could pass as whitefellas. I was four years old and that was the last time I was to see my parents again. Because my sisters were older than me they were taken to the Government receiving home at Mount Lawley. My brother Kevin was taken to the boys home in Kenwick. Colin and I were taken to the Sister Kate's Home. We were put in separate accommodation and hardly ever saw each other. I was so afraid and unhappy and didn't understand what was happening.

We were told Sundays was visiting day when parents and relatives came and spent the day. For Colin and I that was a patch of lies because our family were not allowed to visit. We spent each Sunday crying and comforting each other as we waited for our family. Each time it was the same – no one came. That night we would cry ourselves to sleep and wonder why. We were too young to understand we were not allowed family visits.

A couple of years passed and I started primary school.
It had been such a long time since I had seen my brother Colin. I was so helpless and alone. My brother had been taken away to the boys' home in Kenwick and now I was by myself. I became more withdrawn and shy and lived in a little world of my own hoping one day Mum would come and take me out of that dreadful place. As the years passed I realised that I would never see my family again.

They told me that my family didn't care…

They told me that my family didn't care or want me and I had to forget them. They said it was very degrading to belong to an Aboriginal family and that I should be ashamed of myself, I was inferior to whitefellas. They tried to make us act like white kids but at the same time we had to give up our seat for a whitefella because an Aboriginal never sits down when a white person is present.

Then the religion began. We had church three times a day, before breakfast, lunchtime and after school. If we were naughty or got home from school late we had to kneel at the altar for hours and polish all the floors and brass in the church. We had religion rammed down our throats from hypocrites who didn't know the meaning of the word. We used to get whipped with a wet ironing cord and sometimes had to hold other children (naked) while they were whipped, and if we didn't hold them we got another whipping. To wake us up in the morning we were sprayed up the backside with an old fashioned pump fly spray. If we complained we got more. Hurt and humiliation was a part of our every day life and we had to learn to live with it.

Several more years passed and I still had no contact with my family, I didn't know what they looked like or how I could ever find them. By this time I was old enough to go to High School. This meant I didn't have to look after several of the younger kids as I had previously done, bathing, feeding and putting them on the potty and then off to bed, chopping wood before school and housework which all of us kids done and the housemothers sat back and collected wages – for doing nothing. My life was miserable, and I felt I was a nobody and things couldn't get any worse. But I was wrong.

The worst was yet to come.

While I was in first year high school I was sent out to work on a farm as a domestic. I thought it would be great to get away from the home for a while. At first it was. I was made welcome and treated with kindness. The four shillings I was payed went to the home. I wasn't allowed to keep it, I didn't care. I was never payed for the work I did at Sister Kate's so you don't miss what you didn't get, pocket money etc.

The first time I was sent to the farm for only a few weeks and then back to school. In the next holidays I had to go back. This time it was a terrifying experience, the man of the house used to come into my room at night and force me to have sex. I tried to fight him off but he was too strong.
When I returned to the home I was feeling so used and unwanted. I went to the Matron and told her what happened. She washed my mouth out with soap and boxed my ears and told me that awful things would happen to me if I told any of the other kids. I was so scared and wanted to die. When the next school holidays came I begged not to be sent to that farm again. But they would not listen and said I had to.

I ran away from the home, I was going to try to find my family. It was impossible, I didn't even know where to go. The only thing was to go back. I got a good belting and had to kneel at the altar everyday after school for two weeks. Then I had to go back to that farm to work. The anguish and humiliation of being sent back was bad enough but the worse was yet to come.

This time I was raped, bashed and slashed with a razor blade on both of my arms and legs because I would not stop struggling and screaming. The farmer and one of his workers raped me several times. I wanted to die, I wanted my mother to take me home where I would be safe and wanted. Because I was bruised and in a state of shock I didn't have to do any work but wasn't allowed to leave the property.

When they returned me to the home I once again went to the Matron. I got a belting with a wet ironing cord, my mouth washed out with soap and put in a cottage by myself away from everyone so I couldn't talk to the other girls. They constantly told me that I was bad and a disgrace and if anyone knew it would bring shame to Sister Kate's Home. They showed me no comfort which I desperately needed. I became more and more distant from everyone and tried to block everything out of my mind but couldn't. I ate rat poison to try and kill myself but became very sick and vomited. This meant another belting.

After several weeks of being kept away from everyone I was examined by a doctor who told the

Matron I was pregnant. Another belting, they blamed me for everything that had happened. I didn't care what happened to me anymore and kept to myself. All I wanted now was to have my baby and get away as far as I could and try and find my family.

My daughter was born [in 1962] at King Edward Memorial Hospital. I was so happy, I had a beautiful baby girl of my own who I could love and cherish and have with me always.

But my dreams were soon crushed: the bastards took her from me and said she would be fostered out until I was old enough to look after her. They said when I left Sister Kate's I could have my baby back. I couldn't believe what was happening. My baby was taken away from me just as I was from my mother.

My baby was taken away from me just as I was from my mother.

Once again I approached the Matron asking for the Address of my family and address of the foster family who had my daughter. She said that it was Government Policy not to give information about family and she could not help me. I then asked again about my baby girl and was told she did not know her whereabouts. In desperation I rang the King Edward Memorial Hospital. They said there was no record of me ever giving birth or of my daughter Toni. Then I wrote to the Native Welfare Department only to be told the same thing and that there were no records of the D. family because all records were destroyed by fire.

I now had no other options but to find a job and somewhere to live. After working for a while I left Western Australia and moved to Adelaide to try and get my life together and put the past behind me. I was very alone, shy and not many friends and would break down over the simplest thing. Every time I saw a baby I used to wonder, could that by my little girl. I loved her and so desperately wanted her back. So in 1972 I returned to Western Australia and again searched for my family and child. I returned to see the Matron from Sister Kate's. This time she told me that my daughter was dead and it would be in my best interest to go back to South Australia and forget about my past and my family. I so wanted to find them, heartbroken I wandered the streets hoping for the impossible. I soon realized that I could come face to face with a family member and wouldn't even know.

Defeated I finally returned to Adelaide. In my heart I believed that one day everything would be alright and I would be reunited with my family. My baby was dead. (That's what I was told). I didn't even get to hold her, kiss her and had no photographs, but her image would always be with me, and I would always love her. They couldn't take that away from me.

Confidential submission 640, South Australia: WA woman removed in 1949. In January 1996, Millicent received an enquiry from the South Australian welfare authorities. A woman born in 1962 was searching for her birth mother. This was Toni, Millicent's daughter. The two have since been reunited.

> The general opinion of station people is that it is a mistake to take these children out of the bush. They say that the aboriginal mothers are fond of their children and in their own way look after them and provide for them and that when they grow up they are more easily absorbed and employed than those who have been taken out of their natural environment and removed to towns.

> The Mission Representatives say that if the girls are left in the bush they only became the prey of white men and become mothers at a very early age. My experience has been that removing them to towns and to institutions does not overcome this trouble and only accentuates and increases it (Chief Protector of Aboriginals to Commissioner of Public Works, 27 August 1932, documents provided by United Aborigines Mission evidence 264).

Early policies and practices

In 1836, just two years after South Australia was founded as a 'free colony' unlike the penal settlements of New South Wales or Van Dieman's Land, the Governor issued a proclamation promising to protect Aborigines 'who are to be considered as much under the safeguard of the law as the Colonists themselves, and equally entitled to the Privileges of British Subjects'. In the same proclamation the Governor also said he would promote 'their conversion to the Christian faith' (quoted by Gale 1964 on page 64).

A Protector was appointed soon after and land was reserved for Indigenous people. Under the *Aboriginal Orphans Ordinance 1844* the Protector was appointed legal guardian of 'every half-caste and other unprotected Aboriginal child whose parents are dead or unknown'. The same law allowed for the apprenticing of Indigenous children 'of a suitable age' with parental consent. It was used to place a number of teenage boys attending the Aboriginal School in Adelaide as apprentices with the Harbours Department, the Colonial Engineers Department, a tannery and a bricklayer and as messengers for the Governor. Aboriginal girls were placed in domestic service. However, in most cases the children left the apprenticeships to return to their families and the law fell into disuse.

In 1839 the 'Native Location' School for Aboriginal children was established, followed by several more such schools in the 1840s. All became boarding schools so as to maximise control over the children.

> The children's attendance is procured in various ways – some will come into the School because they prefer a regular supply of food to an irregular one and especially in the winter season; others are sent by the parents on condition that they receive a blanket for three months' attendance and others again are sent by the police if found begging about town. No healthy adult is entitled to receive a blanket on the Queen's Birthday unless he have a child in school (quoted by Mattingley and Hampton 1992 on page 100).

Despite the early attempts at protectionism, the pattern elsewhere of violence and

dispossession of Indigenous people repeated itself in South Australia. Matthew Moorhouse, Protector from 1839 until 1856, himself presided over a massacre of 30 Indigenous people in 1841. In 1856 the office of protector was abolished and by 1860 35 of the 42 reserves set aside for Aborigines had been leased to settlers.

From then until 1881 when another Protector was appointed, the protection of Indigenous people was left entirely to missionaries. The lack of government intervention gave the missionaries independence from the government but meant also that they received little contribution from it, apart from limited rations (primarily for the sick and old) and an annual ration of blankets (Rowley 1970 page 205). In this period no action was taken to control the depredations of pastoralists who removed children from their families and brutally put them into service as stockmen and servants.

> The Government effectively condoned the forcible removal of Aboriginal children from their families by its inaction (SA Government interim submission page 9).

Missions – 1850-1908

In the nineteenth century missionary activity was mainly concerned with establishing settled farming communities near the coast and in the fertile inland areas on reserved land: Poonindie, Point McLeay, Point Pearce and Koonibba. Schooling on these missions was designed to distance Indigenous children from their family and community influences.

> The reason why it is desirable to have boarders at all is, to withdraw the youth of the tribes from the contaminating and demoralizing influence of the vile practices carried on at the wurleys (George Taplin, Point McLeay, 1860, quoted by Mattingley and Hampton 1992 on page 100).

'Protection' – 1908-1939

In 1908 the government appointed Senior Constable W G South to the position of Protector. From the following year the general child welfare law, the *State Children's Act 1895*, was used to remove Indigenous children on the ground of 'destitution' or 'neglect'. A child could be deemed 'neglected' if he or she 'sleeps in the open air, and does not satisfy the Justices that he or she has a home or a settled place of abode' and 'destitute' if he or she has 'no sufficient means of subsistence … and whose relations are … in indigent circumstances and unable to support such a child'.

These definitions could easily be applied to children whose parents were nomadic, involved in seasonal (and therefore necessarily shifting) work or impoverished through loss of their land.

> … children should be committed to the care of the State Children's Council where they will be educated and trained to useful trades and occupations, and prevented from acquiring the habits and customs of the aborigines, and I feel sure they will as a rule, grow up useful, self-supporting members of the community, instead of developing into worse than useless dependants (Protector South, 1909, quoted by Mattingley and Hampton 1992 on page 157).

South lobbied for the power to remove Aboriginal children without a court hearing because the courts sometimes refused to accept that the children were neglected or destitute. In South's view all children of mixed descent should be treated as neglected.

The government responded by enacting the *Aborigines Act 1911* making the Chief Protector the legal guardian of every Aboriginal and 'half-caste' child with additional wide-ranging powers to remove Indigenous people to and from reserves. Under the Act family members could be separated from each other for disciplinary reasons.

> The [*Aborigines Act 1911*] ratified institutionalization as a way of life and confirmed the status of Nungas as 'inmates' whose affairs and families were to be controlled in every respect. It supported vested economic interests by developing reserves as enclaves of slave labour and provided a hidden subsidy to rural employers (Mattingley and Hampton 1992 page 45).

South did not use his new powers immediately. He continued instead to use the *State Children's Act 1895* because it allowed him to send Indigenous children to children's homes where the emphasis was on training them to be sent out to work from the age of 14 years. He was scathing in his criticism of missions which he believed were creating dependence upon charity as well as ignoring the needs of residents. South argued that the policy should be to 'look after and feed the full blooded Aborigines and train the half castes and quadroons' (quoted by SA Government final submission on page 9).

Royal Commission 1913

A Royal Commission was established in 1913 'to inquire into and report upon the control, organisation and management of institutions … set aside for the benefit of Aborigines'.

There was discussion about the appropriate age at which children of mixed descent should be taken from their families. The Secretary of the State Children's Council argued that they should be taken away as soon as they are born. 'If they are in the wurley for a week it is bad for them, but it is fatal for them to remain there a year' (quoted by Mattingley and Hampton 1992 on page 160).

Professor Stirling from the University of Adelaide, on the other hand, argued that the best time to take Aboriginal children was when they were about two years old.

> The more of those half-caste children you can take away from their parents and place under the care of the State the better … When they are a couple of years of age they do not require so much attention and they are young enough to be attractive.

> I am quite aware that you are depriving the mothers of their children, and the mothers are very fond of their children; but I think it must be the rising generation who have to be considered. They are the people who are going to live on (quoted by Mattingley and Hampton 1992 on page 160).

The Royal Commission also heard protests against forcible removals.

> In regard to the taking of our children in hand by the State to learn trades etc., our people would gladly embrace the opportunity of betterment … but to be subjected to complete alienation from our children is to say the least an unequalled act of injustice, and no parent worthy of the name would either yield to or urge such a measure (Matthew Kropinyeri quoted by Mattingley and Hampton 1992 on page 119).

The Royal Commission's final position favoured 'assimilation', as it later became known, in preference to segregation, at least for people of mixed descent.

> … with the gradual disappearance of full blood blacks, the mingling of the black and white races and the great increase in the number of half castes and quadroons, the problem is now one of assisting and training the native to become a useful member of the community, not dependent on charity, but upon his own efforts (quoted by SA Government final submission on page 9).

As recommended by the Royal Commission the government took control of the missions at Point Pearce and Point McLeay. A decade later the *Aborigines (Training of Children) Act 1923* was enacted specifically to allow Indigenous children to be 'trained' in a children's institution and sent out to work. Any Indigenous child could be committed to any child welfare institution and once committed could be dealt with *as if* 'neglected' under the *State Children's Act 1895*, which meant that the child could be apprenticed. The removal of a non-Indigenous child required a court finding of 'neglect' or 'destitution'. The 1923 Act dispensed with this requirement for Indigenous children. This was justified on the basis that it was less traumatic for Indigenous children.

> The procedure is very simple, and is in no way analogous to the judicial proceeding whereby neglected or convicted children are put under the control of the State Children's Council. There is no publicity in the proceeding under the Bill, merely the execution of a document after an agreement has been reached between the Protector and the Council as to the transfer of the particular child (second reading speech, Hansard 17 October 1923 page 902, quoted by SA Government final submission on page 13).

The 1923 Act was vehemently opposed by Aboriginal families who petitioned the government. In 1924 a magazine editor condemned the practice of child removal.

> There is not and never should be occasion for the Children to be taken away from their parents and farmed out among white people (J C Genders, editor of *Daylight* (magazine), 1924, quoted by Mattingley and Hampton 1992 on page 187).

The protests met with some success. The operation of the Act was suspended in 1924. The South Australian Government told the Inquiry that it has been unable to confirm whether the Act was subsequently revived, although indications are that it was (SA Government final submission on page 12). The administrative removal power in the 1923 Act was re-enacted in the *Aborigines Act 1934*.

In 1936 David Unaipon spoke on the steps of the SA Parliament House and was quoted in the *News*.

> We have been for nearly a century under a Chief Protector. Some of the men who have held that office have acted as 'protector' of the Government (quoted by Mattingley and Hampton 1992 on page 57).

Missions

In the 1920s a 'second wave' of missionary activity began in South Australia. In 1924 the United Aborigines Mission (UAM) opened its first mission at Oodnadatta. The mission incorporated a school and a cottage for children. In 1926 the mission moved to Quorn where it became known as the Colebrook Children's Home. The UAM went on to establish missions at Swan Reach (which was later moved to Gerard and taken over by the Government in 1961-2), Nepabunna, Ooldea and Finniss Springs.

The children taken into Colebrook included some who were placed there by their traditional mothers or non-Indigenous fathers because that parent was unable to care for them, those who had been taken from their families by non-Indigenous people to work for them and then ejected when their services were no longer wanted and children who were forcibly removed by government officials. In 1944 the Colebrook Home moved to Adelaide where it remained until it closed in 1981. From shortly after it opened until 1952 it was managed by Matron Ruby Hyde and Sister Rutter. 'They *were* Colebrook. Those kids went through hell on earth after they had gone' (quoted by Mattingley and Hampton 1992 on page 216).

The UAM reviewed the role of Colebrook in a submission to the Inquiry.

> I don't believe that mission personnel were involved in the forceful removal of children from their homes or in any way sought to bring pressure to bear on the parents … The people who established this home were single lady missionaries … They tell us they saw a desperate need and they responded to it without government funding or support. They sought to provide love, care and shelter and in some cases refuge to children who they saw as being vulnerable to harm … When the very persons who were their only recourse to protection brought Aboriginal children to them, they were hardly in a position to refuse to take them in.

> The missionaries who worked in this home over the years sought to provide Aboriginal children with an education and with the skills they felt the children would need to make their own way in an ever-expanding society dominated by non-Aboriginal culture. Some will say they were wrong in doing this but we believe it must be acknowledged that their desire was to do good and not harm (evidence 264 pages 228-9).

Assimilation – 1936-1962

The definition of an Aboriginal person was broadened in 1939 to include anyone 'descended from the original inhabitants of Australia'. An exemption system was introduced at the same time to allow Indigenous people, who 'by reason of their character, standard of intelligence, and development are considered to be capable of

living in the general community without supervision', to escape the application of the Act and the control of the Aborigines' Protection Board.

An exemption certificate entitled the holder to open a bank account, receive certain Commonwealth social service benefits, own land and purchase alcohol. All of these were denied to Indigenous people under the Act. On the other hand, holders of exemption certificates were not allowed to live with their families on reserves and even had to apply for permission to visit them. People could be stopped at any time by the police and required to show their certificates as proof of their 'status'. Exempt families remained vulnerable to the removal of their children, although for them a court hearing was necessary under general child welfare legislation.

> **Dad and Mum moved down to town. When they moved down to Adelaide things seemed to go wrong … The inevitable come when Mum and Dad split up and Mum went back to her Homelands. But because we were light-skinned kids [the manager] told Mum she had to leave [the mission at Point McLeay known as 'Raukken'] and take us with her. I was about 5 or 6, something like that. Sooner or later you got caught up with [the welfare] because we didn't have anywhere else to go. But they made it that Mum had to leave Raukken with us. When she went back to town, there was no support of any sort. So she was told to take us to the courthouse. We had to appear in court. That was their job, to take light-skinned kids. Actually they told Mum to come back on a day to the courthouse when it was going to be heard and I think they told her 2 days wrong. When she come back we had already been committed as wards of the State. Same as they stamp on everyone – neglect.**
>
> *Confidential submission 284, South Australia: woman removed in the early 1940s along with her two sisters.*

The system put Aboriginal families in a double-bind. If they wanted to receive Commonwealth social security benefits to assist them care for their children, they had to leave their homes and extended family on the missions.

'Assimilation' was not formally adopted as a policy by the Aborigines Protection Board until 1951. From the 1940s, however, assimilation was practised in all but name. It took the form of dispersal, moving people off the reserves where they had lived regulated lives to cities and towns. Dispersal had high social costs. Indigenous people who moved from the reserves found themselves financially struggling, isolated and discriminated against. Families found every aspect of their lives monitored and assessed against non-Indigenous standards that discriminated against them. People who were under the control of the Board (non-exempt) were regularly visited by Board officials. Those who were exempt ran up against the Board whenever they sought contact with their non-exempt families. With this ever-present level of intrusion, the numbers of children removed from their families as 'neglected' or 'destitute' increased.

> **They reckon we were starving which was not true because my mother never drink in her life. She had to stay with us and looked after [us], feed and wash us. Just because Mum was not married, they wanted to take us away. Really we were taken away for nothing.**

Confidential submission 112, South Australia: man removed in the 1950s along with 3 siblings and 4 cousins after welfare determined they were neglected.

In 1956 the relationship between the Aborigines Protection Board and the Children's Welfare and Public Relief Board was redefined.

a) The part Aboriginal, whether exempted or not, who is living a fully independent life, earning and paying taxes, should be accepted into our community life. Neglected or destitute children from this group should be subject to the same court orders as other children and should continued to be placed, when necessary, in our departmental institutions with white children.

b) All other destitute or neglected Aboriginal or part Aboriginal children should continue to be the responsibility of the Aborigines Protection Board. In some cases, eg myall Aborigines living a tribal life etc it would be unthinkable to remove the children from their parents. In others, it seems hardly right to expect this Department to admit these children into departmental institutions when it has no power or authority in the matter of improving their usual living conditions (quoted by SA Government final submission on page 19).

People removed remember a less cautious and less progressive approach.

I came into welfare care at 6 weeks of age when an officer of the [Department of Child Welfare] deemed my mother physically abusive towards me due to the fact of bruising on my body. This was not bruising it is what is known – and little known at that – as mongolian black spots. Many non-caucasian babies have this birthmarking … In fact nothing was wrong with me I was not malnourished, unhappy, retarded or unclean … I was back and forth from my mother to welfare until I was about 3 … I was relinquished by my natural mother at 6 years old to be adopted by my foster family.

Confidential submission 851, South Australia.

I grew up Oodnadatta area…with my grandmother and she would see the missionary coming … she would run away with me. She would keep running away and the police … would come sometimes and shoot the dogs and that and my grandmother would run in the creek and hide me away till about really dark and come back home … I might [have] been about 10 or 11 years … we seen one missionary coming … one of my auntie roll me up like a swag sort of thing, you know, and hid me away…but I must have moved and he got me out and he said to me 'I'll give you a lolly and we'll go for a ride, go to Oodnadatta' … they put me on a train and my grandmother was following the train – she was running behind the train, singing out for me … then I was singing out 'I'll be back', I thought I was going for a holiday or something.

Confidential evidence 382, South Australia: woman removed from her grandmother's care in the 1960s. She was never informed of the grounds for her removal.

The 1951 Commonwealth-State conference at which the assimilation policy was further articulated spurred the South Australian Government to take action aimed at

assimilation. State schools were opened to Aboriginal children and Aboriginal parents were urged to send their children to secondary schools. In many cases the children had to live away from home to attend secondary school, often in children's homes in Adelaide.

In 1954 the Aborigines' Protection Board began placing Indigenous children in non-Indigenous foster homes in preference to institutional care. Some of these children came from reserves such as Point McLeay and Point Pearce, others from the 'shanty towns' in country areas and the remaining few were from traditional communities in the far north or west of the State (Gale 1968 page 8).

'The welfare'

The Board's guardianship of all Indigenous children was repealed by the *Aboriginal Affairs Act 1962*. However, the numbers of Indigenous children being removed for reasons of lifestyle and poverty under the general child welfare law did not decrease (SA Government interim submission page 18).

The new Department of Aboriginal Affairs favoured placement of removed children in hostels and institutions 'for the development of a positive Aboriginal identity' (SA Government interim submission on page 12). It was not until 1967 that Indigenous children were fostered with Indigenous families. In that year 157 Indigenous children were in non-Indigenous foster homes, 123 in hostels or institutions, 29 with Indigenous families and 6 in 'medical facilities' (SA Government interim submission page 18). Many were adopted by non-Aboriginal people.

In 1972 the *Community Welfare Act* established the Department of Community Welfare and the separate legislation relating to Indigenous people was repealed. Despite the policy emphasis of the department on promoting the family relationship, a disproportionate number of Indigenous children continued to be removed from their families as 'neglected'.

> Professional and organisational attitudes were at times slow to change. It was still possible for an Aboriginal child to be removed from his or her home because there was insufficient food in the house. Prevailing attitudes did not allow the provision of food, money and other material assistance as a family support measure to help prevent the removal of children (SA Government interim submission page 14).

After the Federal Government took responsibility for Aboriginal affairs in 1973, the State welfare department functioned as the regional office of the federal Department of Aboriginal Affairs while retaining responsibility for providing welfare services to Aboriginal people.

Role of AICCAs

In 1978 the South Australian Aboriginal Child Care Agency ('ACCA') was established 'to have an input into issues surrounding Aboriginal child welfare and to attempt to redress the injustices that were occurring within the government welfare field' (ACCA submission 347 page 10). Of particular concern was the provision of culturally appropriate (and preferably Indigenous) alternative care. At the same time the department

tried to place all Indigenous children who were unable to live with their own family with other Indigenous families and to de-institutionalise its care programs (SA Government interim submission on page 14).

In the *Community Welfare Amendment Act 1982* cultural considerations were explicitly mentioned for the first time.

> … in recognition of the fact that this State has a multi-cultural community, the Minister and the Department shall, in administering this Act, take into consideration the different customs, attitudes and religious beliefs of the ethnic groups within the community (section 10(4)).

In 1983 the Aboriginal Child Placement Principle became the official policy of the welfare department. However, in the same year there were still more Indigenous children in non-Indigenous foster placements than in Indigenous placements (SA Government interim submission page 19). The Principle was incorporated in the *Adoption Act 1988* and the *Children's Protection Act 1993.*

Fiona

1936 it was. I would have been five. We went visiting Ernabella the day the police came. Our great-uncle Sid was leasing Ernabella from the government at that time so we went there.

We had been playing all together, just a happy community and the air was filled with screams because the police came and mothers tried to hide their children and blacken their children's faces and tried to hide them in caves. We three, Essie, Brenda and me together with our three cousins … the six of us were put on my old truck and taken to Oodnadatta which was hundreds of miles away and then we got there in the darkness.

My mother had to come with us. She had already lost her eldest daughter down to the Children's Hospital because she had infantile paralysis, polio, and now there was the prospect of losing her three other children, all the children she had. I remember that she came in the truck with us curled up in the foetal position. Who can understand that, the trauma of knowing that you're going to lose all your children? We talk about it from the point of view of our trauma but – our mother – to understand what she went through, I don't think anyone can really understand that.

It was 1936 and we went to the United Aborigines Mission in Oodnadatta. We got there in the dark and then we didn't see our mother again. She just kind of disappeared into the darkness. I've since found out in the intervening years that there was a place they called the natives' camp and obviously my mother would have been whisked to the natives' camp. There was no time given to us to say goodbye to our mothers.

From there we had to learn to eat new food, have our heads shaved. So one day not long after we got there my cousin and I … we tried to run back to Ernabella. We came across the train. We'd never seen a train before and it frightened the hell out of us with the steam shooting out. So we ran back to the mission because that was the only place

of safety that we knew. She was only four and I was only five.

Then we had to learn to sleep in a house. We'd only ever slept in our wilchas and always had the stars there and the embers of the fire and the closeness of the family. And all of a sudden we had high beds and that was very frightening. You just thought you were going to fall out and to be separated. There was a corridor and our cousins were in another room. We'd never been separated before. And the awful part was we had to get into that train later on with one little grey blanket and go down to Colebrook … a matter of weeks after. From that time until 1968 I didn't see [my mother]. Thirty-two years it was.

[I stayed at Colebrook] till 1946 [when] I was fourteen or fifteen. We were trained to go into people's home and clean and look after other people's children. I went to a doctor and his wife. They were beautiful people. I stayed with them a couple of years.

I guess the most traumatic thing for me is that, though I don't like missionaries being criticised – the only criticism that I have is that you forbad us to our speak our own language and we had no communication with our family. We just seemed to be getting further and further away from our people, we went to Oodnadatta first, then to Quorn next, then when there was a drought there we went to Adelaide and went out to Eden Hills and that's where we stayed till we went out to work and did whatever we had to do.

I realised later how much I'd missed of my culture …

I realised later how much I'd missed of my culture and how much I'd been devastated. Up until this point of time I can't communicate with my family, can't hold a conversation. I can't go to my uncle and ask him anything because we don't have that language …

You hear lots and lots of the criticisms of the missionaries but we only learnt from being brought up by missionaries. They took some of that grief away in teaching us another way to overcome the grief and the hurt and the pain and the suffering. So I'm very thankful from that point of view and I believe that nothing comes without a purpose. You knew that in those days there was no possibility of going back because cars were so few and far between and the train took forever to get anywhere so how could a five year old get back to the people.

I guess the government didn't mean it as something bad but our mothers weren't treated as people having feelings. Naturally a mother's got a heart for her children and for them to be taken away, no-one can ever know the heartache. She was still grieving when I met her in 1968.

When me and my little family stood there – my husband and me and my two little children – and all my family was there, there wasn't a word we could say to each other. All the years that you wanted to ask this and ask that, there was no way we could ever regain that. It was like somebody came and stabbed me with a knife. I couldn't communicate with my family because I had no way of communicating with them any longer. Once that language was taken away, we lost a part of that very soul. It meant our

culture was gone, our family was gone, everything that was dear to us was gone.

When I finally met [my mother] through an interpreter she said that because my name had been changed she had heard about the other children but she'd never heard about me. And every sun, every morning as the sun came up the whole family would wail. They did that for 32 years until they saw me again. Who can imagine what a mother went through?

But you have to learn to forgive.

Confidential evidence 305, South Australia.

> The removal of the children from Wave Hill by MacRobertson Miller aircraft was accompanied by distressing scenes the like of which I wish never to experience again. The engines of the 'plane are not stopped at Wave Hill and the noise combined with the strangeness of an aircraft only accentuated the grief and fear of the children, resulting in near-hysteria in two of them. I am quite convinced that news of my action at Wave Hill preceded me to other stations, resulting in the children being taken away prior to my arrival.
>
> I endeavoured to assuage the grief of the mothers by taking photographs of each of the children prior to their departure and these have been distributed among them. Also a dress length was given [to] the five mothers. Gifts of sweets to the children helped to break down a lot of their fear and I feel that removal by vehicle would have been effected without any fuss (report from patrol officer, 23 December 1949, quoted by *Between Two Worlds* on page 55).

Occupation of the Territory

In 1863 the area now known as the Northern Territory came under the control of South Australia. By 1903 the whole area was leased to non-Indigenous people. As there were few non-Indigenous women, relationships between the Indigenous women and non-Indigenous men were relatively common. The consequence was a growing population of children of mixed descent who were usually cared for by their mothers within the Aboriginal community.

As in other parts of Australia Indigenous people were brutally dispossessed. Forced off their land they moved to pastoral stations or to the edges of non-Indigenous settlement. The stations depended upon the labour of Aborigines but paid barely subsistence wages in the knowledge that Aboriginal people had few other choices. Although a part-time protector was appointed by the South Australian Government in 1864, 'there was a general lack of concern for the welfare of Aborigines in the Territory' (SA Government interim submission page 16).

Apart from the Hermannsburg mission on the Finke River in central Australia, the difficulties in accessing the region effectively deterred the establishment of missions in the Northern Territory until the twentieth century.

The Hermannsburg mission was founded by Lutheran missionaries in 1877 and continued until 1982 when the lease on the land was finally surrendered and the land returned to Aboriginal people. Shortly after arriving, the missionaries gathered the Aboriginal children daily for schooling, with the promise of rations afterwards.

Protection and segregation – 1890-1937

By the 1890s the presence of pale-skinned Indigenous children within the Aboriginal communities and the sexual exploitation of young Indigenous girls by non-Indigenous men were matters of public concern. In response the Government Resident sought to take these children away from the communities in which they were living and place them in the care of missions.

From 1899 the Protector of Aborigines for the Northern Territory, Frederick

Goldsmith, argued for the establishment of an industrial school. Although the *Aboriginals Ordinance 1844* (SA) allowed for the apprenticing of 'orphan' and 'half-caste' Aboriginal children, these children tended to run away (Austin 1993 page 36).

By 1909 the 'half-caste' population of the Northern Territory was estimated at 200, of whom one-third were females of child-bearing age (Austin 1993 page 36). Darwin's European population then numbered about 300. The fact that Aboriginal girls often became pregnant at a young age and bore a relatively large number of children compared to non-Indigenous females raised fears among non-Indigenous people that 'half-castes' would soon be in the majority. For Dashwood's successor as Government Resident, C E Herbert (1905-10), the answer lay in establishing a reserve on which all people of mixed descent could be confined.

Legislation 1910, 1911

The *Northern Territory Aboriginals Act 1910* established the Northern Territory Aboriginals Department 'to provide, where possible, for the custody, maintenance and education of the children of Aboriginals'. Under this Act the Chief Protector was appointed the 'legal guardian of every Aboriginal and every half-caste child up to the age of 18 years', whether or not the child had parents or other living relatives. The Chief Protector was also given power to confine 'any Aboriginal or half-caste' to a reserve or Aboriginal institution.

Just a few weeks after the passage of the 1910 Act the Commonwealth took control of the Territory and enacted the *Northern Territory Aboriginals Ordinance 1911*. The Chief Protector was further empowered to assume 'the care, custody or control of any Aboriginal or half caste if in his opinion it is necessary or desirable in the interests of the Aboriginal or half caste for him to do so'. These powers were retained until 1957.

Spencer report

Following a 12 month posting as Chief Protector in 1912, Professor Walter Baldwin Spencer reported,

> No half-caste children should be allowed to remain in any native camp, but they should all be withdrawn and placed on stations. So far as practicable, this plan is now being adopted. In some cases, when the child is very young, it must of necessity be accompanied by its mother, but in other cases, even though it may seem cruel to separate the mother and child, it is better to do so, when the mother is living, as is usually the case, in a native camp (quoted by Australian Labor Party submission 840 on page 5).

In town areas, Spencer argued, compounds should be established to contain all the Aboriginal people. They would be required to undertake agricultural work to make their compound self-sufficient. In rural areas, stations were to be established under the control of a Superintendent. Their aim would be to train the residents in industrial work, such as carpentry, agriculture and stock work for males and domestic work and gardening for females. Removed from Aboriginal people of full descent they would be schooled, trained and encouraged to marry other 'half-castes'.

Kahlin Compound and The Bungalow

Kahlin Compound was established outside Darwin in 1913. The training the

children received ‘involved little more than doing the jobs needed to keep the Home and its inmates clean and orderly; occasionally some needlework was taught’ (Austin 1993 page 54). ‘The boys were quite free as far as the reserve was concerned but the girls had to be locked up in dormitories like birds in a cage’ (quoted by Austin 1993 on page 58). At 14 years the children were sent out to work.

In 1914 an Aboriginal woman, Topsy Smith, arrived in Stuart (as Alice Springs was known until 1933) with her seven mixed descent children following the death of her husband. The local Protector, Sergeant Stott, to whom the Chief Protector’s guardianship and removal powers were delegated, obtained approval for the erection of an iron shed, which came to be known as ‘The Bungalow’, on land adjoining the police station. The practice began of removing light-skinned children from Aboriginal camps and placing them under the care of Topsy Smith.

Bungalow matron, Ida Standley (1916-29), was firmly of the view that the children needed to be kept away from their families. ‘What it takes us five years to build up is undone by the black influence in 5 minutes’ (quoted by Austin 1993 on page 62). But in fact the conditions under which the children were kept encouraged proximity with their families: lack of room in the small sheds meant that they slept in the open; lack of food meant that they went out searching for it and depended upon family and friends to bring them food from the bush.

1918 Ordinance

The *Aborigines Ordinance 1918* extended the Chief Protector’s control over Indigenous people even further. Aboriginal females were under the total control of the Chief Protector from the moment they were born until they died unless married and living with a husband ‘who is substantially of European origin’. To marry a non-Indigenous man they had to obtain the permission of the Chief Protector. They could be taken from their families at any age and placed in an institution. They could be sent out to work at a young age and never receive wages. They had no right of guardianship over their own children who could be similarly taken from them. Male Aborigines fared little better except that they could be released from guardianship at 18.

During the 1920s the pace of forcible removals increased, leading to severe overcrowding in Kahlin Compound and The Bungalow. The Methodist Missionary Society indicated it was prepared to take the mixed descent children from the Kahlin Compound, where they still had some contact with their family, to its mission on Goulburn Island.

This proposal threatened the availability of cheap domestic labour from the Compound and was opposed by Darwin residents. To accommodate employers a government house just outside the Compound was taken over in 1924 for the girls and the younger boys and became known as the Half-Caste Home. Compound families were thereby separated.

By 1928 overcrowding at the Half-Caste Home had reached a critical level with 76 inmates living in ‘house large enough for only one family’ (Cummings 1990 page 20). In 1931 the boys were moved to Pine Creek to relieve the pressure on the Home.

At The Bungalow in the 1920s about 50 children and 10 adults lived in the three exposed sheds, crowding together on the floor to sleep at night, eating the meagre meals provided on the ground.

> **There's where food was scarce again. Hardly anything … night time we used to cry with hunger, y'know, lice, no food. And we used to go out there to the town dump … we had to come and scrounge at the dump, y'know, eating old bread and smashing tomato sauce bottles and licking them. Half of the time our food we got from the rubbish dump. Always hungry there.**

> **That's another thing – culture was really lost there, too. Because religion was drummed into us, y'know, when we'd be out there and we'd have knuckle-up and that, we were that religious we'd kneel down in prayer … We had to pray every time you swear or anything, you'd go down on your hands and knees … they pumped that religion into us.**
>
> *Confidential evidence 549, Northern Territory: man removed to Kahlin Compound at 3 years in the 1930s; subsequently placed at The Bungalow.*

> It is more than a scandal. It is a horror. The best that can be said of it is that it is reasonably clean, but that is the fault of its mistress and not of the Commonwealth Government and of those Federal Ministers and members who let it remain as a blot on Australia … At night the doors cannot be locked. Inevitable trouble results. Residents of Central Australia a hundred miles from Alice Springs told me that the place was a moral cesspit, and if the stories which they related were only an eighth true … they would make the whole community recoil with horror if they could be repeated … At the Alice Springs bungalow the appearance of everybody and everything convicts the Home and Territories Department of the progressive destruction of 50 young promising human lives and souls (newspaper report 1924, quoted by Markus 1990 page 26).

Yet for some mothers with their children, confinement in The Bungalow at least offered the chance of survival. From 1924 to 1929 central Australia suffered one of the worst droughts on record. Aboriginal people in search of food who came too close to land controlled by non-Indigenous people were liable to be shot. Curable diseases caused blindness, misery and death.

The Commonwealth Government cast about for measures to relieve the overcrowding in the institutions and to remove mixed descent children more completely from Indigenous influence. The South Australian Government was asked if it would accept the children but declined claiming that it had no suitable institutions for such young children and that 'it would introduce an undesirable element in the population' (quoted by Markus 1990 on page 28). Nevertheless, older mixed descent girls from the Northern Territory were welcome in South Australia as domestics during the 1920s owing to a shortage of labour there.

The conditions at The Bungalow reached crisis point in 1928. It was decided to move the 45 children (37 of whom were under the age of 12) to a temporary 'home' at Jay Creek, 45 kilometres west of Alice Springs. Another 90 living with their families and on cattle stations were targeted for removal to a new home if they had not been 'too long with nomadic blacks to be desirable inmates' (quoted by Australian Labor Party submission 840 on page 16).

At Jay Creek the superintendent and matron lived in two tents while the children were housed in a corrugated iron shed where they suffered from a severe shortage of water, extreme cold in winter and lack of protection from the rain when it came. In 1932 the Bungalow children at Jay Creek were moved yet again, on foot, to the cheaply refurbished former telegraph station at Temple Bar, 11 kilometres from Alice Springs. In 1933 they were joined in Central Australia by most of the boys from Pine Creek in the Top End. By 1935 132 children lived at The Bungalow.

Bleakley report

In 1927 the Commonwealth Government, responding to pressure from the Association for the Protection of Native Races, set up an inquiry under J W Bleakley, the Queensland Chief Protector of Aborigines, into its administration of Aboriginal affairs in the Territory. In his 1929 report Bleakley estimated that the Aboriginal population of the Northern Territory was about 21,000 people, including about 8,000 'half-castes'. He found that many Aborigines were not being paid wages, their living conditions were appalling, Aboriginal children were not being schooled and the institutions run by the government 'were badly situated, inadequately financed and insufficiently supervised' (Franklin 1976 page 121). Bleakley, however, was impressed with the work of the missions.

Bleakley proposed that all illegitimate 'half-castes' under the age of 16 years be placed in government-subsidised mission homes for education and vocational training. He proposed that children be sent to different mission institutions according to their proportion of 'European blood'.

Chief Protector Cook 1927-39

In 1927 Dr Cecil Cook was appointed Chief Protector and Chief Medical Officer. He was the first full-time Chief Protector since 1914. Cook was preoccupied with the continuing increase in the numbers of mixed descent children, foreseeing 'a danger that half-castes would become a numerically preponderant under-class, in conflict with the white population of the north' (Markus 1990 page 92). Cook's solution was similar to that proposed by Chief Protector Neville in WA, namely, the absorption of people of mixed descent.

> Generally by the fifth and invariably by the sixth generation, all native characteristics of the Australian aborigine are eradicated. The problem of our half-castes will quickly be eliminated by the complete disappearance of the black race, and the swift submergence of their progeny in the white … The Australian native is the most easily assimilated race on earth, physically and mentally (quoted by Markus 1990 on page 93).

Removal of children from their families was the way to achieve this end.

> Children are removed from the evil influence of the aboriginal camp with its lack of moral training and its risk of serious organic infectious disease. They are properly fed, clothed and educated as white children, they are subjected to constant medical supervision and in receipt of domestic and vocational training (quoted by Markus 1990 on page 98).

Unlike Bleakley, Cook was fervently opposed to mission involvement. He felt that the different approaches of the various missions created the potential for disparate treatment of 'half-castes' and could jeopardise his vision of genetically engineered

future ‘absorption’. He wanted to close existing missions where they did not conform to his standards for diet, accommodation and sanitation.

Nevertheless, he agreed with Bleakley that ‘quadroon’ (‘quarter-caste’) and ‘octoroon’ (one-eighth Indigenous descent) children should be treated differently to promote their chances of absorption. To that end school-aged ‘quadroon’ girls in the north were sent to board at Darwin Convent. With no convent in Alice Springs, paler skinned girls stayed at The Bungalow but were expected to marry non-Indigenous men. Cook discontinued the practice of sending ‘half-caste’ children south for work.

The Bleakley report was discussed at conferences in 1929 and 1930. In the Depression climate of cost-cutting his proposals to spend more on Indigenous people were unwelcome to the government. Ultimately Cook’s views prevailed and the Half-Caste Home and The Bungalow continued under government control as previously with no improvements.

In the 1930s an Aboriginal group emerged called the Northern Territory Half-Caste Association. It successfully lobbied for the introduction of an exemption system in an amendment to the *Aboriginals Ordinance* in 1936. According to this amendment a ‘half-caste’ could be declared ‘not a half-caste’ and thereby not subject to the 1918 Ordinance, although the declaration could be revoked at any time.

> In the Northern Territory, half-caste aliens constitute a perennial economic and social problem and their multiplication throughout the North of the continent is likely to be attended by grave consequences to Australia as a nation (1938 NT Administrator’s Report quoted by Cummings 1990 page 16).

By the late 1930s the Temple Bar premises were in a state of collapse.

> I went carefully through this building this week and to use entirely unofficial language, the whole place stinks and is in exceedingly bad condition (Administrator C L Abbott quoted by Markus 1990 on page 36).

Conditions at the Half-Caste Home were little better. There was never enough food.

> The porridge, cooked the day before, already was sour and roped from the mould in it, and when doused with the thin milk, gave up the corpses of weevils by the score. The bread was even worse, stringy grey wrapped about congealed glue, the whole cased in charcoal. The tea had most of the leaves floating on top (former Acting Superintendent, Xavier Herbert, quoted by Austin 1993 on page 178).

The widow and son of an Anglican parish priest who visited The Bungalow during the 1930s told the Inquiry,

> … there was an air of gloom and repression about the place and the children were sad, silent and sullen. There was no laughter and it was a slow process to gain the confidence of the children … The children and their mothers were frightened to say anything and had not the wherewithal to cope with the problems. Eventually one of the older girls plucked up enough courage to smuggle out a letter of complaint which came to the notice of the authorities …

> On receipt of the letter the superintendent was immediately dismissed and left Alice Springs overnight.

> Girls of all ages from babies to adolescents slept in one dormitory that was poorly ventilated. There were rows of three tiered beds. Such cramped conditions led to all sorts of emotional and developmental pressures on those subject to them. The boys slept in a separate dormitory under similar circumstances.

> The advent of a new superintendent changed things markedly. The general situation improved … [but] the children took a long time to recover from the repressive treatment (Mrs Isabelle and Mr John Smith evidence 7).

Missions

By the early 1930s there were seven missions operating in the Northern Territory, most of them around the northern coast. Together they claimed to be caring for 1,100 Aborigines by the late 1920s and in contact with a further 1,300 (Markus 1990 page 69). The brutality that characterised the non-Indigenous occupation of parts of the Northern Territory meant that the missions were often the only place of sanctuary.

Typically, the children were housed in dormitories, attended school daily and undertook work around the mission.

> One [dormitory], measuring 22 feet by 12 feet is used as a sleeping room for about 25 boys. It has three small barred windows and a small closet at one end. The floor is sanded, and on this the boys sleep with a bluey between each two of them. They are locked in at sundown and released at 8 o'clock in the morning. The other is somewhat larger, and has a verandah closed in with strong pickets round two sides and a closet at the end. There are six small windows, two of them opening on to the closed-in verandah. The floor of this is also sanded, and on it about 30 girls sleep. The hygienic state of these dungeons during the extremely hot summer nights can better be imagined than described. The sand is renewed once every two weeks, which is quite necessary (description of the dormitories on the Hermannsburg mission in 1923, quoted by Markus 1990 page 82).

Contact with family and community was discouraged. The Church Missionary Society (CMS) which founded the Roper River mission in 1908 told the Inquiry that it treated children of full descent and children of mixed descent separately in accordance with the prevailing views of the day. In 1924 all Roper River children of mixed descent were removed to Groote Eylandt.

> Several of these children in later adult years recalled the sorrow of that separation. CMS, however, saw what they were doing as creating some positive opportunities for these children. None of these separations were permanent. Their mothers visited them on Groote Eylandt, and some spent school holidays and other times with their mothers at the Roper River Mission (Church Missionary Society submission 453 page 3).

The missions received little government funding until the mid-1930s which made it very difficult for them to provide dispossessed Aboriginal people with sufficient food or water.

> The stated intentions of the mission were to protect Aboriginal people from exploitation and murder, to bring the Christian faith, and to provide European education and vocational training. Right from the outset, CMS was concerned about the obligations which the then South Australian government might place upon them if government funding was accepted. The first missionaries told the Premier that they 'did not care to devote their lives to training cheap labour' (Church Missionary Society submission 453 pages 1-2).

After 1936 more money was forthcoming but it was still grossly inadequate. The Commonwealth was generally reluctant to spend more than the absolute minimum possible on Aboriginal people in the Territory. In addition some officials, notably Spencer and Cook, viewed missionary activity with contempt.

> [T]he philosophy of Croker [was] 'a place where children could be saved from the destructive forces of Territory society'. The Territory society at that time [1939-1941] was a pretty rough place from the perspective of missionaries, and there was often conflict between traders and missionaries (Rev. Bernie Clarke evidence 119).

Disease was prevalent at the missions. At Hermannsburg many children died from whooping cough in the late 1920s after those initially infected were not isolated. At Oenpelli the children's eyesight was endangered by insufficient light in the classroom. At Groote Eylandt almost 50% of one generation of people of 'mixed descent' suffered from leprosy due, according to Chief Protector Cook, to 'low resistance following years of improper feeding' (quoted by Markus 1990 page 87). Such conditions confirmed Cook's low regard for the caring capacity of the missions.

Assimilation – 1937-1973

Some of the complaints about the Half-Caste Home and the Bungalow came before the 1937 Commonwealth-State conference. Although Cook refuted the content of those complaints, he did concede that there were some legitimate concerns. He presented a picture of the Northern Territory in a few years into the future when the 'half-caste' population was numerically as great as the non-Indigenous population and threatening their power. To avoid this scenario 'everything necessary [must be done] to convert the half-caste into a white citizen' (quoted by Austin 1993 on page 198).

McEwen's New Deal

In 1937 John McEwen was appointed Minister of the Interior. He was determined to raise the profile of his portfolio and show the Commonwealth to be leading the way in the field of Aboriginal affairs. For example, he wanted his field staff educated in anthropology and law. He visited the Territory shortly after his appointment and was shocked by conditions at The Bungalow and the Half-Caste Home in Darwin.

> I know many stock breeders who would not dream of crowding their stock in the way that these half-caste children are huddled (quoted by Australian Labor Party submission 840 on page 13).

In 1939 McEwen announced his 'New Deal' based on greater government control over people of mixed descent, with the exception of those sufficiently versed in non-Indigenous ways to apply for an exemption.

Cook's policy of biological absorption was displaced by economic and social assimilation. Education of 'half-castes' to the 'full white standard' received more attention. Children of mixed descent were to be removed to government institutions where 'up to a certain age, the children of both sexes would be given the care necessary for young children and certain elementary education' (quoted by Austin 1993 on page 203). The missions would take an expanded role as the inculcation of Christian 'moral values' was seen as a way of promoting assimilation.

'Quadroons' and 'octoroons' were to be institutionalised separately, either in the Territory or inter-State. A new compound was constructed urgently at Darwin, the Bagot Aboriginal Reserve. In 1939 the inmates of the Half-Caste Home were transferred there to join those from Kahlin Compound. The move angered McEwen.

> This is the very opposite of what has been agreed upon as the proper care of the half-caste people, the idea being to raise their status by keeping them away from the Aborigines. I could not, without being unparliamentary, express the shame I feel that no money has been provided in the Estimates this year to correct this state of affairs (quoted by Franklin 1976 on page 126).

However, McEwen's plans and policy proposals came to an abrupt end with the commencement of the Second World War and his transfer to the defence portfolio in 1941.

WWII and its aftermath

The bombing of Darwin in February 1942 forced the evacuation of the missions in the Northern Territory. The children were taken to 'homes, rented rural housing and disgraceful makeshift camps' (Austin 1993 page 215) in South Australia, New South Wales and Victoria. They lived there for several years, far from their families and communities. In 1946 some but not all of these children returned to the Territory. Some went 'missing'. Others were refused financial assistance by either the Commonwealth or the State governments to return to the Territory.

After the War, the forcible removal of Indigenous children recommenced. Patrol officers were required to report on the presence of children of mixed descent living in Aboriginal communities and make arrangements for their removal to settlements and mission homes.

> Some of the mothers have said that the day the patrol officer and a woman missionary arrived to remove them they were told that the children were going on a picnic, something they were used to … 'We were tricked', one mother said afterwards and others agree.

> Sixteen children, all related in one way or another, were removed from the mission on a day Julia has never forgotten. The version as presented by the woman missionary years later was that at the request of the Native Affairs Branch she gained the consent of 16 or 18 mothers of the same number of children, and implied that the two children not taken were left solely because their mothers did not consent. However as she (as well as the missionaries based there) did not speak any Aboriginal language at all, and the mothers did not speak English, it is not credible that any form of informed consent was obtained.

> The assembled children were loaded into the truck very suddenly and their things thrown in hastily after them. The suddenness and the suppressed air of tension shocked the mothers and the children and they realised something was seriously wrong … Children began to cry and the mothers to wail and cut themselves … The tailgate was slammed shut and bolted and the truck screeched off with things still hanging over the back and mothers and other children running after it crying and wailing (Stolen Generations NT submission 754 pages 19-20).

An official protest in 1949 by one of the patrol officers at having to effect such removals caused considerable argument in government circles during the early 1950s. The Government Secretary advised that the practice seemed likely to attract 'criticism for violation of the present day conception of 'human rights' and 'to outrage the feelings of the average observer' (quoted by Long 1992 on page 83). In October 1951 Dr Charles Duguid, President of the Aborigines Advancement League, received widespread publicity when he called the practice of taking babies from their mothers 'cruel' and 'the most hated task of every patrol officer' (quoted by *Between Two Worlds* on page 57).

The Director of Native Affairs maintained that removals were for the benefit of the children concerned and conducted humanely. Nevertheless instructions were issued that children under the age of four years were not be removed, that no child was to be removed 'until the Director is satisfied that a painstaking attempt has been made to explain to the mother the advantages to be gained by the removal of the child' and that aircraft were not be used to remove children unless there was no other transport available (quoted by *Between Two Worlds* on page 55). The age at which children could be taken was subsequently revised downwards to three months on the basis of a psychological theory that very early separation was less traumatic for both mother and child.

At the beginning of the 1950s NT missions cared for 360 children (Cummings 1990 page 79) which was most if not all of the mixed descent children in the Territory (Armitage 1995 page 59).

Retta Dixon Home

One of the main homes for these children was the Retta Dixon Home, run by the Aborigines Inland Mission (AIM). It opened after the War with 51 children and eight young women housed in temporary premises in the Bagot Compound (Aborigines Inland Mission submission 535). It operated until 1980. According to AIM '[t]he number of children [in the Home] steadily climbed as the Native Affairs officers constantly asked for additional children to be accommodated. The total stabilised at around 100, but there was a time when a peak of 120 was reached' (submission 535).

Accommodation was in dormitories. Breast-feeding mothers were allowed to stay with their babies for a few months but once weaned the infants were taken from them and placed in the nursery. Mothers could only see their children during the day. At night the infants were in the charge of the mission staff.

As well as receiving children who had been forcibly removed by government officials, former inmates of the Kahlin Compound and the Half-Caste Home 'more or less voluntarily committed their children to Homes as they failed to cope in a hostile

social and economic environment for which their own institutional background had ill-prepared them' (Austin 1993 page 213).

A 1953 inquiry by a patrol officer with the Native Affairs Branch into conditions at Retta Dixon and other mission homes for children of mixed descent reported,

> The Home in its present location and form is a failure, and the children are merely benefitting to the extent that they are clothed, fed, and are receiving some form of education. The only other contribution to their upbringing is perhaps the religious training given by the staff, which to my mind is made to play far too important a part in their formative years, and is far too restrictive (quoted by Cummings 1990 on page 83).

No government action was taken following the report but AIM decided to construct new premises based on the cottage system.

> Inexperienced staff, a high rate of staff turnover, and the frequent transfers of children from cottage to cottage without explanation, prevented a family-style environment from developing. While it was intended that the cottages were supervised by a married couple, most often, it was young, single females who had usually just come up from south. The burdens placed on these young women and the stresses and frustrations they experienced, were no doubt responsible for the brutal punishments that often occurred (Cummings 1990 page 119).

'The welfare'

Following the 1951 Commonwealth-State Ministers Conference Paul Hasluck, the Minister for the newly created portfolio of Territories, urged the Commonwealth Government to adopt a national coordination role and set an example in the Northern Territory by taking active measures to encourage assimilation. Indigenous people of full descent as well as mixed descent people were now subjected to control.

The *Welfare Ordinance 1953* repealed the 1918 Ordinance. It was intended to be the vehicle of assimilation. Its original intent was to move away from the protectionist approach to Aboriginal welfare and subject all Aboriginal people to the same welfare legislation as non-Indigenous people. Accordingly, it made no mention of race, referring instead to 'wards'. A ward was any person who 'by reason of his manner of living, his inability to manage his own affairs, his standard of social habit and behaviour, his personal associations … stands in need of special care'.

The Director of Welfare was made the guardian of all wards. People who were made wards were denied the most basic of human rights concerning their person and property. They could be taken into custody and removed to a reserve or institution and the Director could take control of any property they possessed. The Director's functions included maintaining a 'Register of Wards', commonly known as 'the stud book'.

In response to concerns among non-Indigenous Territorians that they could be subject to wardship under the Ordinance, it was amended to make it quite clear that it was only designed to target Aboriginal people. This was done by specifying that people with voting rights could not be made wards. The Ordinance effectively excluded nearly everyone except Aboriginal people. Non-Indigenous children could only be dealt with under the *Child Welfare Ordinance 1958* which permitted their

removal only on a children's court finding of neglect or destitution.

The 1953 Ordinance entered into effect in 1957. It was accompanied by a blanket gazettal of wardship of all Aborigines of full descent, with a few notable exceptions. The Welfare Ordinance proceeded on the assumption that Aboriginal people of mixed descent had been assimilated although they could be the subject of individual declarations. Within a family or a community some members might be wards and others not.

> The presumption of assimilation made in the Welfare Ordinance must be assessed against the reality of the urban Aboriginal experience in the 1950s and 60's. Darwin at this time had the barest of public housing programs. There were no child care centres and very limited employment opportunities. The employment that was available to women – basically domestic service in the households of public servants – did not allow for a woman to work and at the same time care for her children.

> These conditions ensured that an urban Aboriginal family unit would fulfill the criteria for a declaration of wardship under the Ordinance. However, the result of a declaration itself caused profound social effects to some into play. Inevitably the whole family unit was not declared wards. Rather, only the children were. The children, once declared, were then removed to one of the mission stations. The result of the delivery of family services was then to effect the separation of the family 'in the interests of the child'. Of course there was an alternative, a woman could enter into a 'private arrangement' with a mission institution to care for her children. This avoided the direct intervention of the government, but the resulting family dispersion was the same (Cummings 1996 page 5).

If children who had been made wards absconded from the mission home or proved unmanageable there were no other facilities in the Northern Territory for them. Unless they were allowed to be returned to their parents they would be sent to a juvenile detention centre in one of the southern States.

In 1955 the Commonwealth Government decided that Aboriginal children would have greater opportunities if they left the Territory and lived in a foster home, boarding school or other educational institution in one of the southern States. This scheme continued until the late 1960s.

> Perhaps the most positive step taken by the Government in regard to part-aborigines has been to transfer where practicable, part-aboriginal children from the Territory environment, and give them a chance to develop normally in southern States … Since this scheme began in 1956, 63 children have been transferred to foster homes and institutions in southern States where they are attending technical colleges and high schools, and undertaking apprenticeships, nursing and other courses; as at 30th June, 1961, 47 of these children were being maintained under the Scheme (*Progress towards Assimilation* 1960 page 22).

Reverend Bernie Clarke, who worked at the Croker Island mission, described the selection of foster families in South Australia.

> [T]here was an active program of fostering children in which the government elicited the support of the churches … The churches would provide the Northern Territory Welfare Department with lists of names of people willing to be foster parents. Children from the age of four upwards] would then be placed in a foster placement here in South Australia … [I]t

> was a direct arrangement between the church and the Welfare Department in the Northern Territory.

> In my experience, nearly every foster arrangement resulted in those children going back to search for their roots – nearly everyone tried to find out (evidence 119).

The *Social Welfare Ordinance 1964* repealed the 1953 Ordinance. The distinction made by the government in the 1953 Ordinance in its treatment of full descent and mixed people was further emphasised in the 1964 Ordinance. Under the 1964 Ordinance entry to reserves was limited to people who 'in the opinion of the Director are socially or economically in need of assistance'. The effect of this restriction was to force many island mission residents into urban communities. Despite being made to relocate in a traumatic way, little government assistance was provided. A 1958 survey revealed that approximately 1,200 people in Darwin were living in sub-standard huts and 103 people living at Mindl Beach were in 'something which amounted to far less than huts' (quoted by Cummings 1996 page 7).

The repeal of the 1953 Ordinance meant that Indigenous children came under the same removal legislation as non-Indigenous children, the *Child Welfare Ordinance 1958*. However, the conditions of life for Indigenous people put them at greater risk of having their children removed on the ground of neglect or destitution. The inaccessibility of the courts to Indigenous people, too, rendered most procedural protections ineffective.

> It seems to me that ordinary concepts of justice require that if an allegation is made that a child is under unfit guardianship then the mother or other guardian must be given adequate notice of the Children's Court hearing at which the link between mother and child is likely to be severed, if not permanently, then for an appreciable time. So far as Aboriginal women are concerned, time and trouble must be taken to ensure that the mother understands what is alleged against her and what the result of the proceedings may be. The assistance of the Aboriginal Legal Aid Service should be enlisted for this purpose (Justice Forster in *McMillen* 1976).

In 1967-68 almost 18% of Territory Indigenous children were in government care (Armitage 1995 page 61).

Towards the end of the 1960s foster care began replacing institutional care and the mission homes began closing, although some were operating until 1980. Although foster care was regarded by non-Indigenous workers as better for the children than institutional care, it meant that children of mixed descent were more isolated than they were in places like the Retta Dixon Home. In 1971 97% of Territory children in foster care were Indigenous (Armitage 1995 page 62). The Department of Social Welfare noted, 'Most part-Aboriginal children have been fostered by white people, and full-blood Aborigines by full-blood Aborigines' (quoted by Armitage 1995 on page 62).

Self-management

The assimilation policy was discarded in favour of self-management as Commonwealth policy in 1973. However, as no data were kept by the Commonwealth

Department of Aboriginal Affairs which administered welfare policy until its responsibilities were taken over by the NT Department of Community Welfare in 1977, it is difficult to assess the practical effect of this change. By the date of Territory self-government the subsidisation of missions to care for Aboriginal children was regarded as out-dated and inappropriate.

In 1979 an independent community-controlled child care agency for Aboriginal children was established instead named 'Karu', a Gurindji word meaning 'child'. In 1984 Karu received funding to recruit Aboriginal foster parents and reunite Aboriginal children and families. Even before that the newly created Department of Community Welfare sought to use extended family networks to care for Aboriginal children. From the late 1970s there was a marked decrease in the number of Indigenous children taken into government care although there was still a disproportionate number of Indigenous children in care.

The *Community Welfare Act 1983* incorporated the Aboriginal Child Placement Principle for the first time in legislation in Australia. It was also included in the *Adoption of Children Act 1994*. Referring to Justice Forster's 1976 criticism of child welfare practice quoted above, the Northern Territory Government representative told the Inquiry,

> Why it may have taken until 1983 for those sort of values to be enshrined in both the *Adoption of Children Act* … and the *Community Welfare Act* … I don't know, but certainly in terms of the people who were involved in that matter Justice Forster's words continued to ring in their ears for a very long time (evidence 539).

Evie

My grandmother was taken from up Tennant Creek. What gave them the right to just go and take them? They brought her down to The Bungalow [at Alice Springs]. Then she had Uncle Billy and my Mum to an Aboriginal Protection Officer. She had no say in that from what I can gather. And then from there they sent her out to Hermannsburg – because you know, she was only 14 when she had Uncle Billy, 15 when she had Mum. When she was 15 and a half they took her to Hermannsburg and married her up to an Aranda man. That's a no-no.

And then from there, when Mum was 3, they ended up taking Mum from Hermannsburg, putting her in The Bungalow until she was 11. And then they sent her to Mulgoa mission in New South Wales. From there they sent her to Carlingford Girls' Home to be a maid. She couldn't get back to the Territory and she'd had a little baby.

Agnes [witness's sister] and I have met him [their older brother]. We met him when he was 35. He's now 42 so that's not that far away. Mum had him and she was working but she doesn't know what happened to her money. When she kept asking for her money so she could pay her fare back to Alice Springs they wouldn't give her any.

I've got paperwork on her from Archives in New South Wales. There's letters – stacks of 'em – between the Aboriginal Protection Board, New South Wales, and

Northern Territory. All on my mother. They were fighting about which jurisdiction she was in – New South Wales yet she was a kid from the Northern Territory. So one State was saying we're not paying because she's New South Wales, they should pay.

In the end New South Wales said to Mum, 'We'll pay your fare back on the condition that because you haven't got a husband and you've got a baby, you leave that baby here'. So she left her baby behind and came back to the Territory.

And then she had me and then my brother and another two brothers and a sister and we were all taken away as soon as we were born. Two of them were put in Retta Dixon and by the time they were 18 months old they were sent down south and adopted. She had two kids, like they were 15 months apart, but as soon as they turned 18 months old they were sent down south and adopted out.

One of them came back in 1992. He just has that many problems. The others – we don't know where they are. So it's like we've still got a broken family.

I was taken away in 1950 when I was 6 hours old from hospital and put into Retta Dixon until I was 2 months old and then sent to Garden Point. I lived in Garden Point until 1964. And from Garden Point, Tennant Creek, Hermannsburg. While in Garden Point I always say that some of it was the happiest time of my life; others it was the saddest time of my life. The happiest time was, 'Yippee! all these other kids there'. You know, you got to play with them every day. The saddest times were the abuse. Not only the physical abuse, the sexual abuse by the priests over there. And they were the saddest because if you were to tell anyone, well, the priests threatened that they would actually come and get you.

Everyone could see what they were doing but were told to keep quiet. And just every day you used to get hidings with the stock-whip. Doesn't matter what you did wrong, you'd get a hiding with the stock-whip. If you didn't want to go to church, well you got slapped about the head. We had to go to church three times a day. I was actually relieved to leave the Island.

Q. Did any girls get pregnant at Garden Point when you were there?

I remember one and they actually took her off the Island. And when I ask everyone, like even now when I ask people about her, they don't know what happened to her. All they remember is her being put on the helicopter and flown out and I've never heard her, about her name or anything about her anymore. They remember her but don't know what happened to her.

Q: Who was the Father?

The Priest. The same bastards who …

Q: How do people know that?

Well, the reason they know is, Sister A, poor thing, who's dead – I know she was upset because that priest had that young girl living in his place. He used to come and get her out of the dormitory every night. He used to sneak in about half past twelve, one o'clock in the morning and take her. We'd get up in the morning and she'd be just coming in the door.

All the girls slept in one dormitory. All the boys slept in the other. And we couldn't lock the dormitory from the inside – it had a chain through and padlock outside, so there was only the nuns or priest could get in there. I know he used to come and get her because I was three beds up from her.

There was another priest, but he's dead. The rest of the mob that were on the Island are all dead. He's the only one that's kicking and he should have been the one that's bloody dead for what he did. He not only did it to girls, he did it to boys as well. There was six of 'em involved. Nuns were assaulting the young fellas as well as the priest assaulting the young fellas and the girls.

There was four priests and two nuns involved. We were in their care. That fella's still walking around. He's now got charge of other kids. He's got charge of other kids in D.

In 1977 I had three children. In 1977 my oldest was three years old then. I had another one that was twelve months and another one that was two months old. All those kids were taken off me. The reason behind that was, well, I'd asked my girl-friend and so-called sister-in-law if she could look after my kids. She wouldn't look after my daughter because my daughter's black. So, she said she'd take the two boys and that was fine. And while I was in hospital for three months – that's the only reason I asked them to take 'em 'cause I was going to hospital because I had septicaemia.

I couldn't get my kids back when I came out of hospital. And I fought the welfare system for ten years and still couldn't get 'em. I gave up after ten years. Once I gave up I found out that while I was in hospital, my sister-in-law wanted to go overseas with my two boys 'cause her husband was being posted there for 12 months from foreign affairs. And I know she brought some papers in for me to sign while I was in hospital and she said they were just papers for their passports. Stupid me, being sick and what-have-you didn't ask questions – I signed 'em and found out too late they were adoption papers. I had 30 days to revoke any orders that I'd signed.

And with my daughter, well she came back in '88 but things just aren't working out there. She blames me for everything that went wrong. She's got this hate about her – doesn't want to know. The two boys know where I am but turned around and said to us, 'You're not our mother – we know who our real mother is'.

So every day of your bloody life you just get hurt all the time …

Confidential evidence 557, Northern Territory.

Courtesy University of WA Berndt Museum of Anthropolgy.

Camp scene, Narrogin, WA, 1938

All the teachings that we received from our [foster] family when we were little, that black people were bad …

I wanted my skin to be white.

Confidential evidence 132, Victoria: fostered at 10 years in 1964.

I started looking at my hands and wondered, why am I the colour that I am? Why are you white?

Confidential evidence 215, Victoria: removed in the 1960s and adopted by a non-Indigenous family.

Part 3 Consequences of Removal

Chapter 10 Children's Experiences

Most of us girls were thinking white in the head but were feeling black inside. We weren't black or white. We were a very lonely, lost and sad displaced group of people. We were taught to think and act like a white person, but we didn't know how to think and act like an Aboriginal. We didn't know anything about our culture.

We were completely brainwashed to think only like a white person. When they went to mix in white society, they found they were not accepted [because] they were Aboriginal. When they went and mixed with Aborigines, some found they couldn't identify with them either, because they had too much white ways in them. So that they were neither black nor white. They were simply a lost generation of children. I know. I was one of them.

Confidential submission 617, New South Wales: woman removed at 8 years with her 3 sisters in the 1940s; placed in Cootamundra Girls' Home.

10 Children's Experiences

Children's experiences following their removal contributed to the effects of the removal upon them at the time and in later life. In this chapter we briefly survey the evidence to the Inquiry concerning those experiences which have had the most significant impacts on well-being and development.

Placement stability

As the following table shows, a high proportion of children (based on the experiences of Inquiry witnesses) experienced multiple placements following their removal.

Placement types, Inquiry witnesses

Placement	Number	Percent
Single institution	88	25.1%
Multiple institutions or institution followed by work placement	95	27.1%
Single foster/adoptive placement	50	14.3%
Multiple foster/adoptive placements	6	1.7%
Institution(s) then foster/adoption or placement followed by institutionalisation	95	27.3%
Other	16	4.6%
Total for whom information available	350	100%

One-quarter of the Inquiry witnesses spent the entire period from removal to release in a single children's home while only 14% spent that entire period with a single non-Indigenous family, whether fostered, adopted or both. Many children moved among institutions (27%) or from an institution(s) into a foster placement(s) or vice versa (27%).

> **So I went through foster homes, and I never stayed in one any longer than two months … Then you'd be moved onto the next place and it went on and on and on. That's one of the main reasons I didn't finish primary school.**
>
> *Confidential evidence 316, Tasmania.*

The Inquiry was advised by the Australian Association of Infant Mental Health,

> While separation and loss may become commonplace for the child who experiences several foster placements, the multiplicity of separations does not make them any easier (submission 699 page 4).

Totality of separation

The overwhelming majority of the children forcibly removed under assimilationist legislation and policies were separated from their Indigenous family, community and culture. They were not permitted to use their languages.

> **Y'know, I can remember we used to just talk lingo. [In the Home] they used to tell us not to talk that language, that it's devil's language. And they'd wash our mouths with soap. We sorta had to sit down with Bible language all the time. So it sorta wiped out all our language that we knew.**
>
> *Confidential evidence 170, South Australia: woman taken from her parents with her 3 sisters when the family, who worked and resided on a pastoral station, came into town to collect stores; placed at Umewarra Mission.*

Missionaries in the Kimberley region of WA as late as the 1960s continued to pursue this policy of forbidding the use of Aboriginal languages (confidential evidence 505, Western Australia: man made a State ward at 6 years in 1966 and placed in a church-run hostel in Fitzroy Crossing).

> **My mother and brother could speak our language and my father could speak his. I can't speak my language. Aboriginal people weren't allowed to speak their language while white people were around. They had to go out into the bush or talk their lingoes on their own. Aboriginal customs like initiation were not allowed. We could not leave Cherbourg to go to Aboriginal traditional festivals. We could have a corroboree if the Protector issued a permit. It was completely up to him. I never had a chance to learn about my traditional and customary way of life when I was on the reserves.**
>
> *Confidential submission 110, Queensland: woman removed in the 1940s.*

This policy was usually applied by foster and adoptive families as well as missions and other institutions.

> We made a series of errors through our ignorance and paternalism. We brought him up separate from the Koori population … away from the Koori people. The ones we'd heard about in the paper were having big problems, so we thought we will keep him away from these problems till he matures. We didn't understand the full ramifications of invasion, of dispossession or dispersement. We learnt all this later. So we were – in the 1960s we're talking – we were ignorant well-meaning whites. We had some problems of course when he was about 10 – identity problems.
>
> *Confidential evidence 155b, Victoria: adoptive parents of a year old boy.*

Contact with family members was at best limited and strictly controlled.

> **My mum had written letters to us that were never forwarded to us. Early when we were taken she used to go into the State Children's Department in Townsville with cards and things like that. They were never forwarded onto us.**
>
> *Confidential evidence 401, Queensland: woman removed and fostered at 6 years in the 1950s.*

If we got letters, you'd end up with usually 'the weather's fine', 'we love you' and 'from your loving mother' or whatever. We didn't hear or see what was written in between. And that was one way they kept us away from our families. They'd turn around and say to you, 'See, they don't care about you'. Later on, when I left the home, I asked my mother, 'How come you didn't write letters?' She said, 'But we did'. I said, 'Well, we never got them'.

We were all rostered to do work and one of the girls was doing Matron's office, and there was all these letters that the girls had written back to the parents and family – the answers were all in the garbage bin. And they were wondering why we didn't write. That was one way they stopped us keeping in contact with our families. Then they had the hide to turn around and say, 'They don't love you. They don't care about you'.

Confidential evidence 450, New South Wales: woman removed at 2 years in the 1940s, first to Bomaderry Children's Home, then to Cootamundra Girls' Home; now working to assist former Cootamundra inmates.

Many children were told they were unwanted, rejected or that their parents were dead.

I remember this woman saying to me, 'Your mother's dead, you've got no mother now. That's why you're here with us'. Then about two years after that my mother and my mother's sister all came to The Bungalow but they weren't allowed to visit us because they were black. They had to sneak around onto the hills. Each mother was picking out which they think was their children. And this other girl said, 'Your mother up there'. And because they told me that she was dead, I said, 'No, that's not my mother. I haven't got a black mother'.

Confidential evidence 544, Northern Territory: woman removed to The Bungalow, Alice Springs, at 5 years in the 1930s; later spent time at Croker Island Mission.

I was trying to come to grips with and believe the stories they were telling me about me being an orphan, about me having no family. In other words telling me just get up on your own two feet, no matter what your size … and just face this big world … and in other words you don't belong to anybody and nobody belongs to you so sink or swim. And they probably didn't believe I would swim.

Confidential evidence 421, Western Australia.

They changed our names, they changed our religion, they changed our date of birth, they did all that. That's why today, a lot of them don't know who they are, where they're from. We've got to watch today that brothers aren't marrying sisters; because of the Government. Children were taken from interstate, and they were just put everywhere.

Confidential evidence 450, New South Wales.

Children were given the very strong impression their parents were worthless.

When I first met my mother – when I was 14 – she wasn't what they said she was. They made her sound like she was stupid, you know, they made her sound so bad. And when I saw her she was so beautiful. Mum said, 'My baby's been crying' and she walked into the room and she stood there and I walked into my – I walked into my mother and we hugged and this hot, hot rush just from the tip of my toes up to my head filled every part of my body – so hot. That was my first feeling of love and it only could come from my mum. I was so happy and that was the last time I got to see her. When my mum passed away I went to her funeral, which is stupid because I'm allowed to go see her at her funeral but I couldn't have that when she requested me. They wouldn't let me have her.

Confidential evidence 139, Victoria: removed 1967; witness's mother died two years after their first and only meeting.

'Your family don't care about you anymore, they wouldn't have given you away. They don't love you. All they are, are just dirty, drunken blacks.' You heard this daily … When I come out of the home and come to Redfern here looking for the girls, you see a Koori bloke coming towards you, you cross the street, you run for your life, you're terrified.

Confidential evidence 8, New South Wales: woman removed to Cootamundra Girls' Home in the 1940s.

I grew up sadly not knowing one Aboriginal person and the view that was given to me was one of fear towards [my] people. I was told not to have anything to do with them as they were dirty, lived in shabby conditions and, of course, drank to excess. Not once was I told that I was of Aboriginal descent. I was told that with my features I was from some Island and they [foster family] knew nothing of my family or the circumstances.

Confidential submission 483, South Australia: woman removed to a children's home at 18 months in the 1960s and subsequently fostered by the caretakers.

In an attempt to force 'white ways' upon the children and to ensure they did not return to 'the camp' on their release, Aboriginality was denigrated and Aboriginal people were held in open contempt. This denigration was among the most common experiences of witnesses to the Inquiry.

All the teachings that we received from our (foster) family when we were little, that black people were bad … I wanted my skin to be white.

Confidential evidence 132, Victoria: woman fostered at 10 years in the 1960s.

She [foster mother] would say I was dumb all the time and my mother and father were lazy dirty people who couldn't feed me or the other brothers and sister.

Confidential evidence 5, South Australia: man fostered at 5 years in the 1960s.

There was a big poster at the end of the dining room and it used to be pointed out to us all the time when religious instruction was going on in the afternoon. They had these Aborigine people sitting at the end of this big wide road and they were playing cards, gambling and drinking. And it had this slogan which they used to read to us and point to us while they're saving us from ourselves and giving our souls to the Lord. It had, 'Wide is the road that leads us into destruction', which lead up into hell. The other side they had these white people, all nicely dressed, leading on this narrow road, and 'Narrow is the road that leads us into the kingdom of life or the Kingdom of God'.

When I was 14 years old and going to these foster people, I remember the welfare officer sitting down and they were having a cup of tea and talking about how they was hoping our race would die out. And that I was fair enough, I was a half-caste and I would automatically live with a white person and get married. Because the system would make sure that no-one would marry an Aborigine person anyhow. And then my children would automatically be fairer, quarter-caste, and then the next generation would be white and we would be bred out. I remember when she was discussing this with my foster people, I remember thinking – because I had no concept of what it all meant – I remember thinking, 'That's a good idea, because all the Aborigines are poor'.

Confidential evidence 613, New South Wales: woman removed to Bomaderry Children's Home as a baby in the 1940s; foster placement organised from Cootamundra broke down after 17 months and she was then placed in various work situations.

We were told our mother was an alcoholic and that she was a prostitute and she didn't care about us. They [foster family] used to warn us that when we got older we'd have to watch it because we'd turn into sluts and alcoholics, so we had to be very careful. If you were white you didn't have that dirtiness in you … It was in our breed, in us to be like that.

Confidential evidence 529, New South Wales: woman fostered as a baby in the 1970s.

I got told my Aboriginality when I got whipped and they'd say, 'You Abo, you nigger'. That was the only time I got told my Aboriginality.

Confidential evidence 139, Victoria: removed 1967.

Child and adolescent psychiatrist, Dr Brent Waters, has interviewed a number of people forcibly removed in NSW.

The people that I've talked to who were placed in white families were – and I haven't seen any that were absolutely fulsome about their family experience, most of them had some reservations – things seem to have gone quite well until they got into the teenage years. Then they started to become more aware of the fact that they were different. Some of these were quite light kids, but nevertheless that they were different. And it was the impact of what peers were doing and saying which seemed to be most distressing to them. And sometimes their families didn't deal with that very well. They were dismissive. 'Look, the best thing to do is just forget you were ever Aboriginal' or 'Tell them that you came from Southern Europe'. To pass off what was obviously a difference in skin colour. But in none of those families was there a sense that one way to manage this situation was to recapture your sense of Aboriginality. There seemed to be no honour and dignity in being an Aboriginal, even if you'd been brought up by a family (evidence 532).

Institutional conditions

The living conditions in children's institutions were often very harsh.

> **And for them to say she [mother] neglected us! I was neglected when I was in this government joint down here. I didn't end up 15 days in a hospital bed [with bronchitis] when I was with me mum and dad.**
>
> *Confidential evidence 163, Victoria: woman removed at 9 years in the 1950s.*

The physical infrastructure of missions, government institutions and children's homes was often very poor and resources were insufficient to improve them or to keep the children adequately clothed, fed and sheltered. WA's Chief Protector, A O Neville, later described the conditions at the Moore River Settlement in the 1920s (Neville had no control over the Settlement from 1920 until 1926, his jurisdiction being limited to the State's north during that period).

> Moore River Settlement had rapidly declined under a brutal indifference. Here 'economy' had taken the form of ignoring maintenance and any improvement of buildings, reducing to a minimum the diet of 'inmates' and doing away with the use of cutlery – the children in the compounds being forced to eat with their hands. The salaries of attendant and teachers had been reduced and anything that was not essential to the rudimentary education available was removed. Even toys, such as plasticine, were removed from the classroom. Unhappiness and the desperate anxiety to locate and rejoin family members led to a sharp increase in absconders and runaways. Punishment was harsh and arbitrary and the 'inmates' feared the Police trackers who patrolled the settlement and hunted down escapees (quoted by Jacobs 1990 on page 123).

Doris Pilkington described the conditions as 'more like a concentration camp than a residential school for Aboriginal children' (Pilkington 1996 page 72).

> Young men and women constantly ran away (this was in breach of the *Aborigines Act*). Not only were they separated from their families and relatives, but they were regimented and locked up like caged animals, locked in their dormitory after supper for the night. They were given severe punishments, including solitary confinements for minor misdeeds (Choo 1989 page 46).

The situation did not improve with Neville's return. The per capita funding for the Moore River Settlement was half that of the lowest funded white institution (the Old Men's Home). In 1936 Western Australia spent less per capita on Aboriginal affairs than any other State. In 1938 the *West Australian* newspaper wrote of the 'crowded and unsuitable schoolroom' at the Settlement where over one hundred school age children carried out 'a campaign against two greatly-handicapped teachers'. The children were taught basic literacy, numeracy and hygiene, with a view to employment as domestic servants and rural labourers. There was no equipment for vocational training, therefore these skills were learnt by working on the settlement (Haebich 1982 page 56). An Aboriginal witness to the Inquiry in Perth who taught in the school at Moore River during the 1950s gave evidence that inmates were flogged with a cat-o'-nine-tails (now held in the WA Museum) (confidential evidence 681).

Conditions in other children's institutions are also remembered as harsh. Melbourne

law firm Phillips Fox summarised the experience reported by their clients.

> … the consistent theme for post-removal memories is the lack of love, the strict, often cruel, treatment by adults, the constantly disparaging remarks about Aboriginality – and the fact that the child should be showing more gratitude for having been taken from all that – and of course, the terrible loneliness and longing to return to family and community. Some commented that *'I thought I was in a nightmare'. 'I couldn't work out what I'd done wrong to deserve this'. 'It was like being in prison'. 'It was very strict – you weren't allowed to do anything'* (submission 20 page 6).

> **There was no food, nothing. We was all huddled up in a room … like a little puppy-dog … on the floor … Sometimes at night time we'd cry with hunger, no food … We had to scrounge in the town dump, eating old bread, smashing tomato sauce bottles, licking them. Half of the time the food we got was from the rubbish dump.**
>
> *Confidential evidence 549, Northern Territory: man removed to Kahlin Compound at 3 years in the 1930s; subsequently placed at The Bungalow.*

> **It's a wonder we all survived with the food we got. For breakfast we got a bit of porridge with saccharine in it and a cup of tea. The porridge was always dry as a bone. Lunch was a plate of soup made out of bones, sheeps' heads and things like that, no vegetables. For dinner we had a slice of bread with jam and a cup of tea. After our dinner we were locked up in a dormitory for the night.**
>
> *WA woman who lived at Moore River Settlement from 1918 until 1939, quoted by Haebich 1982 on page 59.*

> **We didn't have enough meal. We used to go jump over the fence to the garden and steal rockmelon, watermelon, whatever we can get hold of, just to fill our stomachs for the night.**
>
> *Confidential evidence 820, Western Australia: man removed at 6 years in the 1940s to Beagle Bay Mission in the Kimberley.*

Institutional regimes were typically very strictly regulated.

> **Dormitory life was like living in hell. It was not a life. The only thing that sort of come out of it was how to work, how to be clean, you know and hygiene. That sort of thing. But we got a lot bashings.**
>
> *Confidential evidence 109, Queensland: woman removed at 5 years in 1948.*

Children's well-being was sometimes severely neglected.

> **These are people telling you to be Christian and they treat you less than a bloody animal. One boy his leg was that gangrene we could smell him all down the dormitories before they finally got him treated properly.**

Confidential evidence, New South Wales: man removed to Kinchela Boys' Home in the 1960s.

Many witnesses related receiving or witnessing severe punishments.

At the time, we used to get a lot of coke. You got to fill the coke bins up. That's what you got to kneel on – on the coke [as a punishment]. You got no long trousers, [only] shorts and bare-footed. You know what we got to eat? Straw and buns. That was our tea. That's besides getting the cane. Get straw and buns. Quite naturally you're going to pull the straw out and chuck it away. You do that and you get caned. You're supposed to eat it.

Confidential evidence 531, New South Wales: man removed to Kinchela Boys' Home at 9 years in 1950.

I remember the beatings and hidings [they] gave us and what I saw. I remember if you played up, especially on a Sunday, you got the cane. You play chasing, you had to drop your pants, lie across the bed and get 3-5 whacks. If you pissed the bed – another 3-5. I remember seeing, when I was about 7 or 9 – I think it was IM get pulled by the hair and her arm twisted behind her back and hit in the face …

Confidential evidence 251, South Australia: man removed to Colebrook at 2 years in the 1950s.

They were very cruel to us, very cruel. I've done things in that home that I don't think prisoners in a jail would do today … I remember once, I must have been 8 or 9, and I was locked in the old morgue. The adults who worked there would tell us of the things that happened in there, so you can imagine what I went through. I screamed all night, but no one came to get me.

Confidential evidence 10, Queensland: NSW woman removed to Cootamundra Girls' Home in the 1940s.

I've seen girls naked, strapped to chairs and whipped. We've all been through the locking up period, locked in dark rooms. I had a problem of fainting when I was growing up and I got belted every time I fainted and this is belted, not just on the hands or nothing. I've seen my sister dragged by the hair into those block rooms and belted because she's trying to protect me … How could this be for my own good? Please tell me.

Confidential evidence 8, New South Wales: woman removed to Cootamundra Girls' Home in the 1940s.

They used to lock us up in a little room like a cell and keep us on bread and water for a week if you played up too much. Stand us on a cement block outside in the rain with raincoats on if you got into trouble – for a month, after school, during playtime.

Confidential evidence 358b, South Australia: man removed as a baby in the 1950s; first placed at Koonibba Mission, then a Salvation Army Boys' Home where he experienced above punishments, then on to reform school and prison.

In some cases administrators were admonished for their treatment of inmates or

residents. Former WA Chief Protector, A O Neville, described in his 1947 book some of the treatments meted out by his staff at the Moore River Settlement.

> One Superintendent I had, because he suspected him of some moral lapse, tarred and feathered a native, and he did the job thoroughly, calling the staff to see the rare bird he had captured … Another Manager I did appoint, an ex-Missionary, and a good man too, I had to dismiss for chaining girls to table legs … Indeed, it was found necessary to provide by regulation for the abolition of 'degrading' and injurious punishments and the practice of holding inmates up to ridicule, such as dressing them in old sacks or shaving girls' heads (Neville 1947 pages 112-113).

Verbal complaints and formal petitions were dismissed by one superintendent who told the commissioner, 'the natives generally feel that they must always have some complaints when you visit them' (quoted by Haebich 1982 on page 59).

In 1927 Mrs Curry, a former employee at Cootamundra Girls' Home in NSW, alleged that girls had been 'flogged, slashed with a cane across the shoulders, and generally treated with undue severity and lack of sympathy, the use of the cane being a daily occurrence' (NSW Aborigines Protection Board Minutes quoted by Hankins 1982 on page 6.1.11).

In 1935 the NSW Aborigines Protection Board commissioned a report on the conduct of the manager of Kinchela Boys' Home following receipt of allegations of insobriety and ill-treatment of the boys. Upon consideration of the report late in that year, the Board determined to 'strongly advise' the manager 'to give up taking intoxicating liquor entirely' particularly when in the company of the boys and to inform him 'that on no account must he tie a boy up to a fence or tree, or anything else of that nature, to inflict punishment on him, that such instruments as lengths of hosepipe or a stockwhip must not be used in chastising a boy, that no dietary punishments shall be inflicted on any inmate in the Home'. He was also to be told that the practice of loaning out boys to local farmers was disapproved (NSW Aborigines Protection Board Minutes of Meetings, 4 December 1935).

Almost 1 in every five (19%) Inquiry witnesses who spent time in an institution reported having been physically assaulted there.

Sexual abuse

Children in every placement were vulnerable to sexual abuse and exploitation. The following table indicates the placements in which Inquiry witnesses for whom the information could be extracted report having experienced sexual assaults. It should be noted that witnesses were not asked whether they had had this experience and that there are many reasons, personal and procedural, for deciding against volunteering the information.

Sexual assaults reported by Inquiry witnesses

Placement	Males				Females			
	Reported		Not reported		Reported		Not reported	
Institution	10	(8.5%)	108	(91.5%)	19	(11.7%)	144	(88.3%)
Foster family	5	(10%)	45	(90%)	21	(29.6%)	50	(70.4%)
Adoptive family	1	(4.8%)	20	(95.2%)	6	(27.3%)	16	(72.7%)
Work	0	(–)	19	(100%)	4	(10.5%)	34	(89.5%)
Total	16	(7.7%)	192	(92.3%)	50	(17.0%)	244	(83.0%)

Girls were more at risk than boys. For girls in particular the risk of sexual assault in a foster placement was far greater than in any other.

Almost one in ten boys and just over one in ten girls allege they were sexually abused in a children's institution.

There was tampering with the boys … the people who would come in to work with the children, they would grab the boys' penises, play around with them and kiss them and things like this. These were the things that were done … It was seen to be the white man's way of lookin' after you. It never happened with an Aboriginal.

Confidential evidence 340, Western Australia: man removed in the 1930s to Sister Kate's Orphanage.

I was being molested in the home by one of the staff there … I didn't know what she was doing with me. I didn't know anything about sex or anything like that, we weren't told. I can remember a piece of wood shaped like a walking cane only on a smaller scale, like the candy striped lollipops they make today approximately 30cms long. She was telling me all about the time she was with my mother when she died and how my mother had told her how much she loved me. She also had a large bag of puffed wheat near the bed, because she knew how much I loved it. All this time she was inserting this cane into my vagina. I guess I was about 9 or 10. I know she did this to me many times over the years until she left the Home when I was about 14 years old.

We were totally isolated in the Home. You never knew anything of the outside world. We didn't know if that was right or wrong. Every time I knew she was coming, when matron was going on holidays, I would beg to matron not to go, because I knew she'd be there. She was always there – in my life, in my life in the Home. Her bedroom used to open out onto the dormitory … I'd hear my name being called … It was always me … One night I hid under the bed. I held onto the bed and she pulled me out and flogged me with the strap. She is my biggest memory of that home.

Confidential evidence 10, Queensland: NSW woman removed to Cootamundra Girls' Home in the 1940s.

When I was at Castledare I was badly interfered with by one of those brothers. I still know the room [in the church]. I was taken, selectively taken, and I was interfered with by one of those brothers. And if you didn't respond in a way, then you were hit, you were hit. I never told anyone that.

Confidential evidence 679, Western Australia: man removed at birth in the 1940s.

One in ten boys and three in ten girls allege they were sexually abused in a foster placement or placements.

I ran away because my foster father used to tamper with me and I'd just had enough. I went to the police but they didn't believe me. So she [foster mother] just thought I was a wild child and she put me in one of those hostels and none of them believed me – I was the liar. So I've never talked about it to anyone. I don't go about telling lies, especially big lies like that.

Confidential evidence 214, Victoria: woman removed at 7 years in the 1960s.

I led a very lost, confused, sad, empty childhood, as my foster father molested me. He would masturbate in front of me, touch my private parts, and get me to touch his. I remember once having a bath with my clothes on 'cause I was too scared to take them off. I was scared of the dark 'cause my foster father would often come at night. I was scared to go to the outside toilet as he would often stop me on the way back from the toilet. So I would often wet the bed 'cause I didn't want to get out of bed. I was scared to tell anyone 'cause I once attempted to tell the local Priest at the Catholic church and he told me to say ten Hail Mary's for telling lies. So I thought this was how 'normal' non-Aboriginal families were. I was taken to various doctors who diagnosed me as 'uncontrollable' or 'lacking in intelligence'.

Confidential submission 788, New South Wales: woman removed at 3 years in 1946; experienced two foster placements and a number of institutional placements.

One in ten girls allege they were sexually abused in a work placement organised by the Protection Board or institution. Other exploitation was known and condemned, but not prevented. By 1940 the NSW Board's record with respect to Aboriginal girls placed in service was well-known and even condemned in Parliament.

It has been known for years that these unfortunate people are exploited. Girls of 12, 14 and 15 years of age have been hired out to stations and have become pregnant. Young male aborigines who have been sent to stations receive no payment for their services … Some are paid as little as sixpence a week pocket money and a small sum is retained on their behalf by the Board. In some instances they have difficulty later in recovering that amount from the Board (quoted in NSW Government submission page 41).

In WA even the Chief Protector himself recognised the sufferings of many of the children he had placed 'in service'.

A good home with a kindly mistress is heaven to a coloured girl of the right type, yet failures are often due to the attitude of employers and their families. It does not help matters much to have the children in a family refer to their mother's coloured help as a 'dirty black nigger' or a 'black bitch' – such are amongst the complaints that the girls used to bring to me.

One lad told me that when he asked for his wages, the Boss said, 'What does a black — like you want with money, you ought to be shot' … I must confess that as regards some of the homes I personally visited, I could not blame the employee, indeed I felt like apologising to him for being the means of placing him in such a position (Neville 1947 page 190).

When I was thirteen I started contract work. I did not ask to go to work. The white officials just told us we had to go to work and they wrote out a contract for us. My first job was on L. Station, Winton. I was employed to do housework but I had to do everything. Looking after Mrs E's invalid mother – including bathing her and taking her to the toilet. I did washing, ironing, house cleaning, cooked and served meals, looked after the yard, chopped wood, milked cows, did bore casing, rod placement, water pumping and did fencing with Mr E.

I had to eat my meals from a tin plate and drank from a tin mug, I ate my meals on the wood heap. I was given different food to what the E's ate. Sometimes I was just allowed a couple of eggs – I was often very hungry. I had a room at the end of the shearer's shed (the shed could accommodate up to 24 shearers, during shearing time). It was small, windowless and there was no lighting. I had a wogga for a bed – made out of hessian [stuffed with straw], a bag for cover and a potato bag for a cupboard. I was very nervous there especially coming from the dormitory life where we were either guarded or locked up.

I was thirteen at the time Mr E wanted to rape me. I rushed around to his car pulled out the shotgun and instead of shooting him I pushed him in the bore tank. He never tried anything else since. I told Mrs E and she told me that it was a lie, that he wouldn't touch a black person. I told the Superintendent at Cherbourg. He wouldn't believe me.

Confidential submission 110, Queensland: woman removed in the 1940s.

One NSW employer pursued her servant's former employer with rape charges. 'In 1940 she arranged for a state ward formerly in her charge to sue her [previous] employer for assault' (Read 1994 page 8). This servant, a Koori girl of only 16 at the time the allegations were made public, had been raped by her previous employer. This was confirmed by two subsequent medical examinations. Nevertheless, the Aborigines Protection Board officials to whom the matter was reported 'accused the girl of being a "sexual maniac" who had lived with "dozens of men" ' (Hankins 1982 page 4.6.6). In 1941 this young woman was 'committed to Parramatta Mental Hospital where she remained for 21 years until the authorities discharged her as having no reason to remain' (Read 1994 page 8). No charges were ever laid against her attacker.

John was removed from his family as an infant in the 1940s. He spent his first years in Bomaderry Children's Home at Nowra. At 10 he was transferred to Kinchela.

John

We didn't have a clue where we came from. We thought the Sisters were our parents. They didn't tell anybody – any of the kids – where they came from. Babies were coming in nearly every day. Some kids came in at two, three, four days old – not months – but days. They were just placed in the home and it was run by Christian women and all the kids thought it was one big family. We didn't know what it meant by 'parents' cause we didn't have parents and we thought those women were our mothers.

It was drummed into our heads that we were white.

I was definitely not told that I was Aboriginal. What the Sisters told us was that we had to be white. It was drummed into our heads that we were white. It didn't matter what shade you were. We thought we were white. They said you can't talk to any of them coloured people because you're white.

I can't remember anyone from the welfare coming there. If they did I can't remember … We hardly saw any visitors whatsoever. None of the other kids had visits from their parents. No visits from family. The worst part is, we didn't know we had a family.

When you got to a certain age – like I got to 10 years old … they just told us we were going on a train trip … We all lined up with our little ports [school cases] with a bible inside. That's all that was in the ports, see. We really treasured that – we thought it was a good thing that we had something … the old man from La Perouse took us from Sydney – well actually from Bomaderry to Kinchela Boys' Home. That's when our problems really started – you know!

This is where we learned that we weren't white.

This is where we learned that we weren't white. First of all they took you in through these iron gates and took our little ports [suitcases] off us. Stick it in the fire with your little bible inside. They took us around to a room and shaved our hair off … They gave you your clothes and stamped a number on them … They never called you by your name; they called you by your number. That number was stamped on everything.

If we answered an attendant back we were 'sent up the line'. Now I don't know if you can imagine, 79 boys punching the hell out of you – just knuckling you. Even your brother, your cousin.

They had to – if they didn't do it, they were sent up the line. When the boys who had broken ribs or broken noses – they'd have to pick you up and carry you right through to the last bloke. Now that didn't happen once – that happened every day.

Before I went to Kinchela, they used to use the cat-o'-nine-tails on the boys instead of being sent up the line. This was in the 30s and early 40s.

They thought you were animals.

Kinchela was a place where they thought you were animals. You know it was like a place where they go around and kick us like a dog … It was just like a prison. Truthfully, there were boys having sex with boys … But these other dirty mongrels didn't care. We had a manager who was sent to prison because he was doing it to a lot of the boys, sexual abuse. Nothing was done. There was a pommie bloke that was doing it. These attendants – if the boys told them, they wouldn't even listen. It just happened … I don't like talking about it.

We never went into town … the school was in the home … all we did was work, work, work. Every six months you were dressed up. Oh mate! You were done up beautiful – white shirt. The welfare used to come up from Bridge St, the main bloke, the superintendent to check the home out – every six months.

We were prisoners from when we were born … The girls who went to Cootamundra and the boys who went to Kinchela – we were all prisoners. Even today they have our file number so we're still prisoners you know. And we'll always be prisoners while our files are in archives.

Confidential evidence 436, New South Wales.

Protection

Chief Protectors, Protection and Welfare Boards and State welfare officers frequently failed to protect their charges from abuse in placements they had organised.

They [foster family] started to get very nasty towards me. Every time I would sit down at the table for meals [they] would always have something to say to me: about my manners at the table, how to sit, how to chew, how to eat, when to eat. If I would make a mistake they

would pull my hair bending my head until it hurt. I would cry saying sorry. I couldn't understand them. It seemed like I was always in the wrong. I started to feel very uncomfortable. I kept crying and thinking about my family. I wanted to go home. I was sick and tired of this sort of life. I hated it.

I was very upset with this family. I couldn't even see anybody to tell them what was happening. A lady from the welfare came to see me. I told her how I was feeling. She just took no notice of me and done her reports saying I was very happy with [them]. I just had to put up with it all. So one day I went to Port Adelaide and stole a pocket knife from one of the stores just so I could get into trouble and leave this family.

Confidential evidence 253, South Australia: man removed at 7 years in the 1950s; his second foster family treated him well and assisted his reunion with his natural father.

The thing that hurts the most is that they didn't care about who they put us with. As long as it looked like they were doing their job, it just didn't matter. They put me with one family and the man of the house used to come down and use me whenever he wanted to … Being raped over and over and there was no-one I could turn to. They were supposed to look after me and protect me, but no-one ever did.

Confidential evidence 689, New South Wales: woman removed to Parramatta Girls' Home at the age of 13 in the 1960s and subsequently placed in domestic service.

My sister saw our welfare officer when she was grown up and he told her that he'd always thought our [foster] house was abnormal. He thought us kids were abnormal. He thought we were like robots, we had to look at her [foster mother] before we said anything. When an officer comes along they're supposed to talk to you on your own. She [foster mother] insisted that she had to be in the room because they could sexually assault us while she was out of the room, so she wasn't going to allow it. Being the minister's wife, they agreed that she was allowed to sit there. So we never had the chance to complain. Welfare never gave us a chance.

Confidential evidence 529, New South Wales: woman removed as a baby with her sisters and placed in an emotionally abusive foster home until the age of 13 years.

Bonds of affection

The developmental needs of children were imperfectly understood until the 1950s and even later. However, there was an early appreciation of the damage incurred in institutions (highlighted by the NSW Public Charities Commission Inquiry in 1874). Non-Indigenous children soon benefited from this new awareness. Indigenous children did not. Their needs were met only to a limited extent in some institutions during some periods.

The example of Colebrook Home in South Australia during the tenure of Matron Hyde and Sister Rutter is acknowledged. Bomaderry Children's Home is perhaps another. The key feature was the encouragement of close attachments between older girls

and babies, infants and young children. As we now know, attachment to a primary carer is essential for the infant's emotional, intellectual and social development and for his or her happiness. The bonds permitted in these more enlightened institutions went some way to overcoming the many other damaging effects of institutionalisation for many Indigenous inmates. Many Colebrook people have spoken fondly of Matron Hyde and Sister Rutter.

> **We were fortunate because we were just like brothers and sisters in Colebrook. We never ended up in reform. Our brothers and sisters were able to keep ourselves together. Because the Sisters were able to give us the Christian upbringing, we were able to keep some sort of sanity about ourselves. We were brought up very well. I think we had nothing but the best in Colebrook.**

> **When you were in Colebrook, the older kids took you on. The two Sisters could not give you the love that a mother could give you but the older one of mine was Emily, that did my hair, she was more than your sister, she was your mother/auntie. The older ones sort of took the younger ones under their care. So you got your love in a different way. Matron couldn't give everybody hugs and loves and kisses, but that minder was more like my mother. There was somebody missing that she took that place as that warm caring person and each one had their older one looking after them.**
>
> *Confidential evidence 307, South Australia: woman removed at 7 years in the 1930s.*

> **We were all happy together, us kids. We had two very wonderful old ladies that looked after us. It wasn't like an institution really. It was just a big happy family. I can say that about that home – United Aborigines Mission home that was at Quorn. Y'know they gave us good teaching, they encouraged us to be no different to anybody else. We went to the school, public school. There was no difference between white or black.**
>
> *Confidential evidence 178, South Australia: woman removed with her brother at 5 years in the 1930s; spent approximately 8 years at Colebrook.*

Some children were also fortunate to find love, care and comfort, and often a considerable measure of understanding of their Indigenous heritage, in foster homes and adoptive families.

> **I was very fortunate that when I was removed, I was with very loving and caring parents. The love was mutual … My foster mother used to take me and my sister to town. Mum used to always walk through Victoria Square and say to us, 'Let's see if any of these are your uncles'. My sister and I used to get real shamed. I used to go home and cry because I used to get so frightened and could never understand why my mum would do this to us, when it made us upset. Only when I was near 29 did I realise why … I know my foster parents were the type of people that always understood that I needed to know my roots, who I was, where I was born, who my parents were and my identity … I remember one day I went home to my foster father and stated that I had heard that my natural father was a drunk. My foster father told me you shouldn't listen to other people: 'You judge him for yourself, taking into account the tragedy, that someday you will understand'.**

Confidential submission 252, South Australia: woman fostered at 4 years in the 1960s.

Education

Witnesses to the Inquiry removed to missions and institutions told of receiving little or no education, and certainly little of any value.

> **The authorities said I was removed from my parents so I could receive an education but the fact is the nuns never gave me that education. I didn't receive an education. I was very neglected.**
>
> *Quoted by WA Aboriginal Legal Service submission 127 on page 49.*

> **I don't know who decided to educate the Aboriginal people but the standard was low in these mission areas. I started school at the age of eight at grade 1, no pre-school. I attended school for six years, the sixth year we attended grade 4, then after that we left school, probably 14 years old.**
>
> *Confidential submission 129, Queensland: man removed to Cherbourg in the 1940s.*

> **I didn't have much schooling … Now, thinking about it, we were told from the outset that we had to go to the mission because we had to go to school, but then when we got in there we weren't forced to go to school or anything.**
>
> *Gertie Sambo quoted by Rintoul 1993 on page 89.*

What education was provided generally aimed at completion of their schooling at the level achieved by a ten year old child in the State education system. It emphasised domestic science and manual training, thus preparing the children for a future as menial workers within the government or mission communities or as cheap labour in the wider community (Loos and Osanai 1993 page 20).

> **I finished school in fifth grade. I think I was 17. I did alright at school but they wouldn't allow us to go on. They wouldn't allow us to be anything. I would have liked to be a nurse or something but when I finished school they sent me to work as a domestic on stations.**
>
> *Confidential submission 277, Queensland: woman removed at 7 years in 1934 to the dormitory on Palm Island.*

Aspirations were trampled.

> **I wanted to be a nurse, only to be told that I was nothing but an immoral black lubra, and I was only fit to work on cattle and sheep properties … I strived every year from grade 5 up until grade 8 to get that perfect 100% mark in my exams at the end of each year, which I did succeed in, only to be knocked back by saying that I wasn't fit to do these things … Our education was really to train us to be domestics and to take orders.**

Confidential submission 109, Queensland: woman removed at 5 years in 1948 to the dormitory on Palm Island.

… as I stood with my father beside my grade 8 teacher, he told her of my ambitions to study medicine, and she responded that I didn't have the brains to go on to high school … notwithstanding that I had always had an above average academic record through school.

NSW Aboriginal Magistrate Pat O'Shane 1995 page 5.

I was the best in the class, I came first in all the subjects. I was 15 when I got into 2nd year and I wanted to … continue in school, but I wasn't allowed to, because they didn't think I had the brains, so I was taken out of school and that's when I was sent out to farms just to do housework.

Woman removed to Cootamundra, NSW, quoted by Hankins 1982 on page 4.2.5.

Work and wages

Although Aboriginal children were expected to take on the responsibilities of work at a very young age, they were not trusted with their own wages. In NSW regulations provided that they were only entitled to retain a small proportion of their meagre earnings as pocket money.

Most girls considered the pocket money they received to be too small to buy anything decent and spent it on items such as beads. Others used it to buy small amounts of food when they had the opportunity. Many girls simply never received the pocket money (Walden 1995 page 13).

The rest had to be paid to the Board which had the right to spend the money on the child's behalf and hold the balance in trust until the child turned 21. Many apprentices never received the money that was rightfully theirs.

Fraud on wards' accounts was common from the early days of the apprenticing system. In Queensland in 1904 an official inquiry found that the protectrice of Aboriginal girls in service had been defrauding their savings accounts. She was forced to resign and a system of thumbprints was introduced for endorsement of withdrawals in an effort to overcome the problem (Kidd 1994 page 98).

They sent me when I was 16 from Parramatta Girls' Home out to M, a property 137 miles from Nyngan. We never had a holiday. We weren't allowed to go into town with them. If you did go in or go anywhere and you saw any Aboriginal people, you weren't allowed to speak to them. So you had to live that isolated life. We never, ever got our wages or anything like that. It was banked for us. And when we were 21 we were supposed to get this money, you see. We never got any of that money ever. And that's what I wonder: where could that money have went? Or why didn't we get it?

Confidential evidence 11, Queensland: NSW woman removed to Cootamundra at 2 or 3 years in the 1940s, spending the ages of 13-16 in Parramatta Girls' Home.

[Chief Protector] Neville got our money. We were working on a station. Some of them worked six or seven years. And the money come down here to that office here in Wellington St [Perth]. When I finished up, coming back from the Territory, I told who I was and I said, 'There's money supposed to be here'. I got 30 shillings – one pound ten – a red, white and blue blanket, and a pass to the Settlement [Moore River]. I said, 'Hey, I don't want your pass to the Settlement. I can go to the Settlement. That's my home'.

Confidential evidence 333, Western Australia: man removed to Sister Kate's Orphanage in 1933 and probably working during the 1940s.

I was sent out when I was eleven years old to [pastoral station]. I worked there for seven and a half years. Never got paid anything all that time. [Even] Aboriginal people I was working with used to get 30 bob. Yet we didn't get nothing. I used to say, 'Where's my money?' 'Oh, they put it into the trust account.' So I worked there for them. Oh rough, hardly any food or anything, put out in remote area on me own, drawing water and that, looking after cattle … no holiday, no pay. I never received one pay that seven and a half years I was there.

Confidential evidence 549, Northern Territory: man removed to Kahlin Compound at 3 years in the 1920s; subsequently placed at Pine Creek and The Bungalow.

Sarah

When I accessed my file, I found out that the police and the station people at B… Station felt that my mother was looking after me. And they were unsure of why I was being taken away. They actually asked if I could stay there. But because I was light-skinned with a white father, their policy was that I had to be taken away. I was then the third child in a family of, as it turned out to be, 13. I was the only one taken away from the area [at the age of 4 in 1947].

The year that I was taken away, my [maternal] uncle wrote a letter to the then Native Welfare and asked if I could be returned to him, because he had an Aboriginal wife and he was bringing up his child. And he gave an undertaking to send me to school when I was of school age and to ensure that I was looked after. The letter that went back from the Commissioner of Native Affairs said that I was light-skinned and shouldn't be allowed to mix with natives.

My mother didn't know what happened to me. My eldest brother and my auntie tried to look for me. But they were unable to find out where I'd been sent.

When I was sent to Sister Kate's in '47, the policies of Sister Kate, even though she'd died the year previous, were still very much in hand. There was possibly something like one hundred kids there and we were brought up in various stages by various house mothers – who were usually English ladies who were not really interested in us. So it was a situation where the younger kids were looked after by the older kids and they were really the only parents that we knew.

We were constantly told that we didn't have families and that we were white children. It wasn't until we went across the road to school that we were called the names of 'darkies' and 'niggers' and those sorts of names. So when we were at school we were niggers and when we were home we were white kids. The policy of the home was to take only the light-skinned children because Sister Kate's policy was to have us assimilated and save us from natives.

We were sent to school. We were given religious instruction seven days a week. We were all baptised, then confirmed in the Anglican faith. Usually the boys were sent out at an early age to work on farms; and the girls too, as domestics. So all of our training was consistent with the aim that we would become subservient to white people as domestics or farmhands. We started doing our own washing and things like that from the time we went to school. And we were also involved in the main washing at the big laundry – that's the sheets and things.

But generally your own washing was done on a weekly basis at the house that you lived in, which was a cottage arrangement.

You all had chores before and after school. There was a main kitchen which did all the meals for the home, and once you started school you were old enough to go over early in the morning and peel vegetables for one hundred kids. So that was all part of the training to be domestics.

We had cows at Sister Kate's. So the boys had to milk the cows and make sure the milk was ready every morning. The boys did the gardening and the general labouring work. The boys were basically being trained as farmhands or labourers and the girls as domestics. There was no thought of any other alternative.

"Don't talk to the natives."

We were discouraged from any contact with Aboriginal people. We had to come into Perth to go to the dentist and the hospital and we would usually be sent in with a house parent or one of the older girls. And you'd come in on the train to East Perth. Our instructions were quite explicit: run across the park, don't talk to the natives. Go to Native Welfare, get your slip, go across the road to the dentist, get your dental treatment done, back to the Native Welfare to report in, run across the park and catch the 3.15 home. You were never allowed to catch the next train. If you missed that train you'd be in trouble when you got home because you might have talked to natives.

But the problem was that a lot of the people who were in the park, while they were drinking or just in groups, actually knew some of the kids, and used to yell out to you. And you had then little hints that somebody knew you. Not so much me, because I was from the country. But other kids had a feeling that those people must know somebody.

As we got older, some people's family used to turn up and they were discouraged, they were sent away, or the kids were removed from that particular area.

We were sent out to families for holidays. That didn't occur until my upper primary school years. And I used to go to a place in G. And they had one little girl there. I wasn't overly

sure why I was being sent there because I didn't like it. It came to a head one Christmas when I found out. I got up in the morning – Christmas morning – and the little girl had been given this magnificent bride doll, and I'd been given a Raggedy Ann doll. So I asked could I go home and I was taken home. I got a good hiding and was sent to bed and told how ungrateful I was because those people wanted to adopt me. I didn't know what 'adopt' meant. But I said I couldn't go somewhere where I didn't get the same as the other kid.

There was no love or anything in the home. That only came from the other kids. But you never really had a chance to confide in anybody about your problems. You found out the hard way about the facts of life. Girls with menstrual problems, things like that, nobody ever told you about it, they just happened.

Children would disappear from Sister Kate's in the early '50s but we didn't know where they went to. We later found out. The scars on the kids are still there. I you were naughty – and naughty could mean anything – if you were extra cheeky or if you ran away overnight or played up with the boys – if you were just caught mixing with the boys too much – the girls were sent to the Home of the Good Shepherd. One girl that I grew up with was sent there for three years from the age of eleven. She never knew why. She just disappeared one morning. That was a lock-up situation at the Home of the Good Shepherd. They were never allowed out of the compound itself. At that time, they did all the washing and ironing for the private schools. That's the sort of hard life those kids had and there was constant physical abuse of the kids …

The power was enormous.

Some of the boys that disappeared, we discovered they'd gone up to Stoneville, which was the boys' institution at that time. One boy at one time ended up in Heathcote [psychiatric institution]. I don't think we know to this day why he ended up in Heathcote. But it just seemed to be that the power was enormous. We were able to be dealt with just like that.

In 1957, with two other children, I was told that I had to go to court. I couldn't remember doing anything wrong. But I was taken down to the Children's Court. I was made a State ward because I was declared to be a destitute child. And I still to this day can't work out how I was declared to be a destitute child when the Government took me away from a mother who was looking after me. Being made a State ward gave Sister Kate's another income, a regular income until I was the age of 18. They then didn't have to depend on Native Welfare for the six pounds a year or whatever they used to get for us. They got extra money and when I turned 18 I'd be eligible for a clothing allowance, even though I was going to be sent out to work earlier.

I was told I was going to be sent out as a domestic. I was told if I didn't do well I'd go out as a domestic. I put my head down with about six other kids. And we got through second year [high school] and then third year, so we were saved from being domestics.

When the Presbyterians took over the home in the mid '50s, they then added an extra lot

of religion to us. We used to have religion from the Presbyterian faith as well as the Anglican faith.

So we weren't sure what we were. And the policies of Sister Kate's were still adhered to in as much as we were discouraged from having any contact with families.

He sent me a letter.

In my second year [high school] I received a letter from my second eldest brother and a photograph telling me he'd had information from a girl my same age who was in Sister Kate's but had gone home [about] where I was and all that sort of information. So he sent me a letter asking me to write back. I don't know how I managed to get the letter. But I went to see Mr D. [the superintendent] and was told that people do that all the time; I should ignore that because some of these people just want us and they would take us away and we'd be with natives. We had a fear of natives because that had been something that had been part of our upbringing. So we were frightened.

[Sarah was finally traced by a nephew when she was in her thirties.]

And suddenly I met a mother I never knew existed and a whole family that I didn't know. My mother blamed herself all those years for what happened. Because I was the only one who was taken away, she thought it was her fault somehow.

Confidential evidence 678, Western Australia.

Children's Experiences

11 The Effects

Why me; why was I taken? It's like a hole in your heart that can never heal.

Confidential evidence 162, Victoria.

Actually what you see in a lot of us is the shell, and I believe as an Aboriginal person that everything is inside of me to heal me if I know how to use it, if I know how to maintain it, if I know how to bring out and use it. But sometimes the past is just too hard to look at.

Confidential evidence 284, South Australia.

Evidence to the Inquiry presented many common features of the removal and separation practices. Children could be taken at any age. Many were taken within days of their birth (especially for adoption) and many others in early infancy. In other cases, the limited resources available dictated that the authorities wait until children were closer to school age and less demanding of staff time and skill. Most children were institutionalised more typically with other Indigenous children and with primarily non-Indigenous staff. Where fostering or adoption took place, the family was non-Indigenous in the great majority of cases.

Because the objective was to absorb the children into white society, Aboriginality was not positively affirmed. Many children experienced contempt and denigration of their Aboriginality and that of their parents or denial of their Aboriginality. In line with the common objective, many children were told either that their families had rejected them or that their families were dead. Most often family members were unable to keep in touch with the child. This cut the child off from his or her roots and meant the child was at the mercy of institution staff or foster parents. Many were exploited and abused. Few who gave evidence to the Inquiry had been happy and secure. Those few had become closely attached to institution staff or found loving and supportive adoptive families.

In this Part we detail the evidence and the research findings relating to the effects of these experiences. The Inquiry was told that the effects damage the children who were forcibly removed, their parents and siblings and their communities. Subsequent generations continue to suffer the effects of parents and grandparents having been forcibly removed, institutionalised, denied contact with their Aboriginality and in some cases traumatised and abused.

It is difficult to capture the complexity of the effects for each individual. Each individual will react differently, even to similar traumas. For the majority of witnesses to the Inquiry, the effects have been multiple and profoundly disabling. An evaluation of the following material should take into account the ongoing impacts and their compounding effects causing a cycle of damage from which it is difficult to escape unaided. Psychological and emotional damage renders many people less able to learn social skills and survival skills. Their ability to operate successfully in the world is impaired causing low educational achievement, unemployment and consequent

poverty. These in turn cause their own emotional distress leading some to perpetrate violence, self-harm, substance abuse or anti-social behaviour.

Courtesy Battye Library BA 368/8 3/7A

Garadjari baby – a fortnight old

I've often thought, as old as I am, that it would have been lovely to have known a father and a mother, to know parents even for a little while, just to have had the opportunity of having a mother tuck you into bed and give you a good-night kiss – but it was never to be.

Confidential evidence 65, Tasmania: child fostered at 2 months in 1936.

It never goes away. Just 'cause we're not walking around on crutches or with bandages or plasters on our legs and arms, doesn't mean we're not hurting. Just 'cause you can't see it doesn't mean … I suspect I'll carry these sorts of wounds 'til the day I die. I'd just like it to be not quite as intense, that's all.

Confidential evidence 580, Queensland.

Eric

Eric's story is told by his psychiatrist.

Eric was removed from parental care in 1957 when he was aged one.

[All of his mother's children were eventually removed: one younger sister went to live with her grandmother; the other sister and a brother were fostered and later adopted. Eric and his older brother Kevin were placed in an orphanage in South Australia.]

Eric recalls being in an institution from the age of two and a half to six before he and Kevin were placed in the care of foster parents who Eric stayed with until the age of 11. Apparently he was then transferred to the care of an uncle and aunt. Kevin in the meantime had become 'out of control', and Eric and Kevin had been separated, with Kevin being sent to a boys' home while Eric remained in the care of his foster mother.

When Eric was sent to his uncle and aunt he stayed with them until about the age of 13 or 15 when he recalls running away because 'there was too much alcohol and violence'. He ran back to Adelaide and refused to return to the care of his uncle and aunt. He was then placed in a further foster placement which he remembers as being slightly better for the next 3-4 years, but left there at the age of 17.

At 17, Eric became a street kid and once again he met up with his brother Kevin. Not surprisingly, Eric felt very attached to his brother Kevin because it was the only family contact available to him at that time. He tells me that Kevin was mixing with criminals in Adelaide and that in 1972 Kevin just disappeared. Eric never saw him again, but Eric then returned to stay with his foster parents for a while at the age of 18 or 19. He then recalls becoming an itinerant for a few years … When he returned to South Australia, he was told that Kevin had died in the custody of police in Castlemaine whilst an inmate of the prison there.

Eric is brought easily to tears as he recalls the events in his life. In his own words, the most significant pain for him has been the loss of family and the separation from his own kin and his culture. When speaking of members of his family he feels a great emotional pain, that in fact he doesn't believe that there is anyone left close to him, he feels as if he has been deprived of contact with his mother and his siblings by the separation at a young age, and he feels acutely the pain of his brother's death in custody. The cumulative effects of these events for him are that he feels a great difficulty trusting anyone. He finds that when he turns to his own people their contact is unreliable. Whilst at some levels supportive, he doesn't feel able to trust the ongoing contact. His brothers have no long term training to be part of a family so that from time to time, out of their own aching, they will contact Eric, but they do not maintain contact. Eric finds these renewed contacts and separations from time to time painful because in a sense they give him a window of what was available to him in the form of family support and what has been taken from him. In some ways he yearns to be closer to his family and in other ways he feels that whatever contact he has, always ends up being painful for him. He tells me that he feels constantly afraid with a sense of fear residing in his chest, that he is usually anxious and very jumpy and uptight. He feels angry with his own race, at the hurt that they have done to him, he feels that particularly the members of his own tribe exposed him to a life of alcohol, drugs and violence which has quickly turned against him.

He says looking within himself that he's a kind-hearted person, that it's not him to be angry or violent, but he certainly recalls a period of time in his life when it was the only behaviour that he felt able to use to protect himself … He feels that throughout his life he has had no anchor, no resting place, no relationship he could rely on or trust, and consequently he has shut people out of his life for the bigger proportion of his life. He tells me that the level of rejection he has experienced hurts immensely. In fact, he says, 'it tears me apart'. He tries very hard not to think about too much from the past because it hurts too much, but he finds all the anger and the hurt, the humiliation, the beatings, the rejection of the past, from time to time boil up in him and overflow, expressing itself in verbal abuse of [de facto] and in violent outbursts.

Eric often relates feelings of fear. He remembers from his childhood, feelings of intense fear. He has related to me incidents from his foster mother who he was with from the age of 6-11. He specifies particular details of physical cruelty and physical assault as well as emotional deprivation and punishment that would, in this age, be perceived as cruel in the extreme. Eric describes to me that, throughout his childhood, he would wet himself and that he had a problem with bed wetting, but he also would receive punishment for these problems. He lived in fear of his foster mother. When he was taken away from her and brought again before the welfare authorities he was too afraid to tell them what had happened to him. At that stage, he and his brother Kevin were separated and Eric found that separation extremely painful because he was too frightened to be left alone with that foster mother.

One of the effects that Eric identifies in himself is that, because of the violence in his past, when he himself becomes angry or confused, he feels the anger, the rage and the violence welling up within him. He tells me 'I could have done myself in years ago, but something kept me going'.

In the light of the research findings, Eric's experiences of separation were both highly traumatic for him and also occurred at an age when he would have been most vulnerable to serious disturbance. For Eric too the separation involved a disruption to his cultural and racial identity.

It is apparent to me that a fundamental diagnosis of Post-Traumatic Stress Disorder is fitting. Eric's symptomatology is obviously severe and chronic. In addition, it is clear that he deals with many deep emotional wounds that do not clearly fit [this] diagnostic classification. His deep sense of loss and abandonment, his sense of alienation, and his gross sense of betrayal and mistrust are normal responses to a tragic life cycle. Having said this, it is also apparent that he deals from time to time with Major Depressive Episodes.

Confidential submission 64, Victoria.

The effects of separation from the primary carer

> It has been argued that early loss of a mother or prolonged separation from her before age 11 is conducive to subsequent depression, choice of an inappropriate partner, and difficulties in parenting the next generation. Anti-social activity, violence, depression and suicide have also been suggested as likely results of the severe disruption of affectional bonds (Australian Association of Infant Mental Health submission 699 page 3 citing Bowlby 1988 page 174; supported by Dr Nick Kowalenko, Director of Child and Adolescent Psychiatry at Royal North Shore Hospital, NSW, evidence 740).

Attachment

The quality of an individual's future social relationships is profoundly affected by a baby's first experiences (Wolkind and Rutter 1984 page 34). As early as 1951, John Bowlby identified infant separation from the primary carer and institutionalisation as causally connected to a variety of psychiatric disorders in adulthood ranging from anxiety and depression to psychopathic personality (Bowlby 1951, Wolkind and Rutter 1984 page 34). The reason for this seems to be that the primary carer was not replaced by a person with whom the child could form a loving attachment. (This is not to deny that sometimes the infant's primary care-giver poses risks to the child and must be replaced.)

> … there is a substantial body of evidence to show that discordant or disruptive family relationships in early life, and a marked lack of parental affection, are both associated with a substantially increased likelihood of both emotional disturbance and personality disorders in adult life (Wolkind and Rutter 1984 page 38).

The biological 'purpose' of an infant's instinct to form an attachment is 'to provide emotional security and social autonomy'. The relationship between an infant and his or her primary carer has been described as 'a secure base (a) from which to explore and learn about the world and (b) to which the infant can retreat when "danger" in the form of novelty, fatigue, illness or other distress threatens (Australian Association of Infant Mental Health submission 699 page 2).

> The strong and healthy bond that a child develops towards family in early years is the foundation for future relationships with others, and for physical, social and psychological development. When a child has a strong and healthy attachment to family, both trust in others and reliance on self can develop.

Most families provide growing children with stories of their past that help children gain a sense of self, belonging and a sense of history.

Attachment helps the child to:

- achieve full intellectual potential
- attain cultural identity
- sort out perceptions
- know the importance of family
- think logically
- develop a conscience
- become self reliant
- cope with stress and frustration
- handle fear and worry
- develop future relationships (Swan 1988 page 4).

The evidence establishes that attachment occurs in infancy and that disruption to the process of attachment at this stage of development is most damaging. Between one-half and two-thirds of children forcibly removed were removed in infancy (before the age of five years). The following table summarises the available information on age of removal among clients surveyed by the Aboriginal Legal Service of WA and among witnesses to the Inquiry.

Age at removal

Age at removal		ALSWA clients*		Inquiry witnesses		
<	1 year	na		83	22.4%	
1 – <	2 years			28	7.5%	
0 – <	2 years	57	11.8%			
2 –	5 years	137	28.4%	97	26.1%	
6 –	10 years	147	30.4%	86	23.2%	
11 –	15 years	33	6.8%	34	9.2%	
Not recorded		109	22.6%	43	11.6%	
Total		483		100%	371	100%

** Submission 127 page 44.*

Skills and learning

Separation can affect a range of skills. Some developmental stages regress only temporarily while others can be permanently depressed. Dr Nick Kowalenko, Director of Child and Adolescent Psychiatry at Sydney's Royal North Shore Hospital, summarised some of the research in evidence to the Inquiry.

> In the last 30 or 40 years there has been a lot of work in the psychological and psychiatric spheres particularly in looking at what we call attachment theory. The issues of bonding between parents and their children have been a lot more closely examined originally from observing the separation of infants and younger children from their parents when they were hospitalised. Observations were made about how deleterious even those kind of quite minor infringements on the day-to-day ongoing contact that sustained children's capacity for security and which also allowed them to feel safe enough to explore the world.

> What was observed just in the hospital setting was that children would start off yearning very much for their parents. They would protest and they would demand to have the nurses contact their parents or whatever. Eventually they would reach a state where they would just be bereft and not move and become very still and not explore their environment. So one of the responses of kids who may not talk about it is that they cease their exploration of their environment. It greatly impacts on their new learning, their psychological development, their sense of trust … They learn that the world from an emotional point of view may be quite unreliable … They will often be disrupted in terms of their previous level of skills. So if they had been toilet trained they might lose that skill for a while. Those kinds of impacts is a sort of snapshot compared to the kind of film that Aboriginal dispossession probably represents (evidence 740).

Psychotherapist Sue Wasterval and her colleagues from the Victorian Koori Kids Mental Health Network told the Inquiry that learning difficulties experienced by many Indigenous children at school may be attributable to resistance to being taught (ie to authority figures) and/or to developmental delays of cognition and language (submission 766 page 7).

> When a severe disturbance occurs in the organization of attachment behaviour, it is likely to lead to learning difficulties, poor ego integration and serious control battles with the care giving adults (submission 766 page 6).

When the infant's attachment must be transferred to a large number of ever-changing adults on the staff of an institution or because of multiple foster placements, the objective of attachment behaviour is defeated. 'It is not the separation as such that causes persistent psychiatric disturbance. Rather, the poor outcomes arise because the separation leads to poorer quality child care, because it sets in motion a train of other adverse experiences, or because the separation itself stems from a pattern of chronic psychosocial adversity' (Wolkind and Rutter 1984 page 46).

While this may explain, in part, the diversity of 'outcomes' or long-term effects reported to the Inquiry by people who had experienced separation, the act of separation and its immediate aftermath were frequently traumatic for Indigenous children. Subsequent 'carers' rarely responded appropriately to trauma reactions and grief felt for the loss of family.

Unresolved trauma and grief has its own severe consequences. There is an association between bereavement in childhood and later psychiatric disorder

(Wolkind and Rutter 1984 page 47). The circumstances and consequences of bereavement render the child vulnerable to stresses, perhaps damaging the child's self-esteem and self-efficacy and often resulting in depression in adolescence and adulthood. The bereavement experienced by many forcibly removed Indigenous children was traumatic and later they were often told they had been rejected or that family members were dead (typically neither was true). They could be punished for expressions of attachment or grief.

> **I remember when my sister come down and visited me and I was reaching out. There was no-one there. I was just reaching out and I could see her standing there and I couldn't tell her that I'd been raped. And I never told anyone for years and years. And I've had this all inside me for years and years and years. I've been sexually abused, harassed, and then finally raped, y'know, and I've never had anyone to talk to about it … nobody, no father, no mother, no-one. We had no-one to guide us. I felt so isolated, alienated. And I just had no-one. That's why I hit the booze. None of that family bonding, nurturing – nothing. We had nothing.**
>
> *Confidential evidence 248, South Australia: woman removed as a baby in the 1940s to Colebrook; raped at 15 years in a work placement organised by Colebrook.*

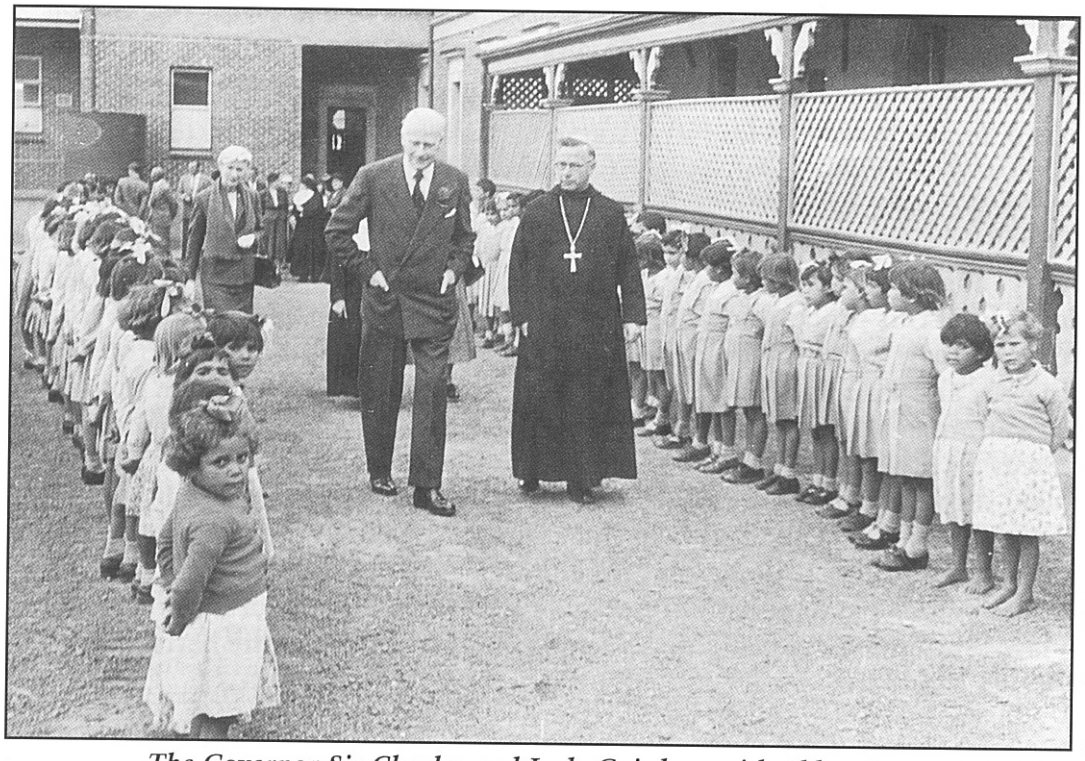
Disrupted parenting in infancy or early childhood renders the person less secure and more vulnerable to adolescent and adult psychological and emotional disturbances. International expert on trauma, Professor Beverley Raphael, advised the Inquiry that due to the trauma they had experienced many separated children would be likely to have difficulties in relationships because their feelings would be numbed (evidence 658). A number of witnesses spoke of this effect on them and of their inability to trust others.

> **There's still a lot of unresolved issues within me. One of the biggest ones is I cannot really love anyone no more. I'm sick of being hurt. Every time I used to get close to anyone they were just taken away from me. The other fact is, if I did meet someone, I don't want to have children, cos I'm frightened the welfare system would come back and take my children.**
>
> *Confidential evidence 528, New South Wales: man removed at 8 years in the 1970s; suffered sexual abuse in both the orphanage and foster homes organised by the church.*
>
> **It's wrecking our relationship and the thing is that I just don't trust anybody half the time in my life because I don't know whether they're going to be there one minute or gone the next.**
>
> *Confidential evidence 379, South Australia: woman fostered at 9 years in the 1970s.*
>
> **I've always been sorta on the outerside of things. I've always had my guard up, always been suspicious and things like that, I guess.**
>
> *Confidential evidence 168, South Australia: man removed to a boys' home at 6 years in the 1950s.*

The consequences can be extremely severe. Bowlby concluded that 'childhood loss of mother is likely to lead a person to become excessively prone to develop psychiatric symptoms and to do so especially when current personal relationships go wrong' (1988 page 174).

The youngest member of our family, Jill, was perhaps more traumatised through all this process because she grew up from the age of 9 months being institutionalised the whole time. She actually had some major trauma illnesses and trauma manifestations of institutional life evident in her life and yet nobody knew the root of it, or the cause of it, let alone knew the remedy to it. [The cottage mother] used a lot of mental cruelty on Jill – I mean, through cutting all of her hair off at one time to exert authority and to bring submission and fear into you … making the kids look ugly and dress like boys. She did that to the younger children – well Jill in particular because she was younger and more impressionable. Jill died because of those policies in law. She committed suicide. She was 34 and death was the better thing.

Confidential evidence 265, Victoria.



Courtesy Battye Library 74244P

The Governor Sir Charles and Lady Gairdner with Abbot Gomez inspecting the children of St. Joseph's Orphanage, New Norcia, WA

I remember all we children being herded up,
like a mob of cattle, and feeling the humiliation
of being graded by the colour of our skins
for the government records.

Confidentialsubmission 332, Queensland: woman removed inthe 1950s toCootamundra Girls' Home.

The effects of institutionalisation

We had been brought up on the surrogate mother of the institution and that whole lifestyle, which did not prepare us at all for any type of family life or life whereby in the future we would be surviving or fending for ourselves; and then the survival skills that we needed in order to survive in the mainstream community, because those survival skills are certainly not skills that you learn in a major institution. And the whole family value system wasn't there and then the practice that comes with that wasn't there and put in place.

Confidential evidence 265, Victoria: four Victorian sisters who were taken into care from their father and grandmother in a brief period of parental marriage difficulties during the early 1960s.

The use of institutions for Indigenous children varied somewhat across Australia. Yet even where foster care was preferred, Indigenous children often spent time in institutions before being fostered. In Western Australia 85% of the 438 clients surveyed by the Aboriginal Legal Service had spent at least part of their childhood in a mission following removal. Seventy-five (15.5%) had spent time in a government institution. Only 2.8% had been in foster care and only 3.5% had been adopted (submission 127 pages 46-49). The following table details the placement experiences of witnesses to the Inquiry for whom the information could be retrieved.

Institutional and other placements – Inquiry witnesses

Placement types	Number	%
Indigenous children's institution(s)	94	25.5
Mixed children's institution(s)	71	19.2
Indigenous & mixed children's institutions	30	8.1
Foster care	28	7.6
Adoption	27	7.3
Institution followed by foster/adoption	89	24.1
Foster/adoption followed by institution	15	4.1
Other, not recorded	15	4.1
Total	369	100.0

Child and adolescent psychiatrist, Dr Brent Waters, has interviewed a number of Koori adults who were removed and institutionalised as children in New South Wales in the 1940s.

> There was an active discouragement of any kind of personal attachments between the children themselves to some extent, and particularly between the children and carers, and of course there was a turnover of staff as well. There was no positive affirmation of Aboriginal identity nor indeed personal identity (submission 532 page 2).

The 1940s were 'the days of the hygiene movement' when the focus was on 'discipline and hygiene': 'whether you were clean, whether you had clean habits and whether you adhered to the program'. There was no interest in 'noticing individuality, individual feelings and individual needs among children'. If an infant's expressions of his or her feelings are not responded to by carers, the child will not experience validation of those feelings as they develop. The result will be suppression of feelings and the child loses 'the desire to feel and

to communicate feelings and expressions to other people' (Dr Brent Waters evidence 532).

The effects of institutionalisation can be noticed immediately.

> Studies of infants who have been institutionalised … have shown them to be different in many ways from babies reared in a family environment. General impairment in their relationships to others and weakness of emotional attachment have been identified as major abnormalities in their development and behaviour … The children's behaviour did not indicate the normal development of a sense of self (Australian Association of Infant Mental Health submission 699 pages 3-4).

Akhurst reviewed the English literature on the effects of 'long stay' care in 1972. Major findings included,

- in almost every aspect – health, physique, educational progress and a wide range of social conditions – these children as a group were at a disadvantage compared with the general child population,
- a very high level of emotional disorder was present, especially 'conduct disorders',
- the level of maladjustment was three times that of a comparable group not in care and affected at least 15-20% of the children in institutional care,
- the group in institutional care was more likely to suffer severe reading disability and 'retardation' of other language skills, and
- failure to learn the art of living with other people, making fewer new friends on leaving care.

The effects of institutionalisation have been found to persist into adolescence.

> Early studies of children who experienced institutional care in the first 3 years of their life displayed 'profound deficits in intellectual and social development'. Follow up studies of these children during adolescence revealed serious cognitive, affective, and social deficits, including disturbances in ability to form relationships, lack of anxiety or guilt over anti-social behavior, poor impulse control, and delinquency (Bloom-Feshbach 1988 page 6).

Dr Ian Anderson of the Victorian Aboriginal Health Service pointed out that all adolescents indulge in risk-taking but that institutionalised children will do so 'to a much greater extent … because they have not been able to develop a sense of self-worth' (evidence 261). The truth of this, he suggested, is borne out in the death rates of young Aboriginal men.

The effects of forcible removal and institutionalisation persist into adulthood, appearing indeed to be life long.

> … the individuals I have seen lack a sense of personal identity, personal worth and trust in others. Many have formed multiple unstable relationships, are extremely susceptible to depression, and use drugs and alcohol as a way of masking their personal pain. They see themselves as so worthless that they are easily exploited, laying themselves open to be recruited into prostitution and other forms of victimisation (Dr Brent Waters submission 532 page 2).

> **My feelings throughout life, of hurt, pain and neglection began as far back as I can remember … I was taken from my family … along with my biological brother, he also was with me through everything, if it wasn't for him, I probably would not been alive today to be able to write about my past.**

Confidential submission 126, Victoria: NSW man taken to a babies' home in Melbourne at about 12 months in 1971.

Rutter and his colleagues researched the adult experiences of girls who had been institutionalised in childhood in London and found that,

> [They] were much more likely than other women to experience serious difficulties in rearing their own children. An appreciable minority could not cope for one reason or another and had to give up the care of their children to other people. At the same time, the outcome proved to be quite heterogeneous, with some women functioning very well (1990 page 137).

The women who functioned well in spite of their disadvantageous upbringing were most likely those who enjoyed the 'emotional support of a nondeviant spouse with whom [they] had a close, confiding, harmonious relationship'. Unfortunately, however, few of the women reared in institutions were able to find such a relationship. The women who functioned worst were those who had experienced 'marked disruptions in parenting during the first 2 years of life' and 'the outcome was particularly bad for girls who spent almost all of their childhood years in an institution' (Rutter et al 1990 pages 137-138).

Michael Constable noted the experiences of Victorian Koori women who had been institutionalised as girls.

> [Some have] stayed in abusive relationships simply because of this sort of learned helplessness: you learn that you've got no control over your life because big authorities have said, 'You're going to this institution and you're going to live this very regimented life'. You're not able to use your own judgment or initiative. You can't protest. You can't move the authorities. So in a sense some people are trapped in problems that they should be able to solve if they had confidence and belief in themselves (evidence 263).

For boys in particular a common response is delinquency. Dr Elizabeth Sommerlad surveyed Aboriginal Legal Services during the 1970s.

> Officers attached to the services in Sydney, Melbourne and Darwin maintained that a large majority of clients seeking legal aid for criminal offences have a history of institutionalisation, repeated fosterings or adoption by white families … their assertion is a reflection of the perception aboriginal officers have of the deleterious effects of removal from the support of the aboriginal community (1977 page 168).

She concluded that feelings of alienation from 'white' culture and lack of identity with Aboriginal culture underlie the high incidence of criminal offending among this group (1976 page 161).

> **It did lead to a career in crime in which, to me, well, it wasn't the crime that turned me on, even though I was successful at it. It was getting back at society. It was kicking 'em, y'know? It wasn't the crime, it was the fact that, well, I'm going to pay back now for 20 odd years. Now, I served something like 5 years in the prisons, not because I wanted to be a criminal, but because I didn't know where I was, I didn't know who I belonged to.**
>
> *Confidential evidence 354, South Australia: man fostered at 2 years in the 1950s; placed in a reformatory at 14.*

The Australian Law Reform Commission drew on Dr Sommerlad's work in a 1982 research paper for its Aboriginal customary law reference.

> It is not possible to state with certainty that the very high rates of Aboriginal juveniles in corrective institutions and of Aborigines in prisons is a direct result of their having been placed in substitute care as children, but that there is a link between them has often been asserted and seems undeniable. In Victoria, analysis of the clients seeking assistance from the Aboriginal Legal Service for criminal charges has shown that 90% of this group have been in placement – whether fostered, institutionalised or adopted. In New South Wales, the comparable figure is 90-95% with most placements having been in white families (page 6).

Three years earlier another researcher noted that,

> There are between 50 – 60 Aboriginal male and female juveniles entering our detention centres every year. That rate has been steady over the past four years. One in every three Aboriginal youth who enters detention as a result of delinquent behaviour is a white family adoption or foster-care breakdown. A further third of the Aboriginal juvenile offending population has a significant history of rearing in Children's Institutions (Palamara 1979 pages unnumbered).

A number of witnesses to the Inquiry had experienced periods of detention throughout their lives.

> **And every time you come back in it doesn't bother you because you're used to it and you see the same faces. It's like you never left, you know, in the end.**
>
> *Confidential evidence 204, Victoria: prisoner telling of a life spent in institutions since his removal at 5 years to a children's home.*

> **I reckon all my troubles started when I was living in them homes. That's when I first started stealing because you wasn't allowed to have anything and if I wanted something the only way I could get it is get it off someone else, get me brother or sister to buy it or just take it. We were sort of denied everything we wanted, just got what we was given and just be satisfied with that. I felt second-rate. I didn't feel like I got the love I was supposed to get; like a kid's supposed to get at that age, because they're more vulnerable at that age. They just follow people that seem to look more after them. That's why I got in with the wrong crowd, I suppose. They seemed to care more.**
>
> *Confidential evidence 146, Victoria: a young father relating how he began stealing when he and his three siblings were in a family group home where all the other children were non-Koori and where he and his Koori brother and sisters received markedly less favourable treatment.*

> **They grew up to mix up with other troubled children in Tardon and didn't know how to mix with us their mother and family, they only knew how to mix with other boys that they grew up with and these boys were into stealing, so my sons went with them, they couldn't do without the crowd that they grew up with. I couldn't tell them anything at this stage cause they felt that coloured people were nothing and that is when they went on the wrong road.**

> **One of my sons was put into jail for four years and the other one died before he could reach the age of 21 years. It hasn't done my sons any good, the Welfare making them wards of the State and taking them away from me, they would have been better off with me their mother.**
>
> *Confidential submission 338, Victoria: Western Australian mother speaking of two sons taken in the 1950s.*

Helen Siggers, a former nursing sister who is now Director of the Aboriginal education centre at Monash University in Victoria, was in a position to compare Aboriginal bridging course students who had been removed with those who had not (evidence 140). She had dealt with 80 students, ten of whom had been removed as children. She observed that those not removed were 'together as people', 'knew about their culture', had 'strong self-esteem' and 'positive [intimate] relationships [of some duration]'. On the other hand, those who had been removed had experienced 'years of self-destructive behaviour', an 'intensity of addictions', 'cardiac problems, diabetes and psychological problems', 'gaol sentences' and a tendency to move 'from one partner to another'. With respect to their progress in the bridging program, those not removed 'accelerated in their learning' whereas those removed 'were held back because they were still dealing with all the emotional stuff'. Those who were not removed were more likely to complete their planned university degrees.

Michael Constable, a community health nurse in Ballarat, also observed a 'higher relationship turnover'. He told the Inquiry that he observed the stolen generations, on reaching adulthood, to be 'chronically depressed' (evidence 263).

The effects of abuses and denigration

In institutions and in foster care and adoptive families, the forcibly removed children's Aboriginality was typically either hidden and denied or denigrated. Their labour was often exploited. They were exposed to substandard living conditions and a poor and truncated education. They were vulnerable to brutality and abuse. Many experienced repeated sexual abuse.

The social environment for all Indigenous Australians and the physical environment for many remain unacceptable. It is pervaded by racial intolerance and a failure to deliver adequate or appropriate basic services from housing and infrastructure to education and hospital care. Ill-health, poverty and unemployment are worse than third world levels. The 1991 NSW Aboriginal Mental Health Report (Swan and Fagan 1991) identified the factors increasing the vulnerability of the Aboriginal community to mental ill-health.

> [I]nstitutional and public racism and discrimination
> the continuing lack of opportunities in education and employment
> poverty and its consequences including stress and environments of normative heavy drinking
> inter-cultural differences in norms and expectations
> problems associated with long family separations and the issues associated with family reunion
> poor physical environments
> high levels of chronic illness and high rates of premature death (Swan and Fagan 1991 page 12).

This makes it almost impossible to pinpoint family separations as the sole cause of some of the emotional issues by which Indigenous people are now troubled (Professor Ernest Hunter evidence 61, Michael Constable evidence 263). However, childhood removal is a very significant cause both in its distinctive horror and in its capacity to break down resilience and render its victims perpetually vulnerable. Evidence to the Inquiry establishes clearly that the childhood experience of forcible removal and institutionalisation or multiple fostering makes those people much more likely to suffer emotional distress than others in the Indigenous community.

The psychiatric report concerning one witness to the Inquiry illustrates the persistence of vulnerability.

> She told me of her mother's death very shortly after she was born, and how when her father came to collect her from the hospital a few days later, she had already been removed as per the Indigenous Family Separation Policy. She was brought up in Colebrook Children's Home away from her father and siblings. She remembers him coming to visit her on occasions and being devastated when he had to leave. She also remembers being sexually abused by the wife of the Superintendent at Colebrook, on several occasions, giving rise to a distrust of so-called caregivers, especially females … While she was still at school, she worked as a housekeeper for a local Minister and alleges that during this time, he regularly and deliberately exposed himself to her. Not having anyone to turn to, this was a confusing and frightening experience. Following leaving school, she was placed in domestic service with a lay minister also associated with the Children's Home. This man raped her but she did not feel able to tell anyone as she felt profoundly ashamed and frightened. She was fifteen years old at the time. After this she was placed at Resthaven Nursing Home, which she believes was a strategy to get rid of her.
> Ms S developed problems with depression and alcohol abuse following the death of her father in 1971. Her difficulties were also compounded by her unhappy marital situation, which was characterised by her alcoholic husband's physical and sexual assault of her on a regular basis. [Diagnosed with manic-depressive disorder 1979. Hospitalised for the first time 1985.]

> Unfortunately, the effects of ongoing alcohol and substance abuse contributed to frequent short-lived depressive episodes with suicidal ideation. Her substance abuse was the result of the difficulty she experienced coming to terms with the diagnosis of manic-depressive disorder, her significant family problems and the effects of a childhood where she was dislocated from her family of origin, thus leaving her vulnerable to the events which followed *(*document provided with confidential evidence 248, South Australia).

Sexual Abuse

Many children experienced brutality and abuse in children's homes and foster placements. In the WA Aboriginal Legal Service sample of 483 people who had been forcibly removed, almost two-thirds (62.1%) reported having been physically abused (submission 127 page 50). Children were more likely to have been physically abused on missions (62.8% of those placed on missions) than in foster care (33.8%) or government institutions (30.7%) (submission 127 page 53).

Witnesses to the Inquiry were not specifically asked whether they had experienced physical abuse. Nevertheless, 28% reported that they had suffered physical brutality much more severe, in the Inquiry's estimation, than the typically severe punishments of the day.

Stories of sexual exploitation and abuse were common in evidence to the Inquiry. Nationally at least one in every six (17.5%) witnesses to the Inquiry reported such victimisation. A similar proportion (13.3%) reported sexual abuse to the WA Aboriginal Legal Service: 14.5% of those fostered and 10.9% of those placed on missions (submission 127 pages 51-53).

These vulnerable children had no-one to turn to for protection or comfort. They were rarely believed if they disclosed the abuse.

There are many well recognised psychological impacts of childhood sexual abuse (Finkelhor and Brown 1986). They include confusion about sexual identity and sexual norms, confusion of sex with love and aversion to sex or intimacy. When the child is blamed or is not believed, others can be added including guilt, shame, lowered self-esteem and a

sense of being different from others. Wolfe (1990) concluded that the impacts amount to a variant of Post-Traumatic Stress Disorder. They reported effects including sleep disturbance, irritability and concentration difficulties (associated with hyper arousal), fears, anxiety, depression and guilt (page 216). Repeated victimisation compounds these effects.

> People subjected to prolonged, repeated trauma develop an insidious progressive form of post-traumatic stress disorder that invades and erodes the personality. While the victim of a single acute trauma may feel after the event that she is 'not herself,' the victim of chronic trauma may feel herself to be changed irrevocably, or she may lose the sense that she has any self at all (Hermann 1992 page 86).

Post-trauma effects can be mitigated for children with a strong self-concept and strong social supports. Few of the witnesses to the Inquiry who reported sexual abuse in childhood were so fortunate. The common psychological impacts have often manifested in isolation, drug or alcohol abuse, criminal involvement, self-mutilation and/or suicide.

> There is no doubt that children who have been traumatised become a lot more anxious and fearful of the world and one of the impacts is that they don't explore the world as much. Secondly, a certain amount of abuse over time certainly causes a phenomenon of what we call emotional numbing where, because of the lack of trust in the outside world, children learn to blunt their emotions and in that way restrict their spontaneity and responsiveness. That can become an ingrained pattern that becomes lifelong really and certainly when they then become parents it becomes far more difficult for them to be spontaneous and open and trusting and loving in terms of their own emotional availability and responsiveness to their children (Dr Nick Kowalenko evidence 740).

Oliver (1993, reported by Raphael et al 1996 on page 13) 'found that approximately one-third of child victims of abuse grow up to have significant difficulties parenting, or become abusive of their own children. One-third do not have these outcomes but the other third remain vulnerable, and, in the face of social stress there was an increased likelihood of them becoming abusive'.

Other trauma

Separation and institutionalisation can amount to traumas. Almost invariably they were traumatically carried out with force, lies, regimentation and an absence of comfort and affection. All too often they also involved brutality and abuse. Trauma compounded trauma. No counselling was ever provided. These traumas 'have impacted particularly in creating high levels of depression and complex PTSD [post-traumatic stress disorder]'. PTSD 'has a lot of somatic symptoms, impact on personality, on impulse control, and often leads to ongoing patterns of abuse' (Professor Beverley Raphael evidence 658).

A representative from the Western Australian Health Department recognised the impacts of the removal policies.

> The negative health impact of past laws and practices have resulted in a range of mental health problems associated with the trauma, including grief and severe depression and self-damaging behaviour, including self-mutilation, alcohol and substance abuse and suicide (Marion Kickett evidence).

Trauma experienced in childhood becomes embedded in the personality and physical development of the child. Its effects, while diverse, may properly be described as 'chronic'. These children are more likely to 'choose' trauma-prone living situations in adulthood and are particularly vulnerable to the ill-effects of later stressors.

Dr Jane McKendrick and her colleagues in Victoria in the mid-1980s surveyed an Aboriginal general medical practice population by interviewing participants twice over a three-year period. One-third of the participants had been separated from their Aboriginal families and communities during childhood. Most of the separations had occurred before the child had reached 10 years of age and lasted until adulthood. Most of the separations were believed by the children to have been on 'welfare' grounds (and not because parents were deceased or had voluntarily relinquished them).

These separated people were twice as likely to suffer psychological distress in adulthood than the remainder of the participants: 90% of participants who had been separated were psychologically distressed for most of the three years of the study, compared with 45% of the participants who had been brought up within their Aboriginal families. Depression accounted for nearly 90% of diagnoses. Factors offering protection against the development of depression and other distress included a strong Aboriginal identity, frequent contact with ones Aboriginal extended family and knowledge of Aboriginal culture.

Overall, two-thirds of the Aboriginal participants were found to be significantly psychologically distressed throughout the three years of the study. The contrast with non-Indigenous general practice populations is telling. 'The rates of psychological distress in non Aboriginal general practice samples vary from 15 to 30 per cent.

However, in contrast to the situation in this Aboriginal group, most of these disorders amongst the general population are short lived, resolving within one to six months' (Dr Jane McKendrick, Victorian Aboriginal Mental Health Network, submission 310 pages 19 and 23).

> **I still to this day go through stages of depression. Not that I've ever taken anything for it – except alcohol. I didn't drink for a long time. But when I drink a lot it comes back to me. I end up kind of cracking up.**
>
> *Confidential evidence 529, New South Wales: woman fostered as a baby in the 1970s.*

The Inquiry was told of two South Australian studies which also linked psychiatric disorders and the removal policies.

> Clayer and Dwakaran-Brown (1991) conducted a study of mental and behavioural problems in an urban Aboriginal population (n=530). They reported a 35% rate of psychiatric disorder. 31% of the total population studied had been separated from their parents by the age of 14 years. Absence of a father and traditional teachings in the first fourteen years correlated significantly with suicide attempts which were at much higher rates than the general population. Similar problem levels were found in Radford et al's (1991) study in Adelaide with many of those showing high levels of suicidal behaviours having been separated from families and brought up in institutions (Professor Beverley Raphael submission 658).

The Sydney Aboriginal Mental Health Unit advised the Inquiry of its experience with patients presenting with emotional distress.

> This tragic experience, across several generations, has resulted in incalculable trauma, depression and major mental health problems for Aboriginal people. Careful history taking during the assessment of most individuals [ie clients] and families identifies separation by one means or another – initially the systematic forced removal of children and now the continuing removal by Community Services or the magistracy for detention of children … This process has been tantamount to a continuing cultural and spiritual genocide both as an individual and a community experience and we believe that it has been the single most significant factor in emotional and mental health problems which in turn have impacted on physical health (submission 650 pages 4-5).

The Unit identified the risk of 'major depressive disorder and use of alcohol and other drugs to ease feelings of hopelessness, helplessness, marginalisation, discrimination and dispossession, leading to breakdown in relationships, domestic violence and abuse' among its clients. The forcible removal policies are seen as the principal cause of these 'presenting issues' (submission 650).

> **I now understand why I find it so very very hard to leave my home, to find a job, to be a part of what is out there. I have panic attacks when I have to go anywhere I don't know well and feel safe. Fear consumes me at times and I have to plan my life carefully so that I can lead as 'normal' an existence as possible. I blame welfare for this. What I needed to do was to be with my family and my mother, but that opportunity was denied me.**
>
> *Confidential submission 483, South Australia: woman fostered at 18 months in the 1960s.*

One consequence of chronic depression is very poor physical health. Dr Ian Anderson and Professor Beverley Raphael both expanded on this point in evidence.

> This also had a multi-dimensional impact in terms of people's health … including the development and progress towards diseases such as heart disease, hypertension and so on … it has been argued for some time that there are many social factors implicated in the development of what we call physical illnesses such as heart disease. However, the association between what is often termed social stressors and the development of disease is difficult to prove using the traditional methods of health sciences or epidemiology … However, there are some health analyses which are very suggestive on, for example, an association between things like how connected you are – what sort of social support you have, how socially connected you are to your own community – and the development of disease processes like high blood pressure [which is] closely linked to heart disease and diabetes (Dr Ian Anderson evidence 261).

> Holocaust studies suggested it [trauma] could impact on the functioning of the brain as well as the immune system. There have been recent studies of trauma such as Vietnam veterans' combat experience without damage [ie without physical injury being incurred] showing changes in brain structure and function as a result of the traumatic experience (Professor Beverley Raphael evidence 658).

Victims of traumatic separation are less likely to follow a treatment regime properly.

It's very hard to get people with these sort of depression and anxieties and insecurities and uncertainties about themselves to actually care about being healthy (Michael Constable evidence 263).

The result of that sort of [separation] process was one which fragmented the identity of many people in quite a profound way. That has an impact on people's sense of who they are, how you fit into the world and where you're going – what in technical terms people call your sense of coherence. It also destroyed the sense of worth of being Aboriginal and fragmented people's sense of identity, and this is something which happened not just to the people who were taken away but it has also happened to the families who were left behind.

Now this whole process in a psychological sense fundamentally impacts on how people look after themselves … It makes it even more difficult for people who do have physical illness to take complicated treatments over a long period of time … Individuals may not have the self-esteem or self-worth to actually come in for care in the first instance or for follow-up management (Dr Ian Anderson evidence 261).

Alcohol is the 'treatment of choice' for many with acute depression.

If they hadn't used alcohol they probably would have committed suicide … You can't be here to carry that sort of pain and depression. We're incapable of staying alive with that sort of feeling, and alcohol was a sort of first aid (Michael Constable evidence 263).

The sorts of things that can happen with people who are having flashbacks of traumatic events is that it can cause such psychic pain that the person might start to drink heavily or use other psycho-active substances heavily (Dr Jane McKendrick evidence 310).

Judith Hermann has pointed to evidence that a chemical reaction occurs in the brain at the time of a traumatic event. This helps the victim to survive the event psychologically intact by permitting a degree of dissociation from it. However 'traumatized people who cannot spontaneously dissociate may attempt to produce similar numbing effects by using alcohol or narcotics'. Thus 'traumatized people run a high risk of compounding their difficulties by developing dependence on alcohol or other drugs' (1992 page 44).

I drank a lot when I was younger, y'know. I still do I guess. I don't drink as much now, but I still do and there's never been anything … any pleasure in it. I guess I don't know whether it's a hangover from seeing the old man do it … whether it's because of that or whether it's because of other issues which I just wouldn't, couldn't confront … I'd have nights where I'd sit down and think about things. There was no answers.

Confidential evidence 168, South Australia: man removed to a boys' home at 6 years in the 1950s.

I tried to look forward. As I say, every time I'd look back as in trying to find out exactly who I was and what my history was, I'd have real bad attacks of Vic. Bitter.

Confidential evidence 156, Victoria: man whose mother had also been removed as a child; he was taken from her at a very young age when she suffered a nervous breakdown and was raised in a children's home.

The following table summarises the findings of the WA Aboriginal Legal Service survey of 483 clients who had been forcibly removed. Caution should be used in interpreting these findings because of the high proportion of participants who did not respond to these questions.

After-effects of forcible removal

Effects	Yes	No	No answer	Total			
Physical ill-health	113	21.4%	177	36.6%	193	40.0%	483	100%
Mental problems	68	14.1%	234	48.4%	181	37.5%	483	100%
Substance abuse	79	16.4%	216	44.7%	188	38.9%	483	100%
Imprisonment	122	25.3%	193	40.0%	168	34.7%	483	100%

Source: Aboriginal Legal Service of WA submission 127 pages 54-55.

Racism

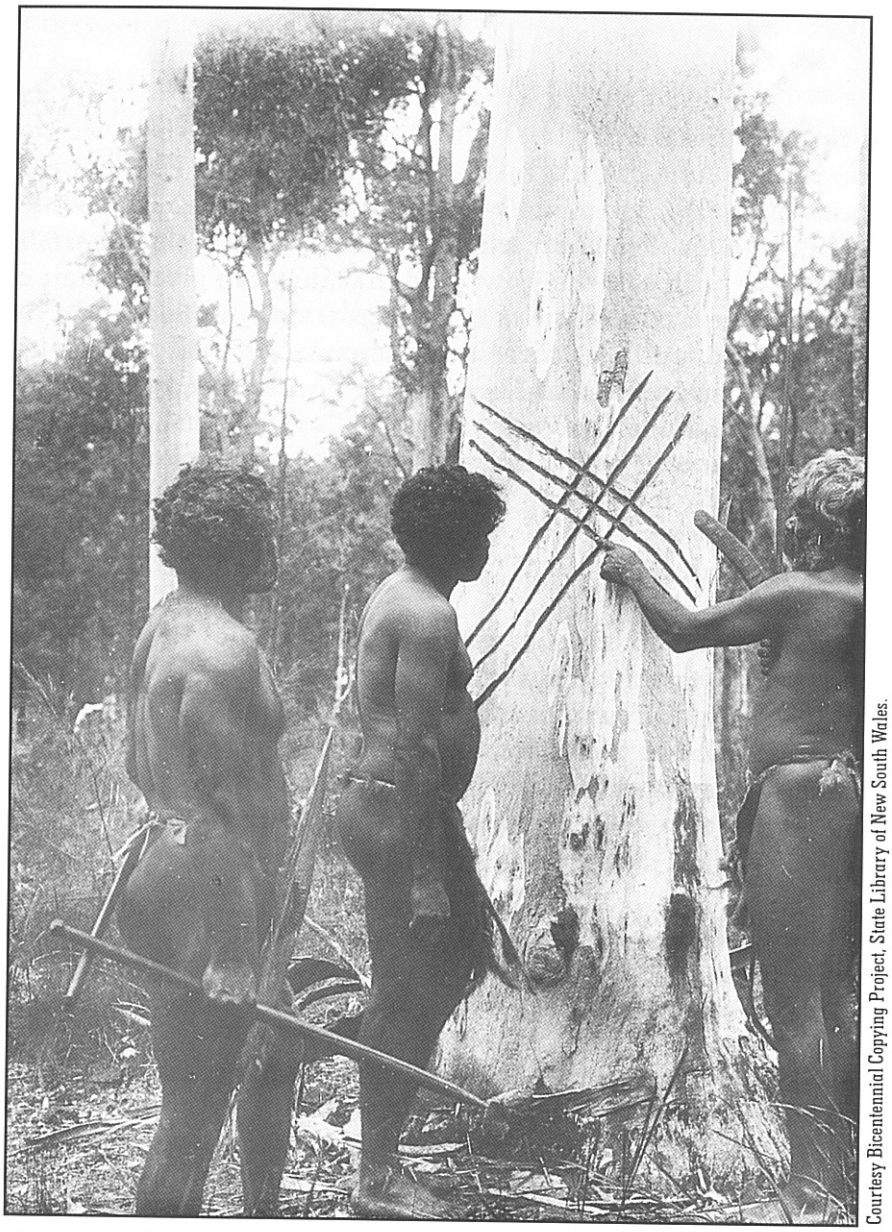
Institutionalised Indigenous children faced a hazard over and above that experienced by institutionalised non-Indigenous children. This was the continual denigration of their own Aboriginality and that of their families.

> **I didn't know any Aboriginal people at all – none at all. I was placed in a white family and I was just – I was white. I never knew, I never accepted myself to being a black person until – I don't know – I don't know if you ever really do accept yourself as being … How can you be proud of being Aboriginal after all the humiliation and the anger and the hatred you have? It's unbelievable how much you can hold inside.**
>
> *Confidential evidence 152, Victoria.*

The assimilation policy seemed to demand that the children reject their families. The tactics used to ensure this ranged from continual denigration of Aboriginal people and values to lies about the attitudes of families to the children themselves. Many children were told their parents were dead. Dr Peter Read told the Royal Commission into Aboriginal Deaths in Custody that,

> The most profound effect of institutionalization, which overrides other well-documented effects of institutionalization generally, was the persistent attempt by authorities to force the boys to identify as European … One was a positive reinforcement of the European model, the other was a negative portrayal of Aboriginality combined with a withholding from the boys of any particular knowledge of their immediate family or of Aborigines generally (quoted in *National Report* Volume 2 page 76).

The complete separation of the children from any connection, communication or knowledge about their Indigenous heritage has had profound effects on their experience of Aboriginality and their participation in the Aboriginal community as adults.



Courtesy Bicentennial Copying Project, State Library of New South Wales.

Aboriginal elder showing youth tree carvings, Port Macquarie area, NSW, 1905

It was forbidden for us to talk in our own language. If we had been able we would have retained it … we weren't allowed to talk about anything that belonged to our tribal life.

Pring 1990 page 18 quoting MurielOlsson, removed to Colebook, South Australia, atthe age of 5.

The effects of separation from the Indigenous community

> **I went through an identity crisis. And our identity is where we come from and who we are. And I think, instead of compensation being in the form of large sums of money, I personally would like to see it go into some form of land acquisition for the people who were taken away, if they so wish, to have a place that they can call their own and that they can give to their children. My wife and I are trying to break this cycle, trying our hardest to break this cycle of shattered families. We're going to make sure that we stick together and bring our children up so they know who they are, what they are and where they came from.**
>
> *Confidential evidence 696, New South Wales: man happily adopted into a non-Indigenous family at 13 months in the 1960s.*

Cultural knowledge

One principal effect of the forcible removal policies was the destruction of cultural links. This was of course their declared aim. The children were to be *prevented from acquiring the habits and customs of the Aborigines* (South Australia's Protector of Aborigines in 1909); *the young people will merge into the present civilisation and become worthy citizens* (NSW Colonial Secretary in 1915). Culture, language, land and identity were to be stripped from the children in the hope that the traditional law and culture would die by losing their claim on them and sustenance of them.

> **The culture that we should have had has been taken away. No, it's not that I don't like the people or whatever, it's just that I'd never really mixed with them to understand what it is to be part of the tribal system, which is the big thing …**
>
> *Confidential evidence 160, Victoria: removed to an orphanage in the mid-1940s.*

> … they have been deprived of their right to the songs and the spiritual and cultural heritage that was theirs, and I think there are direct financial consequences of that. I mean, in doing so, they have been removed from the very link which most land rights legislation demands in order for your rights to native title to be recognised. So in effect their removal in that way from their own family and context was also to deprive them of certain legal rights that we later recognised …

> … the cost is not only confined to inheritance losses, the loss of rights from father to son, mother to daughter; they also lost their sense of identity very clearly (Rev. Bernie Clarke, Uniting Church, former Superintendent at Croker Island Mission, evidence 119).

The response of some people 'brought up to be white' is to deny their heritage. In turn their descendants are disinherited.

> If just one Aboriginal person denies their Aboriginality, by the third generation of descendants from that person, there may be 50 or 60 Aboriginals who up to now were not aware of their heritage (Link-Up (NSW) submission 186 page 165).

Others work to renew their cultural links.

> **When we left Port Augusta, when they took us away, we could only talk Aboriginal. We only knew one language and when we went down there, well we had to communicate somehow. Anyway, when I come back I couldn't even speak my own language. And that really buggered my identity up. It took me 40 odd years before I became a man in my own people's eyes, through Aboriginal law. Whereas I should've went through that when I was about 12 years of age.**
>
> *Confidential evidence 179, South Australia: man removed as an 'experiment' in assimilation to a Church of England boys' home in the 1950s.*

> **I had to relearn lots of things. I had to relearn humour, ways of sitting, ways of being which were another way totally to what I was actually brought up with. It was like having to re-do me, I suppose. The thing that people were denied in being removed from family was that they were denied being read as Aboriginal people, they were denied being educated in an Aboriginal way.**
>
> *Confidential evidence 71, New South Wales: woman who lived from 5 months to 16 years in Cootamundra Girls' Home in the 1950s and 1960s.*

Indigenous identity

Many witnesses spoke of their strong sense of not belonging either in the Indigenous community or in the non-Indigenous community.

> **You spend your whole life wondering where you fit. You're not white enough to be white and your skin isn't black enough to be black either, and it really does come down to that.**
>
> *Confidential evidence 210, Victoria.*

> **I felt like a stranger in Ernabella, a stranger in my father's people. We had no identity with the land, no identity with a certain people. I've decided in the last 10, 11 years to, y'know, I went through the law. I've been learning culture and learning everything that goes with it because I felt, growing up, that I wasn't really a blackfella. You hear whitefellas tell you you're a blackfella. But blackfellas tell you you're a whitefella. So you're caught in a half-caste world.**
>
> *Confidential evidence 289, South Australia: speaker's father was removed and the speaker grew up in Adelaide.*

The policies of separation were often administered in such a way as would directly cause feelings of alienation.

> **I was taken there because I was 'half-caste'. I started thinking, 'Why do I deserve to be treated like this?' But as the years went by, I sort of accepted all that. We were treated differently to white and black people. We weren't allowed to go down to see our Aboriginal people, or go into the houses where the white people were. We just had to live around the outside of the house. They made us feel like we weren't allowed to do anything: no freedom of movement, even to think for yourself. They had to tell you what to do, and how to think.**
>
> **We were locked up in the dormitories, and had to go and ask for anything. We had to go and ask if we could go and see our people. We were more or less like slaves, I think. We didn't think that was wrong. We just thought it was our duty. We did what we were told.**
>
> **Years later, when we were grown up, our own boss – by this time we were married and having our children – we were having families and still couldn't go up and ask the managers if we could get married. They had to tell you who you had to marry. We didn't know what was their plans for us. We just lived and did what we were told.**
>
> **I was almost ashamed to be half-caste sometimes. I had no confidence in myself, or how to make up my mind what to do … When I was growing up I wanted to be a teacher or a nurse. But you couldn't say that because you had to go to school and go out and work in the house, do domestic duties. That's what they said. We lost much of our culture, our language and traditional knowledge, our kinship and our land.**
>
> *Confidential evidence 821, Western Australia: woman removed to Moola Bulla Station at 5 years in 1944.*

This loss of identity has ramifications for individuals' well-being and in turn for the well-being of their families.

> The alienation from culture can create an increase in anger and frustration which can also lead to increases in violence and lawlessness, and we're talking here about a profound sense of alienation … a lack of ego strength, a lack of the capacity to test reality …
>
> I think there is a connection between people's loss of identity and their experience of lawlessness and being gaoled and then losing that sense of identity within the context of that very big institution and the experience of total alienation from themselves, resulting in death (Lynne Datnow, Victorian Koori Kids Mental Health Network, evidence 135).
>
> … it is our experience that most Aborigines raised within the Tasmanian Aboriginal community are far more secure in where they belong than are those who were raised outside the Aboriginal community. We have seen Aborigines raised outside the community being confused, uncertain and insecure about their belonging. That is not, of course, the case with every displaced child (Tasmanian Aboriginal Centre submission 325).

Anna's story illustrates the inter-generational transfer of the effects of forcible removal. Anna's Koori grandmother was forcibly removed from her family and her

mother abandoned her when she was six years old. In time Anna moved in with her uncle and his family and only then, at the age of 16, did she realise her Koori heritage. She sought to identify herself as Koori but her uncle opposed this. She was forced to leave home, joining the airforce after concealing her true age. Anna continues to experience problems relating to her Indigenous identity (confidential evidence 217, Victoria).

Native title

> The removal of 'Stolen Generations' people from their families has, in the majority of cases, prevented them from acquiring language, culture and the ability to carry out traditional responsibilities and in many cases, has prevented them from establishing their genealogical links.
>
> 'Stolen Generations' people are therefore prevented or seriously prejudiced from successfully asserting rights under the LRA *[Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)]* or NTA *[Native Title Act 1993 (Cth)]* (Central Land Council submission 495 pages 2-3).
>
> Separation has broken or disrupted not only the links that Aboriginals have with other Aboriginals, but importantly, the spiritual connection we should have had with our country, our land. It is vital to our healing process that these bonds be re-established or re-affirmed (Link-Up (NSW) submission 186 page 14).

Separation from their families has dramatically affected people's land entitlements as summarised for the Inquiry by the legal firm Corrs Chambers Westgarth (submission 704). In all jurisdictions the ability to bring a native title claim will generally be extinguished by forced removal. The Full Court of the Federal Court considered an analogous situation in the case of *Kanak* in 1995 and concluded that,

> … native title can be enjoyed only by members of an identifiable community who are entitled to enjoy the land under the traditionally based laws and customs, as currently acknowledged and observed, of that community. Individuals may have native title rights that are protected, but these rights are dependent upon the existence of communal native title and are 'carved out' of that title.
>
> The only persons entitled to claim native title are those who can show biological descent from the indigenous people entitled to enjoy the land under the laws and customs of their own clan or group.

Establishing 'biological descent' is the first hurdle for separated people seeking to re-establish their relationship with 'their' land. The person must be able to trace his or her family and the family's community of origin must be known. Although a separated person is unlikely to be able to sustain a native title claim independently (and native title claims are collective claims in any event), a person who has been accepted back into his or her community of origin may participate in a claim brought by that community.

It is possible for Aboriginal people who were removed from their traditional families to become a participant in a collective claim by a group or clan of Aboriginals. However, in order for this to happen it would first be necessary for them to be accepted as a member of the Aboriginal community which has collectively maintained the requisite use and spiritual and cultural ties to the land that have allowed the group's native title to survive.

As a matter of practicality, Aboriginal people who have been removed from their families may be accepted back into Aboriginal communities. The issue is one for the Aboriginal clan or group to decide. However, there may be traditional laws and customs which govern the acceptance of people in the community and it is possible they may be refused permission to rejoin a community, or refused recognition as a member of a community, because they have not participated in the traditional and cultural activities of that community for a length of time. If this is the case, the disentitlement to claim as a member of a group would be a direct result of the forced separation of that person from the community as a child (Corrs Chambers Westgarth submission 704 page 27).

Including a person who has yet to be fully reintegrated into the traditional laws relating to the land in a claimant group may jeopardise the land claim under some legislation, for example the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), although the Inquiry received no evidence that this has occurred. However, once a claim is successful (for example under the *Native Title Act 1993* (Cth)), or once traditional lands have been granted (for example under the *Pitjantjatjara Land Rights Act 1981* (SA)), it is entirely up to the traditional owners to decide whether they will accept a person taken away in childhood and permit him or her to share in the enjoyment of the land.

Where collective land ownership is vested in an association, the rules of the association usually provide for the acceptance of new members (for example *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* (Cth); *Aboriginal Land Rights Act 1983* (NSW)).

Under some legislation a requirement of a period of uninterrupted residence is imposed before the person can become a member of the land-owning group (for example with respect to Framlingham Forest, Victoria, under the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987* (Cth)).

We can't even claim for that, because we're not living on it. But that's not our fault. The Government took us off our land, so how can we get land rights when this is what the Government has done to us?

Confidential evidence 450, New South Wales: woman removed at 2 years in the 1940s, first to Bomaderry Children's Home, then to Cootamundra Girls' Home; now working to assist former Cootamundra inmates.

I have no legal claim to come back here. I can't speak on the board of management, I'm not a living member out here on this mission. What right have I got to speak out here? And this is the way that a lot of the Aboriginals living on this mission see me – as a blow-in, a blow-through. Yet I've got family that are buried out here on the mission … and I have no rights. As an Aboriginal I don't have any rights out here.

Confidential evidence 207, Victoria: man whose mother was removed from Lake Tyers as a child; mother buried at Lake Tyers.

Although they may not be able to make land claims based on a traditional connection to the land, some separated people may succeed by proving an 'historical association' instead. Queensland (*Aboriginal Land Act 1991* section 54 and *Torres Strait Islander Land Act 1991* section 51), New South Wales (*Aboriginal Land Rights Act 1983*) and the Northern Territory (*Pastoral Land Act 1992* with respect to pastoral excisions for community residential areas) all recognise this as a basis for claim. Thus, a group dispersed from their traditional lands and detained on a mission station may be able to reclaim the mission land on the basis of historical association.

Queensland also permits claims based on a group's need for 'economic or cultural viability' (*Aboriginal Land Act 1991* section 55, *Torres Strait Islander Land Act 1991* section 52). The group's land claim may succeed if it shows the land would assist in restoring, maintaining or enhancing the capacity for self-development and the self-reliance and cultural integrity of the group.

A number of governments have established funds to permit the acquisition of land for Aboriginal groups or communities, regardless of their traditional or historic ties. The primary basis for these land purchases will be cultural or economic need. Such land would also usually be held collectively. The principal fund is the Commonwealth's Indigenous Land Fund established in 1995 for the purchase of land for Indigenous corporations. The New South Wales *Aboriginal Land Rights Act 1983* also established a fund from which land could be purchased for economic or other purposes.

Rose

We always lived by ourselves. Not that we thought we were better than any other Koori family. It's just that the white welfare, if they seen a group of Koori families together, they would step in and take their children away never to be seen again.

… never to be seen again

We moved from South Gippsland to East Gippsland. By this time I was about 9 years old. My parents pulled me out of school because the Welfare was taking the Koori kids from school never to be seen again. My parents didn't want this to happen to us. That's why we always lived by ourselves.

My parents made a little mia-mia with bushes and sticks around our heads and our feet at the fire which would burn all night. We all shared the 2 big grey government of Victoria blankets and was a very close family. Our little jobs were to gather whatever we could while our parents were picking [bean and pea picking for a local grower].

We were never allowed to walk down to our camp the same way because our parents didn't want the welfare to find us. That's why we couldn't make a beaten track. Then my parents got paid from picking. They went into Lakes Entrance to get a few groceries and left me, being the oldest, to care for my other brothers and sisters, which I always done. I was like their second mother but big sister. [4 younger siblings

aged between 6 months and 7 years.]

The baby started crying so I went and got my uncle to come and watch the kids until I walked in town to look for my parents. The town was about 15 ks so I left the camp and walked through the bush. I wouldn't walk along the main Highway because I was scared someone might murder me or take me away. I got into town just before dark and this Koori woman who I didn't know asked me was I looking for my parents. I said yes. She said they got a ride out to the camp with some people. That's how I missed them because I wasn't walking on the highway.

She said to me what are you going to do now. I said I'm going to walk back to the camp. She said it's getting dark, you can't walk out there now. You better come and stay with us and go back out tomorrow. I said OK. I trusted this Koori woman whom I didn't know. She gave me a meal and a bed.

The next day I thought and knew that my parents would be upset with me for leaving the kids but I knew they would be alright because they were with Mum's brother.

While I was walking through the bush the police and Welfare were going out to the camp which they had found in the bush. I was so upset that I didn't walk along the Highway. That way the Welfare would have seen me.

The next day I knew …

The next day I knew that the Welfare had taken my brothers and sisters. This lady who I stayed with overnight: her brother came that morning and told her the Welfare had taken the kids to the homes. She called me aside and said, babe it's no good of you going out to the camp today because the Welfare has taken your brothers and sisters away to the homes. I started crying and said to her no I have to go back to the camp to see for myself. She got her brother and sister to take me out there and I just couldn't stop crying. All I could see was our little camp. My baby brother's bottle was laying on the ground. And I could see where my brother and sisters were making mud pies in a Sunshine milk tin that we used for our tea or soup. I didn't know where my parents were.

I was sad crying lost …

I was sad crying lost didn't know what I was going to do. I wished I had of walked along the Highway so my brothers and sisters would have seen me and told the Welfare just so I would have been with them.

Eventually I found my parents in Lakes Entrance. They were shattered upset crying

so they went and got a flagon of wine, which they never ever worried about drink.

They took the kids to Melbourne Allambie Children's Home and bought them back when it was court day.

The Welfare and the Police told my parents that they would have to get a house, furniture, plenty of food in the cupboard and my Dad had to get a job. It was very hard in those days what Welfare put on my parents. Just couldn't happen. People wouldn't let black people have a good home. Or give them anything – not like now.

My parents knew that what the Welfare wanted them to do they couldn't. We just weren't allowed to be up to white man's standards. That's why they knew that they had my brothers and sisters for good. At court my parents knew that was the last time they would see their kids. So they told the court that they didn't want them split up.

The kids was glad to see Mum and Dad at court. They were jumping all over them. Glad to see them. When the Welfare took the kids off Mum and Dad they were holding out their arms trying to stay with Mum and Dad. Everyone was crying sad. Sad. Sad.

After the kids had gone to the home Mum and Dad hit the grog hard as they had done everything in their power and in their hearts to keep us away from the (predators) the Welfare. But they sniffed us out of the bush like dogs.

… they sniffed us out of the bush like dogs.

My parents couldn't handle the trauma of not having the closest warmth loving caring family we were. They separated. My Mum went one way; my Dad went his way.

And I was 9 years of age left to go my way. I didn't know anyone. So I lived with Koori families who took me in. And in return I would look after their kids while they went picking just so I had some sort of family caring. I done this for years. Still not knowing where my brothers and sisters were. I tried hard to find them but couldn't.

The families that took me in I have a lot of respect for them because they tried to mend a 9 year old's broken heart. I love them dearly.

Eventually I got married when I was 21 years old. I thought maybe I could get my brothers and sisters and give them the home that the Welfare said my parents had to do. My husband worked in a sawmill and we had a sawmill house. After about 14 years my [eldest] brother came to live with us. One sister found us through the Salvation Army about 16 years later. Then my brother [the baby] who died last year who was caught up in the System was like a lost street kid and was bashed by the police in Melbourne a couple of years ago ended up with a tumour on the brain and was never the same again. My second sister who I or my family didn't see for 27 years. What could anyone do now to make up for those 27 years of not having their sister a part of their life. A terrible big hole in my heart that will never be filled.

We all are in contact with each other now and we try to make up for all those lost years. But something's missing. Could you put yourself in the situation that we were put through?

Confidential submission 316, New South Wales. These events occurred in 1958.

Courtesy University of WA Berndt Museum of Anthropolgy.

Fair-haired boy, Mt Margaret Mission, north-eastern Goldfields, WA, 1954-55

I often used to ask my foster mother who she was, this old lady who would come to the gate, and the answer I always got was, 'She is some silly old black woman'.

Confidential evidence 56, Tasmania: man removed 1930s; his grandmother died before he was able to find her.

I was there for 16 years and I was brainwashed every day of the week. You never go near Blacks. Your people don't want you anyway. They're just dirty. They don't want anything to do with you … We were playing in the schoolyard and this old black man came to the fence. I could hear him singing out to me and my sister. I said to [my sister], 'Don't go. There's a black man'. And we took off. It was two years ago I found out that was my grandfather. He came looking for us. I don't know when I ever stopped being frightened of Aboriginal people. I don't know when I even realised I was Aboriginal. It's been a long hard fight for me.

Confidential evidence 10, Queensland: NSW woman removed 1940s and placed in Cootamundra Girls' Home

The effects on family and community

The trauma of forcible separation affected the parents and other relatives left behind as well as the children taken. Few of the parents have survived to tell their own stories. Many of those who have feel such guilt and despair that they were unable to come forward. Link-Up (NSW) advised the Inquiry that,

> In preparing this submission we found that Aboriginal women were unwilling and unable to speak about the immense pain, grief and anguish that losing their children had caused them. That pain was so strong that we were unable to find a mother who had healed enough to be able to speak, and to share her experience with us and with the Commission …
>
> We end up feeling helpless in front of our mother's pain. We see how hurt they have been. We see that they judge themselves harshly, never forgiving themselves for losing their children – no matter that they were part of ongoing systematic removal of Aboriginal children …
>
> Our mothers inevitably say that they didn't want to hurt us. But also we realise that here is where our mothers were hurt most deeply. Here is where they were shamed and humiliated – they were deprived of the opportunity to participate in growing up the next generation. They were made to feel failures; unworthy of loving and caring for their own children; they were denied participation in the future of their community (submission 186 part III pages 30-31).

The evidence clearly establishes that families and whole communities suffered grievously upon the forcible removal of their children.

> **The interesting thing was that he was such a great provider … He was a great provider and had a great name and a great reputation. Now, when this intrusion occurred it had a devastating impact upon him and upon all those values that he believed in and that he put in place in his life which included us, and so therefore I think the effect upon Dad was so devastating. And when that destruction occurred, which was the destruction of his own personal private family which included us, it had a very strong devastating effect upon him, so much so that he never ever recovered from the trauma that had occurred …**
>
> **Progressively the shattering effect continued in my father's life to the point that he couldn't see the sense in reuniting the family again. He had lost all confidence as a parent and as an adult in having the ability to be able to reunite our family.**
>
> *Confidential evidence 265, Victoria: woman removed with her sisters from their father and grandmother in the 1960s.*
>
> **Mum was kidnapped. My grandfather was away working at the time, and he came home and found that his kids had been taken away, and he didn't know nothing about it. Four years later he died of a broken heart. He had a breakdown and was sent to Kew [Psychiatric] Hospital. He was buried in a pauper's grave and on his death certificate he died of malnutrition, ulcers and plus he had bedsores. He was 51.**
>
> *Confidential evidence 143, Victoria.*
>
> **I remember my Aunty, it was her daughter that got taken. She used to carry these letters around with her. They were reference letters from the white fellas in town … Those letters said she was a good, respectable women … She judged herself and she felt the community judged her for letting the welfare get her child … She carried those letters with her, folded up, as proof, until the day she died.**
>
> *Quoted by Link-Up submission 186 on page 21.*

Professor Beverley Raphael told the Inquiry,

> Part of the reaction to being traumatised, like suddenly having your child torn away from you, is what we call a high level of arousal … that heightened arousal can stay on a heightened level with physiological responsiveness for the rest of one's life … so that people are aroused, alert. And one reason they take alcohol and other substances is often to dampen this down and they don't know its cause (evidence 658).

My parents were continually trying to get us back. Eventually they gave up and started drinking. They separated. My father ended up in jail. He died before my mother. On her death bed she called his name and all us kids. She died with a broken heart.

Confidential submission 106, New South Wales: woman removed at 11 months in the late 1950s with her three siblings; children fostered in two separate non-Indigenous families.

The Inquiry is not aware of any research on the effects of forcible removal of a child or children on the parents and other family members. However there is research on the effects of the death of a child and some research on the effects of relinquishing a child for adoption. Speaking at the Third Australian Conference on Adoption in 1982 Margaret van Keppel and Robin Winkler summarised some of this research.

> Sanders (1979-80) assessed the intensities of bereavement reactions of people who had experienced three different types of death (spouse, parent and child) and found that those who had experienced the death of a child revealed more intense grief reactions of somatic types and greater guilt with accompanying feelings of despair, than did those bereaved who had experienced the loss of a spouse or parent …
>
> There is consistent evidence indicating that bereavement increases mortality and morbidity …
>
> There is no evidence contradicting the assumption that relinquishing a child for adoption is an undesirable life event, a life crisis, for the relinquishing mother. [Research evidence shows]:
>
> 1 That people respond to crises in specific predictable ways, e.g., shock, anger, depression.
>
> 2 That people go through a series of stages over time, attempting to come to terms with an aversive life-event.
>
> 3 That people eventually accept or resolve their crises [although there is] extreme variability in peoples' responses to life crises [and] the difficulty following a crisis may be experienced indefinitely.
>
> [Factors affecting recovery are]:
>
> 1 Perceived social support facilitates adjustment …
>
> 2 The opportunity for free expression of feelings facilitates adjustment …
>
> 3 The presence of other life-stressors impedes adjustment …
>
> 4 The ability to find meaning in the outcome facilitates adjustment … (pages 176-9).

These findings about bereaved and relinquishing parents can be extended approximately to the experience of Indigenous parents whose children were forcibly removed. They have the lowest likelihood of recovering from the trauma of that event. While social supports would usually have been available within the Indigenous community, beyond that there were none. Indigenous families continued to experience

profound disadvantages (‘other life-stressors ’) including exclusion and control, racism and poverty which would have acted as severe stresses compounding their grief and trauma. They could generally find no meaning in the forcible removal.

A Western Australian mother of two boys was working as a nurse and well able to fit her sons out for school. Yet they were made wards of the State in the late 1950s.

> **It has left me sick, also my son sick too, never to be the same people again that we were before, being separated from one another, it has made our lives to be nothing on this earth. My sons and myself went through a lot of pain and heartbreak. It’s a thing that I’ll never forget until I die, it will always be in my mind that the Welfare has ruined my thinking and my life.**

> **I felt so miserable and sad and very unhappy, that I took to drinking after they took my sons. I thought there was nothing left for me.**
>
> *Confidential submission 338, Victoria.*
>
> **I’m not under the influence of alcohol anymore, you know. Because then you used to sort of deal with it more or less in drink and I thought I could solve my problems in a bottle, you know. That’s the only way I could deal with my feelings for my kids not living here … My kids are with me today, but I’ve lost a lot. I’ve lost that motherhood with my kids, you know.**
>
> *Confidential evidence 208, Victoria*.

Because ‘mixed race’ children were particularly targeted for forcible removal, non-Indigenous parents and families also lost children.

> In some circumstances the non-Aboriginal parent actually believed that they could have done something to stop what happened. In some experiences that I’m aware of, that has led to long-term ill health of that non-Aboriginal parent. In some circumstances it has led to breakdown in those relationships [between the Aboriginal and non-Aboriginal parent] … But how do you tell your father that it’s okay; that it wasn’t their fault; and that his whiteness and maleness in a patriarchal society that should have been enough to protect any person’s family did no good because of the nature of the relationship with his partner? (Joanne Selfe, NSW Aboriginal Women’s Legal Resource Centre, evidence 739).

Parenting roles, nurturing and socialising responsibilities are widely shared in Indigenous societies: ‘relatives beyond that of the immediate family have nurturing responsibilities and emotional ties with children as they grow up’ (Dr Ian Anderson evidence 263). When the children were taken, many people in addition to the biological parents were bereft of their role and purpose in connection with those children.

> Aboriginal life was based on the sharing of all resources for the good of the group. The family unit was not the restricted modern nuclear family but an extended family of sharing and caring. Everybody was related and all relations were important, individual interests were subordinate to the lore. Aboriginal society was an all-inclusive network of reciprocal obligations of giving and receiving, which reinforced the bonds of kinship (Elvie Kelly, Victorian Koori Kids Mental Health Network, submission 758).

> When you look at a family tree, every person that is within that family tree is born into a spiritual inheritance. And when that person isn't there, there's a void. There's something missing on that tree. And that person has to be slotted back into his rightful position within the extended family. While that person is missing from the extended family, then that family will continue to grieve and continue to have dysfunctions within it. Until the rightful person comes and takes their spiritual inheritance within that family (Kevin Booter, NSW Aboriginal Mental Health Worker, evidence 527).

The loss of so many of their children has affected the efficacy and morale of many Indigenous communities. Evidence to the Inquiry referred particularly to the way in which the child-rearing function of whole communities was undermined and denied, particularly where all children were required to live in mission dormitories. Psychiatrist Professor Ernest Hunter documented how removal on missions in the Kimberley region of Western Australia undermined the confidence of families and diluted their ability to rear their children.

> Parental roles and adult authority were compromised as the responsibility for education and discipline was claimed by Europeans (Hunter 1995 page 379).

> … you can say parenting can be undermined absolutely in those instances where a child is physically removed. It can be undermined to a degree in settings where there's sequestration such as dormitorisation, but you could say that parenting is undermined universally in a society where parental roles – particularly Aboriginal paternal roles, male roles – are undervalued generally.

> [The] mission agenda [was] intrusion into family structure and intrusion into the kind of dynamic relationship between sacred and family roles because you can't undermine one without undermining the other …

> I think there's a problem blaming the problems with alcohol and social distress on the removal of kids … However, it certainly is tied in with the broader process of undermining parenting roles and undermining family structure … (evidence 61).

Hunter documented how Kimberley Aboriginal parents responded when the government station managers and missionaries relinquished their control over the children with the growth of self-management progressively from the mid-1970s.

> It was anticipated that Aboriginal adults would reassert their role in the discipline and control of children … Aborigines [in Jigalong, for example] … had relinquished a significant dimension of that function to European mission control, defining it as 'whitefellow business'. When it became redefined as 'blackfellow business' a conflict arose (1993 page 229).

The anticipated reassertion of parental control did not occur. The adults had experienced discipline as children but not nurturing. It had been a model of discipline reliant on physical chastisement, something unacceptable in traditional child-rearing. With their own methods denigrated and largely lost to them and European methods unacceptable, there seems to have been a discipline vacuum.

That's also impacted on my own life with my kids. I have three children. And it's not as though I don't love my kids. It's just that I expected them to be as strong and independent and to fight for their own self like I had to do. And people misinterpret that as though I don't care about my kids. But that's not true. I do love my kids. But it's not as though the Church provided good role models, either, for a proper family relationship.

Confidential evidence 548, Northern Territory: Western Australian woman removed at 4 years in the 1950s and placed at a north-west Catholic orphanage and then at Beagle Bay Mission.

Hunter and other researchers noted how Europeans devalued the paternal role in particular, in common with most other aspects of the traditional male role. Indigenous men generally lost their purpose in relation to their families and communities. Often their individual responses to that loss took them away from their families: on drinking binges, in hospital following accidents or assaults, in the gaol or lock-up, or prematurely dead.

> [This has] a significant impact on child development. For Aboriginal boys, the compromise of traditional and contemporary role models resulting from the father's absence or functional unavailability has a damaging impact on the development of male identity (Hunter 1993 page 231).

Forcible removal affected community life in another way, too. To escape 'the welfare' and avoid their children being taken some families exiled themselves from their communities and sometimes hid their Aboriginal identity.

> Because forcible and seemingly arbitrary separation was so widespread and because the government used the threat of separation to coerce Aboriginal adults, most Aboriginal people lived with the fear of separation structuring their lives. Some tried to protect their families from separation by continually moving; others called themselves Maori or Indian; others cut off all ties with other Aboriginal people, including family members (Link-Up (NSW) submission 186 part III on page 3).

This almost as effectively removed children from community ties and culture; 'social removal and nil contact with Aboriginal people was also achieved by the very real fear of removal and the severance of family ties' (quoted by Link-Up (NSW) submission 186 part III on page 67).

I didn't know anything about my Aboriginality until I was 46 years of age – 12 years after my father died. I felt very offended and hurt that this knowledge was denied me, for whatever reason. For without this knowledge I was not able to put the pathway of my own life into its correct place. When I did find out, for the first time in my life I understood why I had always felt different when I was a young man.

Man whose Aboriginal father lived as a white, quoted by Link-Up (NSW) submission 186 part III on page 65.

My grandfather wanted us to deny our Aboriginality so that we wouldn't be taken away. He used to say that none of his kids would live on a mission. We weren't allowed to say that we were Aboriginal, and we weren't allowed to mix with the Aboriginal people in the country town where we lived … I didn't find out until Mum passed on that

> **I was related to nearly everyone on the south coast. I even found out that the woman who lived across the street when were growing up was my Aunty. But all those years growing up I hadn't known.**
>
> *Quoted by Link-Up (NSW) submission 186 part III on page 64.*

When a child was forcibly removed that child's entire community lost, often permanently, its chance to perpetuate itself in that child. The Inquiry has concluded that this was a primary objective of forcible removals and is the reason they amount to genocide.

> [Children are] core elements of the present and future of the community. The removal of these children creates a sense of death and loss in the community, and the community dies too … there's a sense of hopelessness that becomes part of the experience for that family, that community… (Lynne Datnow, Victorian Koori Kids Mental Health Network, evidence 135).

There have been similar conclusions in the comparable context of forcible removal to educational institutions of Native American children.

> Because the family is the most fundamental economic, education, health-care unit in society and the centre of an individual's emotional life, assaults on Indian families help cause the conditions that characterise those cultures of poverty where large numbers of people feel hopeless, powerless and unworthy (Byler 1977 page 8).

A Congressional Inquiry in 1978 found that the removal of Indian children had a severe effect on Indian tribes, threatening their existence as identifiable cultural entities (US Congress 1978).

'Culture' has been defined as 'a set of values and ideas which contains the distinctive way of life of a group of people and which tends to persist through time and is transmitted from generation to generation' (*Telling Our Story* 1995 page 52).

> Culture is the whole complex of relationships, knowledge, languages, social institutions, beliefs, values and ethical rules that bind a people together and give the collective and its individual members a sense of who they are and where they belong. It is usually rooted in a particular place – a past or present homeland. It is introduced to the newly born within the family and subsequently reinforced and developed in the community. In a society that enjoys normal continuity of culture from one generation to another, its children absorb their culture with every breath they take. They learn what is expected of them and they develop a confidence that their words and actions will have meaning and predictable effects in the world around them (Canadian Royal Commission on Aboriginal Peoples 1995 page 25 quoted by *Telling Our Story* 1995 on page 52).

Every culture is continually changing and adapting to new conditions. Cultural stress such as the massive disruption caused by massacres, introduced diseases, dispossession and forcible removal of children robbed Indigenous societies of almost every opportunity to control the nature of their adaptations.

The impacts of forcible removal are renewed when societies must deal with the desire of removed children to return and reclaim their inheritance. The Jawoyn

Association in the Northern Territory explained to the Inquiry,

> … the impact of the former policy of assimilation on traditional Aboriginal Law – in particular the Law applying to inheritance and inclusion within traditional clan and kinship systems … is creating continuing social tensions and division and has the potential to disrupt and damage – well into the future – traditional land ownership and management structures.
>
> … the establishment of a genealogical affiliation does not necessarily determine 'who speaks for country' under Jawoyn traditional law – and it is this aspect of trying to cope with the colonialist history of assimilationism that has created difficulties for the Jawoyn nation …
>
> … To be able to 'speak for country' crucially involves *knowledge*: knowledge about the law; knowledge about country; knowledge about 'the system'; and a social connectedness to all things Jawoyn. Without such knowledge and connectedness, appropriate to one's age group and experience, one is not entitled to 'speak for country' (submission 841 pages 2, 4 and 6).

The Jawoyn Association has found a way to resolve two competing interests.

> The ability of Jawoyn people living on or near Jawoyn traditional lands, and whose lives are completely integrated in Jawoyn society, to determine what happens on those Jawoyn traditional lands. There has been a strongly expressed fear – perhaps unfounded – of Jawoyn people in this situation being potentially 'outvoted' on decisions by people living well away from their traditional lands and having little if any strong connectedness to those lands or its people.
>
> Recognition and an acknowledgment of and respect for the Jawoyn heritage of those people stolen from their kin and country, and their descendants. Significantly, very few people in this situation have said they want to receive a share in rentals or royalties (except perhaps as a symbol of recognition), however a number of people from a Stolen Generation background have stated they wished to 'come back' to Jawoyn land; some have stated they wished to establish commercial ventures and/or living areas on Jawoyn land (submission 841 page 7).

The resolution chosen by the Jawoyn will not necessarily appeal to other communities and associations dealing with this issue. The Central Land Council advised the Inquiry,

> In some cases, the reunification of some 'Stolen Generations' people with their families and culture has led to Land Councils including those people in land ownership and native title holder records, as determined and as directed by Traditional Owners.
>
> In other cases, while reunited family members are often involved in land and native title claims, their loss of language and culture often 'disables' them from taking part.
>
> There are also cases where 'Stolen Generations' people claim genealogical relationships which may not be acknowledged and cases where there is not recognition of a genealogical link between people in a land or native title claim, situations which are painful for all concerned (submission 495 page 3).

What is clear from the Jawoyn experience is the imperative that each community exercising its right of self-determination must be empowered to resolve the matter for itself.

> It has not been through choice that the Jawoyn had their children kidnapped from their country; likewise those children suffered a cruel fate.

It was a policy that drove at the heart of Jawoyn society, and tore our families apart.

The resolution of this colonialist legacy will only in part be achieved through the mechanisms of this Inquiry and the response of government to its recommendations.

It will not be an easy process, it will not be quick. But it cannot succeed unless Aboriginal law – which has been damaged as part of the same process of assimilationism that led to kids being taken away – is respected as having a place in the restitution process (submission 841 page 11).

Courtesy Battye Library 74234P

Sister Maria and Girls at Work in the Laundry, New Norcia, WA, 1954

If you grow up with no love … I thought sex was love. That's why I probably had all those kids, 'cause I was trying to get all this love, y'know. 'Cause I never got it when I was in the Home.

Confidential evidence 383, South Australia: woman removed at about 4 years in the 1940s and raised largely at Koonibba Lutheran Children's Home.

We wasn't told anything about the facts of life. When we left the Home they didn't tell us anything about sex and that. All us girls, when we all come out the Home, we were all just, bang, pregnant straight away.

Confidential evidence 170, South Australia.

Inter-generational effects

There's things in my life that I haven't dealt with and I've passed them on to my children. Gone to pieces. Anxiety attacks. I've passed this on to my kids. I know for a fact if you go and knock at their door they run and hide.

I look at my son today who had to be taken away because he was going to commit suicide because he can't handle it; he just can't take any more of the anxiety attacks that he and Karen have. I have passed that on to my kids because I haven't dealt with it. How do you deal with it? How do you sit down and go through all those years of abuse? Somehow I'm passing down negativity to my kids.

Confidential evidence 284, South Australia.

The impacts of the removal policies continue to resound through the generations of Indigenous families. The overwhelming evidence is that the impact does not stop with the children removed. It is inherited by their own children in complex and sometimes heightened ways.

Parenting

Most forcibly removed children were denied the experience of being parented or at least cared for by a person to whom they were attached. This is the very experience people rely on to become effective and successful parents themselves. Experts told the Inquiry that this was the most significant of all the major consequences of the removal policies.

Denial of this experience results in an individual whose ability to parent his or her own children is severely compromised, and this is certainly my observation with people who were removed in early childhood. Not only has the legacy of impaired interpersonal relationships and poor self-worth rendered them more liable to unplanned parenthood, but they make poor parents and their children in turn have often been taken into care for having been abused or neglected. Such parents are often disorganised, impatient, capricious and ultimately demoralised, feeling unable to provide for their children what they missed out on and often being painfully aware that the experience of childhood they are providing for their children [is] not dissimilar to that which they experienced (Dr Brent Waters submission 532 page 2).

… when they grow up and begin to form family relationships as adults, they have not had a history of socialisation which includes processes of being nurtured, so that they have difficulty in sustaining and developing good constructive family relationships with their own children (Dr Ian Anderson evidence 263).

The way it translates to the way they become parents down the track is that from a personal point of view sometimes they are very struck by the incongruity of the desire and yearning to look after their kids consistently, the difficulties in dealing with all the real world limitations on that at different times, but also just the sense of emotional continuity that they have not personally experienced because of their disruption and loss. In some way it becomes built into them as a way of defending against the need that their children may have for them in a consistent and ongoing fashion.

So what it means is that they might become afraid of the dependency of the children, or they might become afraid of the needs of their children and they might not be as ready to ensure that all the things that maintain trust and continuity with the care of their children can be sustained (Dr Nick Kowalenko evidence 740).

The damage was recognised by a senior State welfare official in evidence to the Inquiry.

The fact that there has been no history there of family caring, nurturing, and because there has been

a fair degree of in some cases institutionalisation upbringing, people don't have the social and emotional skills to cope. The child has been deprived of its role models (Mike Hepburn, WA Department of Family and Community Services, evidence).

Many parents from the stolen generations are very good parents. Dr Ian Anderson noted that 'some individuals have been very lucky in the way in which they've been able to reconstruct their sense of self-worth and their sense of commitment to their children' (evidence 263). Michael Constable noted that 'despite all the odds and despite the pain, so many people function. They manage to keep families together' (evidence 261).

I feel I have been totally denied of a childhood, but I could never repeat the cycle that happens to so many Aboriginal children that have been removed. It happened to my eldest brother: he had his five children removed. My other brother suffers from alcoholism …

Even though I drink, it's probably once or twice a year. I believe I got it out of my system when I had my first child. Even though I continued to drink when I had my first child, the drinking binges started easing up [to the point] where I didn't need to be drunk every weekend, cause my little boy needed me to be sober.

Confidential submission 788, New South Wales.

Shaun and his mother, Clare, are among the fortunate. Although her parents died when she was young, Clare was raised until the age of 13 by her mother's sister and her husband. She was then removed to a children's home with her younger sister. Clare was determined that her own two sons would not be taken from her and at one stage, when they were quite young, she decided to board them with different relatives to ensure that her own status as a sole parent would not lead to their removal. In this period Clare commuted on weekends alternately to the two homes from her place of work. Shaun told the Inquiry that,

I probably would've been still trying to find my way in life, but the foresight was there from our elders [mother and aunts], teaching some respect and some form or way of getting through life without having to worry.

Confidential evidence 207, Victoria.

Many Indigenous parents experience anxiety in rearing their children. In adulthood the forcibly removed children carry with them the fear that their own children will be taken from them in turn. This was said to be one reason Indigenous people 'don't tap into mainstream services, because there's that fear that the children could be taken away' (Joyce Smith evidence 135).

I now understand the way I am and why my life is so full of troubles and fears. I find it hard to take my children to hospital for the fear of being misunderstood and those in authority might take my children away as I was.

Confidential submission 483, South Australia: woman removed at 18 months in the 1960s.

Now I understand why Mum is the way she is, why she's been strict on us, why she never used to take us to the doctors when we used to hurt ourselves, because the first thing they would have looked at was her skin and said, 'Well, you're obviously not looking after them properly'. So now I know why all those times we never used to go to the doctors and go to the hospital … because Dad worked all his life and Mum stayed home and looked after us kids, so she was very hesitant to take us kids to doctors.

Confidential evidence 143, Victoria.

Professor Ernest Hunter found among his patients a group of parents who 'feel extremely uncertain and almost paranoid about looking after their kids and concerned for their kids' welfare' (evidence 61). The fears of the parents can translate into a lack of discipline for their children.

A lot of people think I'm very, very easy on my children. I don't smack them because I really used to get belted. A lot of people think a smack's not going to hurt them but I just remember it as a child, you know. They've got a lot of spirit in them and I won't knock it out of them. I just won't knock anything out of them that's in them already like I had it all knocked out of me.

Confidential evidence 629, Queensland: WA woman removed as a baby in the 1960s and eventually fostered at 10 years.

… You see some people that just don't know how to show love and they're getting into a lot of financial problems because they're spending all their money on their grandkids. They're doing this so that the kids think that they love them. You see other parents that can't chastise their kids at all or say no to them, you know, in case they won't love them. So some of the kids have just grown up with no limits set on them at all (Sister Pat Swan evidence 658).

That's another thing that we find hard is giving our children love. Because we never had it. So we don't know how to tell our kids that we love them. All we do is protect them. I can't even cuddle my kids 'cause I never ever got cuddled. The only time was when I was getting raped and that's not what you'd call a cuddle, is it?

Confidential evidence 689, New South Wales: woman placed in Parramatta Girls' Home at 13 years in the 1960s.

I have a problem with smacking kids. I won't smack them. I won't control them. I'm just scared of everything about myself. I just don't know how to be a proper parent sometimes. I can never say no, because I think they're going to hate me. I remember hating [foster mother] so I never want the kids to hate me. I try to be perfect.

Confidential evidence 529, New South Wales: woman fostered as a baby in the 1970s.

Behavioural problems

A high proportion of the 'stolen generations' have 'problem children' of their own (Michael Constable evidence 261). Dr Max Kamien's 1972 study in Bourke, NSW, found that one-third of the Aboriginal adults he interviewed had been separated in childhood for more than five years. One-quarter of the Aboriginal boys aged between 5 and 14 and one-third of the girls had 'substantial behavioural problems'

(cited by Hunter 1995 page 378). Kamien commented that nearly all the Bourke children experienced 'inconsistency, unpredictability, and a conflict of values with the dominant white society' (cited by Hunter quoting *The Dark People of Bourke* page 168). However, the study was not conducted in such a way that it could confirm a causal link between a parental history of separation and their children's 'behavioural problems'.

Dr Jo Topp, a Victorian General Practitioner, was able to compare parenting among Koories in Victoria with parenting in remote communities in Central Australia where 'most people had not been directly affected by removal policies'.

> In Central Australia I never saw any infants with feeding or sleep difficulties and whenever I saw infants who were unsettled it was because they were unwell. Young mothers were clearly well supported and advised by their relatives and they had a strong belief in what they were doing. In contrast in Victoria … I saw many young mothers with very little idea of how to interact with their young infants, how to feed them, how to rear and discipline their older children or how to set limits. Removal of children from their families and from their culture has at the very least resulted in loss of role models for them to learn their parenting skills (submission 767).

> Separation of people from families interrupts the flow of knowledge and understanding with respect to stages of child development and culturally appropriate models of parenting and household management (Marion Kickett, WA Health Department, evidence).

Linda Briskman confirmed that 'children coming to the attention of Aboriginal child care agencies frequently had parents who had been removed as children' (evidence 134). Professor Ernest Hunter, in his practice as a psychiatrist, has found that many adolescent patients of the second generation present 'with pictures that look like personality disorders: girls with patterns of substance abuse, promiscuity, self-harm' (evidence 61).

Because of their behavioural problems there is a significantly increased risk that these second generation children will in turn be removed from their families or will have their children removed.

> … as children who grew up under the stolen generations, the fact that we didn't often have our own parents, that we in fact as children when we were raised were not parented by other people and as adults and as women we go on to have children and that those skills and experiences that our extended family would have instilled in us are not there – that puts us at great risk of having our children removed under the current policies and practices that exist today (Joanne Selfe, NSW Aboriginal Women's Legal Resource Centre, evidence 739).

> **I'm a rotten mother. My own husband even put my kids in the Home and I fought to get them back. And then I was in a relationship after that, and he even put my kids in the Home. I think I've tried to do the best I could but that wasn't good enough. Why? Because I didn't have a role model for a start.**
>
> *Confidential evidence 179, South Australia: multiple foster placements in the 1950s and 1960s.*

The Aboriginal Legal Service of WA surveyed 483 clients who had been forcibly

removed. More than one-third of those clients reported that their children had been taken away in turn (submission 127 page 44).

Violence

Professor Ernest Hunter has noted the very high rates of self-harm including suicide and domestic violence among young men in many Indigenous communities (1996). His research has led him to identify the root cause as the inappropriate construction of male identity in Indigenous families due to the fact that male role models were either absent or had been undermined (page 10). Professor Hunter looked beyond the contemporary Indigenous family to explain the reasons for the absence of effective male role models.

> I believe that violence to significant others and self-harm are related and represent the enactment, at the centre of Aboriginal societies, that is, within the family, of the consequences of the protracted and damaging intrusion into family life that accompanied and followed colonisation. I contend that the destabilisation continues as a result of the poor social circumstances and disadvantage of contemporary Aboriginal societies (Hunter 1996 page 11).

Maggie Brady's findings on petrol sniffing strongly support Professor Hunter's conclusion that self-destructive behaviour among young Indigenous men is a consequence of the undermining of family roles and, in particular, of male role models. Brady found that petrol sniffing was rare in communities which had not experienced missionary or government intrusion into family life. These communities had been engaged in the pastoral industry. Pastoralists not only did not intrude into Indigenous families, at least not nearly to the extent experienced on missions and government stations, but they valued Indigenous families living on their traditional lands. The reasons may have been self-interested – the adult workers knew the country intimately and the children were a convenient current and future workforce – but the consequences include stronger Indigenous families and communities (Brady 1992 pages 183-190).

Unresolved grief and trauma

Ways of relating and ways of nurturing are passed from generation to generation.

> There is no doubt that children who have been traumatised become a lot more anxious and fearful of the world and one of the things that impact has is that they don't explore the world as much. Second, a certain amount of abuse over time certainly causes a phenomenon of what we call emotional numbing where, because of the lack of trust in the outside world, children learn to blunt their emotions and in that way restrict their spontaneity and responsiveness. That can become an ingrained pattern that becomes then lifelong really .. and it becomes far more difficult for them as parents to be spontaneous and open and trusting and loving in terms of their own emotional availability and responsiveness to their children (Dr Nick Kowalenko evidence 740).

The Inquiry received evidence that unresolved grief and trauma are also inherited by subsequent generations. Parents 'convey anxiety and distress' to their children (Professor Beverley Raphael evidence 658).

I've come to realise that because of Dad being taken away, grief and all that's been carried down to us. We're not organised. We don't know where we're heading.

Confidential evidence 403, Queensland: speaker's father was removed at the age of 18 months to The Bungalow, Northern Territory.

I have six children. My kids have been through what I went through. They've been placed. The psychological effects that it had on me as a young child also affected me as a mother with my children. I've put my children in Bomaderry Children's Home when they were little. History repeating itself.

Confidential evidence 444, New South Wales: woman removed at 4 years and suffering sexual abuse in one foster home and emotional abuse in the other.

Depression and mental illness

The Inquiry has documented the high rates of depression among people who experienced forcible removal in childhood. The children of these parents are also known to be at risk. The Human Rights and Equal Opportunity Commission's Inquiry into Mental Illness reported that,

> Other recent research indicates that children of depressed parents demonstrate significantly greater levels of anxiety, depressive symptoms and physical illnesses than children of non-depressed parents. They have more difficulty in school, with discipline, and in relating to their peers (pages 498-499 citing Gross 1989, Silverman 1989).

That Inquiry found that the children of parents with mental illness are at greater risk of being taken into care and this is done more swiftly and with less consideration of the alternatives (page 494).

J a m e s F a m i l y

Related by a psychotherapist and her colleagues at the Victorian Koori Kids Mental Health Network.

Grandmother Helen:

Helen was removed from her family at the age of four and placed in a white institution. She was not allowed contact with her parents and left the institution at seventeen to work as a cook in the city. She had no family to support her and no idea of where she came from. She became pregnant very young and was unable to care adequately for any of her children as she had severe socio-economic problems and was also unable to cope because she had no model from which to develop her own parenting skills. Her partner was alcoholic and violent and she became very depressed and began to drink. As her own ability to trust and form close relationships was damaged due to her traumatic removal from her parents at such a young age with no substitute attachment figures provided, she was unable to maintain intimate long-term relationships, her marriage broke down and all her children were placed in care by 'the welfare'.

Mother Jenny:

Jenny grew up in a chaotic family experiencing violence, alcoholism and sexual abuse from her father. At three and a half years she was placed in foster care.

There were periods of time when she was returned to her mother and then removed again. Like her mother she also received no adequate model on which to base her future parenting and due to her deprivation and abuse her ability to trust and form close relationships was damaged. In addition, she also had to cope with a history of violence, alcoholism and sexual abuse that left her depressed and only just able to cope with life on a day to day basis. She could not hold down a regular job, abused alcohol, was attracted to violent, abusive men and tried to meet her needs for care and nurturing by having one child after another. While her children's basic needs were met, the family was chaotic and there were numerous times when Jenny was clearly not coping and needed to have respite from her children.

However, she was not able to avail herself of this support for fear that 'the welfare' would become involved and the children would be removed as she had been. Needless to say children brought up under these circumstances would inevitably have a lot of emotional and behavioural problems thereby continuing the cycle into the next generation.

Baby Mary (3 months):

Mary was born at full-term and considered to be a normal, healthy baby. However, due to her mother Jenny's depression and high level of stress she was emotionally unavailable to mother her child. Breast milk failed and she had difficulty organising regular bottle feeds. Mary lost weight and became listless and pale, ie. failed to thrive. Mary cried constantly which stressed mother Jenny further and reduced her ability to cope even more. Such severe deprivation in the first year of life can lead to disturbances in attachment process and the development of trust and does not bode well for this child's future development.

Son Stephen (7 years):

Stephen presented as a physically healthy though overweight little boy. He was depressed and talked of feeling that life was not worth living – he had in fact attempted to kill himself by cutting his wrists.

Although a very intelligent boy he was failing at school, had no friends and was frequently placing himself at serious risk of physical damage. His behaviour also included sexual acting out which indicated possible sexual abuse, however this could not be substantiated. Due to his aggressive, out of control behaviour he was suspended from school and subsequently moved to another school where after a short period the behaviour continued. Although the school was prepared to try to manage his behaviour his mother could not manage and he was eventually sent to live with his grandmother. Thus at 7 years this boy is unable to learn and has had to be removed from his mother, sister and brother. His future in relation to being able to form relationships, get a job and live a satisfying life are at serious risk and it is very likely that he will end up as a 'street kid'.

Son Jo (14 years):

Jo presented as a physically stocky 14 year old who was dressed neatly. He related initially in a hostile manner saying his problem was that his 'mum was hopeless' and made him feel

angry all the time. Jo believed he should be allowed to do what he wanted and gave a history of school truancy, staying out for nights at a time and mixing with an older Aboriginal group of boys where alcohol abuse, smoking marijuana and taking pills was a regular event. Jo felt he belonged with this group of friends whereas at school he was the only Aboriginal student and the butt of racial taunts. Issues of identity were also a major contribution to his distress.

Behind the anger emerged a significant degree of depression with Jo describing himself as feeling hopeless and helpless about his life changing and believing he would be better off dead. He in fact identified his risk-taking behaviour as a 'Russian roulette' of possible death from taking too many pills. He also saw getting stoned as a way to escape his worries.

Jo's feelings of hopelessness were connected to his desire to look after his siblings and mum, but he also felt unable to do anything that prevented family breakdown. He often thinks about his father and wonders if life up north would be better. He has an idealised image of his father as his parents separated when he was very young. He wants to learn more about Aboriginal culture and feels saddened and fatalistic about the lives of the young people around him in Melbourne.

As far as his own life is concerned, unless some changes occur Jo is likely to become more depressed and drop out of the education system carrying again this cycle on to the next generation. In addition his risk taking behaviour was escalating with the potential for suicide in the future.

Sue Wasterval and colleagues, Victorian Koori Kids Mental Health Network, submission 766.

Courtesy University of WA Berndt Museum of Anthropolgy.

Nurse with two infants, Moore River Settlement, WA, undated

He was about 6 month becaus he was just sitting up. And we loved him very much. And my sister use to visit him on the veranda sitting in a cot but when I use to visit him they told me that he was not my brother becaus I was a half cast child and because of that they wouldnt let me see him because he was a dark child same as my sister.

Confidential submission 65, Tasmania: child fostered at 2 months in 1936.

12 Reunion

> Going home is fundamental to healing the effects of separation. Going home means finding out who you are as an Aboriginal: where you come from, who your people are, where your belonging place is, what your identity is. Going home is fundamental to the healing process of those who were taken away as well as those who were left behind (Link-Up (NSW) submission 186).

Every reunion involves a variety of emotions and reactions on the part of all parties and is unique.

> Just as there are many homes, there are many journeys home. Each one of us will have a different journey from anyone else. The journey home is mostly ongoing and in some ways never completed. It is a process of discovery and recovery, it is a process of (re)building relationships which have been disrupted, or broken or never allowed to begin because of separation (Link-Up (NSW) submission 186).

Here we document some of the experiences and some of the issues that are raised by the need for reunion and the need for support of Indigenous family reunions.

Importance of reunions

Research in the field of adoption has revealed that information about one's natural parents and heritage is important to most adoptees. The Victorian Adoption Legislation Review Committee found that,

> The available research findings indicate that the desire to obtain information about one's origins and background corresponds to a natural, healthy need relating to the development of the 'psycho-historical' dimension of a person's identity. The psychological development of an adopted person is handicapped by the absence of a sense of genealogical history resulting from the lack of a known original family (1983 page 85).

Similarly the NSW Parliament's Standing Committee on Social Issues recognised the fact,

> … that a significant proportion of adoptees have a deeply felt emotional and psychological need to know about their origins. Research in Scotland, Canada and the United States has identified the phenomenon of 'genealogical bewilderment'. This is a real and compelling need of adoptees affecting their total well-being (1989 page 39).

A non-Indigenous adoptee told the Third Australian Conference on Adoption in 1982 of,

> ... the fundamental need of some adopted people to link their natural heritage and identity with the reality of their present adoptive identity. To describe this need as mere curiosity is to denigrate a deep and natural need to know and understand oneself and one's origins ... it is a need to establish oneself as an individual (Lenne 1982 page 336).

Reunion is the beginning of the unravelling of the damage done to Indigenous families and communities by the forcible removal policies. For individuals, their

articulated needs to trace their families are diverse. People need to have a sense of belonging and a sense of their own identity. It is important for most people to know their direct and extended family. Reunion is often an essential part of the process of healing when the separation has been so painful. As Link-Up (NSW) told the Inquiry, 'you have to know where you come from before you can know where you are going' (submission 186).

> The journey home is a journey to find out where we came from, so that we can find out who we are and where we are going. Going home is essential to healing the wounds of separation. At the core, going home means finding out who you are as an Aboriginal person, finding your identity as an Aboriginal person, finding out where you belong. It may or may not include physically going home and meeting relatives, but at a minimum it should include having sufficient information about where you come from in order to make that decision (Link-Up (NSW) submission 186).

> **I was never proud to be black – I never was. It wasn't until I met my family for the first time in my life that I was actually proud to be who I was.**
>
> *Confidential evidence 148, Victoria.*

Many people spoke of their needs for knowledge of and reunion with their families so that they would have access to basic family information. This is important, for example, in relation to health and inherited illnesses and in the context of developing intimate relationships.

> Aboriginals should be able to look forward to founding families as we become adults. Instead, one of the legacies of separation is not knowing who your family is, and a fear of committing incest unknowingly. This may prevent us from having children, or our children from having our grandchildren (Link-Up (NSW) submission 186).

> **When I started to get to know my father and he was telling me about his family and who I was related to, my heart nearly stopped because I realised I had slept with first cousins on occasions ... I was nearly sick. I decided then and there I'd never go with or marry any Aboriginal woman in my life.**
>
> *Quoted by Link-Up (NSW) submission 186.*

Joyous reunions

A number of witnesses told the Inquiry of their feeling of being 'home at last' when they finally met their birth parent, usually their mother.

> **It was this kind of instant recognition. I looked like her, you know? It was really nice. She just kind of ran up to me and threw her arms around me and gave me a hug and that was really nice. And then suddenly there was all these brothers coming out of the woodwork. I didn't know I had any siblings. And uncles and aunts and cousins. Suddenly everyone was coming around to meet me.**
>
> *Confidential evidence 439, New South Wales: NT woman removed to Garden Point Mission at 3 days in the 1960s; adopted into a non-Indigenous family at 3 years; reunited with her birth mother in the presence of her adoptive mother at 21.*

Reunion impossible

Tragically, many Indigenous people affected by removal have, for a variety of reasons, been unable to reunite with their families and communities. Some people discovered their parents had only recently passed away (confidential evidence 178, South Australia) while others were denied by distraught parents and not given an opportunity to meet them.

> **I run into my sister at the school and I just happened to know that it was her because of the same family name. And that's when I found out about my Dad being sick. I didn't get to see Dad. He passed away a couple of weeks after I found my sister. I went back for his funeral. I took my kids.**
>
> *Confidential evidence 283, South Australia: woman fostered at about 5 years in the 1960s.*

> **I arranged to make contact with her as soon as possible. Now I blame myself for what has happened. Because after 52 years I was so anxious that my mother would accept me with open arms, put her arms around me and be happy that she'd found me again. I got onto the Salvation Army Missing Persons. They went around to see her. I believe she got very upset and was shaking and was crying and denying. She [said] she didn't know any woman that'd be looking for a mother. She was crying and shaking, didn't want to know, didn't want to see me.**
>
> *Quoted by Link-Up (NSW) submission 186 on page 123.*

> **My natural mother died of cancer in 1994. I had spoken to her on the phone, but she died before I had a chance to see her. She told me a lot of things I didn't understand at the time because I was 'brainwashed'.**
>
> *Confidential submission 106, New South Wales: woman removed at 11 months in the late 1950s with her three older siblings, made a State Ward and fostered by a non-Indigenous family.*

These people have 'lost something that can never be replaced' (Joyce Smith evidence 135). Others told of finding their parents only to have them pass away soon afterwards or to find themselves unrecognised (confidential evidence 299, South Australia).

> **When I was 20 years old I was reunited with my mother for the first time shortly before she died. I suppose I had a natural curiosity to meet and know her. I had an urge to see my mother and when I met her she said, 'I knew you'd come'. I didn't know at this stage I was Aboriginal. My mother was the first Tasmanian Aboriginal person I had met. A few of my natural siblings were with her. I still haven't met some of my natural siblings.**
>
> *Confidential evidence 314, Tasmania.*

> **I've seen the old lady four times in my life. She's 86 years old. We were sitting on the bench [the first time]. I said, 'I'm your son'. 'Oh', she said, and her eyes just sparkled. Then a second later she said, 'You're not my son'. Well mate, the blinking pain. Didn't recognise me. The last time she saw me I was three years old.**

Quoted by Link-Up (NSW) submission 186 on page 108.

I went to Link-Up who found my family had all died except one sister. I was lucky enough to spend two weeks with her before she died. She told me how my family fretted and cried when I was taken away. They also never gave up of seeing me again.

Confidential evidence 401, Queensland: woman removed at 3 years in the 1950s.

I was in this four bed ward and there was myself [aged 9] and a lady, an old woman who was very sick with tubes hanging our of her. And she seemed really, really ill. And one of my relations who was a nursing aide told me that that old lady was my mother. I hadn't seen her since I was four years old. But she was so sick, and all she could do was just look at me and cry. But I just kept looking at her and I was just angry at her, I was feeling shame, I was frightened, I was happy, I was sad, I was all sorts of things. But I was also starting to feel guilty about feeling like that. Anyway, I stayed in the hospital about four days I think, and then I went back to Beagle Bay Mission. And two days later my Mum died. So that was the last I ever saw her.

Confidential evidence 548, Northern Territory: WA woman removed at 4 years in the 1950s.

Complicating factors

People whose own Aboriginality was denigrated in childhood may be reluctant to admit to it or to make connections with their Indigenous family. People whose Aboriginality was denied in childhood or simply not revealed to them may be unable to overcome the negative views of Indigenous people instilled in them since childhood. When they trace their families, they may find themselves unable to accept them or rejected by them in turn.

When I worked on the wheat bins at the age of 18 there was this Noongah boy and he says, 'My name's Jim Milner. What's your name?' And I said, 'My name's Tony Milner'. And I was just stunned. And he says, 'You're one of our people'. And I said, 'No, I'm not!'. 'No, you're one of our people'. And I had to fight it, and say, 'No, that can't be right'.

Confidential evidence 679, Western Australia: Tony was removed at birth in the 1940s; he was eventually identified by another relative who recognised his surname; he has been unable to trace his mother, locate his file or find out why he was removed.

It is common, for example, for people who have been brought up in middle-class urban areas by non-Aboriginal families to experience a form of 'culture shock' in returning to a family home in a rural community. Similarly some family members may not meet social expectations, and their use of alcohol or drugs may be an affront to the 'newcomer's' standards. Others, realising their Aboriginality for the first time, adopt the red, yellow and black colours of the Aboriginal flag as the only accessible aspect of their Aboriginality, and may experience only a reserved approval from older and less politicised family members if, or when, they find them. Underlying the most traumatic of the possible problems of people reuniting as family members are the understandable tendencies for people to attribute blame – not only to the welfare system, but to parents who were unable to prevent their removal, or free them from institutions (*Learning from the Past* 1994 page 64).

I felt different. I'd had an education – without trying to put them down. I looked around and I saw things that were different to what I had, without trying to be mean or anything. It wasn't what I expected at all. Just mainly silly little things. There's a lot of people in there, a lot of people, all the time. It just felt different. To me it was like everything was for everyone. They shared everything. It wasn't till I saw what they had that I thought, they deserve what I had. To me you feel crammed in, in Nan's house, like, you can't move ...

Quoted by Link-Up (NSW) submission 186 on page 53.

I've received a lot of hostility from other Aboriginal people. They're my own relatives and they really hurt me because ... they have a go at me and say that I don't even know my own relatives, and that I should; that I've got nothing in common with them. The damage is all done and I can't seem to get close to any of them.

Confidential evidence 363, South Australia: woman removed at about 2 years in the 1940s; ultimately fostered.

I had no idea – like I didn't mix with Aboriginal people at all. I had – and I've admitted this in public before that I was racist towards Indigenous people. I learnt my prejudices from newspapers, from the television, from the radio ... and while my adoptive parents didn't go around criticising, you know, Aboriginal people in front of me, there was certainly no positive comments about Aboriginal people ...

Confidential submission 3, Victoria.

Language differences inhibit many reunions and make rebuilding true relationships virtually impossible.

I could have at least had another language and been able to communicate with these people. You know I go there today and I have to communicate in English or use an interpreter. They're like my family, they're closer than any family I've got and I can't even talk to them. We may have upped and left but I can't imagine it because those people never left. That's their home, that's their country, they can't imagine ever living anywhere else and yet now when I go back I feel so isolated from it and I really would like to be part of that community and to work with them. But I find it very difficult. They accept me because of our blood link and things but I am not as good an asset to them as I would have been if I'd maintained all that other stuff.

Confidential evidence 313, Tasmania: woman whose mother was forcibly removed to a mission in Queensland.

Locating family members has proven impossible for some.

But a lot of girls didn't know where home was because their parents were moved and resettled miles away from their traditional homelands. They didn't know where their people were and it took them a long time to find them. Some of them are still searching down to this present day.

Confidential submission 617, New South Wales: woman removed to Cootamundra Girls' Home at 8 years in the 1940s.

Bonds broken forever

Even for those who trace, locate and meet their families, the lost years can never be fully recovered and the lost bonds can never be fully healed.

> **I couldn't deal with it, I couldn't accept my father and his family. They were like strangers to me.**
>
> *Confidential evidence 132, Victoria.*

> **... your siblings ... your family – you can never get that back once you've lost it. The people are there, yes, but you can never get it back.**
>
> *Confidential evidence 321, Tasmania.*

> **I met my natural siblings at my mother's funeral but there was too much water under the bridge – 20 years – for us to have a real relationship. The biological ties were there, but that wasn't enough. We all tried to make a go of it but it just didn't work. I suppose Aboriginal people can get their land back but cannot get their family back. We are still strangers even though we have tried to reunite. We have barriers between us created by something other than us. Being taken like we were gave us all a sense of mistrust and insecurity.**
>
> *Confidential evidence 314, Tasmania.*

> **I found my mother at the age of 13. I remember the day I knocked on the door and she was in shock. She did not want me to stay with her because she had never told her new man about me. So she sent me to Sydney to aunties and uncles. Even though I remembered them before the homes, and all the good times, it just didn't feel the same when I was with them. They also felt like me – that we were strangers ... The family was gone in only a short time when I was away in the homes. It could never be replaced now because it was lost.**
>
> *Quoted by Link-Up (NSW) submission 186 on page 113.*

> **I went with my sister to Redfern [aged 17]. I'm walking up the street and my cousin says, 'That's your mum over there'. I'm standing there against the wall ... I had no connection with her. None whatsoever. So that was it. Never bothered about it. Never said hello to her. I stayed against the wall. [Ten years later met her mother.] I didn't get close to her. I didn't do anything. But I spoke to her and I know who she was then. I didn't have any inkling for her. I didn't get near her.**
>
> *Confidential evidence 405, Queensland: NSW woman removed in the 1940s at about 6 months to Bomaderry Children's Home; transferred to Cootamundra at 8 years; put out to work at 15.*

Some people find it hard to reconnect with family because they fear being separated again. They don't allow themselves to become too attached.

> **... I mean, you realise that basically apart from us, all we've got is sort of ourselves. Because you've got no real parents that you can get close to or relate to. That's sort of where it actually ends, that I feel. You're too scared to show any emotion towards any**

sort of – my remaining parent. Not because it's her fault or nothing like that. You sort of don't blame her. I think if you turn around and you try and analyse it, it's basically because you don't want to lose her as well, so you turn around and you're too scared to get close in case there's something happens where she's off – she either dies or she decides to go again. I think that's been one of the causes why she sort of moved away as it is ... You just keep your distance. It's like someone that sort of manipulated you in a way that you want to turn around and make sure that it doesn't happen again.

... in the time that I've sort of known my mother I don't think I've ever actually walked up and actually showed any affection towards her, possibly because there's fear of her going again or even dying. But you just – most people have said after sort of the experience that you go through in life, you keep a wall against you, and you sort of don't let anyone in.

Confidential evidence 145, Victoria.

Unwelcome news

One obvious consequence of a reunion may be that the child finds out a great deal of personal and family background information which is unacceptable, even traumatic.

It was a shock to find out my father wasn't Aboriginal. I didn't like it at all. It didn't seem right ... I thought it was the same father that we'd all have as well. It makes me angry, very angry. If I met him, I don't think I could be very nice to him. I don't know anything about it, but I feel he didn't care. He just got her pregnant and left her. I don't want any of his blood in my body.

Quoted by Link-Up (NSW) submission 186 on page 149.

Unsupported reunions

Many family reunions have taken place without supportive assistance and counselling such as that provided by Indigenous family tracing and reunion agencies such as Link-Up.

... inadequate preparation of the parties in terms of understanding their own needs and expectations, or those of the other, is at the root of unsatisfying or failed reunions ... We believe that to accommodate the complexities of bringing together the seeker and the sought person, it is advantageous to involve the services of a third person to act as an intermediary wherever possible ...

... mediated contact is safer than direct contact in terms of reunion outcome, particularly in the reduction of unmet expectations or dissatisfactions amongst the parties (O'Dea, Midford and Cicchini 1992 pages 85, 86 and 88).

The Inquiry was particularly disturbed to hear of reunions engineered by 'welfare' officers without any preparation of the child or young person involved, often in circumstances where the reunion was the first time the child's Aboriginality was admitted. No counselling was offered for the after-effects of such reunions.

I was in one of the cottages [in a juvenile detention centre] and they called me up to the head office and they said, 'Your mother's gunna come and visit you this weekend'. And I said, 'Who?' And they said, 'Your mother'. I said, 'Oh yeah, yeah, me mum from Greensborough [foster mother]'. They said, 'No – no, your real mother'. That just tossed me completely. I thought that she [foster mother] was my real mother, you know, because I didn't know I was Koori then. I didn't know I was a blackfella. I just thought I was something different – you know, just dark – tanned or something. I didn't know. And the day came, you know, and she walked down – you know. I was at school, and I seen them, you know – me mum and me stepfather. I seen them walking down and I've looked over and then they called me over, you know, and sat down, you know, talked. I remember I freaked out a little bit. I didn't know what to say, what to do, you know. And I was hiding behind someone else. You know how when you're – kids are kids ... Because you don't know who it is and they say, 'Yeah, it's your mum'. How the hell do I know...?

Confidential evidence 203, Victoria: youth of 15 at the date of this incident, his first meeting with his birth mother.

I was out of control. They [foster parents] wanted to get rid of me. So they packed us on a plane, and dumped us at our mother's place, which we'd never really known. And she never knew we were coming. We were just there and she didn't like us. She didn't talk to us for three days. There was just no connection there. Home never became a home.

Confidential evidence 529, New South Wales: woman fostered as a baby in the early 1970s; rejected at 13 years and returned to her mother by welfare officers; rejection by her mother forced her onto the streets.

Community reunion

Another critical aspect of the reunion experience is in reuniting with the Aboriginal and/or Torres Strait Islander communities. For people who were separated from their families, reunion with the Indigenous community operates on two levels: reunion and possibly reintegration with the particular community of origin and reunion and acceptance by the Indigenous community at large. However some witnesses spoke of being rejected by the Indigenous community.

You have to be accepted by the community and accept yourself. And I've proven that and yet they still won't – they won't do anything about it. They have these big meetings about stolen generations ... 'We want these children back'. And when you're there on their doorstep they're saying, 'Piss off because you can't prove you're black'.

Confidential evidence 210, Victoria.

The other rejection came, of course, from other Aboriginal people in the community. They called us 'whitewashed', 'coconuts' and things like that; also 'Johnny-come-latelys'. You then had to justify your identity, or try and find a place amongst all that.

Confidential evidence 367, South Australia: woman removed as a baby to Koonibba in the 1940s.

When people use the word 'coconut' in front of me I go right off the planet, because there are some of us that have no choice of being one.

Confidential evidence 8, New South Wales.

And other things too like, 'You don't talk like a Koori, you don't dress like a Koori'. You know, 'People aren't going to like you because you're too educated. People aren't going to like you because you're too up-front'.

Confidential evidence 210, Victoria.

Graham, who was adopted as a baby into a non-Indigenous family in 1972, explained that the rejection came from his side, because of his upbringing.

The only problem which I had at that [Aboriginal] TAFE was that the Aboriginal community there wanted me to go to these dances and get involved in Aboriginal dances in the community and all that sort of thing. But I couldn't do it because I hadn't had any contact with people before and all the whites told me they were this and this and that I should stay away and all that sort of thing; they're bad people. So it was sort of very difficult to get involved with Aboriginal people at that stage still.

Confidential evidence 441, New South Wales.

Others spoke of the rewards of perseverance.

... it took me a long time to be accepted back into the Aboriginal community. Actually I hadn't had any contact with the Tasmanian Aboriginal Centre until I was approached about some part-time work and from there on I felt that I started to get back into the community. I often felt at times people thought I was different. I feel proud that I'm accepted into the Aboriginal community and that I can stand up and be counted now. It makes me feel worthwhile. I've certainly lost a lot of time.

Confidential evidence 56, Tasmania.

For the first time I actually felt like I had roots that went down into the ground. But not only into the ground – that went through generations. And it was like I was connected through. And instead of being disconnected as the person that arrived earlier that week, by the end of the week I was connected.

Confidential evidence 71, New South Wales: woman removed at 5 months to Cootamundra Girls' Home in the 1950s.

Impacts on foster and adoptive families

Adoptive and foster families have also been victims of the assimilation policies.

We would never have deprived any mother of her child, nor any child of its mother. This business has been very painful to us, ever since his natural mother told us she had asked for him back. The doctor told me how this child's mother was very young, first pregnancy plus the baby was never wanted right from the start. If this was true, why did she take her poor little frail baby home for three weeks or so? His mother was nearer 20 than 16 … She took her baby home. He would not feed. [He had cerebral damage due to mother's prolonged labour and his breathing difficulties at birth.] She took him back to [the hospital] and it was

> the last she saw of him. She said they would not give him back … We have the saddest situation one could possibly imagine – a total bereavement – the whole lot of them are grieving. He is very fair, somehow someone made this decision and ruined his life.
>
> *Confidential submission 155a, Victoria: adoptive parents of boy born 1965; mother unsuccessfully tried to rescind adoption 'consent'; fostered by Community Services until 21 months in very disadvantaged circumstances; happily adopted; independently located his birth mother at 16 but not accepted by her family.*

When people who were separated undertake to reunite with their natural family, an impact is also felt by members of the adoptive or foster families. Those adoptive and foster families who supported and cared for the child and were able to establish a loving relationship with their adopted child generally supported the child through their reunion. There is respect and understanding of the need for reunion.

> … they made a date to meet in Melbourne. When J. told me, I was pleased for him. I felt it was his right to know his background. 'Do you want me to help?' 'No', he said, 'I can do this by myself'. And he did.
>
> *Confidential evidence 155, Victoria: adoptive mother.*

International removals

An unknown number of Indigenous children have been removed by foster families or adoptive parents overseas. They are likely to have lost their Australian citizenship and their descendants would not usually be automatically entitled to return to Australia. Jack's experience illustrates the difficulty. His grandmother was forcibly removed from the Torres Strait in the early 1900s. Her brother believes she was taken by missionaries to Fiji to work as a domestic servant. Jack was born and raised in Fiji and entered Australia on a tourist visa in 1988. Having overstayed his visa he is liable to deportation. Although he has re-established family and community links, working for the community and accepted by relatives and other community members, he cannot satisfy any of the criteria for citizenship or permanent residence. Jack's great-uncle told the Inquiry,

> **… the Australian Government owes a historical debt to Jack's grandmother (my sister) which it can only repay by granting Jack the right to remain in this country. Jack's birthright was stolen from him by Missionaries acting with the consent of the Queensland Government at the turn of the century and he is morally entitled to compensation. The least that can be done to compensate him would be to grant him a right to reside in his own country.**
>
> *Confidential evidence 138, Victoria.*

For those living overseas, locating family and re-establishing family, community and cultural links is extremely difficult, if not impossible. The importance of doing so is likely to be as great for them as for people living within Australia.

Karen

I am a part Aboriginal woman, who was adopted out at birth. I was adopted by a white Australian family and came to live in New Zealand at the age of 6 months. I grew up not knowing about my natural Mother and Father. The only information my adoptive parents had about my birth, was the surname of my birth Mother.

I guess I had quite a good relationship with my adoptive Mum, Dad and sisters. Though my adopted Mother said I kept to myself a lot, while I was growing up. As I got older I noticed my skin colouring was different to that of my family. My Mother told me I was adopted from Australia and part Aboriginal. I felt quite lonely especially as I approached my teens. I got teased often about being Aboriginal and became very withdrawn and mixed up, I really did not know where I belonged.

As a result of this I started having psychiatric problems. I seem to cope and muddle along.

I eventually got married to a New Zealander, we have two boys, who are now teenagers. One of our boys is dark like myself, and was interested in his heritage. I was unable to tell him anything, as I didn't know about it myself.

My husband, boys and myself had the opportunity to go to Melbourne about 7 years ago on a working holiday for 10 weeks. While in Melbourne I went to the Aboriginal Health Centre and spoke to a social worker, as I had a copy of my birth certificate with my birth Mother's name on it. The social worker recognized my Mother's surname 'Graham', and got in touch with my aunty, who gave me my Mother's phone number.

I got in touch with my birth Mother and made arrangements to meet her. I have a half brother and sister. My birth Mother and Father never married, though my Father knew my Mother was pregnant with me. My Mother did not know where my Father was, as they parted before I was born. My sister decided to call a local Melbourne paper and put our story in the paper on how I had found them after 29 years.

My Father who was in Melbourne at the time, saw the article and a photo of my Mother and myself in the paper. He recognized my Mother and got in touch with her. My Mother and I had been corresponding, after we returned to New Zealand.

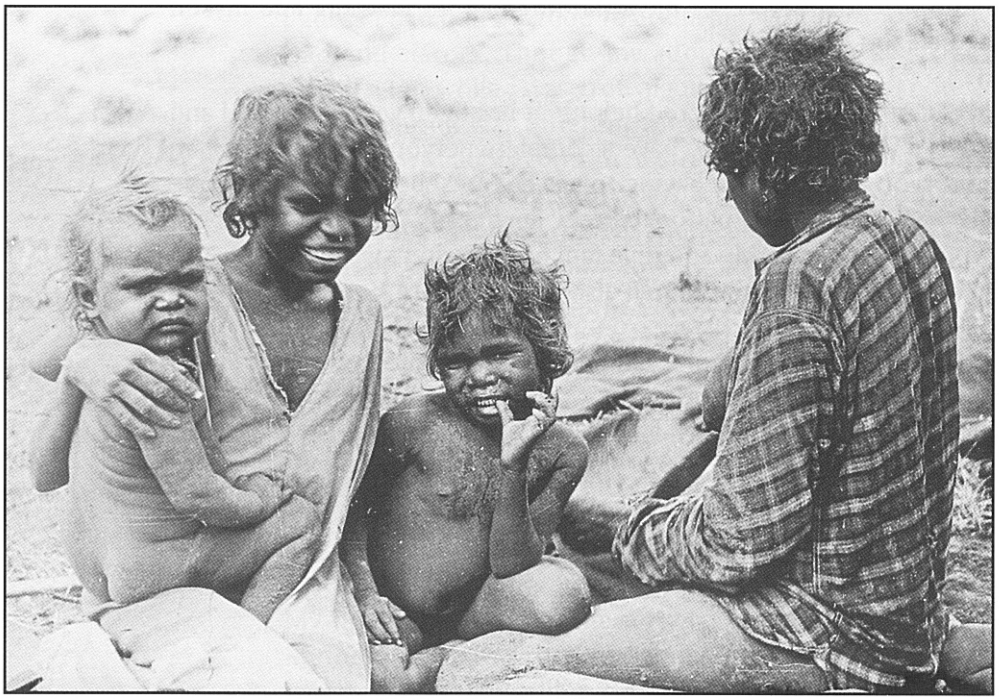
For her own reasons, she would not give my Father my address, so my Father went through the social service agency and got in touch with me two and a half years ago. I have met my birth Father, as I had a family wedding in Melbourne shortly after he made contact with me, so I made arrangements to meet him.

We kept in contact with one another, but I feel we will never be able to make up for lost time, as my birth parents live in Australia and myself in New Zealand.

I still feel confused about where I belong, it has been very emotional and the result of this caused me to have a complete nervous breakdown. I am on medication daily and am having to see a counsellor to help me come to terms and accept the situation, where I am at right now and to sort out some confused feelings. My adoptive family really don't want to know too much about my birth family, which also makes it hard.

I feel that I should be entitled to some financial compensation for travel purposes, to enable us to do this.

Confidential submission 823, New Zealand.



Courtesy University of WA Berndt Museum of Anthropolgy.

Dove's Hill in the Western Desert, 1962

We all adored our mother. She was petite, with long black hair down to her waist. Her skin was soft and chocolate in colour, her big brown velvet eyes were always full of love for all her children. She was a very outgoing caring woman, extremely clean in her home and she kept herself and all we children immaculate in appearance. She was always there for us, her arms wide to comfort us when we were unhappy.

Confidential evidence 332, Queensland.

Even though at home you might be a bit poor, you mightn't have much on the table, but you know you had your parents that loved you. Then you're thrown into a place. It's like going to another planet.

Confidential evidence 323, Tasmania.

Part 4 Reparation

Kooris Come in All Colours

I know I'm a Koori
I've learned from my kin
but sometimes I'm questioned
on the colour of my skin.

I'm questioned on this by
both black and white
my culture and identity
are my legal right.

My Aboriginality
I've searched for, so long
but doubts of others
make it hard to belong.

If you wouldn't make judgements
on just what you see
then maybe by chance you'll see the real me.

Carol Kendall

13 Grounds for Reparation

> **Lots of white kids do get taken away, but that's for a reason – not like us. We just got taken away because we was black kids, I suppose – half-caste kids. If they wouldn't like it, they shouldn't do it to Aboriginal families.**
>
> *Confidential evidence 357, South Australia.*

The Inquiry's third term of reference requires an examination of 'the principles relevant to determining the justification for compensation for persons or communities affected by such separations'. In any legal consideration of a claim for compensation there are two steps. First a wrong (or wrongs) is identified. Second the harm to the victim is identified and 'measured' to the best of the court's (or other decision-maker's) ability using established principles.

In this section we identify the wrongs involved in the forcible removal of Indigenous children from their families. In the following section we define principles which, we recommend, it would be appropriate to employ to remedy the harms caused by those wrongs.

Evaluation of government actions

The Inquiry has been careful not to evaluate past actions of governments and others through the prism of contemporary values.

> The Government takes the view that in considering, and ultimately judging, the laws, policies and practices which led to the separation of Aboriginal and Torres Strait islander children from their families, it is appropriate to have regard to the standards and values prevailing at the time of their enactment and implementation, rather than to the standards and values prevailing today (Commonwealth Government submission page 30).

At the same time, it is important to appreciate that there was never only one set of common and shared values in the past. Even predominant values were not always faithfully reflected in policies and practices. There have always been dissenting voices. There was never universal agreement on what was right and just.

Nevertheless, it is appropriate to evaluate the (legislative and administrative) actions of governments in light of the legal values prevailing at the time those actions were taken. Those legal values can be found in the common law introduced to Australia by the British colonists and progressively developed by Australian Parliaments and courts. More recently they can also be found in the international law of human rights to which Australia not only voluntarily subscribed but played a leading part in developing and promoting.

Two broad periods

Broadly speaking there were two distinct periods in law and policy when Indigenous children were forcibly removed. The first was the period of segregation of 'full bloods' for their 'protection' and removal of 'half-castes' for absorption. This period commenced as early as the mid-nineteenth century in eastern States. It was marked by the maintenance of separate legislative and administrative regimes for Indigenous children and families.

Change came with the 1937 national conference at which the assimilation policy was adopted nationally. New legislation was introduced almost everywhere by 1940. Thereafter, some jurisdictions took the path of applying the same laws and standards to Indigenous as to non-Indigenous families, although the application remained discriminatory and unfair (Victoria, Tasmania and New South Wales). The remainder continued for a period with separate legislative and administrative regimes (Western Australia, Northern Territory, South Australia, Queensland). These were gradually dismantled during the late 1950s and early 1960s and Indigenous children were transferred to the mainstream child welfare systems. However, the policy and practice of assimilation, including the transfer of Indigenous children into non-Indigenous families and institutions, continued into the 1970s. The transfer of Indigenous children continues to this day, as documented in Part 6 of this report.

Colonial legal standards

As British subjects, Indigenous peoples throughout the British empire received a promise of treatment consistent with the British common law. Colonies which ignored that promise were roundly condemned from Britain. The Australian colonies were the most notorious. In 1837 the British Parliament tried to bring these outposts into line.

> It might be presumed that the native inhabitants of any land have an incontrovertible right to their own soil; a plain and sacred right, however, which seems not to have been understood. Europeans have entered their borders uninvited, and, when there, have not only acted as if they were undoubted lords of the soil, but have punished the natives as aggressors if they have evinced a disposition to live in their own country (House of Commons, Select Committee on Aboriginal Tribes (British Settlements) 1837 page 425).

Indigenous children because the focus of colonial policies towards Indigenous peoples generally. In the nineteenth century, children, whether Indigenous or non-Indigenous, were not thought of as children are today.

> Childhood is a social construct and, as such, it has always been perceived and acted upon in the context of the particular time and place (Jamrozik and Sweeney 1996 page 13).

In particular, legislation about children and the establishment of residential institutions were not motivated by children's 'welfare' or 'best interests'. Rather the aim was 'to prevent the proliferation of a class of criminal slum-dwellers similar to those which plagued other advanced urban countries, by cutting off the source of its juvenile recruits' (Jaggs 1986 page 2, commenting on the Victorian *Neglected and Criminal*

Children's Act 1864). The proponents of the Act 'were motivated by fear of the dangers which idle and disaffected lower classes posed for society, as much, if not more, than compassion for the young people concerned' (page 2).

Sociologist Robert van Krieken detected a marked difference in the policy approach to Indigenous and non-Indigenous children by the end of the nineteenth century. Non-Indigenous children and their families were part of the 'civil society' which engaged in complex interactions with State agencies (1991 page 7). Indigenous children and their families, on the other hand, were outside civil society and policy with respect to them was baldly based on social control; it 'fit[s] the model of one dominant group regulating and in fact transforming the everyday experience of another, almost entirely against their will' (1991 page 8).

> It made little difference what the family situation really was or how the children were cared for, because being Aboriginal was in itself reason to regard children as 'neglected'. Even on the rare occasions when officials did not regard Aboriginal culture with contempt and fear, the emphasis on marriage and having fixed housing and employment in definitions of 'neglect' was inherently biased towards seeing all Aboriginal family life as neglectful (van Krieken 1991 page 8).

Basic safeguards protected the integrity of non-Indigenous families and the well-being of non-Indigenous wards of the State. These safeguards were cast aside when it came to Indigenous families and children throughout Australia.

There was a significant divergence between the imported British notions of fairness and liberty and the treatment of Indigenous peoples in Australia. The major components of forcible removal were,

1. deprivation of liberty by detaining children and confining them in institutions;
2. abolition of parental rights by taking the children and by making children wards of the Chief Protector or Aborigines Protection Board or by assuming custody and control;
3. abuses of power in the removal process; and
4. breach of guardianship obligations on the part of Protectors, Protection Boards and other 'carers'.

Deprivation of liberty

Respect for individual liberty is fundamental to the British common law inherited by the Australian colonies and subsequently the States and Territories. It traces its origins to the Magna Carta of 1215, a compact between the King and the barons of England. King John promised that the barons 'have and hold the aforesaid liberties, rights and concessions, well and in peace, freely and quietly … for ever' (article 63). These liberties included the freedom from being seized or imprisoned 'or in any way destroyed' 'excepting by the legal judgement of his peers, or by the laws of the land' (article 39). If that promise was or had been breached, liberty was to be restored (article 52).

Gradually respect for individual liberty extended beyond the barons to all people in

the kingdom. The law defended individual liberty by making false imprisonment a criminal offence and permitting the individual to sue for damages on proof of trespass to his or her person (Halsbury 1955 Volume 10 page 735). The Crown (or government) and public servants could be sued just like private citizens when a public servant in the course of his or her duty wrongfully deprived a person of liberty (Halsbury 1955 Volume 10 page 736).

The taking of Indigenous children from their homes by force and their confinement to training homes, orphanages, other institutions and mission dormitories amounted to deprivation of liberty and, in fact, imprisonment, in the common law sense (Halsbury 1955 Volume 10 page 765). Not every deprivation of liberty and imprisonment is unlawful or wrongful. Detention is lawful when it is ordered or ratified by a court according to law.

The common law offered two safeguards of liberty. The first was the requirement that everything except a very short detention (for example following arrest) must be scrutinised by a court. A deprivation of personal liberty was only lawful after the proponent of removal had established its desirability and lawfulness in open and independent court of law. The second safeguard was the writ of 'habeas corpus' (literally 'deliver the body'). This writ developed in tandem with protection of individual liberty and enabled a person to demand freedom – usually for another person – by bringing the Government into court to justify that person's detention or imprisonment. The court would order the person's release if the detention was found to be unlawful, as would often be the case where the detention had not been sanctioned by the court in the first place. The court process offers the safeguard of publicity as well as the chance to challenge the grounds of removal.

The safeguard of pre-detention court scrutiny was denied to Indigenous children in many States and the Northern Territory when legislation permitted them to be removed and confined by the order of a public servant alone (see table). During these periods non-Indigenous children removed from their families had to be processed through the courts. Where an appeal right was given to Indigenous parents, as in New South Wales, the right was ineffectual. The courts were not realistically accessible to Indigenous people in this period. They were unlikely to know of that right and most would not have been able to find any assistance to proceed to court. The civil disabilities under which Aboriginal people laboured precluded most from asserting their rights.

The States which removed the safeguard of judicial scrutiny for Indigenous children and their families were directly discriminating on racial grounds.

Administrative removal powers not subject to prior judicial scrutiny

State/Territory	Years	Grant of power
Western Australia	1905-1954	Minister empowered to remove any Aboriginal person. As legal guardian of Aboriginal children and head of

		Aborigines Department Chief Protector (Commisioner of Native Welfare after 1936) could exercise this power in relation to Aboriginal children. After 1909 the removal power in relation to 'half-caste' children under eight years delegated to police protectors and Justices of the Peace.
Northern Territory	1911-1957	Commonwealth legislation authorised the Chief Protector to undertake 'the care, custody or control of any aboriginal or half-caste if in his opinion it is necessary or desirable in the interests of the aboriginal or half-caste for him to do so' and thus to exercise a removal power.
	1957-1964	The NT Administrator was empowered to declare Indigenous people to be wards. The Director of Welfare could remove wards at will. An individual had a right of appeal to a court.
New South Wales	1915-1940	Aborigines Protection Board (later Welfare Board) was empowered to remove any Aboriginal child after 'due inquiry' without recourse to a court hearing. The parent could appeal to a court.
South Australia	1911-1923	Local protectors were created with guardianship powers circumventing the previous requirement for a magistrate's court hearing.
Queensland	1897-1939	The Minister was empowered to order removal of Aboriginal families to and between Aboriginal reserves. On reserves Aboriginal children could be confined in dormitories.
	1939-1965	The Director of Native Affairs was constituted the legal guardian of every 'aboriginal' minor (under 21 years) with full parental powers.

Source: Appendices to this report.

Deprivation of parental rights

Some jurisdictions went further and legislated to strip Indigenous parents of their parental rights, making a Chief Protector or similar official the legal guardian of all children defined to be Indigenous children: Western Australia from 1905 until 1963, the Northern Territory from 1910 until 1964, South Australia from 1911 until 1962, and Queensland from 1939 until 1965. This too was contrary to established common law which safeguarded parental rights.

At least as early as 1592 in *Ratcliffe's Case*, the common law courts in England recognised and defended the right of the father (or the mother, but only if the father was dead) to the custody and guardianship of a child, to direct the education of the child and to nurture and control the child. The father is the 'natural guardian' of his child according to cases dating from 1748 (*Mendes* page 624, Halsbury 1955 Volume 21 page 204).

It seems that at common law this applied only to 'legitimate' children. Children born out of wedlock were deemed to be 'children of no-one' (Dickey 1990 pages 298-99,

Jaggs 1986 page 7). However, no State relied on this principle to displace the rights of Indigenous parents. Illegitimate non-Indigenous children were not made wards of the State by legislation. No proof was required that Indigenous children were illegitimate before they were made wards. The legislation extended State guardianship over all Indigenous children satisfying the particular definition at the time regardless of whether they were the children of a marriage or not. In other words, their Aboriginality (or the 'degree' of it) was the reason for the extension of guardianship by legislation, not their legitimacy or illegitimacy.

The Crown, as the 'parent' of all subjects, and the courts have long had the power to remove parental rights. Both at common law (*Re Agar-Ellis* 1878) and under legislation (with the exception of Queensland from 1865 until 1911), however, an individual case would always be scrutinised and the parent could only forfeit parental rights through misconduct or because a court found guardianship to be in the individual child's best interests. The Australian High Court confirmed this position, for a non-Indigenous parent, in 1955.

> It must be conceded at once that in the ordinary case the mother's moral right to insist that her child shall remain her child is too deeply grounded in human feeling to be set aside by reason only of an opinion formed by other people that a change of relationship is likely to turn out for the greater benefit of the child.
>
> It is apparent, too, that a court which is invited to make an order of adoption must appreciate that the child is another's, and that only the most weighty and convincing reasons can justify the involuntary breaking of a tie at once so delicate and so strong as the tie between parent and child (Full High Court in *Mace v Murray* page 385).

Like a parent, or school teacher to whom the parent has entrusted his child, a non-parental guardian such as the Chief Protector had the power at common law to 'confine' his or her ward. By making the Chief Protector or Board the guardian, Western Australia, South Australia, the Northern Territory and Queensland legalised the detention so that they were not in law guilty of wrongful imprisonment of Indigenous children.

Confinement, even by a parent, must be done 'in a reasonable manner and for a sufficient reason' (Halsbury 1955 Volume 38 page 769). Aboriginal Protection Acts did not require Chief Protectors or Protection Boards to consider questions of reasonableness or sufficiency. These decisions were already made: if the child was Aboriginal or 'half-caste' that was reason enough to remove and institutionalise him or her. Again the common law protections were set aside in the interests of maximising State control over Indigenous children. Again Indigenous people were denied common law rights taken for granted by other Australians.

The discrimination was noticed and criticised by many. In 1938 Gladys Prosser made the point in an interview to the WA *Sunday Times* (quoted above). In the same year, the Hon H Seddon MLC contrasted child welfare practice relating to Indigenous and non-Indigenous mothers.

> I wish to cite the case of a mother whose children were taken from her. Judging by the conditions associated with her and judging by white standards, one might say that the department had a considerable amount of reason for its action. Here again is a case where sympathy and understanding might have averted the very serious trouble that overtook this woman. Her two children were taken from her and, as a result, the woman lost her reason. She was confined to the asylum, and the report from that institution is that she is in a very depressed state. I ask the House again to judge that case from the standpoint of a white woman. If a white woman were deprived of her children she would fall into a very depressed state of mind and would suffer considerably. Although the power is given under the Child Welfare Act to take children from undesirable [white] parents, such parents are given every opportunity to appreciate the possibilities of the law and to mend their ways. When dealing with a native, a person whose grasp of our white laws is only more or less that of a child, I say there should be sympathy, there should be understanding, above all there should be help extended to the native before such a drastic step is taken as to deprive a mother of her children (*WA Hansard* 22 November 1938 at page 2243).

Abuses of power

Legislation authorised the majority of removals. It authorised what would otherwise have been gross breaches of common law rights. Many of the practices carried out under 'protection' legislation, however, should not have been countenanced. Sadly even where a court hearing was required, courts were often less than vigilant about these abusive practices.

Some Protectors and Inspectors resorted to kidnap, taking the children from school or tricking them into their cars. Children disappeared without their parents' knowledge. A woman who had been taken to Cootamundra Girls' Home in New South Wales spoke about the practice of Robert Donaldson, MHR and Inspector: 'he used to go around with a tin of boiled lollies, coaxing, taking little kiddies, different kiddies off different stations. Take them for a ride and never take them back' (quoted by Hankins 1982 on page 2.1.13).

> When they came, they had things like balloons and party hats. They told us that we were going on a big party, all the kids. I didn't realise what was happening. They took some of my cousins out of school and put us in the van. I could see Mum was crying. That's when I got frightened. I knew something was wrong. And Dad was running through, and he was like a madman (quoted by Stuart Rintoul submission 58).

> **The police came one day from Halls Creek when they were going on patrol to L. [pastoral station] and found me, a half-caste kid. They told the manager to take me to Fitzroy Crossing to wait for the mail truck from Derby to take me to Moola Bulla [government station]. When the manager's wife told my Mum and [step] Dad that they were taking me to Fitzroy Crossing for a trip, they told her, 'You make sure you bring her back'. But little did they know that I would never see them again.**
>
> *Confidential evidence 821, Western Australia: child brought up traditionally by her Aboriginal parents but captured at 12 years in the 1930s.*

Today the injustice of these practices is obvious, as the NSW Government recognised in its interim submission to the Inquiry.

> The manner in which children were taken compounded the shock and trauma of losing the children. Some children were taken direct from school without their parents knowing, without opportunities to say adequate farewells (page 119).

Many people protested against these unjust practices at the time. Inspector Thomas Clode, a Sub-Protector of Aborigines based in Port Augusta, South Australia, wrote to the Commissioner of Police on 24 February 1910 that,

> Speaking for this Division only [Port Augusta], which is a very large one indeed, the only suggestions I have to make is to leave the Half-Caste Children alone. They are well looked after by their Mothers and have never caused any annoyance to the white settlers. I fail to see that any good will be done by placing them in the State School. Knowing the Blacks as well as I do I have no sympathy with the proposed Gathering in of the Half-Castes in this Division. I can only look upon it as a very cruel thing to do, and fear grave consequences will be the result (quoted by Mattingley and Hampton 1992 on page 61).

Ten days earlier, Inspector Clode had written to his superior that,

> … on the 16.2.1909 instructions were received by me re committing a number of half-caste children to the State Children's Department … I think it is my duty to inform you that if these instructions are carried out that grave consequences may be the result, as the natives have as much love and affection for their children as the white people have, and they will fight for the sake of their children. Such being the case it appears to me to be a very cruel thing to enforce. And it is looked upon by the settlers in the interior as being nothing short of kidnapping … (quoted by Winifred Hilliard submission 387).

As a consequence he was instructed by W G South, the Protector of Aborigines,

> … I am still of the opinion that all half caste children found wandering with the Aborigines in the interior should, for their own protection and proper up-bringing, be placed under the care of the State Children's Department, there they will be educated and taught useful occupations instead of being left to acquire the habits and customs of savages and thus continue an increasing burden on the State. It is regrettable that the natives cannot see that their children would be much better off if removed but as this is apparently impossible, I would recommend that at present only those children who are considered not under proper care and control be removed (quoted by Winifred Hilliard submission 387).

H S Taylor, proprietor and editor of South Australia's *Renmark Pioneer*, wrote to the Protector of Aborigines, around 1910,

> [I] call to your attention what I believe to be a grave miscarriage of the intentions of the provision made for the protection of the [A]borigines of this State … I cannot conceive that it was ever the intention of the legislature that native lads should be torn from their parents without their consent, especially when in the present case, it could be easily shown that the lads were not, in the ordinary sense of the term 'neglected children'. Both of them, in point of fact, were working for kind and considerate masters; the father is in good and regular work … I am unable to regard it as anything short of an outrage that they should have been so sent in defiance of the parents' wish, more particularly when sending them involved their detention for a period of years …

> the affair has so worked on the mother's mind that she has had several seizures of fits since the abduction of their children.

> … the lads were got from their employers, brought into court and committed without either parent knowing of it or having any opportunity to be present, to intimate their mind in the matter … [the father] is strongly opposed to their detention in the industrial school, being of the opinion that they will probably fret themselves ill there (quoted by Mattingley and Hampton 1992 on page 159).

> The Superintendent of a South Australian boys' home recorded in 1964 that,
>
> … he was only held down in town by bluff, and was not a Ward of State … *(document supplied with confidential submission 179, South Australia: man removed with his brother to a predominantly non-Aboriginal Church of England Boys' Home as an 'experiment in assimilation').*

Breach of guardianship duties

The treatment of children while under 'protective' guardianship, or in the care and custody of a Protector or Protection Board, was often officially recognised at the time as intolerable. Many children suffered greatly while in the 'care' of the State. Supervision of their placement in institutions or foster care was inadequate to protect them from brutal treatment and often abuse. Yet these 'carers' were placed by law in a position – a 'fiduciary relationship' – in which they owed legal obligations of care and protection to the children. The fiduciary duty was 'to care for, protect and rear' the ward (*KM v HM* 1992 page 323).

A fiduciary relationship exists where one party is dependent or vulnerable and the other has discretionary powers over the first.

> [T]he critical feature of these relationships is that the fiduciary undertakes or agrees to act for or on behalf of or in the interests of another person in the exercise of a power or discretion which will affect the interests of that other person in a legal or practical sense. The relationship between the parties is therefore one which gives the fiduciary a special opportunity to exercise the power or discretion to the detriment of that other person who is accordingly vulnerable to abuse by the fiduciary of his position (Justice Mason in *Hospital Products Ltd v United States Surgical Corporation* 1984 at pages 96-97).

The duties of a fiduciary may be spelt out in the legislation creating the fiduciary relationship. Where the legislation leaves gaps, these are filled by the common law.

The most obvious fiduciary relationship is that between a child and his or her guardian. At common law the relationship of guardian and ward was identical to that of father and child, with the additional obligations that the guardian who is not a parent must take into account the parent's wishes regarding the religion and education of the child and must 'teach the infant dutiful feeling towards a surviving parent' (Halsbury 1955 Volume 21

page 211; see also *Ex parte Earl of Ilchester* 1803-1813).

The fiduciary must refrain from harming the ward, must protect the ward from harm and must provide for his or her education (Batley 1996 page 188). There is an obligation of maintenance (*Mathew v Brise* 1851). Where harm is caused by an employee or a delegate of the fiduciary, the fiduciary is 'vicariously liable'.

A fiduciary cannot escape liability for breach of his or her duties to a ward or other dependent child by showing that the custody of the child was transferred to someone else. For example, a Protection Board might claim it was not its fault that its wards were inadequately educated or were exploited or abused while they were living at a church-run orphanage or in foster care. The claim would fail. The legislation did not authorise the Boards to delegate their fiduciary duties and common law does not permit such delegation because a ward is especially vulnerable and dependent (*Reynolds v Lady Tenham* 1723, *Burnie Port Authority v General Jones* 1994 page 62).

At the same time, a person with physical custody of the child was also likely to have been in a fiduciary relationship because of the child's dependence and the custodian's discretionary powers, for example, regarding the child's accommodation and maintenance, education and employment and extent of contact with family members. This applies, for example, to the management of a church-run orphanage or training home where forcibly removed children were placed.

The table opposite sets out the statutory obligations created by legislation that established fiduciary relationships between Protectors or Protection Boards and forcibly removed Aboriginal children (or in some cases all Aboriginal children).

The Protectors and other officials were obliged to refrain from causing physical harm to forcibly removed children, to protect the children from any such harm, to provide individually and in each child's best interests for their custody and maintenance, and to provide for education. Paul Batley suggests that the duty should be broader in the case of forcibly removed children, extending to their emotional well-being, because their parents had been denied the opportunity to perform this function. In other words, the duty is greater because the child is entirely and solely dependent on the Board for all the necessities of both life and psychological and emotional development (1996 page 191).

> If the nature of the obligation depends on the nature of the relationship, then it is arguable that the Board's absolute control over the physical and emotional wellbeing of the child supports the recognition of a duty to provide for the essential needs of the child (page 191).

We can readily identify three ways in which Protectors and Boards failed in their guardianship duties to Indigenous wards or children to whom they had statutory responsibilities. In many cases the agents or delegates of the State similary breached their fiduciary duties: missions, church institutions, forster carers and 'employers'.

1. They failed to provide contemporary standards of care to Indigenous children when such standards of care were provided to non-Indigenous children in similar

circumstances.

2. They failed to protect the children from harm.
3. They failed to involve Indigenous parents in decision-making about their children.

Statutory sources of guardianship and related fiduciary obligations

State/Territory	Years	Grant of Power
Western Australia	1886-1905	Aborigines Protection Board responsible for care, custody and education of Aboriginal children.
	1905-1963	Chief Protector (1905-36), thereafter Commissioner of Native Welfare, the legal guardian of all Aboriginal children (except State wards after 1954). Aborigines Department responsible to provide for the 'custody, maintenance and education' of Aboriginal children.
South Australia	1844-1911	Protector of Aborigines made the legal guardian of every half-caste and other unprotected Aboriginal child whose parents were dead or unknown.
	1911-1962	Chief Protector the legal guardian of every Aboriginal and 'half-caste' child until 1923 when he was made legal guardian of every child with any Aboriginal ancestry.
Northern Territory	1910-1957	Chief Protector (Director of Native Welfare from 1939) the legal guardian of every Aboriginal and 'half-caste' child.
	1957-1964	Director of Welfare empowered to declare Indigenous individuals to be his wards; some were deemed wards.
Victoria	1869-1957	Legislation authorised the making of regulations providing for the 'care, custody and education of the children of aborigines (as defined)'.
	1957-1967	One function of the Aborigines Welfare Board was to promote 'the moral, intellectual and physical welfare of aborigines' but otherwise no child-specific powers, nor a regulation-making power as previously.
New South Wales	1909-1915	Aborigines Protection Board charged with the duty 'to provide for the custody, maintenance and education of the children of aborigines (as defined)'.
	1915-1940	Additionally, entitled to 'assume full custody of the child of any aborigine'.
	1940-1969	Education duty dropped.
Queensland	1897-1939	Legislation authorised the making of regulations providing for the 'care, custody and education of the children of aborigines (as defined)'.
	1939-1965	Director of Native Affairs the legal guardian of every 'aboriginal' child under 21 years.

Source: Appendices to this report.

Failure to provide care to contemporary standards

Many witnesses to the Inquiry spoke of the appalling standards of care in institutions. Former residents told of being cold and hungry, worked too hard but educated too little. They told of brutal punishments, fear of sexual abuse and of the stifling of affectionate relationships. They reported emotional abuse by the denigration of Aboriginality and the denial of family contact.

In a submission to the Inquiry the Baptist Churches of Western Australia acknowledged that the standards of care were inadequate.

> In retrospect, however, the Baptist Churches of Western Australia acknowledges that the institutionalised nature of the arrangements in the earlier years, the transfer of children between houseparents, the limited number of trained staff, and the paucity of resources available, did not provide the optimum family-replacement support for already deprived children.

> ... the care provided fell far short of standards being developed in WA at the time. This was inevitable, and in this respect Marribank was no different to similar organisations such as Roelands, Parkerville etc. Deficiencies were due to recurrent problems of recruiting and maintaining suitable staff, including relief and support staff, unsuitable buildings, the isolation of Marribank, and the formidable costs involved in running a child care institution (submission 674 pages 2 and 12).

The mainstream child welfare system was also seriously flawed but children in the mainstream did benefit from advances in knowledge about child development and the effects of institutionalisation many decades before Indigenous children were accorded the same standards of care.

In 1874 in New South Wales the Second Report of the State's Public Charities Commission roundly rejected institutionalisation and recommended 'boarding out' or fostering for destitute and orphaned children. This had already occurred in Victoria and Tasmania; South Australia had adopted a similar policy but failed to put it fully into effect. The Commission reported that,

Those who founded the barrack system for the management of children thought less, it is to be feared, of its probable effects on the children than of the ease with which officers could manage them … Fatal experience in the Mother Country [England] has however proved that this mechanical routine, though necessary for the management of numbers is prejudicial to a healthy development of character, and to the rearing of children as good and useful men and women (page 40).

The same experience had led even earlier to the adoption of boarding-out in Scotland, France, Hamburg in Germany and Massachusetts in the USA.

> Children placed with respectable families in their own rank of life, where they are cared for as if they were members of the household, lose that feeling of homelessness, isolation, and pauperism,

> which is inseparable from the routine and constraint of a pauper school. Their intelligence is stimulated by fresh objects and interests of their new life; the natural affections are called into healthy play; the sentiment of individual responsibility is quickened, and thus the foundations are laid of sound mental education and moral character (page 44 quoting the Victorian Commissioners inquiring into penal and prison discipline).

> The home, the family, are the best nursery for all children, and a poor home is almost always better than a good almshouse (page 48 quoting Daniel Kemp, Governor of the Edinburgh Union, February 1869).

> With this amount of evidence in its favour, we would most earnestly recommend the adoption of the system in this Country, as the best way of escape from the dangers to which children are exposed by being massed in large institutions (page 51).

Institutions as the primary absorption and assimilation tool for Indigenous children, however, persisted for another 90 years in most States and the Northern Territory. They were omitted from developing considerations of humanity and sound practice in child welfare.

> … the placement component of the removal policy was out of step with what was driving placement policy for non-Indigenous children, which to me is an extraordinary thing. I find it hard to explain … I think the various Aboriginal authorities were closely linked to the welfare authorities … So they should have been informed by that same material. And one is certainly drawn towards the conclusion that Aboriginal and Torres Strait Islander children were at that time being treated in a different way for reasons which I'm not entirely familiar with. We should have known at the time the effect that this was going to have on these people, particularly in terms of the personal psychology but also, I think, in terms of their capacity to be effective and caring parents. There was literature at the time which was driving policy in a more constructive way with other people (Professor Brent Waters evidence 532).

Infants' anxiety on separation from their mothers was scientifically observed at least as far back as Freud in 1905 and various theories emerged to explain the reasons (Bowlby 1961 pages 252-3). Psychologists Dorothy Burlingham and Anna Freud made observations of babies and young children in English children's homes during the Second World War. They found babies between one and three years reacted particularly violently to separation. The child's 'longing for his mother becomes intolerable and throws him into states of despair' (quoted by Bowlby 1961 page 261). Older children, those aged between three and five, also experienced distress, but these children believed the separation was punishment and therefore felt guilt. Yet Freud and other influential figures considered a baby or a child only had needs relating to physical survival. Burlingham and Freud therefore interpreted their observations as indicating a need for a more progressive process of separation from the mother instead of a need to keep mother and child together if possible. They failed to perceive the emotional needs of children or the significance of affectional attachments in the development of the human personality. The academic psychiatrist John Bowlby brought these issues to the fore in 1951 and subsequently.

Again it took some time for Indigenous children to benefit from this new

understanding. Indigenous children continued to be institutionalised disproportionately. They continued to be subjected to a standard of care below that provided to non-Indigenous children at the same time.

Failure to prevent harm

The second type of breach was the failure of the Protectors and Boards to prevent the abuse and exploitation of so many of the children in their care. The Inquiry heard evidence not only of the sufferings of many vulnerable children in government and private institutions and foster families but also of the repeated failures of adequate preventive oversight by officials.

Melbourne law firm Phillips Fox submitted that,

> In our view, by taking the children away and making them State Wards – by becoming 'legal guardian' to these children – the State took on parental responsibilities, or fiduciary duties, in relation to each such child.
>
> On our instructions, the State in many cases failed to fulfil these responsibilities and duties, not only by denying the children their culture, but by failing to ensure that they were safe from ill treatment, whether they were in institutions or foster care. Many of the children were verbally, physically, emotionally, or sexually abused – or all of these things (submission 20 page 5).

The children were accommodated in institutions whose physical condition was frequently appalling and not conducive to their proper care and maintenance or education. In 1929 the Rector of Port Lincoln visited the institution at Jay Creek outside Alice Springs. His observations received widespread press coverage (Markus 1990 page 29). The children's dormitory accommodated 48 in a space 24 x 50 feet or 7.3 x 15.3 metres.

> … a more draughty ugly dilapidated place one could hardly imagine. I think that the children would be less liable to colds in the open than in the disgraceful accommodation provided for them (quoted by Markus 1990 on page 30).

In 1938 the Northern Territory Government Secretary wrote of the school for 'half-castes' at the Telegraph Station that,

> [It] and its furniture was in keeping with the rest of the institution which could only be described as nauseating and long overdue for demolition (quoted by Markus 1990 on page 35).

Officially-recognised instances of physical abuse have been quite well-documented and some have been mentioned above. In 1933 the manager of Kinchela Boys' Home in New South Wales had to be warned about punishments he had employed and the NSW Aborigines' Protection Board received allegations from a former Cootamundra Girls' Home staff member about brutal punishments there in 1927. In Western Australia, Chief Protector Neville had found it necessary to draw up regulations to ban 'degrading and

injurious punishments and the practice of holding inmates up to ridicule, such as dressing them in old sacks or shaving girls' heads' (Neville 1947 page 113).

Failure to involve parents

The third type of breach was the failure to consult the living parents' wishes concerning the religion and education of their children. Not only were very many children brought up to despise Aboriginal people such as their own parents, many were told falsely their parents were dead.

Forcible removal itself a breach?

Even with the knowledge and by the standards of the times, Protectors and Boards may have breached their fiduciary duties to many children by the very act of removing them from parental or other family care.

> We would argue that the removal from the family was so casual as to allow unnecessary deprivation to be experienced by all the children regardless of whether some special care was necessary because of the context of their situation. We would argue also that other basic rights were totally ignored in the structure of care of the children, basic human rights. So much so as to suggest that all institutions involved in the care of the children during that period [early 1960s] failed in their fiduciary duty to some extent … I think we would want to say that the failure doesn't mean that many individuals in government and the churches were uncaring and did not work unstintingly to love and care for the children (Rev. Bernie Clarke evidence 119).

> We have spoken with people who, even today, honestly believe that it was right to transfer indigenous children into white families because this would give them the material benefits they would not otherwise have.

> We contend that this motivation does not *in any way* morally excuse, or legally justify, the taking of children from loving families, and robbing them of their culture and identity (Phillips Fox Solicitors submission 20 page 7).

International human rights

By 1940 assimilation had become official policy in all Australian mainland States and the Territories. In fact the practice of child removal with the aim of children's 'absorption' pre-dated the term 'assimilation'. The assimilation policy persisted until the early 1970s and continues to influence public attitudes and some official practices today. Yet within a few years of the end of the Second World War, Australia, together with many other nations, had pledged itself to standards of conduct which required all governments to discontinue immediately a key element of the assimilation policy, namely the wholesale removal of Indigenous children from Indigenous care and their transfer to non-Indigenous institutions and families.

The United Nations Charter of 1945, the Universal Declaration of Human Rights of 1948 and the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 all imposed obligations on Australia relating to the elimination of racial discrimination. Genocide was declared to be a crime against humanity by a United

Nations Resolution of 1946, followed by the adoption of a Convention in 1948. The Australian practice of Indigenous child removal involved both systematic racial discrimination and genocide as defined by international law. Yet it continued to be practised as official policy long after being clearly prohibited by treaties to which Australia had voluntarily subscribed.

Systematic racial discrimination

Legislation made the removal of Indigenous children, as defined, sometimes to cover only 'half-castes, easier than would have been the case had a court order been necessary. This legislation established a legal regime for those children and their families which was inferior to the regime which applied to non-Indigenous children and their families. A pre-removal court hearing would have provided a basic protection, even if only in theory due to the cultural bias of the courts and the unavailability of legal aid at the time. The legislation was racially discriminatory.

Even where a court hearing was necessary, the law discriminated against Indigenous children and families in a number of ways. Almost invariably courts failed to ensure that the families were aware of their right to attend, that they knew the date, that they understood the nature of the proceedings and that they had an opportunity to be legally represented. As noted, in any event legal aid was unavailable.

Too frequently the values and standards expected of Indigenous families were the values and standards of middle-class welfare workers and magistrates. For example, the definition of 'neglect' in the *Neglected Children and Juvenile Offenders Act 1905* (NSW) included 'having no visible means of support' or 'no fixed abode', 'sleeps in the open air' and 'who without reasonable excuse is not provided with sufficient and proper food, nursing, clothing, medical aid and lodging'. These descriptions appear overwhelmingly to target Indigenous lifestyles. By imposing these values on Indigenous families, the child welfare legislation virtually ensured the success of any application to a court for a removal order.

Legislation making poverty or homelessness grounds for removal was at best unfair and unconscionable in light of the history of colonial dispossession, segregation and control. Most Indigenous families had been forced into poverty, dependence on handouts and inadequate housing. They were then expected to attain standards of living which were effectively denied to them.

Racial discrimination was recognised as contrary to international law at least upon the establishment of the United Nations in 1945. The UN Charter, which Australia ratified in that year, provides that,

> With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:
>
> …

> (c) universal respect for, and observance, of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion (Article 55).

In 1950 Hersch Lauterpacht commented on the Charter's human rights provisions.

> Members of the United Nations are under a legal obligation to act in accordance with these Purposes. It is their legal duty to respect and observe fundamental human rights and freedoms. These provisions are no mere embellishment of a historic document; they were not the result of an afterthought or an accident of drafting. They were adopted, with deliberation and after prolonged discussions before and during the San Francisco Conference, as part of the philosophy of the new international system and as a most compelling lesson of the experience of the inadequacies and dangers of the old (pages 147-148).

The binding nature of the Charter's human rights provisions has been repeatedly confirmed by the most eminent jurists. Even before 1950 they were recognised as binding by the most senior North American judges. Two joint judgments in the 1948 US Supreme Court case of *Oyama v California* relied on these provisions.

> Moreover, this nation has recently pledged itself through the United Nations Charter to promote respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion (Justices Murphy and Rutledge).
>
> … we have recently pledged ourselves to co-operate with the United Nations to 'promote … universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'. How can this nation be faithful to this international pledge if state laws which bar land ownership and occupancy by aliens on account of race are permitted to be enforced? (Justices Black and Douglas).

In 1945 the High Court of Ontario relied upon the human rights provisions of the Charter as part of the public policy of Canada in refusing to enforce covenants based on racial origin (*In re Drummond Wren* page 781).

The prohibition of racial discrimination soon found further expression in the 1948 Universal Declaration of Human Rights, providing 'an authoritative guide … to the interpretation of the provisions in the Charter' (Brownlie 1990 page 571).

> … the indirect legal effect of the Declaration is not to be underestimated, and it is frequently regarded as part of the 'law of the United Nations' (Brownlie 1990 page 571).

Article 1 of the Universal Declaration provides in part that 'All human beings are born free and equal in dignity and rights'. Indigenous Australians did not enjoy this right until at least the late 1960s and even later in Western Australia and Queensland (Markus 1988 page 56).

Article 2 states that,

> Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The Universal Declaration enumerated a catalogue of human rights to which everyone is entitled without any distinction based on race. Indigenous Australian families and children in most States and the Northern Territory were denied equal enjoyment of virtually all the rights recognised by the Universal Declaration, in particular,

- the right to liberty and security of person (Article 3),
- the equal protection of the law (Article 7),
- the right to a fair and public hearing by an independent and impartial tribunal in the determination of their rights and obligations (Article 10),
- freedom from arbitrary interference with their privacy, family, home and correspondence (Article 12), and
- the right to a free elementary education and the right of parents to choose the kind of education to be given to their children (Article 26).

From 1950 then the prohibition of systematic racial discrimination on the scale experienced by Indigenous Australians was recognised as a rule binding all members of the United Nations. The subsequent International Convention on the Elimination of All Forms of Racial Discrimination, finalised in 1965 and ratified by Australian in 1975, simply gave greater precision to what was already acknowledged as an injunction of international law.

> The [Convention] is, to a large extent, declaratory of the law of the Charter, or, in other words, the basic principles of the convention lay down the law which binds also states which are not parties to the convention, but, as members of the United Nations, are parties to the Charter (Schwelb 1972 page 351).

In Australia the prohibition of racial discrimination was disregarded for many more years. Legislation continued to provide a different and inferior regime for Indigenous children until 1954 in Western Australia, 1957 in Victoria, 1962 in South Australia, 1964 in the Northern Territory and 1965 in Queensland. Direct discrimination continued following the repeal of specific Indigenous legislation as welfare departments continued to implement the same policies.

This level of systematic racial discrimination amounts to a ‘gross violation of human rights’. While there is no international consensus on the full list of ‘gross violations’, most lists include systematic racial discrimination together with extermination and torture (Dimitrijevic 1992 page 217, International Law Commission 1991, *Third Restatement of*

the Foreign Relations Law of the United States section 702, van Boven 1993 para 13). The term 'gross' refers to the severity, scope or size of the violations as well as the type of human right being violated (van Boven 1993 para 8).

Indirect racial discrimination continues into the present both in child welfare and juvenile justice systems, as documented in Part 6. Indigenous children and their families continue to be judged from an Anglo-Australian perspective which demonstrates little respect for Indigenous values, culture and child-rearing practices. It provides little or no encouragement of or support for Indigenous parenting. Indigenous children continue to be transferred, permanently or temporarily, from their families and communities to the custody and control of non-Indigenous Australians.

Because laws singled out Indigenous children for removal by administrative means and on the ground of their race or colour, they were racially discriminatory. Whether they may have been partially motivated by a benign purpose is immaterial. In determining whether discrimination has occurred, the purpose or intention of the alleged discriminator is not decisive. In international legal usage the term 'discrimination' refers to distinctions which have the purpose *or effect* of impairing the enjoyment or exercise, on an equal footing, of human rights.

Senior government officials clearly knew they were in breach of Australia's international legal obligations. For example, writing on 6 July 1949 to the Commonwealth Department of the Interior, A R Driver, Administrator of the Northern Territory, stated,

> There are certain restrictions which must remain imposed on Aborigines even though they are at variance with the complete ideals of the Universal Declaration of Human Rights (Australian Archives No AA ACT: CRS F1 1943/24).

The Canadian Royal Commission on Aboriginal Peoples reported in 1994 on Canada's relocation of the Inuit peoples of the High Arctic in 1953-55. The relocation involved coercion, separation of the people into different groups by force, holding people in the High Arctic against their will and denial of family allowance and other universal benefits. The Royal Commission found that 'the relocation was an ill-conceived solution that was inhumane and damaging in its design and effects. The conception, planning and supervision of the relocation did not accord with Canada's then prevailing international commitments' because the rights declared in the Universal Declaration 'were recognized by the Government of Canada at the time of relocation' (page 157). As a result the 'relocatees' had an entitlement to redress including compensation (page 164). The same analysis and conclusion apply to the forcible removal of Australian Indigenous children.

Genocide

Genocide was first defined in a detailed way in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Australia ratified the Convention in 1949 and it came into force in 1951.

The Convention confirmed that genocide is a crime against humanity. This expressed a shared international outrage about genocide and empowered any country to prosecute an offender. A state cannot excuse itself by claiming that the practice was lawful under its own laws or that its people did not (or do not) share the outrage of the international community.

Genocide is defined as,

> … any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> a. killing members of the group;
>
> b. causing serious bodily or mental harm to members of the group;
>
> c. deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> d. imposing measures intended to prevent births within the group;
>
> e. forcibly transferring children of the group to another group (article II).

In determining whether the Australian practice of forcible transfer of Indigenous children to non-Indigenous institutions and families was 'genocide' four issues must be considered.

Forcible transfer of children can be genocide

Genocide does not necessarily mean the immediate physical destruction of a group or nation. The Polish jurist Raphael Lemkin was the author of the term and the major proponent of the United Nations Convention. He defined 'genocide' as 'a coordinated plan of different actions aimed at the destruction of the essential foundations of the life of national groups, with the aim of annihilating the groups themselves' (Lemkin 1944 page 147). The objectives of such a coordinated plan would be 'the disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups' (Lemkin 1944 page 79).

Lemkin defined genocide to include 'deliberate separation of families for depopulation purposes subordinated to the criminal intent to destroy or to cripple permanently a human group'. Genocide, he said, typically comprises two phases: the destruction of the cultural and social life of the 'oppressed group' and the imposition of the national pattern of the 'oppressor' (1944 page 147).

Lemkin's approach was adopted in the United Nations Convention of 1948. Genocide can be committed by means other than actual physical extermination. It is committed by the forcible transfer of children, provided the other elements of the crime are established. As the United Nations Secretary-General explained, the separation of

children from their parents results in 'forcing upon the former at an impressionable and receptive age a culture and mentality different from their parents. This process tends to bring about the disappearance of the group as a cultural unit in a relatively short time' (UN Document E/447 1947).

The Venezuelan delegate to the General Assembly summarised the views of the countries which supported the inclusion of the forcible transfer of children in the definition of genocide.

> The forced transfer of children to a group where they would be given an education different from that of their own group, and would have new customs, a new religion and probably a new language, was in practice tantamount to the destruction of their group, whose future depended on that generation of children. Such transfer might be made from a group with a low standard of civilization … to a highly civilized group … yet if the intent of the transfer were the destruction of the group, a crime of genocide would undoubtedly have been committed (UN Document A/AC6/SR83 (1948) at 195).

It is clear that 'mixed race' or 'half-caste' children were recognised as 'children of the group'. that is as Indigenous children and not in any sense as children of no group or as children shared by different groups.

> Since colonisation of this continent it is quite reasonable to assume that a child born our of mixed parentage have never been categorised, if one could say that, as 'part-white' or 'part-European'. Thus once it is known that a child has an Aboriginal parent, he or she is seen by the wider community as an Aborigine and will be subjected to racist and other negative attitudes experienced by Aborigines (ACCA report submitted by the separate representative and quoted by the Family Court in *B and R* 1995 page 597).

Especially during the nineteenth and early twentieth centuries relationships between European men and Aboriginal women were often abusive and exploitative. Many children were the products of rape. The European biological fathers denied their responsibility and the authorities regarded the children with embarrassment and shame. As the 'mixed race' population grew many more children did not have a European parent at all, but merely one or more European ancestors. Aboriginal society regards any child of Aboriginal descent as Aboriginal.

Aboriginal children were not removed because their 'white blood' made them 'white children' and part of the 'white community'. They were removed because their Aboriginality was 'a problem' (Chisholm 1985 page 80). They were removed because, if they stayed with 'their group', they would acquire their 'habits', their culture and traditions.

Plans and attempts can be genocide

The second issue concerns partial destruction as compared with total destruction of the group. Not all Indigenous children were removed. Yet it would be erroneous to interpret the Convention as prohibiting only the total and actual destruction of the group. The essence of the crime of genocide is the intention to destroy the group as such and not

the extent to which that intention has been achieved. Genocide is committed even when the destruction has not been carried out. A conspiracy to commit genocide and an attempt at genocide are both crimes which are committed whether or not any actual destruction occurred.

However, the extent of destruction can be relevant to the offender's 'intention'. The intention to destroy the group as such in whole or part must be proven. It is widely (see Lippmann 1994 pages 24-25, Robinson 1950 page 498) but not universally (see Dinstein 1975 page 55, Bryant 1975 page 691) agreed that an intention to destroy the group 'in part' can be genocidal if the aim is to destroy it 'substantially'.

The Inquiry's process of consultation and research has revealed that the predominant aim of Indigenous child removals was the absorption or assimilation of the children into the wider, non-Indigenous, community so that their unique cultural values and ethnic identities would disappear, giving way to models of Western culture. In other words, the objective was 'the disintegration of the political and social institutions of culture, language, national feelings, religion, and the economical existence of' Indigenous peoples (Lemkin 1944 page 79). Removal of children with this objective in mind is genocidal because it aims to destroy the 'cultural unit' which the Convention is concerned to preserve.

On this point the Inquiry's finding is contrary to that of Commissioner Elliott Johnston in the final report of the Royal Commission into Aboriginal Deaths in Custody. Commissioner Johnston considered that the child removal policies were adopted 'not for the purpose of exterminating a people, but for their preservation' (*National Report* Volume 5 para 36.3.7).

As this issue is central to this Inquiry's terms of reference, it has been the subject of much wider research than Commissioner Johnston undertook. This Inquiry concludes with certainty on the evidence that while child removal policies were often concerned to protect and 'preserve' individual children, a principal aim was to eliminate Indigenous cultures as distinct entities.

> … we tried to remove Aboriginal children because they were Aboriginal children and I think that's a very important thing. It wasn't just a question of looking at children and saying, 'There's a child in need of care, there's a deserted child, we must look after those individual cases'. The Australian experience has been, 'We dealt with them en masse because they were Aborigines (Professor Colin Tatz, Centre for Comparative Genocide Studies, evidence 260).

Mixed motives are no excuse

This finding raises a third issue, namely, the question of mixed motives. Does the Genocide Convention apply where the destruction of a particular culture was believed to be in the best interests of the children belonging to that group or where the child removal policies were intended to serve multiple aims, for example, giving the children an education or job training as well as removing them from their culture? Where good intentions are acknowledged, do they negate the bad or transform the intention to destroy the group as such (ie for its own good) into a benign intention? Does the Convention

apply in cases where the destruction of a particular culture and its family institutions was believed to be in the best interests of the children or where the child removal policies were intended to serve multiple aims?

Through much of the period beginning around the middle of the nineteenth century and persisting until the repeal of overtly discriminatory legislation in the 1960s, a key objective of the forcible removal of Indigenous children was to remove them from the influence of their parents and communities, to acculturate them and to socialise them into Anglo-Australian values and aspirations.

Other objectives included education of the children to make them 'useful' and 'worthy' citizens, their training for labour and domestic service, their protection from malnutrition, neglect or abuse, the reduction of government support for idle dependants and the protection of the community from 'dangerous elements'.

A O Neville, Western Australia's Chief Protector (1915-40), believed he could 'do nothing' for 'full-bloods', who were thought to be dying out. However, he could absorb the 'half-castes'.

> The native must be helped in spite of himself! Even if a measure of discipline is necessary it must be applied, but it can be applied in such a way as to appear to be gentle persuasion … the end in view will justify the means employed (quoted by Haebich 1988 on page 156).

Neville's successor eventually came to have reservations about this policy and practice.

> … with caste Aborigines, the emphasis on their 'whiteness' instead of acknowledgement of their Aboriginal heritage postulates in my opinion that we have helped to destroy in them a pride of origin which should have been our Christian duty to protect and preserve (WA Commissioner for Native Welfare Middleton, 1952 *Annual Report* page 5).

The debates at the time of the drafting of the Genocide Convention establish clearly that an act or policy is still genocide when it is motivated by a number of objectives. To constitute an act of genocide the planned extermination of a group need not be solely motivated by animosity or hatred (Lippmann 1994 pages 22-23).

The continuation into the 1970s and 1980s of the practice of preferring non-Indigenous foster and adoptive families for Indigenous children was also arguably genocidal. The genocidal impact of these practices was reasonably foreseeable. Dr Sarah Pritchard persuasively argues that a general intent can be established from proof of reasonable foreseeability and that such a *general* intent, as contrasted with the *specific* intent when the objective was to absorb Indigenous people, is sufficient to establish the Convention's intent element (1993; see also Kuper 1985 pages 12-13).

Genocide continued in Australia after prohibition

How early can Australian policies and practices of removing Indigenous children be considered as breaching international law? The Convention, adopted in 1948 and ratified

by Australia in July 1949, came into force in 1951. Certainly any removals after that time with the intention of destroying Indigenous groups culturally would be in breach of international law. It is clear, however, that even earlier removals were in breach of international law.

On 11 December 1946 the United Nations General Assembly adopted a resolution declaring genocide already a crime under international law. This resolution is mentioned in the Preamble to the Genocide Convention, making it clear that when the Convention was adopted in 1948 the crime of genocide was well-established in international law. As Lippmann states (1994 pages 10-11) the resolution 'clearly recognises that the prohibition on genocide is a component of customary international law which is binding on all states'.

The existence of genocide as a crime pre-dated the 1946 resolution. Although Lemkin's 1933 call for genocide to be declared a crime was rejected by the international community, it is generally conceded that it had emerged as such before or during the Second World War (*Hugo Princz v Federal Republic of Germany* 1944, Lemkin 1944 page 150).

The policy of forcible removal of children from Indigenous Australians to other groups for the purpose of raising them separately from and ignorant of their culture and people could properly be labelled 'genocidal' in breach of binding international law from at least 11 December 1946 (confirmed by Justice Brennan in *Polyukovich* 1991 page 587). The practice continued for almost another quarter of a century.

Conclusion

Official policy and legislation for Indigenous families and children was contrary to accepted legal principle imported into Australia as British common law and, from late 1946, constituted a crime against humanity. It offended accepted standards of the time and was the subject of dissent and resistance. The implementation of the legislation was marked by breaches of fundamental obligations on the part of officials and others to the detriment of vulnerable and dependent children whose parents were powerless to know their whereabouts and protect them from exploitation and abuse.

In the hard copy version of this report there is a reproduction of the following item:

Group on an outing from Sister Kate's Children's Home, Perth, 1949
Courtesy Mary Terszak.

> I would not hesitate for one moment to separate any half-caste from its aboriginal mother, no matter how frantic her momentary grief might be at the time. They soon forget their offspring.
>
> James Isdell, WA travelling protector, 1909.
>
> **The issues are growing up not knowing any family history, growing up at school and being asked to bring photos of your family, and you can't do it and the teacher says, 'Why can't you do it?', and you're forced to stand up and say that you don't have any family and people turn around and look at you in disbelief, that you couldn't have a family.**

Courtesy Mary Terszak.

Group on an outing from Sister Kate's Children's Home, Perth, 1949

The Government has to explain why it happened. What was the intention? I have to know why I was taken. I have to know why I was given the life I was given and why I'm scarred today. Why was my Mum meant to suffer? Why was I made to suffer with no Aboriginality and no identity, no culture? Why did they think that the life they gave me was better than the one my Mum would give me?

And an apology is important because I've never been apologised to. My mother's never been apologised to, not once, and I would like to be apologised to.

Thirdly, I've been a victim and I've suffered and I'll suffer until the day I die for what I've never had and what I can never have. I just have to get on with my life but compensation would help. It doesn't take the pain away. It doesn't take the suffering away. It doesn't take the memories away. It doesn't bring my mother back. But it has to be recognised.

And I shouldn't forget counselling. I've had to counsel myself all my life from a very young age. And in the homes I never showed my tears … I've been told that I need to talk about my childhood. I need to be counselled for me to get back on with my life.

Confidential evidence 139, Victoria: woman removed at 12 months in 1967.

Findings

Denial of common law rights

The Inquiry has found that the removal of Indigenous children by compulsion, duress or undue influence was usually authorised by law, but that those laws violated fundamental common law rights which Indigenous Australians should have enjoyed equally with all other Australians. As subjects of the British Crown, Indigenous people should have been accorded these common law liberties and protections as fundamental constitutional rights.

Breach of human rights

The Inquiry has further found that from about 1950 the continuation of separate laws for Indigenous children breached the international prohibition of racial discrimination. Also racially discriminatory were practices which disadvantaged Indigenous families because the standards imposed were standards which they could not meet either because of their particular cultural values or because of imposed poverty and dependence.

Finally, from 1946 laws and practices which, with the purpose of eliminating Indigenous cultures, promoted the removal of Indigenous children for rearing in non-Indigenous institutions and households were in breach of the international prohibition of genocide. From this period many Indigenous Australians were victims of gross violations of human rights.

Other victimisation

The Inquiry has found that many individuals were victims of civil and/or criminal wrongdoing. These wrongs were perpetrated by 'carers' and typically ignored by government-appointed guardians. They compounded the initial harm and damage

caused by the children's separation and the denial of access to their families, communities and culture.

The right to compensation

The Inquiry is aware that no measures can fully compensate for the effects of these violations.

> The loss, grief and trauma experienced by Aboriginal people as a result of the separation laws, policies and practices can never be adequately compensated. The loss of the love and affection of children and parents can not be compensated. The psychological, physical and sexual abuse of children, isolated among adults who viewed them as members of a "despised race" cannot be adequately compensated. The trauma resulting from these events have produced life-long effects, not only for the survivors, but for their children and their children's children. The loss of Aboriginal identity, culture, heritage, community and spiritual connection to our country cannot be adequately compensated. Nor can the loss of the parents and other leaders who provide the vision, the strength and the responsibility to carry our communities forward into the future. It is also impossible to adequately compensate us for the internalised racisms expressed as divisiveness within communities caused by separations, such that we judge ourselves and each other as being more or less 'Aboriginal' (Link-Up (NSW) Aboriginal Corporation submission 186 page 2).

Nevertheless, the Link-Up (NSW) submission emphasised the responsibility of governments under international law to provide reparations for gross violations of human rights.

> Insofar as reparation and compensation can assist us to heal from the harms of separation, it is our right to receive full and just reparation and compensation for the systematic gross violations of our fundamental human rights (page 2).

Dr Jane McKendrick, a psychiatrist with the Victorian Aboriginal Mental Health Network, emphasised the healing power of recognition and compensation.

> The people who come to see me with depression and other psychological problems and start talking about the things that have happened to them in their childhood – it is as if they are coping with that on their own and no-one else recognises it. Often they are things that they feel they cannot tell anyone else, even the people closest to them.
>
> They also feel that this has been done to them and no-one cares because there has been no official recognition. And people say, well, nothing is going to compensate me for what I have lost and it can never be completely replaced. But I think some acknowledgement and some form of compensation would assist people to feel that their pain and their suffering has been recognised and it has been recognised that something has been done to them. Because families and individuals who have been removed often feel guilty themselves about the removal …
>
> I think it is a central part of the healing process because you have to have the recognition and to have proper recognition you have to have some form of compensation, because a wrong has been done to these people. And for it to be a proper recognition, there has to be compensation. Unless there is proper recognition of what has been done, people really cannot begin to heal properly (evidence 310).

A human rights framework

Principles for responding to the effects of forcible removals must be developed from an understanding of Australian history as having included gross violations of human rights. International human rights treaties and norms of customary international law impose obligations on countries to respect human rights standards and to prevent their violation, including by private persons (Forde 1985 pages 271-8, Meron 1989 pages 156-9 and 162-9, van Boven 1993 para 41). States breach their obligations when they fail to prevent human rights violations by others as well as when human rights are violated by state action. In either event the victims have a right to reparation.

> … the obligations resulting from State responsibility for breaches of international human rights law entail corresponding rights on the part of individual persons and groups of persons who are under the jurisdiction of the offending State and who are victims of those breaches. The principal right these victims are entitled to under international law is the right to effective remedies and just reparations (van Boven 1993 para 45).

Many international instruments binding on Australia recognise this right to remedies and reparations. Article 8 of the *Universal Declaration of Human Rights* (1948) states that,

> Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 2(3) of the *International Covenant on Civil and Political Rights* (1966), article 39 of the *Convention on the Rights of the Child*, article 19 of the *Declaration on the Protection of All Persons from Enforced Disappearances*, the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* and article 6 of the *International Convention on the Elimination of All Forms of Racial Discrimination* all provide a right to compensation for a violation of human rights. The last named provides that states parties are to ensure effective protection and remedies against any acts of racial discrimination in violation of the Convention as well as the right to seek 'just and adequate reparation or satisfaction for any damage suffered as a result of racial discrimination'.

The right to reparation does not depend on treaties alone. It is now widely recognised that customary international law requires that states make reparation.

> Customary norms are binding upon the constituent units of the world community regardless of any formal act of assent to those norms. An integral part of a State's obligations in regards to international human rights law is the duty to provide an adequate remedy where substantive norms are violated (Anaya 1994 page 360; see also Lutz 1989 page 201).

The Inter-American Court of Human Rights in the *Aloeboetoe Case* held that the obligation to make reparation is a 'rule of customary law' and 'one of the fundamental principles of current international law'.

In summary, there is an international legal obligation 'to repair the damage caused, awarding the victims means of rehabilitation and, where applicable, compensation or

economic indemnification' (Artucio 1992 page 192). This obligation passes from the violating government to its successors until satisfaction has been made (Lutz 1989 page 206).

The van Boven Principles

In 1989 the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities entrusted Professor Theo van Boven with a study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. He submitted a final report, including a proposal for basic principles and guidelines, in 1993. In 1995, the Sub-Commission requested Professor van Boven to prepare a revised set of basic principles and guidelines for its consideration in 1996. The revised document is entitled *Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law* (van Boven 1996; see Appendx 8).
The principles recognise a right to a remedy for these victims.

> 4. Every State shall ensure that adequate legal or other appropriate remedies are available to any person claiming that his or her rights have been violated …

The Inquiry concurs with van Boven that the only appropriate response to victims of gross violations of human rights is one of reparation. In international law and in the practice of other countries the term 'compensation' is generally reserved for forms of reparation paid in cash or in kind. Other terms are used for non-monetary compensation. The term 'reparation' is the comprehensive notion. The Inquiry was urged to interpret the term 'compensation' in term of reference (c) as 'intended to include the more encompassing term "reparation" ' (Aboriginal Legal Service of WA submission 127 page 72). In light of the clear intent of the terms of reference to redress the history of removals the Inquiry adopts this interpretation.

> 7. In accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparations shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (van Boven 1996).

A number of submissions to the Inquiry supported an approach to the principles of compensation which recognises the history of gross human rights violations and the obligation to make reparation. Some were aware and supportive of the 'van Boven principles'. The Aboriginal Legal Service of WA commented that,

> Many of the specific recommendations made by those interviewed by the ALSWA are consistent with van Boven's proposals (submission 127 page 105).

The ALSWA recommended that Commonwealth and State governments accept and 'give effect to the proposed basic principles and guidelines recommended by van Boven to justify an award to persons, families and communities affected by the separation of Aboriginal children from their families' (recommendation 1). The Stolen Generations *National Workshop* also endorsed the approach taken by van Boven

(submission 754 page 50).

The Broome and Derby Working Groups submitted,

> We believe that those who have suffered are entitled to monetary compensation and to some form of restitution for what they have lost and that the Government and other institutions responsible for formulating and implementing these policies and practices should assist in the rehabilitation of individuals and families who have suffered the ongoing effects of these policies and practices (submission 518 page 2).

In its 1994 report on the High Arctic Relocation of 1953-55, the Canadian Royal Commission on Aboriginal Peoples proposed a package of reparations along similar lines. It recommended that the Canadian Government 'should acknowledge the wrongs done to the Inuit and apologize to the relocatees', should fund additional services to assist the readjustment of 'returnees' and all others still adversely affected, and should make 'provisions for returning, including re-establishment in the home community' and should pay monetary compensation for the effects of relocation (pages 163-164).

Reparations should be material, in-kind and non-material and should include, but not be confined to, monetary compensation. In this Part we make recommendations relating to acknowledgment and apology, guarantees against repetition, some measures of restitution and monetary compensation. In Part 5 we make further recommendations which are restitutive in nature and a number of recommendations which are rehabilitative in nature.

Components of reparation

Recommendation 3: That, for the purposes of responding to the effects of forcible removals, 'compensation' be widely defined to mean 'reparation'; that reparation be made in recognition of the history of gross violations of human rights; and that the van Boven principles guide the reparation measures. Reparation should consist of,

1. **acknowledgment and apology,**
2. **guarantees against repetition,**
3. **measures of restitution,**
4. **measures of rehabilitation, and**
5. **monetary compensation.**

The gross human rights violations documented by the Inquiry have affected Australia's Indigenous peoples widely. They have affected the families and communities of those forcibly removed. They have affected the entire Indigenous population with demoralising consequences. The van Boven principles recognise that victims of violations may be direct and indirect, thus including the children and families directly affected together with entire communities.

> 6. Reparation may be claimed individually and where appropriate collectively, by the direct victims, the immediate family, dependants or other persons or groups of persons connected with the direct victims.

The importance of making reparation to all who suffered as a result of these practices is recognised in the Inquiry's terms of reference and was underlined by a number of submissions to the Inquiry.

> Compensation needs to be seen not only in direct relation to the children who were removed, but also the parents, families and communities from which the children were taken. Whole communities were severely affected and collective grief is a continuing reality in the communities affected (Link-Up (NSW) Aboriginal Corporation submission 186; supported by Aboriginal Legal Service of WA submission 127 recommendation 11).

> This process must include a recognition that the removals affected more than the individuals actually taken, but also the communities they were taken from and the descendants of those taken, all of whom continue to suffer the anguish the removals caused (Stolen Generations *National Workshop 1996* submission 754 page 50).

At the same time, submissions emphasised that the principal victims were the children taken away and that their individual rights to reparations should not be overlooked in the process of making reparation to their families and communities.

> There is collective grief; but not comparable to the grief suffered by the individuals who were the subject of the policy and who were deprived of being raised in normal circumstances with their family and community. Nor does compensating communities recognise that individuals' legal rights have been affected by the policy, and that individuals suffered damage (Tasmanian Aboriginal Centre submission 325 pages 2-3; supported by NSW Aboriginal Land Council submission 643 page 2 and confidential evidence 163, Victoria).

Claimants

Recommendation 4: That reparation be made to all who suffered because of forcible removal policies including,

1. **individuals who were forcibly removed as children,**
2. **family members who suffered as a result of their removal,**
3. **communities which, as a result of the forcible removal of children, suffered cultural and community disintegration, and**
4. **descendants of those forcibly removed who, as a result, have been deprived of community ties, culture and language, and links with and entitlements to their traditional land.**

Acknowledgment and apology

The first step in any compensation and healing for victims of gross violations of human rights must be an acknowledgment of the truth and the delivery of an apology. Van Boven's principle 15 concerns 'satisfaction and guarantees of non-repetition' including, as necessary,

(a) Cessation of continuing violations;

(b) Verification of the facts and full and public disclosure of the truth;

> (c) An official declaration or a judicial decision restoring the dignity, reputation and legal rights of the victim and/or of persons connected with the victim;
>
> (d) Apology, including public acknowledgment of the facts and acceptance of responsibility;
>
> (e) Judicial or administrative sanctions against persons responsible for the violations;
>
> (f) Commemorations and paying tribute to the victims;
>
> (g) Inclusion in human rights training and history textbooks of an accurate account of the violations committed in the field of human rights and humanitarian law;
>
> (h) Preventing the recurrence of violations …

For victims of gross human rights violations, establishing the truth about the past is a critically important measure of reparation (Orentlicher 1994 page 457). For many victims and their families, an accurate and truthful description of past policies and practices and of their consequences is the first requirement of justice and the first step towards healing wounds (Danieli 1992 page 210). Also essential is an acknowledgment of responsibility (Danieli 1992 page 208). Related to calls for truth and acknowledgment of responsibility, the Inquiry has heard demands for apologies to the individuals, families and communities who have survived the removal of Indigenous children.

The Canadian Royal Commission on Aboriginal Peoples recently recommended the establishment of a public inquiry to investigate the Canadian policy of removing Indigenous children to residential schools. It is proposed that the inquiry should in turn 'recommend remedial action by governments and the responsible churches … including as appropriate, apologies by those responsible' in addition to the payment of compensation (1996b Volume 5 page 143).

The Inquiry was told that both governments and non-government agencies, including the churches and missions, should acknowledge their part in the separation of Indigenous families and apologise to the victims. ATSIC submitted,

> The prospect of apologies to indigenous people has been raised on many occasions. There is no uniform view about reparations but there is a consistent view of indigenous people as to the necessity for apologies … an apology must be matched by a commitment to rectify past mistakes through reparation and compensation.
>
> … ATSIC considers that reconciliation must surely begin with this one elementary condition: an apology. Indigenous people may then feel that the issue of separation, and the injustices it caused, have been acknowledged by those present-day government and non-government organisations who are directly connected with organisations responsible for past policies and practices (submission 684 page 32).

'[T]he assimilation policy that operated in this country be [should be] denounced officially by governments across the country' (Aboriginal Legal Rights Movement submission 484 recommendation 18); 'public acknowledgment and apologies [should] take place from the Australian population including especially government organisations, church bodies' (SA Aboriginal Child Care Agency submission 347 recommendation 5). Link-Up (NSW) called for 'a full public disclosure of the facts of

separation', admissions of responsibility from governments 'for the development and implementation of the policies and practices of separation', admissions of responsibility from the churches for their roles and extension of apologies to the survivors for their 'engagement in practices of genocide, forced assimilation and ethnic cleansing' (submission 186). The Aboriginal Legal Service of WA recommended,

> That the State government [and the Commonwealth government] make a public statement in Parliament acknowledging the devastating impact of the policies and practices of removing Aboriginal children from their families on individuals, their families and the Aboriginal community, and express regret, and apologise on behalf of the people of Western Australia [and Australia] (submission 127 recommendations 3 and 5).

Government statements

Australian governments have only very recently admitted the history of forcible removals and its effects. While governments recognise the harms suffered, as the following statements evidence, only the Government of New South Wales has extended an apology.

Addressing the United Nations Human Rights Committee in 1988, Australia's Representative stated,

> [Australia] acknowledged that the Public Policy regarding the care of Aboriginal children, particularly during the post-war period, had been a serious mistake (quoted by Aboriginal Legal Rights Movement submission 484 on page 18).

Launching the 1993 Year of the World's Indigenous People, then Prime Minister Paul Keating stated,

> It begins, I think, with the act of recognition. Recognition that it was we who did the dispossessing. We took the traditional lands and smashed the traditional way of life. We brought the diseases. The alcohol. We committed the murders. We took the children from their mothers. We practised discrimination and exclusion.
>
> It was our ignorance and our prejudice. And our failure to imagine these things being done to us. With some noble exceptions, we failed to make the most basic human response and enter into their hearts and minds. We failed to ask – how would I feel if this were done to me. As a consequence, we failed to see that what we were doing degraded all of us (Redfern, 10 December 1992).

The South Australian Minister for Aboriginal Affairs, Michael Armitage, stated in the House of Assembly in September 1994,

> I remind members of the appalling and breathtakingly paternalistic practice of taking Aboriginal children from their families, ostensibly to provide for them in a so-called 'better fashion' …

> There would be few Aboriginal people beyond school age who were not raised without the threat, if not the actuality of family dislocation. It will take decades yet before the consequences of these policies are worked through.
>
> The consequences of past mistakes are carried from generation to generation. Reconciliation appropriately involves an honest acknowledgment of the impact of colonisation, both historically and up to the current day (quoted by Aboriginal Legal Rights Movement submission 484 on page 48).

In its submission to the Inquiry, the Tasmanian Government stated that it,

> … recognises that past legislation, practices and policies have adversely affected Aboriginal people. This has had implications to Aboriginal people in Tasmania over successive generations (final submission page i).

The Queensland Government submitted,

> The extent of government control over the lives of the indigenous people of the State that occurred in the past, and the associated high degree of government and institutional interference with indigenous family life, have had wide-ranging and often tragic impacts on Aboriginal and Torres Strait Islander people in Queensland over successive generations.
>
> Many of those policies and practices, and the beliefs that engendered them, are not acceptable today (interim submission page 2).

The Victorian Government submitted,

> The Government has acknowledged before the Commissioner, that the early history of child welfare in Victoria is hallmarked by policies and practices which evolved in accordance with the views of the Victorian community of that time. Many of these approaches to child welfare would be unacceptable today (final submission page 3).

On 14 November 1996, New South Wales Premier Bob Carr, in a speech on reconciliation in the Legislative Assembly, stated that removals were 'done in the name of the State and in the name of this Parliament'.

> That is why, Mr Speaker, I re-affirm in this place, formally and solemnly as Premier, on behalf of the government and people of New South Wales, our apology to Aboriginal people.
>
> And I invite the House to join with me in that apology, and in doing so, acknowledge, with deep regret Parliament's own role in endorsing policies and actions of successive governments which devastated Aboriginal communities and inflicted, and continues to inflict, grief and suffering upon Aboriginal families and communities.
>
> I extend this apology as an essential step in the process of reconciliation.

Acknowledgment and apology – Parliaments and police forces

Recommendation 5a: **That all Australian Parliaments**

1. **officially acknowledge the responsibility of their predecessors for the laws, policies and practices of forcible removal,**
2. **negotiate with the Aboriginal and Torres Strait Islander Commission a form of words for official apologies to Indigenous individuals, families and communities and extend those apologies with wide and culturally appropriate publicity, and**
3. **make appropriate reparation as detailed in following recommendations.**

Recommendation 5b: That State and Territory police forces, having played a prominent role in the implementation of the laws and policies of forcible removal, acknowledge that role and, in consultation with the Aboriginal and Torres Strait Islander Commission, make such formal apologies and participate in such commemorations as are determined.

Submissions to the Inquiry similarly called on the churches to acknowledge their respective roles and extend apologies to the children, their families and communities.

> [That] Churches acknowledge what happened, support Aboriginal initiatives to begin healing process, open up their archives providing information about people's families and resolve any outstanding land issues with relevant communities (Broome and Derby Working Groups submission 518 recommendation 3.2.8).

Church statements

Most churches recognise the devastating effects of the forcible removal policies and practices.

> Centacare Catholic Community Services on behalf of the NSW Catholic Church's diocesan welfare agencies deeply regrets the enormous suffering to individuals and the aboriginal people as a community as a result of the massive social dislocation caused by the removal of Aboriginal and Torres Strait Islander children from their families (Centacare Catholic Community Service submission 478 page 5).

> There is no doubt that the policy of taking children from their natural families has had devastating effects on many of the people who were taken away, on their families and on the community as a whole. Although many of the people have since become leaders in the Aboriginal community, many others have been devastated by the experience …

> As well, the second generation have felt the effects of the deprivation suffered by the generation that was taken away. For them the loss also of parenting, relationship and life-skills, of how to give and receive love has been devastating. There has been a loss of identity, of self-respect and hope (Uniting Church in Australia first submission 457 page 10).

Agencies of the Catholic Church in Australia have acknowledged their role and its effects while other branches have extended apologies in submissions to the Inquiry. On 18 July 1996 representatives from three national groups of the Roman Catholic Church delivered a Joint Statement to the Inquiry.

On behalf of our constituent national groups we sincerely and deeply regret any involvement Church agencies had in any injustices that have been visited upon Aboriginal and Torres Strait Islander families. It is apparent with hindsight that some Church agencies, along with other non-government organisations, played a role in the implementation of government policies and legislation which led to the separation of many children from their families and communities.

We sincerely regret that some of the Church's child welfare services and organisations, which were amongst those non-government organisations in Australia that provided residential services and institutional care to Aboriginal and Torres Strait Islander children forcibly removed from their families by agents of the state, assisted governments' implement assimilationist policies and practices.

To the best of our knowledge, at no time have the Church's child welfare services and organisations been given any legislative power or authority to forcibly or physically remove any children from their families … We do accept that there were cases where the actions of Church child welfare services and organisations were instrumental in keeping children separate from their families and in this respect the Church holds some responsibility in playing a role for the state to keep these children separate from their families (Chairman, Bishops' Committee for Social Welfare, Chairperson, National Aboriginal and Torres Strait Islander Catholic Council and National Director, Australian Catholic Social Welfare Commission, extract from page 1).

We Pallottines freely admit and regret our mistakes in this area. Our attitudes were in some ways typical of the prevailing mindset of the general population. We deeply regret every hurt visited on Aboriginal and Islander people who have been taken from their heritage of family, community, culture and language. We apologise for any role which any of our group, however well meaning, might have played in such activities (Society of the Catholic Apostolate (Pallottines) submission 433 page 1).

We are also mindful of the role our order played in the devastation that is now known as the removal of the Stolen Generation and we are endeavouring to come to terms ourselves with the hurt and pain that this policy of assimilation has caused those Aboriginal people that were removed from their families and the members of the families that were left behind to grieve their loss. In the spirit of Reconciliation we offer unreservedly our apologies for any hurt our role in this process has caused and offer whatever resources we have available to us to help people come to terms with the hurt that has occurred (Kimberley Sisters of St John of God submission 521 page 6).

To those who have suffered personal deprivation and hurt in Church institutions because of the effects of this policy, the Church of this Diocese unreservedly apologizes. Further, She regrets the great suffering that continues in the hearts of some people and extends to them a compassionate wish for peace and reconciliation (Roman Catholic Church of the Diocese of Broome submission 519 page 3).

The Anglican Church Social Responsibilities Commission referred to apologies extended by other parts of the Anglican Church of Australia.

The SRC joins with other parts of the Anglican Church of Australia in offering its unreserved apology for the involvement of Anglicans, both individually and corporately, in the policies and practices that allowed the separation of Aboriginal and Torres Strait Island children from their families. It may be that the church had no direct control over the policies themselves. It

may be that its members and agencies, to the extent that they were involved, acted as part of already existing networks of welfare arrangements.

It may be that many of those involved believed that they were acting in the best interests of the children concerned. It may also be that many of them did not understand the full implications of their actions, performing only the tasks immediately in front of them. The SRC does not wish to impute any particular motives to those involved. It simply states that no amount of explanation can detract from the now observable consequences of those misguided policies and practices. A great wrong has been done to the indigenous people of Australia. It is for participation in that wrong that this apology is offered (Anglican Church Social Responsibilities Commission submission 525 pages 3-4).

The National Assembly of the Uniting Church passed the following resolution in September 1996.

… that Standing Committee, on behalf of the Uniting Church in Australia, acknowledge to the Aboriginal community:

- the trauma and on-going harm caused to individuals, families, the Aboriginal community as a whole and the entire Australian community by the practice of separating Aboriginal children from their parents and raising them in institutions, foster homes or adoptive homes;

- that the church thought it was acting in a loving way by providing them with homes, but was blind to the racist assumptions that underlay the policy and practice;

- the fact that these assumptions, spoken and unspoken conveyed destructive, negative messages to the children about Aboriginal culture and their Aboriginality;

- that fact that although it was the intention and policy of the church to provide children who had been separated from their parents with a loving, secure environment in which they were encouraged to develop their gifts and graces, and although faithful women and men who worked in the institutions often provided such an atmosphere, there were also times when the reality contradicted the intention and goal, and where children even met violence and abuse at the hands of some of the very staff whom they should have been able to trust;

- that there were many good, faithful and self-sacrificing houseparents, foster parents and adoptive parents who provided loving homes for the children in their care, and encouraged their self-esteem, their growth, their pride in Aboriginal culture and their achievement; many of the people who grew up in the institutions have continued a close relationship with former house parents until the present time (second submission 457).

The Federal Aborigines Board of the Churches of Christ, the Anglican Church Diocese of Perth and the Baptist Church of WA acknowledged their complicity as did the Catholic Social Welfare Commission (submission 479 page 2).

Churches of Christ recognize and acknowledge the pain suffered by the children and parents who experienced separation. We recognise our complicity in a system which we understood at the time to be beneficial but now is seen to have been destructive. To the degree which we were a part of the destruction processes we seek forgiveness and offer our repentance. We also acknowledge that we sought to do what was most appropriate and for some the experience was positive and for such people we affirm the outcome (Churches of Christ Federal Aborigines Board submission 411 page 8).

> It must be acknowledged that, no matter how well intentioned the motives of the Church were in its involvement in separating children from their families, it's complicity has contributed to the dislocation of the people concerned, and therefore to their loss of land, language, and identity.
>
> It is evident that the present high rate of continuing social dislocation and Aboriginal imprisonment is direct result of the separation of children from their families in which the Church was complicit (Anglican Church of Australia, Diocese of Perth submission 410 page 2).
>
> In retrospect, however, Baptist Churches of Western Australia acknowledges that its efforts to reach out with Christian compassion, practical care and spiritual help were unfortunately combined with an unconscious complicity with the Government policy of assimilation of 'part-Aboriginal' people. While rightly deploring the degrading impact of European settlement upon Aboriginal peoples, and taking no part in the removal of children, Baptist Churches of Western Australia failed to provide a clear prophetic voice to challenge the Government policies of the day and the general community philosophy of racial superiority. We failed to publicly proclaim, in respect of Aboriginal and Islander peoples, the Biblical view of the intrinsic worth of all people as individuals made in God's image (Baptist Churches of Western Australia submission 674 page 2).

The Australian Association of Social Workers also expressed its regrets.

> We know and sincerely regret that social workers, and unqualified workers known as 'Social Workers', were actively involved in the removal of aboriginal children from their families even up to relatively recent times. As far as we are aware, our professional association has not made any comment or apology about the involvement of social workers in the separation of families which has had such a dramatic impact on aboriginal communities …
>
> The Association acknowledges that social workers were involved in the forced separation of Aboriginal and Torres Strait Islander children from their families in every state and territory in Australia during this century (Australian Association of Social Workers submission 721 pages 1 and 2).

Doomadgee Inc is the successor of the Aborigines Inland Mission at Doomadgee in Queensland.

> … we are sensitive to the perception of some Doomadgee Aborigines that missionaries were sometimes too firm in their administration of discipline, or too assertive in their presentation of the Christian gospel. To these Aborigines we express our sincere apologies. The desire of all the missionaries was to achieve the very best outcomes for Aborigines and anything perceived by them to fall short of this is a matter of deep regret to us (Doomadgee (Inc) submission 78 page 8).

Acknowledgment and apology – Churches and others

Recommendation 6: That churches and other non-government agencies which played a role in the administration of the laws and policies under which Indigenous children were forcibly removed acknowledge that role and in consultation with the Aboriginal and Torres Strait Islander Commission make such formal apologies and participate in such commemorations as may be determined.

Comparable experience suggests that satisfaction should go beyond a single instance of acknowledgment and apology. Victims should be appropriately commemorated (Correa 1992 page 1478). The Inquiry received a number of submissions as to forms of commemoration.

> Public tribute must be paid to the survivors, and those who have not survived the policies and practices of separation. Public recognition of the ongoing courage and determination of Aboriginal people to resist the genocidal policies of separation is essential. Commemoration can and should take place at different levels. Nationally, there should be a 'Sorry Day' commemorating Aboriginal survival of the holocaust which is accorded the same recognition as ANZAC day. On a local level, communities may wish to establish commemorative places, or have a 'Welcome Home Day' (Link-Up (NSW) submission 186).

Other proposals concerning forms of commemoration include establishing education centres, naming of streets, endowing scholarships, memorial services and monuments (see also van Boven 1992 page 15). Commentators have observed that commemoration is important not only for victims but also for the society as a whole.

> Commemorations can fill the vacuum with creative responses and may help heal the rupture not only internally but also the rupture the victimization created between the survivors and their society. It is a shared context, shared mourning, shared memory. The memory is preserved; the nation has transformed it into part of its consciousness. The nation shares the horrible pain (Danieli 1992 page 210).

Commemoration

Recommendation 7a: That the Aboriginal and Torres Strait Islander Commission, in consultation with the Council for Aboriginal Reconciliation, arrange for a national 'Sorry Day' to be celebrated each year to commemorate the history of forcible removals and its effects.

Recommendation 7b: That the Aboriginal and Torres Strait Islander Commission, in consultation with the Council for Aboriginal Reconciliation, seek proposals for further commemorating the individuals, families and communities affected by forcible removal at the local and regional levels. That proposals be implemented when a widespread consensus within the Indigenous community has been reached.

Guarantees against repetition

UN Special Rapporteur van Boven identified a need for guarantees to prevent any repetition of the gross violations of human rights. Appropriate measures must be implemented to ensure that Indigenous families and communities in Australia never again suffer the forcible removal of their children simply because of their race. Governments and responsible agencies are encouraged to consider sympathetically and respond to proposals submitted by Indigenous organisations, communities and individuals with a view to the prevention of repetition.

Teaching the history of the removal policies to all school students was widely supported in submissions to the Inquiry. The importance of a wider public education campaign was emphasised, as was the need for professionals working with Indigenous children and families to develop a complete understanding of the history

and effects of forcible removals.

> Justice requires that the wider Australia community be informed about these policies and practices, and be informed about the resolute resistance Aboriginal people have continuously maintained. We want the wider community, Aboriginal and non-Aboriginal alike, to be informed about and recognise not only the adversities we have endured as a result of separations, but the courage and strength we have had in surviving as a people and in seeking to reunite with our people despite years of detention in non-Aboriginal environments. It is equally important for it to be recognised that separation policy and practice is not something that happened a long time ago, it is not ancient history. Rather it has continued in various forms and guises up to the present and for the future of many Aboriginals (Link-Up (NSW) submission 186 page 6).

Specific proposals to the Inquiry included,

> • rewriting of school textbooks and official histories to include the policies and practices of separation;
>
> • education for those working with Aboriginal people with respect to the issues and effects of separation, including the judiciary, solicitors, social service workers, doctors, psychiatrists, health workers, mental health workers, teachers and other educators, prison workers and archivists;
>
> • general community education (Link-Up (NSW) submission 186 page 6).

That the history of forced family separations of Aboriginal and Islander children be made more widely known through whatever avenues available eg school education curriculums (including arts, drama), media, publication of the history of separations and individual stories (SAACCA Forum Inc submission 347 recommendation 4).

> The history of removal of children be incorporated into Aboriginal studies programs and that these be compulsory for all students in all schools (Broome and Derby Working Groups submission 518 recommendation 3.2.7).

Truth and reconciliation processes established in Chile, El Salvador and Honduras to address the impacts of periods of gross and systematic human rights violations have also emphasised the importance of general education to reinforce the values of human rights in the culture of the nation (Correa 1992 page 1478). The Truth and Reconciliation Commission in South Africa has expressed a similar view.

School education

Recommendation 8a: That State and Territory Governments ensure that primary and secondary school curricula include substantial compulsory modules on the history and continuing effects of forcible removal.

Recommendation 8b: That the Australian Institute of Aboriginal and Torres Strait Islander Studies be funded by the Commonwealth to develop these modules.

Professional training

Recommendation 9a: That all professionals who work with Indigenous children, families and communities receive in-service training about the history and effects

of forcible removal.

Recommendation 9b: That all under-graduates and trainees in relevant professions receive, as part of their core curriculum, education about the history and effects of forcible removal.

While Australia ratified the 1948 Genocide Convention, its provisions have not been incorporated into Australian law. The *Genocide Act 1949* (Cth) merely approved ratification of the Convention and extended its provisions to external territories. Australian service personnel engaged in conflicts overseas are covered by its provisions but not those working within Australia. In 1992 the Human Rights Sub-Committee of the Joint Parliamentary Committee on Foreign Affairs, Defence and Trade recommended that the Australian Government introduce legislation to implement the Genocide Convention fully. The effect of implementation would be to create a criminal offence of genocide, including attempting to commit genocide, complicity in the crime of genocide and inciting others to commit genocide. Effective penalties would have to be provided. Implementation would establish a right to compensation for victims of genocide.

Genocide Convention

Recommendation 10: That the Commonwealth legislate to implement the *Genocide Convention* with full domestic effect.

Land, culture and language restitution

The purpose of restitution is to re-establish, to the extent possible, the situation that existed prior to the perpetration of gross violations of human rights. The children who were removed have typically lost the use of their languages, been denied cultural knowledge and inclusion, been deprived of opportunities to take on cultural responsibilities and are often unable to assert their native title rights.

Many stolen children will be unable to satisfy the requirement of a continuing relationship with their traditional land on their own.

> It is undeniable that the forced removal of Aboriginal people from their families and the legacy of assimilation policies will have an impact on the ability of some Aboriginal people to claim native title rights … NSWALC would expect the courts to approach the issue of connection to land in a manner which is sensitive to the historical realities of Aboriginal people and understanding of the ability of Aboriginal communities to rebuild despite the impact of policies aimed at their destruction. NSWALC believes the Inquiry into the removal of Aboriginal children should encourage such sensitivity and understanding (NSW Aboriginal Land Council submission 643 page 3).

However, native title is communal in nature and traditional Law recognises the authority of traditional owners to define the content and scope of that title. In other words, the traditional owners or claimants are entitled to determine whether or not to include a person removed in childhood.

> The content of a particular group's native title, including what it has to say about the rights of particular individuals within the group, is determined by the indigenous group concerned according to their traditional law and custom, not the common law.

> [Thus] it will be the relevant indigenous group which determines according to its traditional law and customs whether a particular individual who was taken away from their community and their land continues to enjoy native title rights and interests in relation to that land in common with the other members of the community (Cape York Land Council submission 576).

Traditional owners and claimant groups should, of course, remain free to define their membership to include people forcibly removed from their families, thereby including these people among those entitled to the benefits of a successful statutory or native title land claim.

Returning to country can be a critical step in the reunification and healing process for people removed as children. However, it is fraught with difficulties.

> Many found the task of re-establishing themselves in their country was achievable, but others did not. Communities sometimes found it difficult to accept people who had spent so long away from country back into their social networks on a basis of equality with those who had not been removed. People who had suffered the trauma of removal often encountered the double jeopardy of suspicion, mistrust or even blame upon their return, despite the location of real responsibility in the governments of the day (Cape York Land Council submission 576).

Support is required to facilitate return. This support has two key aspects. First the 'returnee' must be prepared for his or her return. This preparation would usually include some information about appropriate behaviour. Second the community needs to be prepared to receive the person returning. This preparation would usually include provision of information about the policies and effects of forcible removal. Where support is available, the return is more likely to be a success and the traditional owners are more likely to accept the 'returnee' and reintegrate him or her into the community. Developing community genealogies will assist community leaders in their decision making on the return of people affected by removals.

> Assistance should be given to those wishing to return to their and their families' traditional country and to assist them with negotiations with the Native Title holders of that country (Broome and Derby Working Groups submission 518 recommendation 3.2.2).

Traditional owners should be assisted to decide whether, and to what extent, they can include people who were removed as children. In particular, they need reliable information about the history of forcible removal, its effects and the involvement of particular individuals.

Assistance to return to country

Recommendation 11: That the Council of Australian Governments ensure that appropriate Indigenous organisations are adequately funded to employ family reunion workers to travel with clients to their country, to provide Indigenous community education on the history and effects of forcible removal and to develop community genealogies to establish membership of people affected by forcible removal.

Many people affected by the removal policies may be unable to return to their traditional country. In many cases the policies of removal and segregation have successfully destroyed their capacity to maintain their connection to their land. In some cases, traditional owners will be unwilling to reintegrate former community members. People who by reason of their removal are now unable to enjoy native title rights should be able to establish that loss in any claim for monetary compensation. The importance of compensating such loss was emphasised in numerous submissions to the Inquiry.

> Grants of land and/or housing should be made to families of those who have lost access to traditional land and such land could be allocated in areas where these people grew up and with which they now identify (Broome and Derby Working Groups submission 518 recommendation 3.2.1).

> **I think compensation for me would be something like a good land acquisition where I could call my own and start the cycle of building good strong foundations for Aboriginal families. Because the whole thing started from people coming to this country and stealing the land, and then everything fell apart from then on. So I think for people who have been dispossessed of land, but more importantly dispossessed of our identities and dispossessed of where we came from … I think to give us compensation in the form of some land acquisition would go very well into helping start stable family relationships and stable generations from here on in.**
>
> *Confidential evidence 696, New South Wales.*

> **What I'd like to have – I'd like to have me own house, me own block of land. Like, I figure they owe me that much. I've given most of my life, surely they can pay for that. Maybe if I was with me family I'd have a decent bank account instead of one with a dollar sixty-seven credit or something like that, or overdraft. I want me own block of land, something that I don't have to pay for again. Something I can call mine and no-one can take it away, because I haven't had that yet.**
>
> *Confidential evidence 146, Victoria.*

> [T]he people who have become landless … partly due to this kind of policy could be compensated by assistance to have a home and land of their own or for their family (Jack Goodluck, former Minster in the Uniting Church and Superintendent of Croker Island, evidence 119).

Other recommendations to the Inquiry have drawn attention to the need for broader measures of 'cultural restitution'.

> Cultural and language education centres, meeting centres and land acquisition are the kind of reparations and facilities that community opinion indicates may be appropriate as recompense for past suffering and dislocation (ALRM submission 484 at 22; see also Cape York Land Council submission 576).

> Full support be provided to Kimberley Aboriginal organisations promoting Aboriginal culture, language, identity and history (Broome and Derby Working Groups submission 518 recommendation 3.3.3).

The significance of Indigenous languages to the maintenance of family relations and the preservation and transmission of cultures was not lost on missionaries and protectors. The speaking of languages was frequently prohibited.

> People were also punished for speaking language. In many places language became something that had to be hidden; we were taught to be ashamed if we spoke anything other than English (Kimberley Language Resource Centre submission 759 page 2).

> [The old people] didn't like you listening in and wouldn't explain things to you, what it was about … Then again they were frightened of white-fellas, Superintendents [-] they were very very frightened … If old people tried to teach the younger people, they were sent to Palm Island, at the pleasure of the Superintendent in those days. It was a crime to teach us languages, that's why we were going backwards … The old people were frightened of getting sent away … That's why a lot of our people were frightened to teach us our language. It was fear (quoted by Aird 1996 on page 14).

The loss of language is intimately connected with the loss of identity for those forcibly removed and their descendants.

> The story of language loss is the story of separation. With the removal of children from their families and displacement to missions, authorities effectively isolated these children from the nurturing and supportive structures of all aspects of their culture.

> It is well known that the mission children were not only discouraged from speaking their native languages, but in many cases physically punished for doing so.

> 'What must be remembered is that language is not simply a tool for everyday communication, but through recording of stories, songs, legends, poetry and lore, holds the key to a people's history and opens the door to cultural and spiritual understanding (Aboriginal and Torres Strait Islander Corporation of Languages submission 854 page 2).

The Kimberley Language Resource Centre submitted,

> Language and identity are closely linked, and for many of us our language is a symbol of identity central to our self-esteem, cultural respect and social identification. Our languages provide more than just a way to talk to each other. They provide a way for us to interpret the reality we see around us. The words we use to name things, to describe feelings, understandings and each other, carry meanings particular to us. If we lose these words, we lose part of ourselves …

> … when our children were stolen from our families one of the things that happened was that the language learning cycles were broken. Transmission from generation to generation is a crucial link in language maintenance. Taking the children away broke this link (submission 759 page 1).

The Royal Commission into Aboriginal Deaths in Custody commended the establishment of language and culture centres and recommended that governments support these Indigenous initiatives (Recommendation 56). A network of regional language centres is now established with funding administered by ATSIC under the Aboriginal and Torres Strait Islander Language Identification Program (ATSILIP). The

Program was reviewed for ATSIC in 1995 by the National Language and Literacy Institute of Australia. The Review 'strongly recommended' a continuation of the program to the end of 1999-2000 'with an expectation that it may need to be extended further, given the range of languages involved and the work that needs to be done' (Recommendation A.1). The Program was also strongly endorsed in 1996 by the National Board of Employment, Education and Training, with a similar recommendation for extension. Core tasks of the language centres are language recording and maintenance and teaching languages.

The existing language centre model is clearly appropriate for the task of assisting people affected by forcible removal to recover their languages. Local and regional negotiations will be required to determine whether the language centre is the appropriate body to take on other tasks envisaged by the Inquiry, notably that of recording and storing personal testimonies of forcible removal and its effects and that of archiving local history records. The generic term 'language, culture and history centres' is used to indicate the range of tasks that need to be performed. Existing language centres may be expanded. Alternatively new institutions may be established.

Language, culture and history centres

Recommendation 12a: That the Commonwealth expand the funding of Indigenous language, culture and history centres to ensure national coverage at regional level.

Recommendation 12b: That where the Indigenous community so determines, the regional language, culture and history centre be funded to record and maintain local Indigenous languages and to teach those languages, especially to people whose forcible removal deprived them of opportunities to learn and maintain their language and to their descendants.

The Inquiry has found that a key objective of forcible removals was to sever the link between the child and his or her family, community and culture. For many people the practices used to advance this objective have resulted in an inability to establish their Aboriginality by reference to the frequently applied three-pronged definition. For many purposes proof of Aboriginality now requires (1) proof of descent from the Indigenous peoples of Australia, (2) self-identification as an Indigenous person and (3) acceptance by the Indigenous community as an Indigenous person.

Some people who were forcibly removed and their descendants are not acknowledged as members by their own communities of origin, while others are unable to locate their communities. The application of a definition requiring acceptance as Indigenous by the person's community must not be permitted to discriminate against the most direct victims of the forcible removal policies.

Indigenous identification

Recommendation 13: That Indigenous organisations, such as Link-Ups and Aboriginal and Islander Child Care Agencies, which assist those forcibly removed by undertaking family history research be recognised as Indigenous communities for the purposes of certifying descent from the Indigenous peoples of Australia and acceptance as Indigenous by the Indigenous community.

This recommendation extends only to a person's general acceptance as an Indigenous person. It does not propose that the organisations mentioned should be authorised to certify membership of a particular Indigenous community for any particular purpose such as Land Council membership. This is entirely a matter for the particular community itself, which may in its discretion rely on the advice of a link-up worker or other organisation.

Monetary compensation

> **People go on about compensation and all this. And they don't seem to get the real reason as to why people want some sort of compensation or recognition. I need to be given a start. I just need something to make the road that I'm on a little bit easier.**
>
> *Confidential evidence 441, New South Wales.*

On the subject of monetary compensation, van Boven proposed the following principle.

> **Compensation** shall be provided for any economically assessable damage resulting from violations of human rights and humanitarian law, such as:
>
> (a) Physical or mental harm, including pain, suffering and emotional distress;
>
> (b) Lost opportunities, including education;
>
> (c) Material damages and loss of earnings, including loss of earning potential;
>
> (d) Harm to reputation or dignity;
>
> (e) Costs required for legal or expert assistance.

There was considerable support among submissions to the Inquiry for the provision of monetary compensation to the victims of forcible removal.

> The Commissioners should encourage governments to negotiate financial settlements with groups and individuals on the basis that either financial compensation or reparations to be made available to them as atonement for past and continuing grievances (Aboriginal Legal Rights Movement (SA) submission 484 page 52; see also Aboriginal Legal Service of WA submission 127 recommendation 11, Broome and Derby Working Groups submission 518 page 1, Stolen Generations *National Workshop* submission 754 page 50).

All the harms and losses suffered by people affected by forcible removals are recognised under the common law or under contemporary statutory regimes as losses for which compensation can be awarded. People who have suffered these harms and losses should not be denied a remedy just because the perpetrators were mainly governments or because the victimisation was on such a vast scale.

> It is NSWALC's view that individuals who have had wrongs committed against them are entitled to full and proper compensation. Compensation to individuals should at the very least be assessed on the same basis as any other tortious claim. The obligation on governments to pay monetary compensation is not to be shirked because it may be considered politically

> undesirable or because the requirement to pay compensation may be onerous (NSW Aboriginal Land Council submission 643 page 1).

The reparations scheme should recognise the full range of harms and losses caused by the removal policies. The Inquiry's recommendations under term of reference (b) in particular address the losses incurred by Indigenous communities. Individual victims should also be entitled to measures of restitution and rehabilitation as proposed under term of reference (b). Monetary compensation should be payable for harms and losses for which it is not possible to make restitution in kind. Any individual affected by the removal policies should be entitled to make a claim for compensation, including parents, siblings and other family members in appropriate cases. The Inquiry was urged to recognise the full range of damages suffered by the victims of the removal policies.

> We recommend that compensation to be paid for the following … :
>
> pain and suffering of the victims and their families
>
> loss of access to their families and their love and support
>
> loss of access to and knowledge of their traditional lands
>
> loss of their Native Title rights
>
> loss of the right to grow up knowing their traditional culture and language
>
> loss of the right to have private property
>
> loss of inheritance rights
>
> loss of freedom
>
> loss of the right to determine their own lives and those of their children
>
> suffering hardship and abuse whilst detained in institutions
>
> suffering racism and discrimination whilst detained in these institutions
>
> (Broome and Derby Working Groups submission 518 recommendation 3.1.1).

Supreme Courts in both South Australia and the Northern Territory have awarded substantial damages to Aboriginal accident victims for loss of cultural fulfilment. In *Napaluma v Baker* in 1982 $10,000 was awarded for loss of cultural fulfilment to an initiated man of 18 whose head injury meant he could take no further part in ceremonies. In *Dixon v Davies* in the same year $20,000 was awarded to a boy of 10 who would not be able to be initiated and would therefore lose status and be unable to participate in ceremonies.

With respect to compensation for loss of native title rights, the Cape York Land Council submitted that,

> … at least two heads of damage suggest themselves: specific damages for the loss of actual legal rights, which in this case would be the right to enjoy native title as part of a group, and

> general damages for the pain and suffering arising from the loss of these particular legal rights (submission 576).

Where native title rights can be restored, that is where the traditional owners accept the individual as a full participant in enjoyment of the title, no damages should be available.

The heads of damage identified in Recommendation 14 are in line with those proposed by van Boven and adopted in successful human rights litigation in other jurisdictions.

Heads of damage

Recommendation 14: That monetary compensation be provided to people affected by forcible removal under the following heads.

1. **Racial discrimination.**
2. **Arbitrary deprivation of liberty.**
3. **Pain and suffering.**
4. **Abuse, including physical, sexual and emotional abuse.**
5. **Disruption of family life.**
6. **Loss of cultural rights and fulfilment.**
7. **Loss of native title rights.**
8. **Labour exploitation.**
9. **Economic loss.**
10. **Loss of opportunities.**

Civil claims for compensation

Indigenous people are now taking civil damages actions arising from forcible removal. One was commenced in New South Wales by Ms Joy Williams, a woman taken from her mother at birth in 1942 and placed in Bomaderry Children's Home. She was moved at four to a non-Aboriginal children's home because she was 'fair-skinned'. Here visits from her mother ceased because the mother was not told of her whereabouts. The child was told she was an orphan. She complains that she was ill-treated in this home and repeatedly ran away. She was brought up to believe she was 'white' and to have a low opinion of Aborigines. But in adolescence she was told she had 'mud in your veins' causing severe distress. She opened her veins to examine her blood for mud (*Williams* 1994 page 501). In adulthood she suffers severe psychiatric and other ill-health.

Ms Williams claims the Aborigines Welfare Board was her statutory guardian and breached its fiduciary duty to her by denying her her cultural heritage, by failing to protect her from harm and by failing to prepare her for healthy adult life.
The injuries she now experiences are said to flow from her wrongful removal first from her mother and then from Bomaderry to a non-Aboriginal home. Having overcome a potential problem with the statute of limitations, Ms Williams' case awaits trial on the issues.

Another action has been commenced against the Commonwealth by two groups of Northern Territory plaintiffs, one group of six and another of three. The first group of six includes the mother of a baby girl removed from her in 1946. The other plaintiffs were forcibly removed as children in the 1920s, 1930s and 1940s. Their complaint is that the *Aboriginals Ordinance 1918-1953* which the Commonwealth enacted for the Northern Territory and under which they were removed was invalid because it was contrary to implied constitutional rights, notably an implied right to personal liberty. The complainants seek a declaration to that effect and damages for breach of their constitutional rights and for breach of fiduciary duty. The case was argued in May 1996 before the High Court of Australia. Judgment is awaited.

Difficulties of proof and the expiry of statutory periods of limitation may deny a remedy to many victims of forcible removal. However, the harms they suffered, detailed in Parts 2 and 3 of this report, are recognised heads of damages that can be compensated under Australian law. Relying on the civil courts for remedies, however, is likely to lead to great delay, inequity and inconsistency of outcome. The civil process is daunting and expensive, thus deterring many of those affected. It will also involved great expense for governments to defend these claims.

> In our experience the separation issue is a very private and personal one for the people concerned. The stress and trauma of a court case and the resulting loss of privacy is likely to deter many Aboriginal people from bringing a legal action against the Government (Tasmanian Aboriginal Centre first submission 325 page 11).

Ex-gratia payments

In its submission to the Inquiry the Commonwealth Government proposed that ex-gratia payments might be made to those affected by the forcible removal policies provided that certain criteria and principles could be satisfied (submission page 27).

> By definition, ex-gratia compensation is at the discretion of the Government (subject to parliamentary authorisation of appropriations) and it is neither possible nor desirable to develop binding rules (submission page 27).

The Commonwealth submitted that the application of three principles in particular to the facts revealed by the Inquiry would preclude the ex-gratia payment of compensation in this case.

- Difficulties in identifying the persons eligible for compensation.
- Difficulties in estimating the amount of loss in monetary terms.
- Negative consequences for the wider community.

The Inquiry considers that the Commonwealth has overstated the difficulties in identifying with reasonable certainty people who have suffered loss. The Inquiry has found that in different ways individuals, families and communities have suffered as a result of forced removals. Different forms of reparation and different procedures for determining compensation can be appropriate to reflect particular experiences of, and needs arising from, separation of families. This is consistent with the approach of

the United Nations Special Rapporteur van Boven and the Canadian Royal Commission on Aboriginal Peoples in its report on the High Arctic Relocation.

The Inquiry's approach is based on a human rights framework. It recognises that in most cases the right to claim reparation in the form of monetary compensation will be limited to individuals and families. Communities should receive reparation for the harm they have suffered in the form of restitution, rehabilitation, satisfaction and guarantees against repetition. The class of persons eligible for compensation therefore can be specified with reasonable certainty.

The Commonwealth Government also submitted that gaps and deficiencies in records would render the identification of persons within the class problematic. In the Inquiry's view, it would be unjust to exclude from compensation any individual who has been a victim of forcible removal merely because of the unsatisfactory state of his or her records which have been at all times the preserve of government and delegated carers. It would also be unjust to refuse compensation to those whose records have survived and who can establish a claim. Despite gaps and deficiencies, extensive records relating to forcible removals have survived. Where an individual can establish that he or she suffered harm as a result of forcible removal, governments have an obligation to provide compensation.

The second Commonwealth difficulty concerned estimating the monetary value of loss. The Commonwealth submitted that '[t]here is no comparable area of awards of compensation and no basis for arguing a quantum of damages from first principles'. Most elements of the harm experienced by the victims of forcible removal are recognised heads of compensation in Australian civil damages law. The same principles should apply to quantification as would apply in the civil courts. It is difficult to quantify damages for loss of a limb in a motor vehicle accident or for the psychological injury incurred. Yet the difficulty does not prevent civil courts assessing tortious damages in these kinds of cases every day.

Even where Australian law does not presently recognise a right to reparations, as for gross violations of human rights, there are numerous precedents which should guide Australian developments. For example, under the *Alien Torts Claims Act* United States courts frequently award damages to victims of gross violations of human rights, as well as to their estates and to close family members.
The Inter-American Court of Human Rights on numerous occasions has quantified compensatory damages to be awarded to the families of victims of gross violations of human rights.

In a situation with parallels to that dealt with by this Inquiry, Swiss Romany victims of forcible child removal have been awarded a lump sum amount by way of compensation. From 1926 until 1972 the organisation 'Children of the Road', with Swiss Government approval, aimed to protect the children of travelling people, particularly the Roma people (sometimes disparagingly called 'Gypsies'). This 'protection' involved the enforced settlement of many children and the separation of 619 from their families. Upon the dissolution of Children of the Road, its parent organisation officially apologised to the Romany community and 'has set about compensating the victims, a total amount of SF 11 million having been divided among almost 1,900 victims' (Switzerland's periodic report to the Human Rights Committee under the International Covenant on Civil and Political Rights, UN Document

CCPR/C/81/Add.8 page 115).

As to the Commonwealth Government's third point of particular difficulty, the Inquiry does not agree that payment of compensation would have negative consequences for the wider community. The Commonwealth argues that the forcible removal laws are only one example of laws later discredited. This understates the enormity of the devastation wrought and the significance of its continuing effects on the well-being of all Indigenous communities. A distinction should be made between a subsequent recognition that public policy was poorly judged and a public policy in breach of fundamental human rights. Systematic racial discrimination and genocide must not be trivialised and Australia's obligation under international law to make reparations must not be ignored.

Far from being socially divisive, reparations are essential to the process of reconciliation. The Chilean National Commission for Truth and Reconciliation was established to investigate gross human rights violations under the Pinochet dictatorship. A member of that Commission has noted that,

> [S]ociety cannot simply block out a chapter of its history; it cannot deny the facts of its past, however differently these may be interpreted. Inevitably, the void would be filled with lies or with conflicting, confusing versions of the past. A nation's unity depends on a shared identity, which in turn depends largely on a shared memory. The truth also brings a measure of healthy social catharsis and helps to prevent the past from reoccurring (Zalaquett 1992 page 1433).

A national compensation fund

The Inquiry received many submissions addressing the means by which compensation should be determined and distributed. A number of submissions call for the establishment of a specialist mechanism to adjudicate on compensation for victims of the removal policies. These submissions refer to the unfairness of requiring victims to pursue their claims through the court system.

> It is a monstrous and callous policy which relies on court processes to deal with the effect of a government policy of displacement of Aboriginal children. To avoid simplifying the remedy process for Aborigines affected by the displacement policy, exposing them instead to the adversarial civil system with its onus of proof, causation and technical rules of evidence, is to exacerbate the grief. If governments of the day caused the problem, it is the responsibility of governments of today to fix the problem. The purpose of action for displaced children and families should be to alleviate the pain … The tribunals should be run on a fairly informal basis, without having to adhere to the rule of evidence or court procedure and protocol (Tasmanian Aboriginal Centre submission 345 pages 12 and 14).

> That the Commonwealth and State governments establish a Task Force which has a majority of Aboriginal representation to develop a non-technical, expeditious and effective mechanism to distribute monetary compensation to all individuals, families and communities affected by the removal of Aboriginal children from their families under the assimilation policies (Aboriginal Legal Service of WA submission 127 recommendation 12).

> In relation to the compensation issue in general, we would urge the Commission not to recommend a legalistic approach in determining the entitlement to compensation of Aboriginal persons affected by forced family separations … The few cases initiated to date by Aboriginal plaintiffs seeking redress for their separation from their families have become bogged down in procedural matters … Court actions are always expensive … [There are] difficulties in quantifying 'damage' for compensation issues. Clearly any attempt to quantify the pain and suffering and psychological problems brought about by government assimilation and integration policies is fraught with difficulty (Tasmanian Aboriginal Centre submission 345 pages 12-13).

There was also support for the establishment of a fund to which affected people could apply for compensation.

> [C]ompensation should be paid in non-taxable lump-sums to individuals. Such payments to be assessed against a scale defining categories of persons affected by these policies and practices of removal. [C]ompensation should be paid from a regional trust fund with a Kimberley Aboriginal Board of management, funded by the State and Federal Governments, ex-missions and commercial and mining interests in the Kimberley. A levy could be paid to the trust fund by mining and business interests operating in the region. [[I]ndividuals could apply to the trust fund which would assess each application (Broome and Derby Working Groups submission 518 recommendation 3.1.2).

In its submission to the Inquiry the Commonwealth Government expressed a concern that different jurisdictions would be likely to differ in their decisions on compensation, thus causing inequity as between claimants (page 31). To overcome the pitfalls of costly, time-consuming litigation and possible inconsistency of results, the Inquiry proposes, as an alternative to litigation, a statutory compensation mechanism to determine claims in accordance with procedures designed to ensure cultural appropriateness, minimum formality and expedition.

The major church organisations which played a role in forcible removal by accommodating the children should be encouraged to contribute to this fund should they so choose.

National Compensation Fund

Recommendation 15: That the Council of Australian Governments establish a joint National Compensation Fund.

Contributions to the Fund must be over and above existing funding for services and programs to Indigenous people and communities.

> It is repugnant, unjust and unprincipled for reparation payments to be met through offsets to allocations for indigenous programs. Compensation should be met by payments specifically distinguished from these appropriations (ATSIC submission 684 page 34).

> NSWALC believes great care should be taken in labelling certain measures as a form of compensation … [T]o suggest that improved delivery of service can be a form of 'compensation' for wrongs committed against Indigenous peoples is inappropriate. Services such as health, education and housing are basic human rights which Aboriginal people are entitled to enjoy to the same extent as other citizens … Aboriginal people should not have to bargain for essential services by foregoing compensation, nor should the delivery of essential

> services be seen as recompense for past wrongs. These services should be delivered regardless of any compensation that may be recommended by the Inquiry (NSW Aboriginal Land Council submission 643 page 2).

A Board (or similar) will be needed to administer the Fund, consider claims and award monetary compensation. This Board must include Indigenous members and be chaired by an Indigenous person. It is likely that the contributing governments will desire some representation on the Board, while simultaneously sharing an interest in keeping membership to a minimum. The make-up of the Board is ultimately a matter for the Council of Australian Governments.

National Compensation Fund Board

Recommendation 16a: That the Council of Australian Governments establish a Board to administer the National Compensation Fund.

Recommendation 16b: That the Board be constituted by both Indigenous and non-Indigenous people appointed in consultation with Indigenous organisations in each State and Territory having particular responsibilities to people forcibly removed in childhood and their families. That the majority of members be Indigenous people and that the Board be chaired by an Indigenous person.

Procedural principles

Some fundamental procedural principles are necessary to ensure that monetary compensation is distributed effectively and equitably. Guidance is provided in this respect by internationally recognised principles, including those of van Boven.

Whatever compensation mechanism is established, culturally appropriate assessment criteria and procedures which are expeditious, non-confrontational and non-threatening and which respect and accommodate cultural and linguistic needs, must be applied in the determination of compensation claims (van Boven 1992 pages 13-14, Lutz 1989 page 210).

The experience of victims of the Shoah (Holocaust) suggests that it can take some time before victims are mentally capable of filing claims or accepting compensation (van Boven 1992 page 14). Lutz has noted that,

> [F]ormer victims are not likely to focus immediately on seeking compensation, especially in the years just following their persecution. Their primary concern during that period will be to rebuild their lives. Once physical health needs are addressed, it may take years for a former victim to recognize that he or she has unresolved mental health problems or is unable to work at his or her previous occupational level (1989 pages 207-8).

In this connection, Professor van Boven has commented,

> The principle should prevail that claims relating to reparations for gross violations of human rights are linked to the most serious crimes to which, according to the authoritative legal opinion, statutory limitations shall not apply. Moreover, it is well-established that for many victims of gross violations of human rights, the passage of time has no attenuating effect; on the contrary, there is an increase in post-traumatic stress, requiring all necessary material,

> medical, psychological and social assistance and support over a long period of time (van Boven 1993 para 135).

This approach is confirmed by the United Nations *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity* (1968, but not ratified by Australia).

> No statutory limitations shall apply to the following crimes … [c]rimes against humanity whether committed in time of war or time of peace … the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, even if such acts do not constitute a violation of the domestic law of the country in which they were committed (article I(b)).

Procedural principles

Recommendation 17: That the following procedural principles be applied in the operations of the monetary compensation mechanism.

1. **Widest possible publicity.**
2. **Free legal advice and representation for claimants.**
3. **No limitation period.**
4. **Independent decision-making which should include the participation of Indigenous decision-makers.**
5. **Minimum formality.**
6. **Not bound by the rules of evidence.**
7. **Cultural appropriateness (including language).**

Assessment of compensation

In its submission the Commonwealth Government expressed concern that '[p]ayment of a single standard rate of compensation, without regard to individual circumstances would inequitably equate very different circumstances' (page 31). The Inquiry's recommendations will avoid inequity of this kind. Our approach finds support in submissions from the Broome and Derby Working Groups (submission 518) and the Tasmanian Aboriginal Centre (submission 325).

> Compensation should be paid in non-taxable lump sums to individuals (Broome and Derby Working Groups submission 518 recommendation 3.1.2).

This approach has been adopted in somewhat analogous situations in other countries. For example, in 1989 the United States Government authorised lump sum reparatory payments to Americans of Japanese ancestry who had been interned during the Second World War. Research undertaken in Chile by the National Commission for Reparation and Reconciliation into the wishes of victims of violations of human rights by the military dictatorship revealed a clear preference for equal compensation for all regardless of their particular circumstances.

In the determination of compensation, some practical difficulties might arise in assessing what qualifies as proof of removal and proof of loss. In many cases evidentiary material such as records may be difficult to obtain or have been

destroyed. In these cases, the burden of proof should be on governments to rebut otherwise credible claims. Governments should be able to defend a claim if they can establish that removal was in the best interests of the child. The reversal of the onus of proof to the extent proposed in Recommendation 18 is necessary as a 'special measure' under the *Racial Discrimination Act 1975* (Cth). Special measures in favour of one ethnic group (or 'race') are permissible where needed to secure adequate development, advancement and protection so that they can enjoy, fully and equally, their human rights and fundamental freedoms.

The proposed monetary compensation mechanism is intended as an alternative to the cumbersome and often prolonged processes of civil claims. Accordingly, its processes should be straight-forward and non-technical and should ensure consistent results for claimants. The approach adopted finds support in the submission made to the Inquiry by the Tasmanian Aboriginal Centre.

> We contend that such tribunals be empowered to make monetary awards to Aboriginal people affected by such separations. Empowering legislation could prescribe a minimum amount of damages to be awarded to each person on proof that they were displaced. Claimants wanting larger awards could be required to provide further particulars of their separation and the debilitating effect of such separation (submission 325 page 14).

The Chilean Commission for Truth and Reconciliation also recommended payment of equal compensation to all without regard to their particular social, economic or cultural circumstances, although in Chile a pension scheme was recommended in preference to payment of a single lump sum (Danieli 1992 page 206).

Minimum lump sum

Recommendation 18: That an Indigenous person who was removed from his or her family during childhood by compulsion, duress or undue influence be entitled to a minimum lump sum payment from the National Compensation Fund in recognition of the fact of removal. That it be a defence to a claim for the responsible government to establish that the removal was in the best interests of the child.

Proof of particular harm

Recommendation 19: That upon proof on the balance of probabilities any person suffering particular harm and/or loss resulting from forcible removal be entitled to monetary compensation from the National Compensation Fund assessed by reference to the general civil standards.

Everyone who can establish forcible removal and everyone who can establish harm or loss resulting from the forcible removal of any person should be entitled to claim monetary compensation regardless of the date of removal. The principal basis for the Inquiry's recommendations on reparations is that forcible removal was a gross violation of human rights norms legally binding on Australia since late 1946. However, this is not the only basis for compensation. Many of the harms that can be established were the result of actions contrary to common law well before 1946.

In addition, the Inquiry's recommendations do not rest on legal entitlements alone. A crucial justification for reparation, including monetary compensation, is a moral one.

It should be appreciated that the applicable human rights instruments did not invent rights but rather recognised and formally declared the existence of such rights as inherent in all human beings and as already existing. Further, invidious and unjust distinctions ought to be avoided. Thus it would be unfair to deny a remedy to a victim of forcible removal in 1945 while extending a remedy to a person forcibly removed in 1947 for example. Both were subject to the same legislation and procedures and would have endured much the same suffering.

A statutory regime of monetary compensation administered under administrative rather than judicial processes should not displace the entitlement of any person to pursue a civil claim through the courts as an alternative. Some people may wish to pursue civil claims to maximise the damages payable to them.

Civil claims

Recommendation 20: That the proposed statutory monetary compensation mechanism not displace claimants' common law rights to seek damages through the courts. A claimant successful in one forum should not be entitled to proceed in the other.

Courtesy University of WA Berndt Museum of Anthropolgy.

"Maids of the Mission", Forrest River, WA, undated.

Those who teach the Aborigines very soon discover that they are no whit behind any other race in mental capacity, and that they can master the lessons that white children learn quite as quickly and completely as they can**.**

Rod Schenk, UAM missionary in WA in 1935, quoted by Harris 1990 on page 559.

What past? There ain't none. There is more or less the past that they wanted me to have, not what I wanted, what I'd like to have.

Confidential evidence 146, Victoria: one of four siblings placed in a group home.

Part 5 Services for Those Affected

Empty Cradles

Nunga baby taken away
‘Where’s my mama’ hear him say
‘You takin’ me to Goonyaland?’
Carried and fed by white man’s hand
Growing up different
Never knowing
Aunts and uncles, cousins growing

Mama cries – Government pays
Children lost to city ways

But they’ll return
when they grow old
and tell their children
of lies been told
So it won’t happen again
you see
The cradles outback
that were left empty.

Mandy Hunter-Hebberman 1996

> … there needs to be a focused response to the needs of families and communities affected by past policies beyond those provided to individuals who access their own records (Victorian Government interim submission page 4).

Governments have been slow to respond to the effects of forcible removal on Indigenous people. The first responses were made by Indigenous individuals themselves who made efforts to locate and reunite their families. These efforts began for some from the very moment of separation.

During the 1980s Indigenous organisations were formed to assist in tracing family members and to provide counselling and support. In 1980 Coral Edwards and Peter Read established Link-Up (NSW). Similar services now exist in other States and in the Northern Territory and have attracted government funding.

Indigenous family reunion workers brought to light the need for forcibly removed children and their families to have ready access to the records kept by government and non-government agencies involved in their removal or subsequent placement. Other records, for example genealogies collated by anthropologists and family history cards compiled by missionaries or government agents, are also needed to assist in identifying family and community ties. Most governments but few churches have recognised Indigenous people's need for information from their records to allow tracing of family and proof of identity.

Reunion can be a part of healing for the individuals, families and communities affected by forcible removal. However the damage to well-being and emotional health has typically and quite predictably been severe. Yet the need for healing strategies focused specifically on those affected by forcible removal has only very recently been acknowledged by governments and funding is still scarce. Fortunately again some Indigenous people and services have recognised this need and begun to address it.

While governments began responding to some of the effects of forcible removal during the 1980s, it was the 1991 Royal Commission into Aboriginal Deaths in Custody which articulated an obligation on all governments to address these effects comprehensively. The Royal Commission found that 43 of the 99 people whose deaths in custody were investigated had been separated from their families in childhood. All governments support the relevant recommendations of the Royal Commission and have committed themselves to implementation.

Evaluation

The Inquiry's second term of reference requires an examination of existing services and procedures available to those affected by the forcible removals. We have taken this to mean those services and procedures specifically for those affected and specifically addressing the effects. A literal interpretation of term of reference (b) would require the

Inquiry to examine all services applicable to Indigenous people, because all are 'available' to those affected.

The examination is further confined to services and procedures provided by governments or by churches who were involved in caring for forcibly removed children as *responses* to the history and its effects. Many services are provided by Indigenous communities. When these are funded by government it is appropriate that the funding mechanism and quantum be evaluated by the Inquiry. However, community-based services are otherwise for Indigenous people themselves to evaluate and reform if that is considered necessary.

Term of reference (b) requires the Inquiry to evaluate the effectiveness and the adequacy of the relevant services and procedures, of 'responses' to the effects of forcible removal. To make a useful and thorough evaluation which can assist in the development of improved responses, the Inquiry has considered each response within two distinct but overlapping frameworks.

With respect to government responses we consider first the framework established by governments themselves based on the recommendations of the Royal Commission into Aboriginal Deaths in Custody. Second we propose a framework that satisfies Australia's human rights obligations and takes account of the levels of need identified by this Inquiry.

In this Part we outline and evaluate the three principal government responses to the continuing effects of separation:

1. provision of access to personal and family records,
2. provision of funding to Indigenous services assisting family reunification, and
3. provision of services to address the individual and family well-being effects of forcible removal.

We briefly describe the response of the churches in the final chapter of this Part.

Our first evaluation of each government response takes as its starting point the stated or implicit objectives of that particular response. We ask, 'What does the response aim to achieve?'. Then, 'Have these objectives been achieved?'. Achievements are compared with aspirations. We conclude that achievements do not match aspirations. Moreover, the aspirations themselves are often minimalist. The major reasons for this are a limited understanding of the Royal Commission recommendations, failure to understand and incorporate human rights goals and ignorance about the size of the problem and the extent and seriousness of the need for services. If government responses to the effects of forcible removal are to be adequate in the future, they must be established within a framework of Indigenous human rights and with a commitment to healing the effects of forcible removal for which governments bear responsibility.

The Inquiry's evaluation criteria

Term of reference (d) requires us to take into account the principle of self-determination in formulating our recommendations with respect to laws, policies and practices relating to child placement and care. Adoption of this principle is fundamental to progress in Indigenous affairs generally. It must also underpin changes to laws, policies and practices relating to services and procedures for those affected by forcible removal.

Term of reference (b) requires us to consider the adequacy of existing services and procedures. For a service to be adequate it must at least operate in a fair and timely way without imposing additional harm on clients or potential clients. This requires that services take account of the variety of life circumstances and the extent and duration of the need for assistance in the Indigenous community. One measure of inadequacy is the unmet need for the service.

In addition to evaluation criteria dictated by the terms of reference, we have also taken into account Australia's human rights obligations: notably, the obligations of governments to prevent racial discrimination and to respect and promote the right of members of ethnic, religious and linguistic minorities to enjoy their cultures, religions and languages.

Self-determination

Self-determination is a collective right of peoples to determine and control their own destiny. It is a right to exercise autonomy in their own affairs and a right to make their own decisions. As the Aboriginal and Torres Strait Islander Social Justice Commissioner has noted, 'every issue concerning the historical and present status, entitlements, treatment and aspirations of Aboriginal and Torres Strait Islander peoples is implicated in the concept of self determination' (Dodson 1993 page 41).

For evaluation purposes it is necessary to distinguish between different levels of Indigenous participation in decision-making and service delivery. Self-determination requires more than *consultation* because consultation alone does not confer any decision-making authority or control over outcomes. Self-determination also requires more than *participation* in service delivery because in a participation model the nature of the service and the ways in which the service is provided have not been *determined* by Indigenous peoples. Inherent in the right of self-determination is Indigenous *decision-making* carried through into implementation.

> The right of self determination is the right to make decisions. These decisions affect the enjoyment and exercise of the full range of freedoms and human rights of indigenous peoples (Dodson 1993 page 41).

The relevant distinction is between a program or policy freely adopted by Indigenous peoples and a program or policy adopted by government about or for Indigenous peoples (Dodson 1993 page 43). The former reflects an exercise of self-determination. The latter does not. To respect the right of self-determination,

governments should confine their roles largely to providing financial and other resource support for the implementation of Indigenous programs and policies.

> There is no right more fundamental for indigenous people than that of self determination. It is central to addressing the general disadvantage and oppressed condition of Aboriginal and Torres Strait Islander peoples …
>
> It is central to a social justice package that policies, institutional structures and legislation should operate to empower indigenous peoples and provide for collective rights of indigenous peoples (ATSIC 1995 page 29).

Unless provided in accordance with the requirements of self-determination, services to Indigenous people may be effectively inaccessible to them or where accessible are unlikely to secure their objectives.

> The exercise of self determination by Aboriginal and Torres Strait Islander communities most frequently centres on the provision of community services. The aim is not merely to participate in the delivery of those services, but to penetrate their design and inform them with indigenous cultural values. The result is not merely services which are better structured to reflect the needs and identity of particular communities: there can be a resultant improvement in the effectiveness and efficiency of these services (Dodson 1993 page 56).

Only Indigenous people themselves are able to comprehend the full extent of the effects of the removal policies. Services to redress these effects must be designed, provided and controlled by Indigenous people themselves.

Non-discrimination

The prohibition of racial discrimination has long been fundamental to human rights law. It finds expression in all the treaties within HREOC's jurisdiction, including the Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights. These treaties do not just prohibit intentional or explicit discrimination. They also prohibit systemic discrimination against an ethnic group because, for example, a service is modelled on the needs, language or culture of others. Actions, policies and services which have the effect of discriminating against an ethnic group, intended or unintended, are also prohibited (section 9(1A) *Racial Discrimination Act 1975*).

Implicit in the design of any service are assumptions about the nature and needs of the anticipated clients. Typically a service will be designed with the majority or dominant ethnic group in mind. This is particularly true for generalist or 'mainstream' services as contrasted with specialist services. In Australia the dominant ethnic group (Anglo-Australians) has a very different demographic profile from Indigenous Australians. Most Anglo-Australians live in urban areas or visit cities regularly and with ease, earn a salary, speak English and have had a high school education. A very high proportion of Indigenous Australians, in contrast, lives in rural or remote areas, rarely travels to cities,

is dependent on social security, speaks English as a second or third language and does not read it fluently, and has not had a high school education. It will always be the case that a service designed to address the needs of the majority of Anglo-Australians will fail to cater to the needs of a certain proportion of the members of that group. However, it will fail to cater to the needs of a substantially higher proportion of Indigenous Australians.

In practice such a service would be racially discriminatory because access to and effective use of it would be denied to a significantly higher proportion of Indigenous Australians. This is indirect discrimination. Some services which fit this description can nonetheless be justified because it would be unreasonable to require them to cater to the needs of Indigenous and non-Indigenous clients alike. Factors relevant to deciding reasonableness can include remoteness, cost, the extent of the need for the service and detriment caused by lack of effective access.

This justification is not available for core government services, however. Governments have a duty to ensure that basic services are provided on a basis of equality to all. Substantive equality will require that particular needs and disadvantages are taken into account. A clear example is the need to provide an interpreter when a non-English speaking person requires medical assistance.

Cultural and language differences, remoteness, unique histories and particular emotional needs mean that equality in the provision of services to Indigenous people will frequently require distinctive approaches. In some cases modification of a 'mainstream' service may suffice. In other cases, a specialist service will be required. Necessary specialist services should not be confused with discriminatory services. The objective of specialist services is to ensure equity of access and to overcome the discrimination which clients would otherwise experience if required to have their needs met by mainstream services.

Cultural renewal

Human rights law recognises the right of distinct ethnic groups to the enjoyment of their culture (International Covenant on Civil and Political Rights article 27). This right involves two distinct categories of obligation for governments. First, governments must not interfere in groups' enjoyment of their cultures, practise of their religions and use of their languages. Second, governments must act positively to ensure the conditions for the exercise of this right.[1] For example, if school teachers today were punishing Indigenous children for using their own languages at school, governments would have an obligation to prohibit such punishments

The purpose of article 27 is 'to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned'.[2] In particular, governments must take all measures necessary to ensure the cultural survival and well-being of Indigenous peoples.

Under the heading of cultural renewal we consider whether the service in question contributes effectively to the repair of broken cultural and familial ties. In this connection we recognise the existence of many Indigenous cultures in Australia. Common to all is

the history of forcible removal and other gross violations of human rights.

Coherent policy base

The history we have documented has had a profound impact on every aspect of the lives of Indigenous communities. It has jeopardised their very survival. It has impoverished their capacity to control and direct their future development.

An adequate response to this history and its effects will challenge the sensitivity, the goodwill and the creativity of all governments. It requires a whole-of-government policy response with immediate targets, long-term objectives and a continuing commitment. Each aspect of the government's response — whether provision of family history information or enhancing well-being through medical and mental health services — must derive its rationale from that central policy commitment. The degree of co-ordination and co-operation between government departments and agencies and the level of resources committed must adequately reflect the implications of our finding of genocide and other gross violations of human rights.

Having a coherent policy base means that the people who fund the service and the people who deliver it are clear about why they are doing it and what goals they are trying to serve. So, for example, a reunification service must understand the history of forcible removals and be committed to facilitating reunion for all those affected who want to find their families. It must be culturally appropriate. It must not turn away people whose nuclear family members are deceased. Instead it must recognise the extended family and the whole community as people with whom a stolen child needs to be reunited. It must also recognise the child's right to know about his or her land and culture.

Government policy must identify services needed to begin a process of healing and reparation as well as a degree of central co-ordination of the resourcing of services designed for this purpose.

Adequate resources

The key resource for any service is its staff. As our discussion of previous criteria has established, services to Indigenous people and communities must be controlled and delivered by Indigenous people themselves. Staff must be adequately and appropriately trained and equipped to perform their roles. Whether the role is counsellor, psychologist, archivist or researcher, the education and training must be accessible to Indigenous people. This may require the establishment of traineeships and scholarships. Training must be culturally appropriate. This will require significant Indigenous input throughout the degree or other qualification.

The expertise in the Indigenous community must be recognised and appropriately remunerated. Survivors of forcible removal have a wealth of knowledge about the history of removal, its effects and the experiences of children in placements. They can provide invaluable information about the children with whom they were placed. Older community members can build genealogies, have information about removals and their impacts on family members left behind and can assist in tracing the subsequent movements and experiences of family members. People who have effected their own reunions can assist

others with information and encouragement. Mutual support, community and friendship are keys to healing. The knowledge, experience and skills of traditional healers also need to be acknowledged and drawn upon.

There must be sufficient funding and other resources to ensure that services can respond promptly to demands in ways which ensure realisation of the right of self-determination, which are culturally appropriate and which ensure equality of access for all. Services must be adequately resourced so that they can be flexible enough to take into account the many and diverse ways in which the removal policies have affected individuals, families and communities.

Endnotes

1 The Human Rights Committee's 1994 General Comment on article 27 states that, 'The enjoyment of those rights may require positive legal measures of protection…' (UN Document CCPR/C/21/Rev.1/Add.5, 26 April 1994).

2 *Ibid*.

16 Access to Personal and Family Records

People need their personal and family records for various reasons.

> **I wanted to find out my right age and where all my family came from and who I was related to.**
>
> *Confidential submission 110, Queensland.*

> In some cases the records held by non-Aboriginal organisations may be the only source of information that Aboriginal people have about ourselves (Link-Up (NSW) submission 186 page 10).

> **That's why I wanted the files brought down, so I could actually read it and find out why I was taken away and why these three here [siblings] were taken by [our] auntie … Why didn't she take the lot of us instead of leaving two there? … I'd like to get the files there and see why did these ones here go to the auntie and the other ones were fostered.**
>
> *Confidential evidence 161, Victoria.*

> Access to knowledge can assist: to reinstate pride in family experiences; enhance a stronger sense of identity; re-establish contacts with family members; reaffirm interaction with broad family networks; revive and maintain Aboriginal traditions …; understand the historical background of contemporary personal issues …; re-claim ownership of material pertaining to family life; develop resources … and enhance research skills (Patrick Dodson quoted in the *National Report* of the Royal Commission into Aboriginal Deaths in Custody Volume 2 on page 78).

Existing services and procedures

The variety of existing services and procedures for accessing personal and family records – even within a single jurisdiction – creates a complex and somewhat confusing scene.

> There is a patchwork of laws governing access to these records. At the federal level the *Archives Act 1983,* the *Freedom of Information Act 1982* and the *Privacy Act 1988* are relevant. There may be as many as three pieces of parallel legislation in each State. At the local [government] level access to records may be governed by State legislation or by independent regulations of the local government authority.

> There is no legislation governing access to records generated in the non-Government sphere …
>
> As there is no single piece of legislation across Australia governing access to government records there is no consistency in terms of practices or policies …

> The differences in practices and policies between States, which are in part a reflection of different legislative frameworks, make the seeking of access more complicated (Australian Archives submission 602 page 4).

The key problem areas for Indigenous searchers, however, can be readily identified. The descriptive material which follows, therefore, briefly sets out those problems and concerns and describes existing responses, some of which may serve as models for other record agencies. The source of the information in this section is government submissions and evidence to the Inquiry unless otherwise stated.

Destruction of records

Many relevant files have been lost or destroyed. Archives legislation in Western Australia, Queensland, South Australia and Victoria permits or permitted at one time the destruction of some classes of records or culling a percentage of records in a particular class. Between 1973 and 1985, for example, 95% of case files created by the SA Department of Family and Community Services were culled. 'The belief at the time was that when any child was successfully fostered or adopted, the files would not be of any further use' (Sonia Smallacombe consultancy report submitted by ATSIC submission 684 page 21).

> This lost to them information that may have been contained within these files is both priceless and irreplaceable to the survivors of Indigenous Family Separations and may well be lost to them forever, and therefore their links with their past and to their people and country may never be able to be traced (Aboriginal Legal Rights Movement submission 484 page 46).

In WA adoption and wardship files have been kept but the predecessor to the Department of Family and Community Services began destroying foster care files in 1957. Also in WA the Inquiry was told by a former employee of the Department of Community Services,

> **I know that in 1984-85 there was an instruction went out to all the welfare offices to burn all the files. There were instructions from Perth head office to all the DCS offices instructing them to destroy files. And a couple of the officers here [East Kimberley] started to burn them. And then they started reading some, and then they informed other people and they saved a few. The Derby office [West Kimberley] was burnt down and that's where our [family's] files were.**
>
> *Confidential evidence 505.*

NSW Archives has identified an unexplained gap in Aborigines Welfare Board files for 1938-1948. Also in NSW adoption records from 1922 to about 1950 were culled. A fire is reported to have destroyed files in Victoria prior to the Second World War. The Inquiry was told that Torres Strait Islands administrators regularly destroyed personal files relating to residents (confidential evidence 631) and that personal files in the Northern Territory were culled back to only 200 records in the 1970s due to concerns their contents would embarrass the government (Sonia Smallacombe consultancy report submitted by ATSIC submission 684 page 7).

Little effort has been made to identify all files which are of relevance to Indigenous people affected by forcible removal. Thus '[a]t this stage, no government is able to provide comprehensive information on which records still exist and may be relevant to people tracing their families' (*Families on File* page 20).

Old records are fragile. The more people touch them the more they risk disintegration. Preservation is a particular concern but it is costly and resource-intensive. The best preservation method seems to be copying the pages onto microfilm. NSW Archives has begun a project to microfilm the Aborigines Protection Board records it holds.

Location of records

Records relevant to forcibly removed children and their families – records which could assist searchers to discover their true identity, to locate family members and to begin the process of reunion – were usually created by a range of records agencies: protection boards, police, welfare departments, adoption agencies, education departments, hospitals and missions among others. While older government records which have survived are usually physically located in an archive, they are still owned by the department which created them or its successor. Access to most records is by arrangement with the agency which created the record.

This fact, coupled with the fact that the searchers were babies and children in the period for which they seek records – and therefore typically unaware of all the authorities who dealt with them – means that the search task is daunting at best, impossible to contemplate at worst.

There is no 'one-stop shop' in which all the personal information held generally by government can be located and accessed.

> There is no single, comprehensive, national database or index that provides information about what archives are held by which organisation and where. Consequently, researchers need to ask themselves which governments, organisations, or people, have had involvement in any particular event or activity. Then the researcher needs to approach the organisations (or their archives) to establish whether the records are extant, where they might be, whether they are accessible and so on. This may require a deal of searching, and deduction and can be quite daunting and frustrating (Australian Archives submission 602 page 19).

> In terms of information about the history of Western Australia, there has not been any coordinated approach or any arrangements that actually could bring together all the information … there has not been any coordinated approach to actually manage the records in … a way that will serve the interests of the community (Cedric Wyatt, WA Aboriginal Affairs Department, evidence).

The range and complexity of the records of relevance to separated families make indexing a prerequisite to genuine accessibility. Often there is no index at all to assist a searcher to locate a relevant record in a series. Indexes created at the time were more likely to be meaningful to the officers then than to Indigenous searchers today. The size

of a search task in unindexed records is illustrated by the example of one record series which contains some information relevant to Aboriginal people together with some of no interest at all. The correspondence files initiated by the Commonwealth department administering the Northern Territory dating from 1903 to 1938 are filed simply in date order and take up 340 metres of shelving (Australian Archives submission 602 page 20).

The family history cards (1916-48) held by the WA Aboriginal Affairs Department and the NT register of wards (known as the 'Stud Book' because it records partial genealogies) are easier to search because they are indexed by family name. Indexes are being developed in South Australia, Queensland, Victoria and NSW. The compilation of indexes must tread carefully between providing sufficient information about the records to ensure their utility on the one hand and, on the other, revealing personal information in breach of privacy principles or even permitting the collation of individual dossiers by linking formerly unrelated records.

In addition to appropriate indexes, the production of finding aids is essential if individuals are to locate their own records. Victorian and Queensland records are made more accessible with finding aids specifically for Indigenous records. The Victorian Archives combined with the Australian Archives to produce a guide titled *My Heart is Breaking* in 1993.

> [It] consists of separate annotated listings of the relevant holdings of both Commonwealth and State archives with some notes on the authorities that created the records. It includes a name index to assist with family study … and suggests other sources for research and study … [It] includes reference to the archives of other [Victorian] State agencies that are known to have had contact with Aboriginal people in the period until the transfer of responsibility to the Commonwealth [in 1975] (Karen Cleave, Victorian Department of Health and Community Services, evidence).

These guides were criticised, however, on the grounds that they 'are written in a language that appeals to only a small tertiary educated elite group' and are 'often compiled with very little, if any, Indigenous input' (Sonia Smallacombe consultancy report submitted by ATSIC submission 684 page 10).

Many files which may be of relevance do not distinguish between Indigenous and non-Indigenous subjects.

> Where records were created in the course of or to document the lives of Indigenous Australians or in administering Aboriginal or Torres Strait Islander affairs, identification and description is more likely to be relatively straightforward. But records are also created to document activities in which Aboriginality was unimportant to the creators of the record. As a result records about Aboriginal and Torres Strait Islander people or of relevance to them exist embedded within other records (Stuartfield House Consulting Group 1996 page 4).

Indexes to those records 'may not give any indication of Aboriginality' (Stuartfield House Consulting Group 1996 page 4) and indeed individual records may not record the person's Aboriginality. This greatly adds to the size and complexity of the search task and there is always a risk that a relevant file will be overlooked.

> What was very disturbing … was the way Aboriginality was identified was not by a mark on the file or by trying to slot kids into Aboriginal programs. It was sometimes just because racist terms appeared in the file [that I could tell the subject was Aboriginal] (Linda Briskman evidence 134).

Many people will need assistance to obtain the information kept by the government about them. Many will need assistance just to be aware there might be a relevant and accessible file.

> Firstly, people have to know about the service and their rights of access, and many do not yet have this information. People who live in remote communities may be a long way from a District Centre [of the department]; and language and cultural differences can inhibit communication and access. Aboriginal people who are mistrustful or apprehensive of Family and Community Services may not feel confident about requesting access and negotiating the specific information they want to receive (SA Government interim submission page 23).

Beginning a search

Researching government records is complicated and time-consuming. Few people who have not worked in a bureaucracy can understand the record-keeping systems, codes and procedures.

> … a very complex maze. It's hellishly complex. There's terrible numbering systems; the systems have changed over time. There was a whole maze of ways of looking at the [records] system (Linda Briskman evidence 134).

> Research based on archival sources is an analytical and labour intensive process. Archival research involves the study of unique, original documents. The storage areas of archives, unlike those of most libraries, may not be browsed by researchers wishing to identify records that might be relevant. This means that researchers are entirely reliant on indexes or finding aids to locate material of relevance to their research. Archives see their role as assisting researchers to understand and use the indexes and other tools. By and large Archives are not able to assist researchers in identifying or selecting relevant records or interpreting the records (Australian Archives submission 602 page 19).

> … archives are pretty daunting places for anybody … all archives have different systems … They're complicated places to use (Kathryn Frankland, Queensland Archives, evidence).

> In reality this kind of search is not possible either for Link-up with hundreds of clients, or for people trying to do their own research. The sheer size of the job is not the only problem although it is a significant one. There are difficulties in identifying possible sources in the first place. Inventories and other finding aids are not always available and access provisions prevent trawling widely through possible sources (Rosie Baird presentation included with Karu submission 540, page 7).

A number of record agencies have established specialist units to undertake the complex search process on behalf of Indigenous searchers. We found such units to be

operating in Queensland, WA, SA and Victoria. The Australian Institute of Aboriginal and Torres Strait Islander Studies also offers a family research service. The following table sets out what services are available and whether Indigenous staff are employed.

Access as of right

'Personal information' is information about the searcher, the forcibly removed child or perhaps a descendant. This information may include the searcher's date and place of birth, birth name, date and reason for removal, placement(s), health and education records. While 'personal information' usually includes the names of the child's biological parents and their dates of birth, it does not include other records about the parents such as their health records, employment and housing records, information kept by missionaries and protectors about their relationships, other children, changes of residence and so on. Nor does it include information about the searcher's siblings, grandparents, cousins or other family or community members.

There is a right of access to personal information throughout Australia with the exception of the Northern Territory. This right is established by 'freedom of information' laws (FoI) covering personal information compiled by government agencies.

> … if someone requests documents – whoever they may be – as long as that document directly relates to them there is no prohibition on their access to the information (Dr David Rathman, SA Department of Aboriginal Affairs, evidence).

> If the file was just about you we wouldn't deny you access at all. We'd actually make a copy of the file for you (Rose Mitchell, WA Aboriginal Affairs Department, evidence).

Freedom of information legislation sets minimum rights of access. It is a back-up if access to documents cannot be obtained less formally. FoI legislation does not prevent access being provided informally. '[It] is not the only mechanism by which the objectives of government openness and accountability, dissemination of information and protection of privacy can be achieved. Its importance lies in the fact that it provides an enforceable right of access to government-held information' (*Open government* 1995 page 15).

> The FOI Act prescribes when information *must* be disclosed. It does not prescribe when information is *permitted* to be disclosed. Agencies retain a discretion to disclose information at any time (*Open government* 1995 page 38).

FoI legislation requires departments to respond to requests within set time limits and if departments refuse to release records the legislation provides rights of appeal.

Restrictive application of FoI

The administration of FoI application procedures can be unhelpful to many Indigenous searchers seeking personal information. One limitation is that the applicant for a record must usually specify the file sought. Most record agencies will not search

through all of their files to discover whether there is a record of the applicant. Nor will they recreate the applicant's life and family history from the various records held.

> … when people put in an application for freedom of information they have to be specific about what document they want and be very clear. Freedom of Information covers documents not collections or records as a larger record. So it is very restrictive for anyone applying and in fact it is not at all an easy process under FoI (Jennie Carter, WA Aboriginal Affairs Department, evidence).

The 1995 review of the Commonwealth's FoI Act found considerable resistance among bureaucrats to the release of government records in accordance with the letter and the spirit of FoI (*Open government* pages 35-6, 81). Nevertheless the existence of FoI laws 'does reinforce a culture of open government' (*Families on File* 1996 page 28).

> In the Northern Territory, where FOI laws are absent, Indigenous organisations have reported that departments more often than not refuse to release personal information and have declined to negotiate access principles (*Families on File* 1996 page 28).

In most States Indigenous people removed from their families as children can see their major personal records without going through the Freedom of Information process. Records kept by Aborigines protection and welfare boards, departments of native welfare and their equivalents are now the responsibility of State and Territory welfare and/or Aboriginal and Islander affairs departments. Where the Commonwealth had legislative responsibility (in the NT and ACT) or where responsibility for Indigenous affairs was transferred to the Commonwealth (in Victoria from 1975) most of the relevant records are held by Australian Archives.

Most Indigenous affairs and welfare departments now have specific (non-FoI) access procedures for Indigenous families in general or specifically for children taken into State care or guardianship. These procedures are less formal than FoI, discretionary and designed specifically for Indigenous searchers. While they are often slower than an FoI application, they are usually free of charge and research assistance may be available (see the table above).

> By not requiring people to lodge FOI requests agencies are not bound by restrictive provisions in FOI legislation and have more flexibility to handle each case in a way best suited to the applicant, including using their discretion to release third party information (*Families on File* 1996 page 27).

Exceptions to this special provision are Victoria and the NT. In Victoria the Freedom of Information legislation must be used. The only Victorian records that are available without going through FoI are files on adults which were created more than 75 years ago and files on children created more than 99 years ago, under archives legislation which has equivalents in most States and Territories. In the NT there is 'no automatic entitlement of clients to information or records' (NT Government interim submission page 31).

Adoption information

Adoption information is treated separately. All States and Territories except SA have legislation to permit adopted children to find out who their natural parents are without using FoI procedures. Legislation varies somewhat in each State and Territory. In NSW the birth parent or the adopted child can lodge a contact veto but cannot prevent the release of identifying information. In other jurisdictions the parties can register a veto over the release of identifying information or can permit this release but prevent the other person from making contact. In Queensland even if parents' identity cannot be disclosed the adopted child will be told their age, religion, occupation, ethnicity and a general description. In all jurisdictions adopted children are only entitled to the information about their birth once they reach 18.

No right of access to non-government records

Records made by non-government organisations, for example churches running children's homes and orphanages, are not covered by FoI. Some researchers' records, for example the extensive 'Tindale Collection' of photographs and genealogies created by anthropologist Norman Tindale in the first half of this century, and some non-government agency record collections, for example some mission records in the NT and the A O Neville collection in WA, have been deposited in various State, Territory and Commonwealth archives. The Australian Institute of Aboriginal and Torres Strait Islander Studies also holds significant family and biographical information. The general rule is that the depositing organisation and not the archives itself decides who can have access to these materials and on what conditions.

Non-government organisations are under no statutory obligation to retain their records or to expend resources preserving and indexing them. 'It really is up to the organisations concerned to have some sort of general social conscience in terms of ensuring survival of important records' (Richard Gore, NSW Archives, evidence).

A current proposal to extend the Commonwealth *Privacy Act 1988* to non-government organisations should ensure the protection of relevant church and mission records and grant a right of access for people whose personal information is held in church archives.

No right of access to family information

Family information, as distinct from personal information, is treated as information about third parties. Third party information is protected to varying degrees by privacy principles with the practical effect that the searcher may be denied information about family members. 'And yet that file may provide the information that is the missing link to that person's history' (Aboriginal Legal Rights Movement submission 484 page 47).

> … Freedom of Information legislation places restrictions on the actual information that a person can access in their file, as it excludes identifying information about other people. This poses particular difficulties for Aboriginal people, as the excluded information is often exactly what they are searching for (SA Government interim submission page 24).

> Confidentiality provisions within the legislation and by departmental policy make it virtually impossible to access another persons file without their express written permission. This becomes difficult where that person may have died and cannot give that permission. And yet that file may provide the information that is the missing link to that persons history (Aboriginal Legal Rights Movement submission 484 pages 46-47).

Respect for individual privacy means that information about third parties will not be divulged without their consent or, where deceased, consent from their next of kin. This may appear unjust.

> **In order to get records I have to prove Dad is dead and that I am his daughter. It is unjust that I have to get paperwork that I am related in order to get the records.**
>
> *Confidential evidence 183, South Australia.*

Yet the importance of protecting privacy was stressed to the Inquiry.

> [It] has been raised with me by a number of elderly Aboriginal members of the community that they do not want their families to access records that may have been produced by the Protector of Aborigines or the Aborigines Protection Board that relate to their family histories without them giving express permission … (Dr David Rathman, SA Department of Aboriginal Affairs, evidence).

When one considers the kind of information recorded about people by protection boards and other agencies, the reluctance of some parents to have their children see it is understandable. A mother may not wish her children to know that she was raped by an employer for example. A father may wish to keep private the fact that his application for an exemption certificate was rejected on the grounds that his standard of living or 'intelligence' was judged inadequate.

In view of these concerns two issues arise. The first is whether a distinction can be made between, on the one hand, third party identifying information which permits a searcher to identify his or her own family and community links and, on the other, information which is solely personal to the third party. The second issue is whether the record agency should seek the third party's consent or whether that should be left to the searcher to pursue.

Some States interpret the right of privacy more strictly than others and agencies vary within States. In Queensland information about the immediate family of the searcher will be divulged but 'sensitive' information about third parties will be deleted (Queensland Government interim submission page 68). In WA, on the other hand, the welfare department will not even advise a searcher of his or her parents' identity.

> Under Western Australian law, if people wish to pursue personal information that has been withheld, they may obtain the consent from the third party if they know the identity of the third party. Departments are obliged under the [FoI] Act not to reveal the identity of the third party. However it is usual practice [for the department] to contact the third party to seek their views (personal communication from Director-General, WA Family and Children's Services).

In the NT many relevant records are held by Australian Archives. Many of these records contain personal information about a number of people. For example, a single record may contain personal information about several generations of one family or it may contain information about a group of unrelated children who happened to have been dealt with together at some time. 'The challenge for the Archives has been how to address the needs of indigenous people separated from their families yet safeguard the privacy of individuals' (Australian Archives submission 602 page 5). A 'memorandum of understanding' developed by Australian Archives in consultation with Indigenous user agencies resolves many of the third party privacy concerns by requiring the searcher to sign an undertaking not to reveal sensitive information about other people to anyone else. This solution permits the searcher or an agent such as an Indigenous tracing agency to peruse all records of relevance to himself or herself in their context, even when that context includes information personal to others. A similar approach was adopted following a similar process of consultation in the 'common access guidelines' developed in NSW.

Some agencies will seek out a third party's consent to the release of information to an applicant. The Department of Community Services and Health in Victoria, the Aboriginal Affairs Department and the Family and Children's Services Department in WA and the Queensland Community and Personal Histories Service will do this. Others leave that up to the searcher, for example NSW Archives and the Queensland Department of Aboriginal and Islander Affairs. The latter approach can place some searchers in a catch-22 situation. Without knowing the identity of a parent, the parent cannot be contacted for consent. Yet without consent, the searcher cannot find out the parent's identity. This absurd situation arises where the record agency takes a very strict approach and does not assist by contacting family members to obtain their consent.

In the case of adoption information most States permit either party to register a veto on the release of identifying information. In NSW however neither party can require identifying information to be withheld.

Unrelated third parties

Respect for third party privacy currently seems to require that all information relating to non-immediate family will be withheld, for example the identity of foster parents or the welfare department's assessments of the quality of care being provided. The Tasmanian Aboriginal Centre submitted that this information belongs as much to the child as to the carers and should be released.

> We have raised with the Department the need to make available information which may be adverse to the interests of foster parents (where for example there is information indicating physical, emotional or sexual abuse). To date the Department has indicated that it will not provide such information without the consent of the third party affected. It is our belief that any information, opinion or fact should be released (second submission 325 page 2).

This information may be critical to the success of a civil damages claim brought by

a former ward who was harmed or abused in foster care.

Cost and delay

Generally people do not have to pay anything to read their personal information. In most cases files will be copied for free. Sometimes a fee does apply, for example in Queensland identifying information about a natural parent could cost an adoptee a $50 application fee and in NSW the fee is $120. In those cases the fee can be waived or reduced in the case of hardship. Australian Archives is among the agencies which have resisted requests for free copies.

> The Archives has received representations that all copying done for the purposes of research by or on behalf of people affected by past child removal policies and practices in the Northern Territory be provided free of charge. The Archives' response was that an open-ended arrangement might have enormous resource implications for the Archives but that the Archives was willing to consider a restricted waiver of charges if an acceptable arrangement could be developed (submission 602 page 16).

Many Indigenous people seeking information about themselves and their family will be able to proceed independently of FoI. In these cases the FoI statutory time limits on departmental responses to applications do not apply.

> There are three stages at which researchers may experience delays in accessing records. The first is in the process of undertaking archival research which may be labour intensive … The second possible delay is when a researcher seeks access to Commonwealth records in the open period [ie older than 30 years] for which the Archives has not yet made an access decision [for example records more than 30 years old will not be released to the public if that would involve an unreasonable disclosure of the personal affairs of the record-subject]. In such instances there may be a delay, particularly if exemptions have to be applied or if consultation is required … The third possible delay is of the shortest duration – as archives do not allow browsing or self-service in the repository there is a delay between the material being requested [after the completion of the previous two stages] and provided (this is usually no more than thirty minutes) (Australian Archives submission 602 page 5).

Archival research is likely to cause the longest delays in all States and Territories. The difficulty of the task is exacerbated by a lack of indexing as discussed above. The Inquiry heard evidence of considerable delays (SA Aboriginal Legal Rights Movement evidence 484). In WA the Aboriginal Affairs Department can take six months to meet a request although most are met within two months. Requests to the WA Department of Family and Community Services may still be active after four years or more (ATSIC submission 684 page 20).

In NSW efforts were made to reduce the delay significantly for the duration of the Inquiry. The 'common access guidelines' envisage a ten day turnaround between the receipt of the application by the agency and the provision of the information sought. In Queensland the Community and Personal Histories Service attempts to prioritise urgent requests such as where the applicant seeks confirmation of his or her date of birth, where the information is needed for a native title claim or where an older person is looking for missing family members.

Distressing information, denigratory language

For forcibly removed people and their families the information recorded about them by government agencies is almost certain to raise painful memories and their files will almost certainly contain information that will cause pain if not trauma and despair.

> **There's letters written there in my handwriting and I go berserk, I can't handle it. I can't go near them because I see my handwritten letters there as a little kid. You know, 'May I see my brothers and sisters? I haven't seen them for a long time. They're dear to my heart'. 'Do you know where my mum is? Can I please see my dad?' There's letters written back by them that my behaviour didn't warrant visits. There's letters there saying that if I didn't improve my behaviour that I would not be able to be with my brothers and sisters and that I would never see my parents again.**
>
> *Confidential evidence 284, South Australia.*

> … people experience different emotions, ranging from the excitement of locating a missing family member to outrage and distress in relation to what has been recorded on a personal file. For many clients, the records remind them of incidents in their lives that they would prefer to forget and they are often dismayed to find that intimate details of their private lives were recorded on government files (Qld Government interim submission page 69).

> The files often contain very minimal or inaccurate information, entries may be written in a tone and style that is very disturbing and offensive to the person concerned, and content may be difficult to understand and interpret (SA Government interim submission page 23).

> **We've got Mum's records from the department. Mum was in the home when she was about 8 or 9. She didn't get released until she was 17. I was expecting something like a thick book. She only got about, I'd say, maybe 20 pages …**
>
> *Confidential evidence 143, Victoria.*

> **There are a lot of stories in the files that have been written about me from when I was in different stations working … And the bad things they said about me in the past from the settlement wasn't true. There are a lot of untrue things about me on the files. I have cried about the lies on those files. Things that are lies about me, things I was never told about, are on those files.**
>
> *Confidential submission 110, Queensland.*

Two issues clearly arise. The first is that of deleting false information. The second is that of support and counselling for people before, during and after the file is read.

People may be entitled to write a statement correcting false information and have the statement put on their file. However no information, even false information, can or should be deleted. There is much value in retaining even false information, as well as

derogatory and racist language, so that the true quality of administration can always be understood.

With respect to support and counselling the Inquiry was struck by the contrast between the care and funding commitment devoted to adoption reunion counselling and the inadequacy of support for Indigenous family reunions where adoption was not involved. All governments now provide a counselling service in conjunction with access to adoption information.

> … the process of obtaining information, searching and making contact with family can precipitate many intense emotions. Counselling, support and assistance is available from AIS [Adoption Information Service] to assist in dealing with these feelings and the issues of loss and grief (Victorian Government interim submission page 25).

Only Victoria and Tasmania have extended the same service to ex-wards of the State including Indigenous people. Yet the trauma involved in tracing and reuniting with families can be far more significant for children who were forcibly removed. Often they remember the removal process, remembering parents to whom they were unable to say goodbye or remembering a last glimpse of a frantically distraught parent. They may have been told their parents didn't want them or were dead. Often they were institutionalised. Institutional and foster care almost always involved denigration of Aboriginality and often brutality and abuse.

> For some clients, especially those who were taken from their families as children, the whole process of finding family and establishing cultural links is extremely traumatic for them and their family (Queensland Government interim submission page 70).

The role of Indigenous-controlled family tracing and reunion services is therefore critical.

> The effect of seeing information which has been kept confidential, because it is private information, or because it was the practice in some States to document every governmental action and ungenerous remark of an administrator, can be devastating. Sympathetic counselling, especially by other Aboriginal people who have themselves been adopted or institutionalized, such as the Link Up staff, ought to be available to Aboriginal people who gain access to records of their family. We should be mindful of the emotional hurt which can be caused. (Royal Commission into Aboriginal Deaths in Custody *National Report* Volume 2 page 78).

The availability of family reunion and tracing services – commonly referred to as 'link-up' – is the subject of the following chapter.

Evaluation – government objectives

Our evaluation takes as its first framework the objectives of government record agencies in permitting Indigenous people to access their personal and family records. Are the agencies fulfilling their own objectives with respect to those records?

Government agencies keep records for a variety of reasons. They have obligations under archival legislation to preserve records for posterity. Government departments also have an interest in recording the history of their administration. The objective of relevance to the Inquiry is the objective of responding to the history of forcible removal by facilitating access to the records.

Recommendation 53 of the Royal Commission into Aboriginal Deaths in Custody is the common objective of government record agencies. All Commonwealth, State and Territory governments have agreed to implement that recommendation. Australian Archives advised the Inquiry that 'Recommendation 53 … has largely shaped the Archives' policy on providing access to Commonwealth records by Aboriginal and Torres Strait Islander people separated from their families' (submission 602 page 5). In submissions to the Inquiry both the Queensland Government (interim submission page 63) and the ACT Government (interim submission page 21) referred to their efforts to implement Recommendation 53. The South Australian Government advised the Inquiry,

> We are committed to facilitating the access of Aboriginal people to their personal records, and their reconnections with their family, community, culture, and land (interim submission page 22).

The first part of Recommendation 53 calls on all governments to,

> … provide access to all government archival records pertaining to the family and community histories of Aboriginal people so as to assist the process of enabling Aboriginal people to re-establish community and family links with those people from whom they were separated as a result of past policies of government.

The Privacy Commissioner found that the agencies have not adequately evaluated their own fulfilment of this Recommendation. There is a 'lack of meaningful measurement of outcomes' (*Families on File* 1996 page 15).

Essential features of complying access provisions

There are five essential features of a system of access to records which fully and appropriately implements Recommendation 53.

First, information about the availability of access to records should be widely communicated throughout Indigenous communities. In fact most Aboriginal people do not know about the existence of records, their rights of access, how to go about the search or the availability of assistance. Information videos such as that recently prepared by the WA Aboriginal Affairs Department are essential to disseminating this information.

Second, access to one's personal records, including information about one's family background, should be available as of right. There is no general right of access in the Northern Territory, although access may be granted. Elsewhere there is a right of access to personal information. Moreover, in a number of agencies flexibility of interpretation and an understanding of Indigenous people's needs enables searchers to receive information – strictly third party information – to assist in building a picture of their

family history. Other agencies, however, continue to interpret third party privacy restrictively and fail to assist searchers to meet their requirements for third party consent. The searcher can be denied the very information needed to identify family members and re-establish community and family links.

The responsibility of governments to provide this information to Indigenous people goes far beyond the standard justifications for FoI legislation, namely openness and accountability of governments and the individual's right to privacy. Indigenous people require personal, family and community information for even more fundamental reasons, namely to assist them to recover from a past marked by gross violations of their human and community rights by governments. By committing themselves to implement Recommendation 53 all governments have recognised this claim. The second part of Recommendation 53 states,

> The Commission recognises that questions of the rights of privacy and questions of confidentiality may arise and recommends that the principles and processes for access to such records should be negotiated between government and appropriate Aboriginal organisations, but such negotiations should proceed on the basis that as a general principle access to such documents should be permitted.

Third, the access procedures should be simple, straightforward and very cheap, if not free of charge. In fact however access provisions and services are fragmented (*Families on File* 1996 page 1). Often the searcher will need to approach more than one agency and go through different kinds of application procedures because 'there are [still] inconsistencies in approaches both across jurisdictions and within them' (*Families on File* 1996 page 26).

Where specialist research units exist they are able to access only the records created by the departments of which they are a part or, in the case of archives, records already archived. Yet Indigenous people were subject to such control by government that relevant records are usually held in a number of departments. Indigenous children were often subject to multiple placements which could involve administration by more than one government department and could also involve control by a non-government agency. To reconstruct a child's history a 'file trail' often needs to be followed. This is time-consuming and complex. Existing research units are unable to provide the full assistance service needed and 'no government has a streamlined process for delivering access to the records of *all* its agencies' (*Families on File* 1996 page 4 emphasis added).

Where the application has to be made under FoI an application fee may be charged. The costs of making copies of documents may also be charged to the searcher. Levying an application fee is not only inappropriate, it is unjust. The individual's need for the information has been created by government policies identified as genocidal and as gross violations of human rights. It is unjust to make restitution, including family reunion, and rehabilitation conditional on the victim's ability to pay.

Fourth, to ensure that all relevant records are identifiable and dealt with in any particular search all the records must be thoroughly indexed. In fact not even all government-created records have yet been indexed (*Families on File* 1996 page 21).

Finding aids are essential for Indigenous searchers themselves to access their records. Only relatively few specialist finding aids or guides have yet been produced.

Fifth, the distressing personal backgrounds of Indigenous searchers, the difficulty of the process of searching for family information and the likelihood that the files will contain material that is upsetting all indicate the individual's need for pre-search counselling, support during the perusal of files and counselling subsequently. Indigenous family tracing and reunion services are available in most jurisdictions to assist Indigenous searchers in this way. Government record agencies may not be the most appropriate providers of the necessary support and counselling. However they must be conscious of the needs of applicants and have referral information on hand. Ideally initial applicant contact should be with another Indigenous person. In fact not even the specialist search services listed in the table above uniformly have either appropriate counselling services on-site or a standard referral protocol. No records agency provides resources for counselling equivalent to that provided for adoption information applicants in spite of the typically far greater harm caused by the removal policies and the grief experienced by Indigenous people now searching for family members.

Evaluation – Inquiry criteria

The second framework for evaluation of procedures for access to personal and family records is the human rights framework already established and detailed.

Self-determination

The right of Indigenous self-determination requires that Indigenous peoples should be able freely to access information critical to their history and survival as peoples. No record keeping agency has transferred control of its Indigenous family and community records, or copies of its records, for holding in Indigenous community-controlled archives or repositories. No such repositories have been established or funded. Australian Archives, invited to comment on the possibilities of transferring ownership and control of its record holding, responded negatively.

> Current Commonwealth legislation does not accommodate this view of ownership … The records are crucial to indigenous people for research, but they are also of use for a variety of other reasons. For example, evidential reasons that are important to the Commonwealth; legal reasons; and research reasons that may or may not be associated with indigenous people (Australian Archives submission 602 page 17).

The co-operative arrangements between government agencies and Indigenous family reunion services represent tentative steps towards partnerships reflecting the right of self-determination. In Queensland Link-Up staff can access the Heritage Database at the Personal and Community Histories Service. In NSW a link-up worker is located in the State Archives at Link-Up's expense. Staff of Indigenous reunion services who are located in such positions have an opportunity to shape the response of the government agency to Indigenous searchers.

Non-discrimination

The arrangements for accessing records can disadvantage a substantial proportion of Indigenous people. Equity of access requires the creation of a welcoming environment.

> Even when Aboriginal people visit institutions holding their cultural and historical resources the problems don't dissolve. Aboriginal people feel ill-at-ease and self-conscious when entering white institutions which emanate an entirely alien cultural presence. So much depends upon the person at the counter.

> And … there is a language barrier for many of us with regards to what is written about us. The institutional language of government, law, economics, anthropology and so on, the jargon, is simply incomprehensible to many of us to whom English is a second or even third language (Fourmile 1989 pages 3 and 4).

Those living in rural and remote communities are significantly disadvantaged.

> Government records, which are all that Aboriginal people have formal access to, are held in Perth. There is currently a two year wait to receive files, and it is frustrating to have to deal with a bureaucracy so far away, especially when there are no databases or access to information about what kind of files and information is held (Kimberley Land Council submission 345 page 25).

Some record agencies overcome the problem of distance from the capital city by forwarding full or edited copies of files directly to searchers. Potential inequity of access due to poverty is reduced by some agencies in most States and Territories by keeping costs and charges down, although in some cases these arrangements may not continue beyond the life of this Inquiry.

Cultural renewal

Indigenous communities in Australia do not yet control and manage their own complete documentary history. Renewal of family and community ties and hence regeneration of community life and culture may depend to some extent on reclamation of historical documentation.

> … hundreds of Aboriginal and Torres Strait Islander communities have no representative collections of those components of their heritage, and in many cases are unaware that these often rich resources even exist. Consequently our Elders are dying without passing on vital cultural knowledge and history to our younger generations – knowledge which could be rekindled or stimulated if they had ready access to cultural items, old photographs, genealogies, language tapes, anthropological field notes, mission records, and so on …

> Aboriginal and Torres Strait Island communities are not getting the benefits of the various collections of their cultural heritage to which they are entitled. The overall situation constitutes a massive breach of our human rights as detailed in a number of international instruments to which Australia is a signatory (Fourmile 1992 page 3).

In most States and Territories Indigenous communities are not being involved in the decisions government and non-government agencies make about the management of access to and research into their records. Concerns about confidentiality dominate the process of releasing records. Most Indigenous communities are not consulted on how third party information should be treated. Some Indigenous communities may be less sensitive about the release of third party information than about longstanding gaps and blanks in the picture of the community's history. On the other hand, non-Indigenous searchers have tapped the documentary history without consultation with the relevant community.

Coherent policy base

No government has a policy statement which acknowledges the full range of needs of people affected by forcible removal. All governments are in the position admitted to by the Northern Territory.

> The effects … have not been examined to any significant degree by government. A number of books and articles have been published [by others]. As far as this Government is aware, none of these so far have carried out a rigorous analysis of the effects in a manner that would be of assistance in developing programs that could address the problems that appear to continue to exist (interim submission page 18).

Agencies which have responded at all have done so on their own initiative or more often at the instigation of an Indigenous organisation.

> The current social welfare policies within Tasmania merely seek to patch up identified problems. There is no long term social policy in place. Government response is therefore ad hoc (Tasmanian Aboriginal Centre first submission 325 page 8).

Even access to personal and family records is typically addressed on an ad hoc basis with the various record agencies operating differently and in isolation from each other. In New South Wales it was recognised 'that one of the real problems … was fragmentation, lack of co-ordination and lack of a whole-of-government approach' (Richard Gore, NSW Archives, evidence). The working party established in NSW to develop common access guidelines has contributed to significantly enhanced co-ordination. ATSIC commended the 'holistic' NSW approach to the Inquiry (second submission 684 page 1).

WA has also established an inter-agency co-ordinating committee to address the problem to some extent. Winji Bulup draws its membership from the Aboriginal Affairs Department, the Department of Family and Children's Services, the Aboriginal Legal Service, the Aboriginal family and children's issues services Manguri and Yorganop, and Centacare, a Catholic family welfare agency. All of the organisations represented are engaged in accessing Indigenous family and community records and the committee discusses 'ease of access, types of records that we hold or … if we're unable to locate a particular record, then we're able to utilise the membership of that committee to try and help us search' (Dawn Wallam, WA Family and Children's Services, evidence).

Adequate resources

The deployment of family reunion workers by a number of government agencies goes some way to meeting the requirement for adequate staff resources. Most specialist Indigenous family research services do employ Indigenous staff. However most agencies have been unable to employ Aboriginal archivists because few are professionally qualified and no relevant traineeships are available.

The poor state of many record series, the lack of indexes and finding guides and the size of the search backlog in many agencies starkly illustrate the failure to provide adequate resources to government record agencies to enhance access. WA's Aboriginal Affairs Department complained of understaffing and noted the 'huge cost problems' of 'electronic data capture' of its personal history card holdings (both as a preservation measure and in the interests of more efficient searching).

Queensland's Department of Families, Youth and Community Care is the only agency to have approached the issue comprehensively and with a significant resource commitment.

> … in the last five years we have probably spent well over a million dollars on some of the systems that support the Community and Personal Histories Service: information systems, the arrangement and description of the records, the actual safe storage and preservation … all the records management issues are something that does take a lot of money to do (Carmel Finn, Community and Personal Histories Service, evidence).

Recommendations

The Inquiry's recommendations are designed to achieve three broad objectives. First, all records which may be of assistance to Indigenous people seeking to re-establish family and community links or establish Indigenous identity must be preserved. All culling of relevant or potentially relevant records must be embargoed. Second, access to records must be made easier and less hurtful. This involves improving access procedures, ensuring culturally appropriate access and involving the counselling and support assistance of Indigenous family tracing and reunion services. Third, in the longer term Indigenous communities should have an opportunity to manage their own historical documentation. For those communities which desire it, copies of relevant records collections should be provided to Indigenous repositories within established privacy principles.

The first and second objectives directly aim to implement Recommendation 53 of the Royal Commission into Aboriginal Deaths in custody effectively and the Inquiry's interest in family and community reunion. The third objective recognises, as does Recommendation 53 implicitly, the need for Indigenous communities to reclaim and renew their histories and community identities as one step in the process of recovering from the history of genocide. All three objectives offer strategies for providing restitution, either to individuals and families directly affected or to communities indirectly affected by forcible removals.

> **Restitution** shall be provided to re-establish the situation that existed prior to the violations of human rights and humanitarian law. Restitution requires, inter alia, restoration or liberty, family life, citizenship, return to one's place of residence, enjoyment of property (van Boven Principle 12).

Preservation of records

Subject to certain criteria, government agencies and archives are currently authorised to cull and destroy records they have created. It is essential that all records which could enable any Indigenous person to trace his or her family, establish his or her identity or locate his or her community or communities of origin be protected against destruction. The *Stolen Generations National Workshop (1996)* submitted that,

> … all records relating to Aboriginal people and their communities, including those that were kept by governments, churches and private agencies, are the property of the people and communities to which they relate. Thus no agency (government or non-government) currently holding records relating to Aboriginal people has the right to destroy, alter or deny access by the owner to these records (submission 754 page 23).

Because many record series do not identify subjects' Aboriginality, the obligation to retain records which could reasonably be found to relate to Indigenous communities, families or individuals in effect requires all records of the relevant type to be retained, including those ultimately found to relate to non-Indigenous people. Non-Indigenous people removed from their families of origin in childhood have many of the same concerns about identity and background as Indigenous people. This does not mean that all records created by an agency need to be retained permanently. Two categories of records must be permanently retained: those relating to all children removed from their families for whatever reason and those known to relate to Indigenous people, communities and families.

Destruction of records prohibited

Recommendation 21: That no records relating to Indigenous individuals, families or communities or to any children, Indigenous or otherwise, removed from their families for any reason, whether held by government or non-government agencies, be destroyed.

There is an urgent need to identify, preserve and index records now held by governments (initiating agencies or archives) and non-government agencies (such as churches and former missions). This task includes the identification of destroyed or lost records and records series. The Inquiry commends the preservation and indexing work of the Queensland Community and Personal History Service as a sound model.

The task of preserving and indexing records is a priority since assisting family reunions is the most significant and urgent need of separated families. The *Stolen Generations National Workshop (1996)* proposed to the Inquiry that the 'resource

implications' of this task 'should be seen as a part of the overall reparation package to which governments have a legal and moral obligation' (submission 754 page 22).

Appropriate implementation of the tasks of identification, preservation and indexing will involve a partnership with relevant Indigenous user services and individuals (ATSIC second submission 684 page 2). Prioritising needs within the records held and identifying which records and collections are most likely to contain information of relevance will be among the roles allocated to the Commonwealth, State and Territory Records Taskforces proposed below.

Record preservation

Recommendation 22a: That all government record agencies be funded as a matter of urgency by the relevant government to preserve and index records relating to Indigenous individuals, families and/or communities and records relating to all children, Indigenous or otherwise, removed from their families for any reason.

Recommendations 22b: That indexes and other finding aids be developed and managed in a way that protects the privacy of individuals and, in particular, prevents the compilation of dossiers.

Enhancing access

Common access guidelines are needed in each State and Territory. Retrieving relevant personal and family information is currently unnecessarily complicated by the diverse access provisions in the various record agencies. Additional difficulty is attributable to the refusal of access by non-government agencies or, where access is provided, to the different conditions of access. The development of appropriate guidelines will require detailed discussions with Indigenous users. A taskforce should be created by each government, constituted by all interested parties, including record agencies and Indigenous family reunion services. The 1994 *Going Home Conference* recommended,

> …that a representative Aboriginal Advisory Committee be established to advise the Commonwealth archives agency on all matters of interest and concern to Aboriginal people, with a view to ensuring that Aboriginal people have ready access to any information of concern to them for use as the Aboriginal people themselves determine.

Joint records taskforces

Recommendation 23: That the Commonwealth and each State and Territory Government establish and fund a Records Taskforce constituted by representatives from government and church and other non-government record agencies and Indigenous user services to,

1. **develop common access guidelines to Indigenous personal, family and community records as appropriate to the jurisdiction and in accordance with established privacy principles,**
2. **advise the government whether any church or other non-government record-**

holding agency should be assisted to preserve and index its records and administer access,

3. **advise government on memoranda of understanding for dealing with inter-State enquiries and for the inter-State transfer of files and other information,**
4. **advise government and churches generally on policy relating to access to and uses of Indigenous personal, family and community information, and**
5. **advise government on the need to introduce or amend legislation to put these policies and practices into place.**

Inter-State enquiries

Recommendation 24: That each government, as advised by its Records Taskforce, enter into memoranda of understanding with other governments for dealing with inter-State enquiries and for the inter-State transfer of records and other information.

These recommendations address the central concern of the proposal from the *Going Home Conference* to ensure the full involvement of Indigenous representatives in decision-making about access to records. The recommendations also take into account the clear evidence that access guidelines and standards may need to vary in detail in different regions. National guidelines would be inappropriate although national minimum standards are essential.

> State and Territory based consultations [will] more effectively allow the different laws, history, sensitivities and social organisation of Indigenous people in particular regions to be taken into account (*Families on File* 1996 page 57).

The first task of each taskforce must be to develop, as a matter of priority and within the parameters of minimum national standards (Recommendation 26), common access guidelines applying to all record agencies. Matters to be considered will include whether and to what extent personal records need to be censored before release to a searcher, how records should be indexed, how priorities are to be established for dealing with requests for access to records, the form of pre-access advice and procedures for referral to counselling and support services. Each taskforce would continue to monitor the implementation of its guidelines and improve and refine them as needed.

A commitment to minimum access standards is required immediately in all jurisdictions and by all record agencies, both government and non-government. The Inquiry has received many submissions concerning these standards. It is most important that they be adopted regardless of jurisdiction and regardless of agency type. Indigenous people seeking personal and family information must no longer experience discrimination on the basis that the information they seek is in a particular State or held by a particular type of agency.

> That a consistent approach be adopted across jurisdictions in relation to access by Indigenous people to information in Government records. A national code of practice for archival agencies should be developed that takes account of the rights and interests of indigenous clients (Central Land Council submission 495 page 14, recommendation 7 and ATSIC submission 684 page 4, recommendation 7).

A key issue for access guidelines will be third party privacy.

> Privacy is a major issue when dealing with archival research. The information held in Archive files relates to family members, someone's mother and father. The information may not even be known to the person it is written about and with so many peoples histories located in one institutional file, a person electing to do their own research, has someone else's history open to them (Rosie Baird presentation included in Karu submission 540 page 3).

At the Commonwealth level Information Privacy Principle 11 prohibits the disclosure of one person's personal information to any other person without the first person's consent, except in a narrow set of circumstances which are irrelevant here (*Privacy Act 1988*). The Commonwealth's FoI Act reflects this Principle by exempting personal information belonging to a third party from the general disclosure rule. The 1995 review of the FoI Act proposed that third party information should only continue to be exempt if disclosure, on balance, would not be in the public interest (*Open government* 1995 page 127). Although this proposal has yet to be implemented it clearly shows that public policy development is moving away from a blanket protection for third party information. In some circumstances the public interest may require disclosure and the relationship between the searcher and the record subject ought to be relevant to that decision (*Open government* 1995 pages 129-30). This alternative policy of flexibility in recognition of special circumstances is especially appropriate to the needs of Indigenous people seeking family and community information.

The need to protect one person's privacy has to weighed against the need to provide another with access to personal information. The refusal to release third party identifying information could deny an Indigenous searcher the opportunity for reunion with his or her family and/or community and access to entitlements for which proof of community connection or Aboriginality generally is required.

Australian Archives advised the Inquiry that in the course of developing the Memorandum of Understanding for Northern Territory records it became apparent that 'the indigenous community and the Archives have differing views on what is sensitive and what is not' (submission 602 page 15). Similarly the consultancy report prepared for ATSIC by Sonia Smallacombe stated,

> Within many Aboriginal communities, most people had relatives who suffered from leprosy and they were often accepted as part of the community. The attitudes of the wider Anglo community to isolate and reject people who had leprosy was not always evident in the Aboriginal communities. Therefore, Aboriginal communities may not regard this information to be sensitive enough to warrant restriction (with submission 684 page 12).

While the precise details need to be defined in consultation with Indigenous communities in each region, the Inquiry has come to the conclusion that at a minimum every searcher must be entitled to personal and family identifying information, including parents' and siblings' names and dates and places of birth, even where disclosure of that information might be thought to infringe third party privacy.

Minimum access standards

Recommendation 25: That all common access guidelines incorporate the following standards.

1. **The right of every person, upon proof of identity only, to view all information relating to himself or herself and to receive a full copy of the same.**
2. **No application fee, copying fee or other charge of any kind to be imposed.**
3. **A maximum application processing period to be agreed by the Records Taskforce and any failure to comply to be amenable to review and appeal.**
4. **A person denied the right of access or having any other grievance concerning his or her information to be entitled to seek a review and, if still dissatisfied, to appeal the decision or other matter free of charge.**
5. **The right of every person to receive advice, both orally and in writing, at the time of application about Indigenous support and assistance services available in his or her State or Territory of residence.**
6. **The form of advice provided to applicants to be drafted in consultation with local Indigenous family tracing and reunion services and to contain information about the nature and form of the information to be disclosed and the possibility of distress.**
7. **The right of every person to receive all personal identifying information about himself or herself including information which is necessary to establish the identity of family members (for example, parent's identifying details such as name, community of origin, date of birth).**
8. **The right of every person who is the subject of a record, subject to the exception above, to determine to whom and to what extent that information is divulged to a third person.**

FoI in the NT

Recommendation 26: That the Northern Territory Government introduce Freedom of Information legislation on the Commonwealth model.

Access to personal and family information is also hampered by the complexity of record holdings. In recognition of the urgency of facilitating family reunions all efforts should be made to assist people affected by forcible removal. The Inquiry considers that the best approach is to establish an Indigenous Family Information Service in each State and Territory as well as at the Commonwealth level. While these Services would not hold all relevant records, they should have detailed information about the location of records

and access procedures so that they can provide a full assistance service to Indigenous searchers. These Services will require priority access to a network of specialist officers in each record-holding agency, sufficient information about the holdings of each agency and sufficient resources and skills to provide competent and reliable referral. Each government has a responsibility to establish an Indigenous Family Information Service as a 'first stop shop' for people seeking access to records.

Widespread advertising of the existence and services of the Indigenous Family Information Service would be a key to facilitating access.

While they must be staffed by Indigenous people, the Services would not necessarily be the best source of support and counselling, tracing and reunion support, or general family and community research. It is preferable that these roles be undertaken by Indigenous-controlled services (see Royal Commission Recommendation 192).

Indigenous Family Information Service

Recommendation 27: That the Commonwealth and each State and Territory Government, in consultation with relevant Indigenous services and its Records Taskforce, establish an Indigenous Family Information Service to operate as a 'first stop shop' for people seeking information about and referral to records held by the government and by churches. That these Services be staffed by Indigenous people. That to support these Services each government and church record agency nominate a designated contact officer.

The Indigenous Family Information Services must be staffed by Indigenous people. Ideally the entire contact network should be constituted by Indigenous officers. The *Going Home Conference* recommended,

> … that the Minister direct his Department to create positions for Aboriginal contact officers in the central and regional office of the Commonwealth Archives. The Aboriginal contact officers would be responsible for facilitating for Aboriginal people who wish to have access to information held in the Commonwealth archives.

To this end relevant traineeships and scholarships should be established. Graduates would find employment in Family Information Services, government record agencies, family tracing and reunion services and, where established, Indigenous language, culture and history centres.

Training

Recommendation 28: That the Commonwealth and each State and Territory Government institute traineeships and scholarships for the training of Indigenous archivists, genealogists, historical researchers and counsellors.

Indigenous repositories

> … there exists a large body of administrative and personal records relating to Aboriginal and Torres Strait Islander peoples … these records form part of the cultural heritage of the Aboriginal and Torres Strait Islander peoples of this State and are of vital concern to those … wishing to find out more about their own, their families and their communities past (Queensland Community and Personal Histories Draft Access Policy 1996).

Indigenous organisations and individuals told the Inquiry that records about them created and held by governments and non-government agencies should belong to them. Some witnesses asserted an individual's rights to reclaim his or her records.

> **Why have they got records on us? I'm not a criminal. I never have been a criminal and I object to the government holding records on me. I didn't do anything wrong and I want those records to be – if they don't want to hand them over to me, then destroy them in front of me. I don't see why I should have that humiliation.**
>
> *Confidential evidence 284, South Australia.*

> **I think they should be getting everyone's records together and handing it back to them, so that at least we know our own identity. A lot of it's still lost and I don't know if I'll ever find it.**
>
> *Confidential evidence 283, South Australia.*

Indigenous organisations asserted the community's right to recover the documentation of its history, including personal information about community members.

> All records relating to Aboriginal people and their communities should be housed by appropriate Aboriginal organisations as determined by the communities (Link Up's, Keeping Places, or Cultural Centres may be examples of such organisations). Such organisations must be given adequate resources in order to arrange proper 'user friendly' access, and indexing to these records and to allow for their physical maintenance. In addition such organisations must be resourced in order to provide necessary client counselling and support, research assistance services and 'new and potential user' information services (*Stolen Generations National Workshop 1996* submission 754 page 23).

> Link-Up recommends the establishment of an Aboriginal Archive where all of the departmental records pertaining to Aboriginal people will be consolidated under an Aboriginal-controlled administration with uniform and culturally appropriate access procedures.
>
> To implement this recommendation, an Aboriginal Archive committee comprising appropriate departments and Aboriginal organisations should be formed to formulate a plan for establishing the Aboriginal Archive (Link-Up (NSW) submission 186 page 11).

> That a national centre or institution be established as a memorial to truth, in recognition of the gross violations of human rights suffered by the 'Stolen Generations' and for the purpose of sharing history, keeping records, undertaking research and establishing international links with other victims of forced removal (Central Land Council submission 495 page 14, recommendation 8).

Murri academic Henrietta Fourmile makes a cogent argument for the return of records founded upon the cultural and individual consequences of the history documented in those records. The history is one of disinheritance, disempowerment and ultimately attempted destruction. True restitution and cultural and social reconstruction require the restitution of control over the historical documents. While that control should be shared with those who share the history (in this case with record agencies), Indigenous control must be real and not token. At present Indigenous peoples are almost entirely dependent on non-Indigenous institutions to interpret and disseminate their history. Indigenous peoples need resources and facilities and culturally appropriate avenues to disseminate their history, in particular to their own communities. Indigenous communities must have the information on which to base their retelling of their history.

> This lack of our collections of books, documents, and records constitutes a severe impediment in our quest to make and pass on our own history …
>
> Much of Aboriginal people's own sense of powerlessness stems from ignorance because of this lack of access to information about matters which control our lives. An informed Aboriginal population will have a much greater feeling of power over its own destiny …
>
> The nett effect of the lack of our own cultural and historical resources and the difficulties of access to those that exist elsewhere is to foster our dependence on non-Aboriginal specialists in law, history, anthropology, education and in Aboriginal affairs generally. They effectively become our brokers in transactions between Aboriginal communities and the various institutions and the public at large which have an interest in our affairs, and thereby usurp our role as history-tellers … in the context of Aboriginal sovereignty it is completely untenable that one 'nation' (ie European Australia) should have a monopoly and control of such a substantial body of information concerning another, the Aboriginal 'nation' …
>
> At the core of the problem concerning the documentation and recording of our culture and history is the fact that much of it is a shared enterprise undertaken between members of two quite different cultural backgrounds. The documentation itself is a record of the interactions which make up our history. Simple justice would acknowledge the rights of both parties not only to share the physical records of that history but also to share responsibility for their custody and management so that the rights of one party are not prejudiced in order to benefit the other (Fourmile 1989 pages 2-5).

The Royal Commission into Aboriginal Deaths in Custody similarly recognised the need for 'a process of reclamation by Aboriginal people of their own immediate history' (*National Report* Volume 2 page 77). Fourmile argues for 'a cultural policy formulated between Aborigines and governments which gives Aboriginal people ownership and control over important historical and cultural resources which might be housed in Aboriginal cultural facilities comparable to those available to non-Aboriginal Australians' (1989 page 5).

> If the revitalisation and resurgence of Aboriginal culture is to fully take place, and so that we can contribute our culture to the world heritage on our own terms, then we must once again be able to own, control and enjoy our cultural and historical resources housed within our own community facilities (1989 page 5).

The Aboriginal and Torres Strait Islander Commission (ATSIC) submitted to the Inquiry that,

> The archival records form the basis of a cultural heritage. There is anger that cultural property is vested under Government legislation. Repatriation of records is seen as an important consideration and an issue to be negotiated with indigenous communities and organisations (submission 684 page 23).

Australian law does not currently accept the view of record ownership implicit in these arguments. The owner of the record is the person or department which created it (*Breen v Williams* 1996; various archives acts). While FoI laws recognise the right of the subject of the record to see it and have a copy, they simultaneously prevent any other person or organisation seeing it or having a copy without the individual's consent. However, there are numerous records relating to Indigenous families and communities which do not contain sensitive personal information or which are now less sensitive due to the passage of time since their creation. Records Taskforces are well placed to distinguish between these categories of records.

Original records should generally remain in the custody of the agency which created them or of an archive. Exceptions include letters and other records created by Indigenous people and placed on government or mission files. Non-government agencies or private individuals may donate original records to an Indigenous repository. The Australian Institute of Aboriginal and Torres Strait Islander Studies project, Return of Materials to Aboriginal Communities, may offer some insights into how the provision of documentary materials to an Indigenous repository might be managed in practice (evidence 703).

We have proposed elsewhere the expansion of the role of Aboriginal language centres or the creation of new institutions. The functions of 'language, culture and history centres' could include oral history archive as proposed in Recommendation 11, records archive, community education facility, language centre (recording and teaching), memorial, museum, cultural and historical resource and research centre. There was significant support among submissions to the Inquiry for the housing of personal and family records in these centres.

Indigenous repositories

Recommendation 29a: That, on the request of an Indigenous community, the relevant Records Taskforce sponsor negotiations between government, church and/or other non-government agencies and the relevant Indigenous language, culture and history centre for the transfer of historical and cultural information relating to that community and its members.

Recommendation 29b: That the Council of Australian Governments ensure that Indigenous language, culture and history centres have the capacity to serve as repositories of personal information that the individuals concerned have chosen to place in their care and which is protected in accordance with established privacy principles.

17 Funding for Reunion Assistance

In each State and Territory with the exception of the ACT specific funding is made available for specialised assistance to Indigenous people seeking family information and reunion support.

> … many survivors today still live with the sad reality that they have still not reunited with their family and land and cannot move forward in their lives until they have all the information that they need concerning their past. This makes Link-Up an important agency as they can assist in providing the answers many survivors are seeking in order to rebuild their lives (SA Aboriginal Legal Rights Movement submission 484 page 40).

The first Indigenous family tracing and reunion service was established in New South Wales in 1980 by Coral Edwards and Peter Read. Coral Edwards was removed from her Koori family and raised in Cootamundra Girls' Home. Peter Read was researching the impacts of government policies on the Wiradjuri people of NSW. They recognised the need for a tracing and support organisation for people who had been taken and for the families who had lost their children.

Reunion is important but very difficult because of the way in which the removal policies were administered. Prior to the establishment of Link-Up most people were not aware of the family records that might provide clues to their identity. Accessing those records was difficult. Between 1980 and 1994 Link-Up (NSW) Aboriginal Corporation reunited more than 1,000 individuals.

The following table shows the family tracing and reunion services that now exist.

Family tracing and reunion services were established at the instigation of Aboriginal individuals and organisations who recognised the need and lobbied for funding. In some cases services have been provided without specific funding for various periods. For example, Karu provided a tracing service without specific funding from 1985 until 1989. They also rely heavily on volunteers.

Late in 1996 the Stolen Generations Kimberley Steering Committee launched a bid to establish a family reunion and tracing service in that region of Western Australia.

Evaluation – government objectives

Funding family tracing and reunion services is a government response to the effects of forcible removals. The objective of current funding is the implementation of Recommendation 52 of the Royal Commission into Aboriginal Deaths in Custody. The Royal Commission recognised that,

> The legacy of child separation is still a significant issue in the lives of many Aboriginal people. It is an issue that still needs investigation and there is still a 'lost generation' that needs support and reunion with their families. Hence there is a need for more expanded services such as those provided by Link-Up which would deal with the emotional and psychological legacy of what are now recognized as misguided child placement policies (*National Report* Volume 2 page 77).

Royal Commission Recommendation 52 proposes,

> That funding should be made available to organizations such as Link-Up which have the support of Aboriginal people for the purpose of re-establishing links to family and community which had been severed or attenuated by past government policies. Where this service is being provided to Aboriginal people by organizations or bodies which, not being primarily established to pursue this purpose, provide the service in conjunction with other functions which they perform, the role of such organizations in assisting Aboriginal people to re-establish their links to family and community should be recognized and funded, where appropriate.

In response to Recommendation 52 the Commonwealth committed $1.9 million to Indigenous family tracing and reunion services and related functions to be spent over five years beginning 1991-92. This funding is administered by the Aboriginal and Torres Strait Islander Commission (ATSIC) which budgeted $927,817 for family reunion services in 1996-97. This funding has been quarantined from Commonwealth funding cuts in the current financial year.

Evaluation of the implementation of Recommendation 52 should focus on two major issues: whether the funding model permits the Indigenous services to respond appropriately to the diverse demands of each individual case and whether the funding is sufficient to enable the services to meet the demand in a way which is timely and does not exacerbate the hurt already suffered by separated families or the emotional and other difficulties surrounding the reunion process.

A flexible individualised response to the needs of each client is critical to the success of these services. The diversity of clients' experiences and current needs is considerable. Many clients experience chronic multiple and entrenched problems. Clients may be of any age. Each client's experience of reunion will be unique and the range of reactions from new-found family and community is wide. The complexity is compounded by the desire of clients to recover their identity and culture against a background of denial and denigration of Aboriginality.

> … it might be that the person who's trying to go back to their community really struggles with how to deal with that return and really needs quite a lot of help in adjusting to the old identity that they believe they were brought up with and this new sense of identity which they feel is much more their real identity, and that's a very complex issue to come to terms with in any individual person as well as within a family (Lynne Datnow, Victorian Koori Kids Mental Health Network, evidence 135).

Funding through ATSIC permits family tracing and reunion services to respond flexibly to the needs of each client. Services are available for people removed as children, families searching for children removed and foster and adoptive families as well. ATSIC-funded family reunion services have developed a range of skills, a network of contacts and appropriate responses to diverse client needs relating to reunion. Link-Up (NSW), Link-Up (Qld) and Karu (NT) offer the following services.

- Research required for accessing family and personal records.
- Obtaining copies of records.
- Advice and support before records are read.
- Locating family members.
- Arranging and assisting at family reunions.
- Providing an ongoing Indigenous community for all clients, regardless of their acceptance or otherwise into their community/ies of origin.
- Support and counselling before a decision to proceed with a reunion is made and counselling for all parties during and after that occurs, including grief and loss counselling and relationship-building.

> **… If they need counselling to be able to communicate with their families, give that to them … I still can't talk to my mother and that's because of what happened to me. If I'd had counselling earlier on in that area I'd be right … Counselling today would help a bit but not as much as it would back then. Today it is extremely hard just to communicate.**
>
> *Confidential evidence 316, Tasmania.*

The resource implications were recognised by government representatives.

> While reunification of Aboriginal and Torres Strait Islander children with their families is an important step, it often has disturbing consequences for both the person who was removed and for the family. The Aboriginal Health Division supports the need for the development of additional resources and support services to address the often difficult consequences of family reunification (Marion Kickett, WA Health Department, evidence).

> Reconnection is far more than simply access to a file. It is a process, often over a long period of time, of reconnection with identity, homelands, stories, cultural heritage, and many people. Limited resources exist to help people in this process.

> Counselling, support, and assisting a person locate family are all resource intensive. Both the initial reconnection, and maintaining connections with scattered family and homelands intrinsically involves travel, and given the poverty of many Aboriginal people, the sheer expense of reconnection may be prohibitive (SA Government interim submission pages 22 and 24).

Not all reunion services are able to perform the full range of core activities. For example the link-up workers in Victoria rely on the expertise of the non-government and non-Koori adoption information agency, VANISH, to access both adoption and non-adoption records for their clients. Alternatively clients must be referred to the government record agencies (Victorian Government interim submission page 26). Some proportion of clients would be loathe to approach these non-Indigenous services and may decide instead not to proceed with family tracing. Nevertheless the Secretariat of National Aboriginal and Islander Child Care (SNAICC) is confident that this proportion

can be kept to a minimum because of the 'good working relationship' that has been developed between the link-up workers and the government agencies, at least in Victoria (1995 page 13).

Family reunion services are limited in the extent to which they can offer professional counselling relating to complex yet common issues of sexual abuse, incest, domestic violence and substance abuse. Clients requiring such counselling must generally be referred to a professional. However there are few professional counselling services which are adequately equipped to deal appropriately with Indigenous clients presenting with such problems.

The services are also restricted in their ability to assist locals requiring information from another State. There was a considerable number of removals of children inter-State and some witnesses told the Inquiry of their need to leave their home State when they were released from wardship in order to escape painful memories. Inter-State enquiries are frequent. Fewer than half (45%) of the people seeking the assistance of Karu in Darwin in 1995 were NT people requiring searches in the Territory. Another 25% were Territory people requiring searches to be made elsewhere and the remainder (29%) were people living elsewhere requiring searches to be made in the Territory (NT Government interim submission page 36). Similarly almost half (45%) the people seeking assistance from the link-up workers at the Victorian Aboriginal Child Care Agency were brought to Victoria as children from elsewhere while another 10% are Victorians removed to other States as children (evidence 335).

Networking among family reunion services makes inter-State enquiries easier but many clients must still go directly to services in their State of origin (Karu submission 540 page 33, Victorian ACCA evidence 335). The complexity of a reunion process can be increased when relevant records are held in one State, family members live in another and the client perhaps in yet another or even overseas. Strong and responsive networks which can facilitate service-provision in these situations require funding.

Without adequate resources and reciprocity among services individuals will be discriminated against by virtue of having been removed inter-State or overseas in childhood. All services in Australia need to have the capacity to respond effectively to inter-State and international requests. It goes without saying of course that they need an equivalent capacity to respond to intra-State enquiries. The distribution of family reunion services across Australia, as outlined in the table above, raises concerns about the equity of access to reunion assistance. There is a considerable imbalance in the capacity of services for example. ATSIC funding is not provided uniformly to all services: the WA and SA services receive no federal funding at all in spite of the Commonwealth commitment in response to the Royal Commission.

Most services depend almost entirely on ATSIC funding with States playing no role or only a peripheral one. Since all State and Territory governments supported Recommendation 52 and families were separated pursuant to State legislation, this is clearly unacceptable. In the case of the NT, the Government's position is that the removals occurred under Commonwealth legislation prior to Territory self-government

and therefore the Territory is not responsible.

We acknowledge the material assistance provided to Link-Up (Qld) by the Community and Personal Histories Service (work space, access to the Heritage database and training in archival research) and by the Queensland welfare and Indigenous affairs department (office accommodation).

The absence of an independent Indigenous family tracing and reunion service in South Australia is particularly concerning. Indeed there was no link-up worker at all for much of 1995 and 1996, a critical period during which the Inquiry was receiving evidence and recommendations from Indigenous victims of the removal policies. Even when the position is occupied the function is limited to helping people access government records and archival information (Aboriginal Legal Rights Movement submission 484 page 40). There is a desperate need for a culturally-appropriate counselling service in SA both to support the family reunion process and generally to assist people affected by removals.

The SA Aboriginal Child Care Agency advised the Inquiry that in this period it received numerous requests to undertake reunion work. However, not being funded for this work, the Agency had to refuse these requests (submission 347 page 19). In SA the Inquiry took confidential evidence from more than 120 Indigenous people directly affected by forcible removal, a number which can only hint at the need in the Indigenous community in that State for the assistance, support and counselling provided by a family reunion agency.

The SA Government assured the Inquiry of its commitment to assisting Indigenous family reunions and acknowledged the complexity of the process. However it complained about the 'limited resources [existing] to help people in this process' (interim submission page 22). There is no evidence that the State plans to fund the necessary services in the foreseeable future.

It is quite clear to the Inquiry, as it was to Royal Commissioner Elliott Johnston, that the need for reunion assistance can only be met effectively by an independent Indigenous agency because 'people would not go to welfare for help in finding their parents and family because of their past record' (*Learning from the Past* 1994 page 66). The agency would preferably be managed and staffed by people who have experienced the removal policies themselves.

The location of the SA link-up worker within the Department of Family and Community Services was criticised by the Aboriginal Legal Rights Movement.

> This has been a bone of contention among the Aboriginal community as there is a widespread opinion that the Link-Up programme should come under the control of the Aboriginal community and not a part of the government machinery. We support this proposition as FACS was the government department that played the largest role in the removal of Aboriginal children from their families and we feel this is adding insult to injury for the survivors of this tragic attempt at genocide (submission 484 page 40).

The SA Aboriginal Child Care Agency also recommended to the Inquiry that,

> Link up services should be accessible to Aboriginal people and offered in non-threatening environments. Link-up services must be offered from non-government Aboriginal organisations such as Aboriginal Child Care Agencies (submission 347 page 9).

Even the close working relationship between Yorganop in WA and the Department of Family and Children's Services has raised suspicions among some Indigenous people in that State.

> It is potentially fatal to Yorganop's survival and effectiveness that it be perceived as dependent on government. This problem is reinforced by the fact that Yorganop relies solely on Family and Children's Services funding, which is inadequate. The legacy of assimilation policies and practices, as administered by the Department of Native Welfare … makes it crucial for Yorganop to be seen to be independent from Family and Children's Services (Aboriginal Legal Service of WA submission 127 page 289).

Family reunion services advised the Inquiry that their funding does not permit them to meet the demand for their services in a timely way (Link-Up (NSW) submission 186 page 165, Link-Up (Qld) submission 397 page 22). Very significant backlogs were reported by some services. The Tasmanian Aboriginal Centre received 250 enquiries in 1995 but made only 19 reunions, although not all enquiries necessarily required resolution by reunion. Karu in Darwin closed only 52 files during 1995 while 215 remained active at the year's close. Link-Up (Qld) has assessed its current additional staffing needs as four caseworkers, two grief and loss counsellors, a staff supervisor and archivists, together with additional funding for travel to conduct reunions (submission 397 page 22).

The plight of people in rural and remote communities is of particular concern. With offices only in capital cities, with the exception of the Central Australian Aboriginal and Islander Child Care Agency in Alice Springs, the family reunion services find it difficult to provide a full service throughout their respective States. In NSW there are suggestions for regional meetings to develop support groups to assist and refer rural people between visits by link-up workers (*Learning from the Past* 1994 page 66). In WA remote Pilbara and Kimberley communities are simply without a family tracing and reunion service at all (Kimberley Land Council submission 345 page 25; the KLC is currently sponsoring a bid for funding for a regional link-up service).

With most services focused on providing immediate client services there is little time, resources or energy for attention to the broader picture. All services should be in a position to engage fully and effectively in:

- regular national networking and issues-based conferences,
- involvement in revision (or design) of common record access guidelines,
- advocacy generally for their clients as a group with record agencies,

- provision of training and work placements for Indigenous researchers, archivists, genealogists and counsellors,
- involvement in the design and delivery of training for the above,
- outreach and publicity relating to their services,
- community education about the history and effects of removal, with a special emphasis on professionals and others working with Indigenous people,
- research into the history and its effects,
- support of test cases and other efforts to obtain compensation,
- advocacy for their clients with their Indigenous communities of origin, cultural arbiters and native title holders, and
- staff support including debriefing and counselling.

Link-Up (NSW) has developed an effective balance between its competing immediate and longer-term objectives in the interests of all people affected by forcible removal. An isolated officer, as in South Australia, or even an individual worker or small unit within an otherwise appropriate Indigenous agency, such as an Aboriginal Child Care Agency, is unlikely to be able to cover all of these objectives within the single job description.

ATSIC has provided special grants to support some of these activities. In 1992-93 ATSIC funding supported two national link-up workers' conferences and enabled the Centre for Aboriginal Studies at Curtin University in Perth to develop a module for training Aboriginal families to undertake their own family research. In October 1994 ATSIC supported the Going Home Conference in Darwin. One result of that conference was significantly increased demand for reunion assistance nationally. In 1995-96 ATSIC funded two NT Aboriginal legal services for reunion related activities. The North Australian Aboriginal Legal Aid Service received $700,000 to research past government practices and to undertake litigation and another $11,252 to host a national workshop.

Clearly a balance needs to be struck between regular funding for continuing activities, which require staff to be redeployed or employed to organise and implement them, and special one-off projects, which are likely to be responsive to particular unusual situations. Fully effective family reunion services will need to undertake:

- outreach and Indigenous community education,
- general community education,
- historical research,
- assistance with claims for compensation and other redress,
- national networking,
- staff training and the ability to offer work and training placements, and

- consultation regarding record access protocols.

Clearly then, full implementation of the Royal Commission's Recommendation 52 requires a significant increase in funding, a fair distribution of Commonwealth funding across all jurisdictions to eliminate discrimination based on State or Territory of residence and an acceptance of a funding obligation by all States.

Evaluation – Inquiry criteria

Self-determination

All governments, by supporting Royal Commission Recommendation 52, have recognised the importance of self-determination in the provision of reunion assistance. Funding of family tracing and reunion services through ATSIC has the potential to promote self-determination. Therefore the Inquiry is concerned that ATSIC support for reunion assistance is not provided in WA, SA or the ACT where there is a demonstrated yet unmet need. Indeed with no independent family reunion service in SA at all, there must be a question mark over that State Government's commitment to self-determination.

Non-discrimination

In recent years most Australian governments have recognised the need for intensive support and counselling for all parties to an adoption when an adopted child and birth parent(s) decide to meet. Considerable care and resources have been devoted to supporting 'adoption reunions'. Some Indigenous families are able to benefit from these services where they are able to satisfy the criterion of having been adopted or having relinquished a child, although the adoption services employ no Indigenous staff. However, many cannot satisfy that criterion. Adoption information and counselling services in Tasmania and Victoria are available to some other Indigenous families affected by removals. However comparison of the resources devoted to assist adoption reunions and those devoted to Indigenous family reunions indicates that, although the depth of emotional turmoil is typically far greater for Indigenous families, State and Territory governments have not committed anything approaching the resources per reunion to Indigenous family reunions as to adoption reunions. In other words very serious discrimination occurs with State government resources favouring predominantly non-Indigenous adoptees over Indigenous children removed under now-discredited State laws.

Cultural renewal

Separated children were not removed only from their families. They were also removed from their communities and land, cultures and heritage. For many people reunion is not accomplished until they have been reunited with their entire Indigenous heritage. The first step is usually to find one's family records. The second is to meet and rebuild one's family if possible. As the Inquiry was told, family reunion work should not stop there. The introduction of the client to his or her community, cultural heritage and country may also need to be mediated and supported.

> Once each person is reunited with their family, it's the beginning of a slow process of getting to know their family and learning about their community. Support and counselling of the many underlying issues, is normally required as an ongoing process for many years … (Link-Up (Qld) submission 397 page 4).

> Going home is fundamental to healing the effects of separation. Going home means finding out who you are as an Aboriginal: where you come from, who your people are, where your belonging place is, what your identity is. Going home is fundamental to the healing processes of those who were taken away as well as those who were left behind (Link-Up (NSW) submission 186 page xi).

> It is essential for Aboriginal people to 'have a country' … There is [the need for] re-education of countrymen and the Land Councils who have been forced to forget the Stolen Generations … (Rosie Baird presentation included in Karu submission 540, pages 29-30).

Link-Up (NSW), Link-Up (Qld) and Karu (NT) are committed to assisting all aspects of reunion. The Inquiry however is not satisfied that the funding they receive adequately takes the need for cultural renewal and reunion into account.

Most worryingly many of the remaining family reunion services are so constrained that they are unable to accomplish all core reunion tasks much less attend to clients' broader and longer-term needs. Failure to appreciate the significance of 'cultural reunions' by supporting them financially seems to spring from assimilationist thinking. At the very least it is a failure to acknowledge and redress the damage of assimilation policies thereby permitting its perpetuation in future generations.

Coherent policy base

The inequality in the distribution of ATSIC funding for reunion assistance belies any acceptance at the Commonwealth level of the right of all affected families to family reunion assistance. This in turn suggests that services are funded on an ad hoc basis. There is no sense of an underlying policy objective driving Commonwealth spending in this area. The current arrangement removes governments from accountability for outcomes. That would be acceptable if funding were adequate to enable family reunion services to respond fully and quickly to demand. This is not the case however.

The virtual absence of State and Territory funding has been mentioned. Instead Indigenous services tend to rely on the States for co-operation, for example responsiveness by State record agencies to requests for records. The Inquiry has been impressed with the level of co-operation between Indigenous services and record agencies. The government record agencies in the NT represent a notable exception with Indigenous services having to 'advocate' repeatedly for their co-operation. As described in the discussion of access to records, Indigenous user services are routinely involved in negotiations for improved record access guidelines and link-up workers are either formally or informally 'accredited' researchers for the purposes of accessing records. At this level, then, there is a commitment to facilitating family reunions by inter-agency co-

operation.

The funding constraints limiting services generally, the lack of qualified Indigenous researchers, genealogists and counsellors and the impossibility for some of State-wide coverage all indicate a failure of commitment at the State and Territory government level to full, effective and equitable service delivery in this area. States and Territories have not yet developed a coherent package of responses to heal the effects of the forcible removal policies.

Adequate resources

Funding for reunion assistance, as discussed above, is inadequate and unfairly distributed. Outreach is limited. Services are constrained in securing training for their staff. Potential clients in rural and remote areas are disadvantaged in obtaining access to assistance and those in some regions have no access to assistance at all.

Recommendations

To date family tracing and reunion services have been critical to the success of most Indigenous family and community reunions. Even when all the Inquiry's recommendations are implemented, the role of these services is not likely to diminish. All governments have accepted the principle that 'in the implementation of any policy or program which will particularly affect Aboriginal people the delivery of the program should, as a matter of preference, be made by such Aboriginal organizations as are appropriate to deliver services pursuant to the policy or program on a contractual basis' (RCIADIC recommendation 192).

Services required to support and facilitate family and community reunions and/or personal background research will be unique for each client. Services could include assisting with or making on the client's behalf initial contact with record agencies or the Indigenous Family Information Service, pre-access counselling to cover the possibilities that records have been lost or destroyed, are incomplete, offensive and/or distressing, pre-access counselling to cover the possibilities that family members are deceased or do not want contact, family history research and tracing, support for reunions which may include counselling for all parties, being present during initial and even subsequent contacts, translation services, referral to professional counselling services when reunions provoke grief and trauma, and assistance with recording personal and family testimony.

Establishment of family tracing and reunion services

Recommendation 30a: That the Council of Australian Governments ensure that Indigenous community-based family tracing and reunion services are funded in all regional centres with a significant Indigenous population and that existing Indigenous community-based services, for example health services, in smaller centres are funded to offer family tracing and reunion assistance and referral.

Recommendation 30b: That the regional services be adequately funded to perform the following functions.

1. **Family history research.**

2. **Family tracing.**
3. **Support and counselling for clients viewing their personal records.**
4. **Support and counselling for clients, family members and community members in the reunion process including travel with clients.**
5. **Establishment and management of a referral network of professional counsellors, psychologists, psychiatrists and others as needed by clients.**
6. **Advocacy on behalf of individual clients as required and on behalf of clients as a class, for example with record agencies.**
7. **Outreach and publicity.**
8. **Research into the history and effects of forcible removal.**
9. **Indigenous and non-Indigenous community education about the history and effects of forcible removal.**
10. **Engaging the service of Indigenous experts for provision of genealogical information, traditional healing and escorting and sponsoring those returning to their country of origin.**
11. **Participation in training of Indigenous people as researchers, archivists, genealogists and counsellors.**
12. **Participation in national networks and conferences.**
13. **Effective participation on Record Taskforces.**
14. **Support of test cases and other efforts to obtain compensation.**

International removal

For Indigenous people removed overseas and their descendants, reunion is often inhibited by distance and the impossibility of returning permanently to Australia. In recognition of the fact that forcible removal was wrongful and of the need of many to re-establish their Indigenous identity, kinships and cultural links, the Commonwealth should assist those living overseas to return to this country permanently should they so choose.

Two situations have been particularly drawn to the attention of the Inquiry. Jack's situation has been detailed in Chapter 12. His grandmother was forcibly removed to Fiji and Jack is liable to be deported from Australia. Although the *Australian Citizenship Act 1948* sections 10 and 11 recognise the Australian citizenship of a direct first generation descendant of an Australian citizen, Jack does not qualify because he is a second generation descendant. It is not clear what relevance would attach to the fact that, as an Indigenous Australian, Jack's grandmother was not a citizen at the date of her forcible removal in the early 1900s.

The second situation is that of Indigenous people imprisoned overseas. The case of James Hudson Savage illustrates this. James was born to a Koori mother in Victoria and adopted shortly after by a non-Indigenous couple. The family emigrated to the United

States when James was six. The adoption was not entirely successful and by his early teens James was homeless and committing offences. In 1988 he was convicted of first degree murder and sentenced to life imprisonment. Following his arrest for that offence he was located by his birth mother and other family members. He wishes to return to Australia but could only do so if arrangements could be made for the international transfer of him as a United States prisoner to a prison in Australia. A bill to authorise such transfers is currently being considered by the House of Representatives Standing Committee on Legal and Constitutional Affairs.

Return of those removed overseas

Recommendation 31a: That the Commonwealth create a special visa class under the *Migration Act 1951* (Cth) to enable Indigenous people forcibly removed from their families and from Australia and their descendants to return to Australia and take up permanent residence.

Recommendation 31b: That the Commonwealth amend the *Citizenship Act 1948* (Cth) to provide for the acquisition of citizenship by any person of Aboriginal or Torres Strait Islander descent.

Recommendation 31c: That the Commonwealth take measures to ensure the prompt implementation of the *International Transfer of Prisoners Bill 1996*.

William

I can remember this utility with a coffin…

I can remember this utility with a coffin on top with flowers. As a little boy I saw it get driven away knowing there was something inside that coffin that belonged to me. I think I was about six years old at the time. This was the time of our separation, after our mother passed away. My family tried to get the Welfare to keep us here … trying to keep us together. Aunty D in Darwin – they wouldn't allow her to keep us. My uncle wanted to keep me and he tried every way possible, apparently, to keep me. He was going to try and adopt me but they wouldn't allow it. They sent us away.

As a little kid I can't remember what was going on really, because I was a child and I thought I was going on a trip with the other brothers. I just had excitement for going on a trip. That's all I can think of at the time.

When St Francis [orphanage] closed up, they sent us out to different places. My second eldest brother and I went to a Mrs R. And my only recollections of that lady was when we first went there. We were greeted at the door. The welfare officer took us into this house and I can remember going into this room, and I'd never seen a room like it. It was big, and here me and my brother were going to share it. We put our bags down on the floor. We thought, 'This is wonderful'. As soon as the welfare officer left, Mrs R took us outside that room and put us in a two bed caravan out the back.

I was sleeping in the caravan. I was only a little boy then. In the middle of the night

somebody come to the caravan and raped me. That person raped me and raped me. I could feel the pain going through me. I cried and cried and they stuffed my head in the pillow. And I had nobody to talk to. It wasn't the only night it happened.

Oh God, it seemed like night after night. It seemed like nobody cared. I don't know how long it went on for, but night after night I'd see the bogey man. I never saw the person. I don't know who that person was.

Then we were all taken away again to a new home, to another place. We were shunted from place to place, still trying to catch up with schooling, trying to find friends. I had no-one. I just couldn't find anybody. And when I did have a friend I was shunted off somewhere else, to some other place. Wanting my mother, crying for my mother every night, day after day, knowing that she'd never come home or come and get me. Nobody told me my mother died. Nobody …

They shifted us again and that was into town again. And then they put us in with this bloke … They've got records of what he did to me. That man abused me. He made us do dirty things that we never wanted to do. Where was the counselling? Where was the help I needed? They knew about it. The guy went to court. He went to court but they did nothing for me, nothing. They sent us off to the Child Psychology Unit. I remember the child psychologist saying, 'He's an Aboriginal kid, he'll never improve.

He's got behavioural problems'. I mean, why did I have behavioural problems? Why didn't they do anything?

Why did I have behavioural problems?

I hit the streets of Adelaide. I drank myself stupid. I drank to take the pain, the misery out of my life. I couldn't stop. I smoked dope, got drugs. I tried everything. I did everything. I just couldn't cope with life. I lived under cardboard boxes. I used to eat out of rubbish bins. I'm so ashamed of what I've done.

I suffer today. I still suffer. I can't go to sleep at night. It's been on for years. I just feel that pain. Oh God, I wake up in the middle of the night, same time. My kids have asked me why I get up in the middle of the night and I can't explain it, I can't tell them – shamed. I can't sleep too well with it. I can't go to bed. I leave it 'til 12 o'clock sometimes before I go to bed. I lay there awake, knowing I'm gonna wake up at that time of the morning, night after night. I often wish I was dead. I often wish I was gone. But I can't because of my children. You can't explain this to your kids. Why did this happen? I had nobody.

I've had my secret all my life. I tried to tell but I couldn't. I can't even talk to my own brothers. I can't even talk to my sister. I fear people. I fear 'em all the time. I don't go out. I stay home. It's rarely I've got friends.

I wish I was blacker. I wish I had language. I wish I had my culture. I wish my family would accept me as I am. We can't get together as a family. It's never worked. We fight, we carry on. I've always wanted a family.

Confidential evidence 553, Northern Territory: man removed from Alice Springs to Adelaide in the 1950s.

> There is no Aboriginal family that is untouched by this policy. Many Aboriginal organizations today attempt to help Aboriginal adults who were 'removed' children to patch up their lives. Yet even today no official recognition is given to what happened. One problem of this blinkered approach by officialdom is that much needed support services are not provided to many people who literally 'live on the edge' (Secretariat of National Aboriginal and Islander Child Care submission to the Royal Commission into Aboriginal Deaths in Custody, quoted in *N ational Report* Volume 2 on page 11).

Mental health needs

Indigenous mental health is finally on the national agenda. As participants in the National Mental Health Strategy, States and Territories acknowledge the importance of the issue. Some of the effects of removal including loss and grief, reduced parenting skills, child and youth behavioural problems and youth suicide are increasingly recognised.

The circumstances in which a large proportion of Indigenous people live also contribute to experiences of loss and grief and to mental health and related problems. They include poverty and high rates of unemployment, marginalisation and racism. This complex of factors is noted in the Queensland Mental Health Policy Statement for Aboriginal and Torres Strait Islander People (June 1996) and in the final submission to the Inquiry by the South Australian Government.

> Mental health status for all people is the result of a dynamic and interactive process involving social, environmental and life circumstances, as well as biological factors. For Aboriginal and Torres Strait Islander people in general, there are significantly higher levels of stress and anxiety in their lives resulting from the consequences of trauma and grief, which are inextricably linked to mental health and disorder.

> The history of colonisation of Australia has had a profound effect on Aboriginal and Torres Strait Islander people. They have, as a group, experienced considerable trauma in the form of dispossession of land, removal of children, family separation and displacement, and loss of culture. In the present day, many Aboriginal and Torres Strait Islander people continue to live in conditions of social and economic disadvantage compared with the population as a whole, and exhibit high levels of unemployment, lack of appropriate housing and other basic services.

> A very significant issue in this context which was highlighted in community consultations is the need to understand and address grief and loss relating to the social and historical context of Aboriginal and Torres Strait Islander life (Queensland Mental Health Policy Statement pages 9-10).

> Issues relating to socio-cultural determinants, historical and political events, racism, cultural genocide and communal self-worth all impact on the scope of Aboriginal 'mental health'. The area of Aboriginal mental health is poorly understood; few experts would claim to fully understand the normal Aboriginal psyche or to confidently diagnose deviations … Many of the so called mental health issues in the Aboriginal Community result from striving to fulfil the

> expectations of two different cultures – about finding a sense of place (South Australian Government final submission page 54).

The complexity of the causes of mental health problems for Indigenous people and their entrenched nature need to be recognised in the development of responses and treatments.

The National Mental Health Strategy is a joint Commonwealth-State funding program which includes a component for Indigenous people as a special needs group. This joint initiative is a five year program (1992-93 to 1997-98) with a broad objective of spurring mental health reforms (Commonwealth Government submission page 11).

Indigenous health generally was the focus of the 1990 National Aboriginal Health Strategy. This Strategy was developed by the National Aboriginal Health Strategy Working Party which reported in 1989. On mental health the Working Party concluded that,

> Mental distress is a common and crippling problem for many Aboriginal people and appropriate services are a pressing need. Advances in the understanding and treatment for mental health problems have been impressive since World War II; this progress has yet to benefit Aboriginal people. Culturally appropriate services for Aboriginal people are virtually non-existent. Mental health services are designed and controlled by the dominant society for the dominant society. The health system does not recognise or adapt programs to Aboriginal beliefs and law, causing a huge gap between service provider and user. As a result, mental distress in the Aboriginal community goes unnoticed, undiagnosed and untreated (pages 171-172).

Indigenous use of services

Indigenous people are generally under-represented as clients of mental health services, especially primary and secondary services (NSW Government interim submission page 106, Adams 1996 page 1, Dr Jane McKendrick submission 310 page 32, Swan and Fagan 1991 page 24). However all governments now accept that proportionally at least as many Indigenous people suffer mental health problems but that mainstream services have not been accessible or appropriate. The Queensland Government has additionally recognised that 'because of the conditions of life for many Aboriginal and Torres Strait Islander people, other disorders appear to have higher rates. These include anxiety and adjustment disorders, substance induced psychotic disorders, cognitive impairment in older people, and conduct disorders in children' (Mental Health Policy Statement 1996 page 10).

The reasons for Indigenous under-representation as clients were analysed for the Inquiry in a number of submissions.

> There is an enormous amount of ignorance, lack of understanding, lack of tolerance and unfounded beliefs associated with Aboriginal and Torres Strait Islander people's mental health issues among mainstream services. Mainstream services lacked knowledge and/or were insensitive to cultural issues of history, culture, spirituality, trauma, loss and grief. These features were virtually universal to all Aboriginal people who experienced mental distress. Other problems relevant to poor acceptability and accessibility of the mainstream services related also

> to racial prejudice and discrimination, lack of respect, and in many cases poor previous experience in mainstream services both rural and urban (Sydney Aboriginal Mental Health Unit submission 650 page 2).

> Such services [ie conventional, mainstream, mental health services] are culturally inappropriate for Aboriginal people and do not meet their needs. Aboriginal people do not feel comfortable using mainstream health services … It is vital to Aboriginal people that they know and are known by those they trust to work with them (Dr Jane McKendrick, Victorian Aboriginal Mental Health Network, submission 310 pages 32-33).

The national consultancy on Indigenous mental health commissioned by the Commonwealth under the National Mental Health Strategy found widespread agreement with this assessment.

> Consumers and families have frequently described the failure to inform them, to explain, to provide optimal care and there is a pervasive view that diagnosis and treatment are 'second class' for Aboriginal people with mental illness (Swan and Raphael *Ways Forward* 1995 page 32).

The authors concluded,

> [There was] extensive evidence of the inadequacy of current mental health services for Aboriginal people. In many remote and rural communities these were virtually non-existent. Where there was contact with or use of mainstream mental health services they were frequently seen as unhelpful, non responsive, inaccessible or unavailable and totally failing to respond to the needs of Aboriginal people with mental illness. Misdiagnosis, the inappropriateness of Western models, failure to recognise language differences, ignorance of Aboriginal culture and history, and racism complicated the picture … the overall picture is one of gross inadequacy … (Swan and Raphael *Ways Forward* 1995 page 38).

Misdiagnosis with its consequent inappropriate treatment or even failure to treat is a critical problem.

> … in a lot of cases from my experience, Aboriginal people are often misdiagnosed as having a personality disorder when they are in fact depressed. And that will come about because psychiatrists might hear that they have been in gaol or that they have been abusing substances and so immediately the diagnosis is closed. The diagnosis of personality disorder – which is actually more a moral diagnosis and implies you cannot help the person – is given.

> There are other cases where a person has very obviously got a very serious psychotic disorder and they present to a hospital and if they smell of alcohol at all they might be refused admission. Or if they have committed a minor offence they might be refused admission. It seems that the obvious psychotic symptoms are missed and the person is said just to have a personality disorder.

> In other cases psychiatrists do not understand Aboriginal culture and so they might misdiagnose a severe depression as being psychosis because of certain symptoms that occur in normal grief reaction (Dr Jane McKendrick, Victorian Aboriginal Mental Health Network, evidence 310).

> … there have been a lot of Aboriginal women over the last 10 to 15 years who have been labelled with mental illnesses, with mental health disorders. I believe, through information from Department of Health, that those women really didn't have psychotic episodes or anything like that; that it was part of them not knowing who they were and struggling within themselves, between being ripped in trying to find out who they are, the difficulties in putting yourself in the public eye and asking for help to find your family, to find your children. It has caused the women to have breakdowns, to have mental health disorders. But they have actually been labelled as schizophrenic, psychotic, when that really isn't the truth of what's happening for them (Susan Pinckham, NSW Aboriginal Women's Legal Resource Centre, evidence 739).

The Mental Illness Inquiry conducted by HREOC in the early 1990s also noted that mental health services are designed for non-Indigenous people and fail to adapt to Aboriginal needs and beliefs. Indigenous people are significantly more likely than other Australians to live in rural and remote areas, yet these are the areas worst-served by mental health services (Human Rights and Equal Opportunity Commission 1993 chapter 23).

Research in the NT in 1995-96 revealed the nature of the 'second class' treatment experienced by Aboriginal people.

> Aboriginal people are less likely to have contact with mental health services prior to their admission … on admission, Aboriginal people's social and personal history are unlikely to be documented. Somatic treatment only is offered, and little consideration is given to cultural issues, and …

> Aboriginal mental health consumers and their families are rarely given information about their mental illness, nor is counselling or psychotherapy (ever) offered (Adams 1996 page 1 citing research by Nagel and Mills).

In Queensland Indigenous people are more than twice as likely to use in-patient services for mental illness (6.4% of inpatients in psychiatric hospitals compared with 2.5% of the population in mid-1995, Mental Health Policy Statement 1996 page 10). This indicates both greater need and less access to preventive programs and community-based care. Also indicative of proportionately greater yet unmet need is the youth suicide rate among Indigenous Queenslanders: more than twice the State average for 15 to 20 year olds (Mental Health Policy Statement 1996 page 11). The Queensland Mental Health Policy Statement suggests that the 'stigma associated with mental illness is very high in [Indigenous] communities' potentially 'prevent[ing] people from seeking early treatment, and often result[ing] in treatment being sought only once an acute or crisis situation has developed' (page 11). Other factors are the cultural inappropriateness of most mental health services for Indigenous people and the almost total absence of community-based

preventive programs in Queensland.

South Australian data also reveal high usage by Indigenous people of in-patient services (equivalent to or slightly higher than non-Indigenous rates of use) (SA Government final submission page 48).

To some extent adequate service provision has been hindered by a lack of data on the extent of mental health and emotional problems among Indigenous people. The Inquiry applauds the Commonwealth's intention to remedy the lack of data (submission page 13). However government health departments should recognise that because of their greater exposure to causal factors Indigenous people are more likely than others to experience mental and emotional ill-health. In addition discriminatory treatment such as that revealed by the Northern Territory research cited above cannot be excused.

Having reviewed the Australian literature the authors of the National Consultancy report on Indigenous mental health, *Ways Forward*, concluded that 'available data indicates significant mental health problems affect at least 30% of the [Indigenous] community and McKendrick's study using systematic measures indicates there is likely to be an even higher level for some groups' (Swan and Raphael 1995 page 36).

> It is not possible to quantify the need accurately, as prevalence rates have not been researched. However, the proportion of people who experience severe and recurrent emotional distress or disorder is likely to be considerable (Sydney Aboriginal Mental Health Unit submission 650 page 3).

In light of these findings the Inquiry considers that the needs are first for the provision of targeted services for Indigenous people and second for additional measures to enhance their access to mainstream services.

Existing services

Commonwealth funding

The Commonwealth does not directly provide mental health services. The Commonwealth funds Indigenous medical and health services ($83.3 million in 1996-97) and substance misuse services ($16.8 million in 1996-97) (Commonwealth Government submission page 9). In October 1996 the Minister for Health, Michael Wooldridge, announced a federal commitment of almost $20 million over four years commencing 1996-97 specifically for Indigenous mental health initiatives. The strategy, or 'Action Plan', is based largely on the *Ways Forward* report.

The Action Plan aims to enhance the cultural appropriateness of mainstream services at the same time as bolstering the capacity of Indigenous primary health care services to meet mental health needs. Families and young people are targeted. For example there are initiatives to reduce youth suicide and strengthening families is a strategy for this.

The need for trauma and grief counselling is recognised. The Action Plan seeks to ensure 'all staff in community controlled health services [will] be trained to handle trauma and loss events while some workers would receive additional training to cover counselling for families and individuals'.

Community-based Indigenous health services are directly funded by the Commonwealth Department of Health and Family Services. They are described below where information is available to provide an overview of the services available in each State.

New South Wales

The NSW Aboriginal Health Strategy is 'in development' and there are plans to employ a number of Aboriginal Mental Health Workers (NSW Government submission page 106). In evidence the Inquiry was told that nine workers would be employed and in training by July 1996 (Maria Williams, Acting Director, Aboriginal Health Unit, evidence).

The Aboriginal Health Branch consulted Link-Up (NSW) in its development of specific policy and programs to respond to 'the Inquiry needs', which we take to mean Indigenous witnesses' needs for follow-up counselling after giving evidence (NSW Government submission pages 106-7). In this process Link-Up observed a general commitment to Indigenous mental health and planning for 'significant improvement' (Link-Up (NSW) submission 186 page 159). The proposed development of responses to the Inquiry witnesses' needs did not eventuate.

One recent NSW initiative is the Central Sydney Aboriginal Mental Health Unit. This service was established in 1995 as a joint project of the Redfern Aboriginal Medical Service, the Aboriginal Health and Resources Co-operative and NSW Health's Central Sydney Area Mental Health Directorate. The Area Clinical Director Professor Marie Bashir and Unit Co-ordinator Sister Robyn Shields have a staff of two (a clinical nurse specialist and a psychiatrist) with two hospital-based psychiatrists also designated. The Unit accepts referrals of Koori patients from a range of sources including prisons, the Aboriginal Medical Service and the Aboriginal Legal Service. Clinics are conducted at the Aboriginal Medical Service and at the State's psychiatric hospital (Rozelle).

In South Sydney a preventive home visiting program for new parents was initiated late in 1996 by the National Association for Prevention of Child Abuse and Neglect (NAPCAN) and the Lions Club. There is a significant Koori population in this area. The Director of the NSW Department of Aboriginal Affairs is represented on the project's Professional Advisory Body and it has the support of the Murawina [Koori] Children's Centre in Redfern. The aim of home visits will be to enhance parents' confidence and self-esteem and to assist them to access local services.

Victoria

The Victorian Government supports the Statewide Aboriginal Mental Health Network established in 1987 by the Victorian Aboriginal Health Service (interim submission page 78). This network is a collaboration between the Aboriginal Health

Service and the Government's North-East Metropolitan Psychiatric Services with most staff currently employed by the latter. In addition to a Consultant Director there are two medical officers, two psychiatric service officers and two Aboriginal mental health and liaison workers (the latter based at the Aboriginal Health Service). From the beginning of 1995 the Aboriginal Health Service has been funded to employ a psychiatric nurse directly (Dr Ian Anderson evidence 261). The network primarily responds to Aboriginal people with serious mental illness (Victorian Government interim submission page 77). In-patient needs are met by five designated hospital beds in the north-east metropolitan region. Out-patient services are provided at the Aboriginal Health Service.

Another two Aboriginal mental health workers are employed by other mental health services, giving a total of four for the State (Victorian Government interim submission page 78).

The Koori Kids Mental Health Network is also based at the Aboriginal Health Service. This Network enables the Service to refer children and young people to a roster of psychiatrists and other mental health professionals.

> We are able to meet with, assess and work with Koori families at their own Aboriginal Health Service and to facilitate more culturally responsive services in the otherwise intimidating and daunting hospitals and clinics. To many Koories of course these represent the white man's State [and] the removal of their children – their parents, themselves, from family (Dr Campbell Paul submission 768 page 7).

The Victorian Aboriginal Health Service suggested in evidence to the Inquiry that funding for Indigenous mental health services is higher per capita in Victoria than elsewhere in Australia. Nevertheless services are still limited to crisis counselling. Long-term therapy cannot be provided, preventive work with families and communities is not possible and funding does not take into account 'complex presentations' which typically involve physical ill-health, emotional and psychological problems and drug or alcohol abuse (Dr Ian Anderson evidence 261).

The current health funding model is felt to ignore the special needs of Indigenous people, especially in trusting and feeling comfortable with a non-Indigenous health professional. While there may be a budget for the professional, there is rarely funding for an Aboriginal worker to work alongside that professional (Dr Ian Anderson evidence 261).

Queensland

Indigenous people were recognised as a priority group in the Queensland Mental Health Policy (1993) and Plan (1994). Queensland produced a Mental Health Policy Statement for Indigenous people in mid-1996. Of most significance is the proposed shift away from a sole focus on serious mental illness. From now on there should be a dual focus extending also to 'broad social and cultural mental health problems such as widespread depression, anxiety and substance abuse' (Mental Health Policy Statement 1996 page 3).

In Queensland there are three designated government Indigenous mental health professionals (commencing 1996-97). There is one full-time position located in each of the Cairns and Brisbane offices of Queensland Health and an Aboriginal mental health

worker is based at the State's psychiatric hospital (John Oxley). In 1995 Queensland reported difficulty in meeting Indigenous demand for mental health services because of the difficulty of 'recruiting specialised staff to work in rural and remote areas' (1994 Progress Report to the RCIADIC page 172). Plans to fund regional Indigenous mental health workers have been foiled for this reason and because trained Indigenous personnel are not available.

To address the latter problem the Cape York Peninsula and Torres Strait Islands district mental health service was funded in 1995-96 to train local Indigenous health workers. Yet even this service experienced difficulty attracting staff with six of the 15.5 positions still vacant at the end of that financial year (Queensland Government final submission, Attachment 16).

> Currently, only a small number of Aboriginal and Torres Strait Islander community organisations are funded by Queensland Health to provide mental health services. These organisations have links with specialist mental health services and have been funded predominantly to assist people with mental illness, although some also address cultural and social mental health issues (Mental Health Policy Statement 1996 page 13).

The Commonwealth funds Queensland Indigenous organisations under the National Mental Health Strategy to a total of $213,000 in 1996-97. This funding will cut out in 1998 when the Strategy comes to an end. The 1996 Queensland Mental Health Policy Statement reveals no plans for the State either to take over that funding commitment or to extend mental health funding to more Indigenous community-controlled organisations.

A gathering of Queensland Indigenous community members in November 1995 considered the issues of grief, oppression and mental health.

> … participants considered existing mainstream mental health services actually exacerbate the problems of the indigenous community. These mental health services are culturally inappropriate, largely staffed by personnel who have little or no awareness of indigenous culture and sensitivities, and who, for the most part, appear uninterested in developing awareness within that area (Qawanji Ngurrku Jawiyabba 1995 page 2).

South Australia

In response to the National Mental Health Policy South Australia began a process of amalgamating mental health and general health service delivery. Since 1992 the number of specialist non-Indigenous community mental health workers in Adelaide has been increased from 70 to 230. Another 20 are now based in country areas. However there are only three specialist Aboriginal mental health workers, at Port Lincoln, Port Augusta and Adelaide. There is no State policy for mental health services specifically for Aboriginal people (SA Government final submission pages 49- 50).

As in other States and Territories, South Australian mental health services have concentrated to date on serious mental illness. The Government therefore identified relevant service deficiencies.

> It is possible that many Aboriginal people experiencing mental illness arising from or connected with separations will not be best assisted by these services. It is likely a possible resource deficiency exists within the arenas of:
>
> - community health mental health services
> - private sector eg options such as narrative therapy or alternative healing
> - aboriginal mental health services …
> - non-government counselling and support services including both generic and primarily mental health focussed models (SA Government final submission page 53).

Post-traumatic stress is not catered for (page 53). The South Australian Aboriginal Child Care Agency submitted that there are 'inadequate resources' for mental health services in the State.

> ACCA field workers constantly witness the need for individual and family counselling. However, within South Australia there are inadequate resources to assist with the cumulative trauma and grief that Aboriginal people suffer. It is more than just a matter of financial resources. Appropriate models of counselling and support need to be developed to assist Aboriginal people in healing. Flexible and accessible counselling programs need to be made available and support given to Aboriginal people undertaking the process of healing (submission 347 page 18).

The Inquiry was told that South Australian mental health services are beginning to develop partnerships with Aboriginal services along the lines of those in Victoria (SA Government final submission pages 54-55).

Country services are likely to remain poor. Consultant psychiatrists refuse to work in rural areas although the use of teleconferencing both to support Aboriginal health workers and as a tool for diagnosis may overcome this difficulty to some extent (Dr David Rathman, Department of State Aboriginal Affairs, evidence). Pitjantjatjara people living in South Australia have to rely on a psychiatric nurse based in the Northern Territory.

> This sole position follows up people with diagnosed major mental illness, who have been discharged from Alice Springs hospital. The nurse will cross the borders as required if clients are moving between States, but the N.T. clients have priority for a limited service (Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council submission 676 page 22).

Western Australia

The Aboriginal Health Division of the WA Health Department has ambitious plans to provide appropriate and accessible mental health services across the State (Marion Kickett evidence). At present however only two Indigenous mental health 'programs' are funded and both are located in Aboriginal Medical Services (Tracey Pratt, Aboriginal Health Division, Health Department, evidence). As there are now 13 Aboriginal Medical Services in WA, with an additional four planned, there is ample scope for this funding to be expanded.

The Yorgum Aboriginal Family Counselling Service in Perth was established in 1994 with World Vision funding. The service works with an average of 12 individuals, four families and five groups each week, attempting to cover the gamut of issues from grief and loss, Aboriginal identity and relationships to family violence, sexual assault and racism victimisation. The counsellors are all Aboriginal women. Since funding supports only the co-ordinator's position, Yorgum charges a fee for its services of an amount negotiated with each client.

The State Health Department itself employs some senior Aboriginal people as community liaison workers (not trained as health workers) to assist community members to access regional offices of the Health Department.

Between 27 and 35 Aboriginal patients spend time each month as in-patients of the State's psychiatric hospital (Graylands). The majority of these patients are from rural and remote areas, predominantly the north-west. In evidence to the Inquiry the Government's Aboriginal Health Division noted that the treatment approach at Graylands is not 'culturally appropriate' and that many patients simply should not be in this hospital.

> It is just that there are no other institutions set up to be able to deal with these people effectively and people just seem to think that locking them away is the way to deal with them, and it is not (Marion Kickett evidence).

In 1994 an Aboriginal Mental Health Service was established at Graylands. It was recently relaunched as the Aboriginal Psychiatric Service. This Service provides in-patient support, operates a cultural activities centre at the Hospital and aims to provide support to patients and their families on discharge. Staff will accept referrals. For example they are available to visit prisoners in need of support for mental health related issues.

An Aboriginal organisation has recently won a contract to provide cross-cultural training for the health industry, including both government and non-government services (Marion Kickett evidence). The Centre for Aboriginal Studies at Curtin University in Perth offers health worker training to Indigenous people. The program was first offered in 1993. Most students are employed in the health field and take their qualification on a 'block-release' basis (four 2-week intensive teaching blocks each year). Qualifications offered are a Certificate in Aboriginal Health (1 year), an Associate Degree in Aboriginal Health (2 years) and a Bachelor of Applied Science in Indigenous Community Health (3 years). Degree students can specialise in counselling and mental health.

Northern Territory

The Inquiry is grateful to the NT Government for the detailed material supplied on this subject. Although its Indigenous population is similar to that of WA and well under those of Queensland and NSW, the Territory has committed considerably greater resources to the provision of mental health services and shown considerable innovation. Sadly resources remain insufficient and there is evidence of funding reductions in recent years.

Funding applications by the Danila Dilba Aboriginal Medical Service in Darwin to establish a counselling service have been repeatedly rejected.

> Since the establishment of Danila Dilba it has always been clear that we needed our own counselling service. We began to make submissions for funds for such a service to both the NT government and to the Federal government. We saw the counselling service as part of what we called the Family Support Unit which also included men's health and allied services including counselling to families in crisis and beyond. All without success …
>
> The NT government provided some project funds to Danila Dilba to have a domestic violence counsellor on staff. Although the counselling was funded from this project, she was actually providing a general counselling service and did not deal exclusively with domestic violence. This counsellor was extremely busy and we built up the expectation in our community that we could provide this service. The NT government chose after twelve months not to fund this position any longer and we lost the counsellor and placed many clients in limbo (submission 537 pages 1 and 2).

Late in 1996 the NT Minister for Health Services promised $70,000 over two years to Danila Dilba to establish a counselling service specifically for people affected by past policies of forcible removal. In 1995-96 three other Aboriginal organisations also received mental health grants of between $21,000 and $26,000 each. At the same time the Government itself employs ten Aboriginal mental health workers, two of whom are contracted to a community based health association (NT Government supplementary information, exhibit 20 page 6).

A review of the innovative East Arnhem Mental Health Teams dated November 1995 strongly supports the expectation that there is a substantial demand for culturally-appropriate mental health services which only becomes fully apparent when such a service is provided. The East Arnhem project was overwhelmed by the demand for its services once the service providers approached communities appropriately and the Indigenous people came to recognise the services offered as relevant to their needs. This experience is graphically captured in the following anecdote from a community health nurse.

> I was the first Mental Health person that had ever visited this community. There was only one person from this area known to be suffering from any form of mental illness. The day was spent sitting with this small group of people listening to and telling stories about people with mental health problems. At the end of my visit one of the elders said 'so you are the man who works with sadness problems'. While listening to my stories the elders had been conducting their own community needs analysis and then told me their priorities. In the 10 months since that visit there have been five other referrals from that community (Mcleod 1995 page 11).

Yet resources for the East Arnhem project far from growing in response to this increased demand have been reduced. The experience of burgeoning demand in response to the provision of appropriate services was confirmed by Danila Dilba.

> When we began [in 1991], we were seeing 300 people per month, now we are seeing approximately 1,100 per month to 1,400 per month. The longer our Service is in operation the more needs are demanded by our community and identified by us (submission 537 page 1).

Tasmania

The Tasmanian Government informed the Inquiry that Indigenous mental health had not been researched for its submission or evidence. The Tasmanian Aboriginal Centre advised that '[t]here are no counselling services available to deal specifically with Aboriginal families affected by separation' (submission 325 page 8).

ACT

The ACT's mental health services strategic plan dated December 1993 identified 'Aboriginals' as a special needs group but made no mention of culturally appropriate service development or delivery (ACT Health 1993 page 29). However in 1996 a review of Indigenous people's needs and an evaluation of services was undertaken (ACT Government interim submission page 23).

The Inquiry was told of a training program for Aboriginal mental health workers at the Queanbeyan Mental Health Service but no details were provided (ACT Government interim submission page 28).

Evaluation – government objectives

All Australian governments have endorsed the 1990 National Aboriginal Health Strategy and have affirmed their endorsement by approving Recommendation 271 of the Royal Commission into Aboriginal Deaths in Custody which regards implementation of the Strategy as 'crucial'. Pursuant to the Strategy the Commonwealth commissioned a national consultancy report. Its submission to the Inquiry adopted the report *Ways Forward* as a baseline document to be used when planning and delivering services, developing policy, developing education and training programs and developing data collection and research priorities' (Commonwealth Government submission page 14).

The Commonwealth relies on the report's principles in negotiating Commonwealth-State funding agreements on Indigenous health (Commonwealth Government submission page 15). The Queensland Government advised that the report 'was used as a guide for development of the Queensland Mental Health Policy Statement for Aboriginal and Torres Strait Islander People' (final submission page 16). The NSW Government advised that 'NSW Health supports the aims and recommendations of *Ways Forward* and has incorporated them in the draft NSW Aboriginal Mental Health Policy/Strategy document' (final submission page 16). The Inquiry endorses *Ways Forward* as setting out the broad objectives for all governments in the area of Indigenous mental health.

The Commonwealth Government identified three guiding principles (submission page 14). Indigenous mental health services should,

- be based on a mental health promotion and prevention model,
- emphasise the primacy of Indigenous empowerment and self-determination, and

- adopt an holistic approach.

Health promotion and prevention model

The desirability of this model is indicated by the prevalence of psychological distress and psychiatric problems affecting Indigenous people.

> Any approach to Aboriginal mental health based simply on direct treatment programs, is unlikely to impact significantly on outcomes for Aboriginal communities (Swan and Raphael *Ways Forward* 1995 page 85).

Strategies should include Indigenous community education about psychological distress and development of prevention programs for those at risk. The humanitarian benefit of prevention and early intervention is obvious. Economic benefits can also be demonstrated. The East Arnhem early intervention strategy achieved a reduction in emergency evacuations of petrol sniffers to hospital in Darwin from 43 in 1991 to just five in 1993 at a saving per patient of ovef $5,000 for an air evacuation and over $75,000 for in-patient treatment for lead toxicity (Mcleod 1995 pages 7 and 9). To date however mental health interventions for Indigenous people have significantly clustered towards acute and crisis intervention and away from community health promotion and prevention strategies.

Trauma and grief 'were identified as amongst the most serious, distressing and disabling issues faced by Aboriginal people both as a cause of mental health problems and as major problems in their own right' (Swan and Raphael *Ways Forward* 1995 page 3). Only the most recent Commonwealth initiative addresses this issue.

Ways Forward proposed that priority be accorded to violence and destructive behaviours (page 5). There is no evidence of any mental health project acknowledging that these issues should be incorporated within the definition of mental health (with the obvious exception of self-destructive behaviours) much less of recent initiatives according them priority. These matters are, however, the focus of the NSW Aboriginal Family Health Strategy launched in 1996.

Indigenous empowerment and self-determination

The *Ways Forward* report stated,

> It is essential in terms of recognition of the needs and wishes of Aboriginal people that the implementation of policy is managed, coordinated, monitored and evaluated by Aboriginal people and organisations (page 21).

Indeed 'self-determination is central to Aboriginal people's well-being' and 'denial of this right contributes significantly to mental ill-health' (page 21). The 1990 National Aboriginal Health Strategy also identified self-determination in health care as essential (Swan and Raphael *Ways Forward* 1995 page 21).

Most States and the Northern Territory now support Aboriginal medical and health services. Tasmania, South Australia and the ACT are notable exceptions. A preponderance of resources, including 'human resources' such as Aboriginal mental health workers, are still controlled by government health departments. This preponderance in part reflects the fact that most mental health resources are devoted to the care of the mentally ill rather than to health promotion and the prevention of mental illness.

Holistic approach

A holistic approach is one which permits mental health issues to be addressed in the 'general health sector'. Mental health care must be part of primary health care as well as reflecting Aboriginal values and approaches to mental and general well-being (Swan and Raphael *Ways Forward* 1995 page 26).

This approach requires, for example, that Indigenous medical and health services be equipped to deal with mental health issues and that Indigenous general health workers be trained to recognise and deal with mental health problems and mental disorders (page 26).

The general reluctance to pursue this strategy wholeheartedly seems to stem from the continued emphasis on more acute care. A preventive focus would be more conducive to facilitating a holistic approach. Similarly the more mental health resources are placed at the disposal of Indigenous organisations implementing self-determination, the more their values and needs can be incorporated in the overall approach to Indigenous mental well-being.

Evaluation – Inquiry criteria

The Inquiry's evaluation criteria are largely consistent with the objectives for Indigenous mental health provision set out in *Ways Forward*.

Self-determination

As noted above, the bulk of mental health resources continue to be controlled by governments and non-Indigenous non-government agencies. If effective Indigenous-controlled primary and preventive programs were widely available it might well be efficient and appropriate for secondary and tertiary services, for a much smaller minority of Indigenous patients, to remain under government control. It would still be essential for the government to work in partnership with local or regional Indigenous community organisations in the provision of acute care.

Ways Forward proposed the establishment of a National Aboriginal Mental Health Advisory Committee to 'oversee, coordinate and monitor' national policy and planning (page 23). Consultations in the Northern Territory came to a similar conclusion.

> The Aboriginal Reference Groups or a Consultative Network of prominent Aboriginal people must be responsible for the provision of high level advice and direction to the Minister … Territory Health Service must make their staff accountable to Aboriginal people and communities … (Adams 1996 pages vi and vii).

The Commonwealth Government advised the Inquiry that an Aboriginal and Torres Strait Islander Health Council was established in 1996 at the federal level (submission page 10).

Non-discrimination

The National Aboriginal Health Strategy and the Indigenous mental health component of the National Mental Health Policy are responses to the very significant discrimination experienced by Indigenous people in using or needing to use mainstream mental health services. Therefore there is reason to be optimistic that in the not-too-distant future discrimination in access to mental health care will be significantly diminished.

A key feature of Indigenous mental health care provision is the discrepancy between what is available in urban areas and what is provided in rural and remote communities.

> Aboriginal mental health has been neglected by our profession [psychiatry]. In the tumult of political and social change the voices of young Aborigines, particularly in remote Australia, are unheard and their needs unmet (Hunter 1995 page 382).

The Inquiry therefore commends the aspirations in the Queensland Mental Health Policy Statement for Indigenous people (1996).

> The Policy aims to bring mental health services closer to where Aboriginal and Torres Strait Islander people live; to ensure that Aboriginal and Torres Strait Islander people are employed in specialist mental health services and in primary health care services to address the two areas of need in mental health; to ensure that cultural awareness training is provided to mental health services staff by Aboriginal and Torres Strait Islander people; and that cultural awareness training is included in curricula of relevant tertiary education courses (page 3).

Cultural renewal

The predominant health model informing most health service provision to Indigenous people remains a Western model. Where traditional culture remains strong, insistence on the Western approach could cause significant problems including exacerbation of ill-health. Strategies within the Indigenous community for promoting well-being are undermined.

> Bad Health is not being connected to your spiritual being. This indicates all those important parts of your life are not connected, being damaged by different forces not of our control or doing. For example, people taken away from their families and country, and made to live in another environment like missions or homes.

> [Service delivery must recognise] that introduced influences such as colonisation, government policies, Whiteman's invasion, alcohol, Stolen Generation, oppression, Christianity, and destruction of Aboriginal societies and cultures, genocide, institutional racism and poverty has contributed to Aboriginal mental health.

> Territory Health Service [must] recognise and acknowledge the consequences … [and] make it compulsory for all health personnel to attend Aboriginal developed and delivered cross-culture awareness programs and abide by Aboriginal cultural protocols developed in partnership with Aboriginal people (Adams 1996 page 48).

Cross-cultural training programs are slowly being introduced in the health sector. While necessary, this training is not sufficient to ensure full respect for and incorporation of Aboriginal values and concepts of health and well-being. Devolution of service provision to Indigenous-controlled organisations will best secure this objective. These organisations should be flexibly funded to utilise community healing expertise and to incorporate a model of health and well-being dictated by the community being served.

Coherent policy base

Ways Forward presents all Australian governments with a comprehensive and coherent policy base from which to develop programs and to deliver adequate, appropriate and effective services. Governments are still only in the process of developing their Indigenous mental health policies or planning for implementation. The position described in Tasmania therefore prevails more generally.

> The current social welfare policies within Tasmania merely seek to patch up identified problems. There is no long term social policy in place. Government response is therefore ad hoc (Tasmanian Aboriginal Centre submission 325 page 8).

Adequate resources

The Inquiry was told that despite the adoption of the National Aboriginal Health Strategy in 1990 mental health resources are still grossly inadequate in all jurisdictions. A comparison might be made between existing Indigenous mental health provision in Queensland Health and the need identified by the Mental Health Branch. In October 1996 there were three dedicated professional positions in the State. The Branch identified an immediate need for another nine (a 300% increase) (Queensland Government final submission page 15).

Services to deal with loss, grief and depression are virtually non-existent. Historically the emphasis has been on major mental illnesses and acute care. The extent of emotional problems caused by the forcible removal policies has only recently been revealed and has yet to be fully acknowledged. Even in the relatively well-resourced Northern Territory 'there are not enough psychiatric nurses or mental health professionals visiting Aboriginal communities' (Adams 1996 page 10).

> There are no support facilities in remote communities for victims of family violence. When an event like family violence or rape occurs, police interview notes are taken or medical examination is completed and the victim is sent home. There is no counselling or debriefing (primary, secondary or tertiary) conducted either for the victim or the family (Adams 1996 page 43).

> These issues [where removal has led to an inability to nurture children who in turn develop behavioural disturbances] often require intensive resources [including] lots of individual therapy and also family therapy. That's one of the key areas where there's a real lack of good services at a primary health care level (Dr Ian Anderson, Victorian Aboriginal Health Service, evidence 260).

Continuing emotional distress as a result of the removal policies receives insufficient attention.

> There are very limited counselling or specific services available to Aboriginal and Torres Strait Islander people directed to assisting families and individuals who have been affected by the separation under compulsion, duress or undue influence of any Aboriginal or Torres Strait Islander children from their families. General mental health services, i.e. mainstream, have been described as not being aware of or responsive to Aboriginal people's mental health issues generally and to the issues of trauma and grief in particular (Professor Beverley Raphael submission 658 page 3).

> What this means for Link-Up clients and for separated people in general who are dealing with long term and profound distress as a result of separations, is that there are very few services available to meet their counselling and specialised therapeutic needs (Link-Up (NSW) submission 186 page 159).

Recommendations

Our recommendations are underpinned by the recognition that a substantial injection of funding is needed to address the emotional and well-being needs of Indigenous people affected by forcible removal. In addition it is clear that these needs must be treated as unique because of their causes and because of the family and socio-economic contexts in which they are now experienced.

By funding rehabilitation services for survivors of torture the Commonwealth and States have already recognised the need for specialist services, in this case particularly for refugees and other immigrant torture and trauma survivors, to meet unique needs. There is a torture and trauma rehabilitation service in each State and Territory with substantial joint Commonwealth-State funding and large professional and bilingual staffing. For example, the Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS) in NSW receives $1.3 million annually to deal with a caseload of approximately 400 clients each year. These services meet a distinctive mental health need. Indigenous mental healt needs are also distinctive and require similar specialist responses.

Data collection

Before services addressing the range of needs arising from the forcible removal policies can be planned and implemented, basic information is needed on what and where those needs are. Indigenous people, specifically organisations already confronted by aspects of the traumas and other issues arising, need to be involved as partners in the collection of that information. These organisations include family tracing and reunion

services, Aboriginal and Islander Child Care Agencies and medical and health services.

> The [1993 National Aboriginal Mental Health] Conference demanded that research into all aspects of Aboriginal and Torres Strait Islander communities, be undertaken only within Aboriginal and Torres Strait Islander community designed guidelines, including community participation and only with full consent of the particular community, with whom research is to be undertaken (Swan and Raphael 1994 page 35).

The Royal Commission into Aboriginal Deaths in Custody recognised the importance of Indigenous participation in research design and recommended that 'Aboriginal people be involved in each stage of the development of Aboriginal health statistics' (Recommendation 271(a)). Further, Recommendation 48 provides,

> That when social indicators are to be used to monitor and/or evaluate policies and programs concerning Aboriginal people, the informed views of Aboriginal people should be incorporated into the development, interpretation and use of the indicators, to ensure that they adequately reflect Aboriginal perceptions and aspirations. In particular, it is recommended that authorities considering information gathering activities concerning Aboriginal people should consult with ATSIC and other Aboriginal organizations, such as NAIHO or NAILSS, as to the project.

A simple count of people presenting with mental illnesses and disorders is insufficient. Emotional problems and issues relating to well-being are much broader than established mental illnesses and disorders that are at the extreme of the problems needing to be covered. Moreover the chances of misdiagnosis of Indigenous patients is significant. Governments which have adopted the national consultancy report *Ways Forward* already recognise these issues.

Research

Recommendation 32: That the Commonwealth Government work with the national Aboriginal and Torres Strait Islander Health Council in consultation with the National Aboriginal Community Controlled Health Organisation (NACCHO) to devise a program of research and consultations to identify the range and extent of emotional and well-being effects of the forcible removal policies.

Indigenous well-being models

For Indigenous people 'health does not just mean the physical well-being of the individual but refers to the social, emotional and cultural well-being of the whole community' (Swan and Raphael *Ways Forward* 1995 page 1).

> Aboriginal people have a spiritual contact with life as part of being in touch with the land, trees, air and earth. Aboriginal people feel better when they are involved in cultural activities. Those people who stay in the bush and participate in cultural activities seem to be more healthier, only the old people become sick through diabetes and high blood pressure … However, not all Aboriginal mental health consumers are able to partake in cultural activities. This could be caused through the lack of transport, location, ignorance or reliance on the medical model. Aboriginal Mental Health Consultants and Aboriginal Health Consultants must include cultural activities as part of their employment in primary health care (Adams 1996 page 30).

> Traditional Aboriginal culture like many others does not conceive of illness, mental or otherwise, as a distinct medical entity. Rather there is a more holistic conception of life in which individual wellbeing is intimately associated with collective wellbeing. It involves harmony in social relationships, in spiritual relationships and in the fundamental relationship with the land and other aspects of the physical environment. In these terms diagnosis of an individual illness is meaningless or even counterproductive if it isolates the individual from these relationships (Sydney Aboriginal Mental Health Unit evidence 650).

Thus it has been proposed that,

> [There is a] need to develop services and programs according to Aboriginal terms of reference, concepts, values, beliefs, ways of working, priorities that recognise the diversity of Aboriginal culture … When Aboriginal and non-Aboriginal people are employed to deliver Mental Health Education Programs they must recognise and respect local Aboriginal cultures and people. Aboriginal people must be included and employed in the program development, management, processes, implementation, documentation, evaluation, funding and delivery (Adams 1996 page 6).

The Queensland Mental Health Policy Statement for Indigenous people adopted mid-1996 has recognised the issue.

> Mental health is viewed by Aboriginal and Torres Strait Islander people as a broad concept. It includes the social, emotional, cultural, physical and mental well being of the individual and the whole community, and is based on current, historical and spiritual values.

> Features of mental disorders may differ to those in the non-indigenous population, leading to the possibility of misdiagnosis. Mental health issues for Aboriginal and Torres Strait Islanders must therefore be understood beyond those conditions which are dealt with in a traditional Western clinical context, in keeping with the culturally defined concept of health … (pages 3 and 10).

Link-Up (NSW) called for 'culturally appropriate definitions of mental health'.

> Understandings of mental health are culturally specific. Aboriginal understandings of mental distress may be different from those in European Mental Health Diagnostic Manuals. In developing community-based recovery strategies, it is essential to develop culturally appropriate Aboriginal definitions of mental health and mental illness (submission 186).

The Inquiry was advised that culturally-appropriate healing models do exist and are being used by Indigenous services and projects. They include traditional healing, art therapy and narrative therapy. Colleen Brown, NSW Aboriginal Health Educator, described her use of art therapy in which young people express problems and hurt through painting (evidence 842). Relationships Australia (formerly the Marriage Guidance Council) described the narrative therapy model devised by Michael White and utilised with Nunga people in South Australia.

> It is a model that takes into account injustice, responsibility and oral history. Michael sees that our lives are a story that provides context for our experiences. He sees that society and the individual process this story and give it an interpretation. This interpretation then effects what we do and the steps that we take in life.

> Michael's counselling listens to the story that has shaped a person's life. The theory aims to give an alternate story to 'how life may be' by talking through alternatives. Michael's work also addresses mapping the effects of the problem. It is here that he looks at the effects of the problem in light of people's lives and their relationships. It seems that Michael White is also interested in aspects such as:
>
> . naming injustice
>
> . healing through traditional means
>
> . caring and sharing
>
> . remembering
>
> . being listened to (submission 685 page 7).

Further development and evaluation of these and other models, particularly as applicable to grief and trauma and the inter-generational effects of the forcible removal policies, are needed. There must be opportunities for documentation and sharing of innovations and lessons across Australia.

> … Aboriginal people have been working in this area and there is a valuable amount of information and techniques available. This information needs to be brought to an awareness, documented, and distributed to National Aboriginal Australia. Thus creating a cultural sensitive counselling programme that can be added to continuously (report from Joyleen Koolmatrie, Sept 1996).

At the same time it must be appreciated that,

> Traditional healing practices are diverse and specific to individual communities and family groups. They may include traditional song and dance, food and medicine. In some communities the use of traditional healing is predominant, being regarded as essential for cultural and spiritual well being (Queensland Mental Health Policy Statement 1996 page 12).

Indigenous healing may also be dependent on particular locations on traditional lands. Dr Jane McKendrick of the Victorian Aboriginal Mental Health Network told the Inquiry,

> … it has been my experience with some Aboriginal people who have been taken away from their families in childhood and who have had severe mental health problems in adulthood have really benefited from going home, spending time on their traditional land with their elders and extended

> family. The healing process might take a few years, but that is by far the best way to do that (evidence 310).

Submissions to the Inquiry made clear that primary 'well-being' services need to be controlled and delivered by Indigenous people.

> If you did not have the mental health worker there who can communicate with the patient in language the patient understands, you know, talk in terms of things important to the patient and the patient knows are important to the health worker – it helps to settle things down. But if you do not have that sort of trained person present there can be disastrous consequences. It could even lead to either unnecessary hospitalisation or in the worst case a successful suicide (Dr Jane McKendrick, Victorian Aboriginal Mental Health Network, evidence 310).

> I sought counselling to try and help me overcome a lot of the feelings I carry with me from my childhood, but it doesn't seem to really help. The counselling I received has not been from people that know much about Aboriginal culture or what we went through at the mission (quoted by ALSWA submission 127 on page 200).

> Non-Aboriginal nurses have a lot of difficulty establishing rapport and trust with Koori mothers precisely because it was often nurses [in Victoria] who were most likely to be associated with the removal of Aboriginal children (Dr Ian Anderson, Victorian Aboriginal Health Service, evidence 261).

> The most important thing is that some sort of access or system is established where there is a high degree of trust. [It] would have to be very strongly focused around an Aboriginal community network or an Aboriginal community counselling service because there may be some very particular ways these issues should be addressed by Aboriginal people in which [non-Indigenous professionals] should at best have some sort of advisory role or assistance (Dr Nick Kowalenko evidence 740).

The 1996 Stolen Generations *National Conference* recommended the establishment of 'counselling centres, established and run and staffed by Aboriginal people [as] an essential and urgent part of the *rehabilitation* component of a reparation package' (submission 754 page 50). A number of Indigenous organisations similarly called for self-determining Indigenous healing centres (Broome and Derby Working Groups submission 518 page 5, Aboriginal Legal Rights Movement submission 484 page 53, Karu Aboriginal and Islander Child Care Agency submission 540 page 34, Western Aboriginal Legal Service (Broken Hill) submission 775).

UN Special Rapporteur van Boven recognised government support of rehabilitation for victims of gross violations of human rights as essential to reparations. Principle 14 provides that,

> **Rehabilitation** shall be provided and will include medical and psychological care as well as legal and social services.

There are very strong and cogent arguments for 'well-being centres' which offer a full range of healing services. This is consistent with the recommendation in *Ways Forward* for holistic primary health care services.

> Commitment to holistic view of health and the cyclical concept of life, death, life, so that mental health programmes should be based in a community setting with no artificial separation of children and elders from people in middle life … so everything should be under the one umbrella. And also in a primary health care setting because people who are psychologically distressed often have chronic physical problems (Dr Jane McKendrick, Victorian Aboriginal Mental Health Network, evidence 310).

> Everyone at the [1995 Queensland] Gathering expressed the need for funding for Indigenous Healing Places initiated, established and staffed by our own people with access to other help as is needed and appropriate. These Healing Places are envisaged as places where intervention can happen before, during, and after crises, and provide longer term care also. We must be funded to provide an alternative to the mainstream facilities (Qawanji Ngurrku Jawiyabba 1995 page 4).

This approach was supported by the 1993 National Aboriginal Mental Health Conference which noted that mental health should be seen as part of primary health care and not separate from it and that spiritual life and traditional ways are important to Aboriginal well-being.

> The majority of mental health disorders and mental health problems in Aborigines and Torres Strait Islanders do not require dual intervention for specialised secondary services. It is therefore illogical to separate emotional well being issues and therefore mental health services from primary health care (as defined by the NACCHO). A holistic, integrated team approach to well being is required through community controlled health services … resourced effectively by professionals and through financial resourcing (Swan and Raphael 1994 page 32).

The Conference proposed an immediate allocation of $100 million for comprehensive counselling services in Indigenous community-based organisations simply to tackle immediate issues (Swan and Raphael 1994 page 25). Funding for Indigenous community-based services must empower those services to utilise culturally appropriate healing models and personnel including traditional healers where they are available.

> Our traditional healers must be funded to do their work in the community. At the moment their work is not recognised by funding bodies yet their role is essential to the healing of our people – more so than white medicine and white interventions (Qawanji Ngurrku Jawiyabba 1995 page 4).

Indigenous well-being model

Recommendation 33a: That all services and programs provided for survivors of forcible removal emphasise local Indigenous healing and well-being perspectives.

Recommendation 33b: That government funding for Indigenous preventive and primary mental health (well-being) services be directed exclusively to Indigenous community-based services including Aboriginal and Islander health services, child care agencies and substance abuse services.

Recommendation 33c: That all government-run mental health services work towards delivering specialist services in partnership with Indigenous community-based services and employ Indigenous mental health workers and community members respected for their healing skills.

Staff training

The Royal Commission into Aboriginal Deaths in Custody recognised the importance of training professionals dealing with Indigenous patients about Indigenous history with the expectation that a better and more appropriate service will be provided. Recommendation 154 addressed training of health professionals working in the prison system.

> All staff of Prison Medical Services should receive training to ensure that they have an understanding and appreciation of those issues which relate to Aboriginal health, including Aboriginal history, culture and life-style so as to assist them in their dealings with Aboriginal people.

Health professional training

Recommendation 34a: That government health services, in consultation with Indigenous health services and family tracing and reunion services, develop in-service training for all employees in the history and effects of forcible removal.

Recommendation 34b: That all health and related training institutions, in consultation with Indigenous health services and family tracing and reunion services, develop under-graduate training for all students in the history and effects of forcible removal.

Indigenous people too will need appropriate training to meet the new demands of working within culturally appropriate models of well-being while at the same time liaising with non-Indigenous professionals and services to obtain specialist assistance as needed. The Curtin University, WA, counselling course offers one training model. The course is designed, managed and directed by professional Indigenous staff and takes a holistic approach to mental health (Collard and Garvey 1994).

Mental health worker training

Recommendation 35: That all State and Territory Governments institute Indigenous mental health worker training through Indigenous-run programs to ensure cultural and social appropriateness.

Parenting and family well-being

The effects of forcible removal are far-reaching and complex and often compounded in subsequent generations. A focus simply on 'mental health' therefore is inappropriate for two reasons. First, the concept is a western one which does not encompass the Indigenous perspective of social, spiritual and community well-being. Second, healing the effects of forcible removal will require a number of inter-related strategies, only one of which is clearly covered by the term 'mental health'. All the effects of the removal policies need to be addressed including substance misuse, parenting skills deficits, impacts on physical well-being, children's and youths' behavioural disturbances and so on. We can understand all of these under the general rubric of rehabilitation while recognising that the need for rehabilitation will be felt by the people who were removed, their families including their own children and grandchildren and their communities as a whole.

> It is imperative that separation, identity issues and their effects on Aboriginal wellbeing are kept in the forefront as Aboriginal Mental Health Services are developed and implemented, and in training Aboriginal Mental Health Liaison Officers (Link-Up (NSW) submission 186 page 159).

A very significant continuing effect of the forcible child removal policies has been the undermining of parenting skills and confidence. Rebuilding these must be a priority. The 1993 National Aboriginal Mental Health Conference recommended that 'culturally appropriate Aboriginal family therapy programs be developed by Aboriginal Legal, Medical and Children's Services' (Swan and Raphael 1994 page 31).

> Most communities suggest the need for special programs to support young Aboriginal people and to redevelop parenting skills both in terms of child rearing generally and traditional practices (Raphael et al 1996 page 15).

Submissions to the Inquiry from Indigenous organisations were very supportive of these programs.

> That parenting programs be developed and made available for carers who might benefit from such programs. These programs must be provided from appropriate organisations such as Aboriginal Child Care Agencies and must be developed and provided in a culturally appropriate manner … That preventive family support programs be developed and run from accessible organisations such as Aboriginal Child Care Agencies (SA Aboriginal Child Care Agency submission 347 recommendations 7 and 9).

> Today there is a massive Koori Parenting crisis, which VACCA [Victorian Aboriginal Child Care Agency] confronts daily with parents in difficulties coping with their children, and in the many manifestations of family violence. VACCA's experienced workers perceive a strong link between children who do not receive adequate nurturing, consistent parenting, especially in their earliest years, and their later violent behaviour in their family settings (Jenny Gerrand submission 578 page 3).

The 1995 report of the WA Taskforce on Families also identified the issue and

proposed a similar solution.

> … most of the problems faced by Aboriginal people today stem from generations of oppression and have resulted in a lack of trust in the non-Aboriginal society. The Native Welfare Department's practice of taking Aboriginal children from their families to be brought up on missions, still impacts upon Aboriginal people in Western Australia.
>
> One of the most important consequences of this practice is the lack of parenting skills due to the fact that thousands of children were denied nurturing, loving and modelling by their parents and extended family. It also caused a major disruption in the transmission of culture and traditional values (page 106).

The Taskforce recommended,

> That the Department for Community Development work with members of the Aboriginal community to develop and implement specific and appropriate parenting programs, services and courses designed for Aboriginal parents, recognising the primary role played by grandparents and the extended family in the upbringing of the children (page 106).

In evidence to the Inquiry child and adolescent psychiatrist Dr Brent Waters agreed.

> Young people need to have available to them people who can work with them as they deal with whether or not they're going to form families and how they manage the first stages of parenting … It is very, very important that there are resources available, not only to support these people who are susceptible to passing on a pattern of neglectful and abusive parenting, but who can actually provide concrete advice on what to do. That certainly should come from within the Aboriginal community. A generation which in my experience has a great potential to assist there is the grandparent generation (evidence 532).

In response to the need the Victorian Aboriginal Child Care Agency has proposed the establishment of a Koori Parenting Centre 'to deliver to Koories whose parenting skills need building up, the necessary input so that these parents can achieve their long-term goal of caring for their children, and of becoming self-determining people' (submission 578 page 3). Among other strategies 'VACCA has commenced work on a video and book about culturally-relevant ways of parenting called 'Parenting: Doing it Our Way'. Victorian Koori elders are interviewed about the ways they parented their children (submission 578 page 4).

Parenting skills

Recommendation 36: That the Council of Australian Governments ensure the provision of adequate funding to relevant Indigenous organisations in each region to establish parenting and family well-being programs.

In making this recommendation we do not intend to further fragment the delivery of

needed services. The point was clearly made to the Inquiry that a holistic approach is essential.

> Aboriginal health issues can't be isolated. What have we got? We've got alcohol and drug over here, we've got domestic violence centre over here, we've got medical centres over here, diabetes over there. They can't be separated like that. The physical body will heal once we heal our spirit from all of our past pains, traumas and tragedies. We've got to look at the whole thing holistically (Rosemary Wanganeen evidence 256).

The proposed parenting and family well-being centres are likely therefore to be located in existing Aboriginal and Torres Strait Islander medical and health services and/or Aboriginal and Islander Child Care Agencies.

Prisoners

Special attention must be paid to people in custody. Indigenous people are still over-represented in both juvenile and adult detention and are more likely than non-Indigenous people to be returned to prison within a comparatively short time of the completion of a sentence.

> … the system that has left us with a legacy of discrimination and disadvantage also pathologises us for feeling angry and abused and imprisons and institutionalises us instead of recognising that our feelings are valid and need to be addressed. Very often our people are imprisoned when the intervention that is indicated is actually medical (Qawanji Ngurrku Jawiyabba 1995 page 3).

The distance of most detention centres and many prisons from Indigenous population centres means isolation for Indigenous prisoners which increases their distress.

> Recent reports have highlighted a range of problems for Aboriginal and Torres Strait Islanders with mental disorders or mental distress in custodial correctional centres, linking suicide among young males with untreated mental illness, alcohol abuse, profound despair and demoralisation (Queensland Mental Health Policy Statement 1996 page 14).

Because of repeated incarceration and isolation these people are least able to take advantage of Indigenous mental health services. Even where services are available '[t]here is a problem with lack of continuity of care and appropriate follow-up … particularly … when they are transferred throughout the statewide prison network' (Queensland Mental Health Policy Statement 1996 page 14).

An efficient prison mental health service with good consultative links with Indigenous health services and employing Indigenous mental health workers will identify and assist many prisoners with mental illnesses or disorders. Again however a broader preventive approach is needed which directly addresses the emotional distress and despair common to most Indigenous prisoners and their underlying causes. A focus on more psychiatrists, as proposed by the Queensland Mental Health Policy Statement 1996, will ignore this broader spectrum of need.

The Royal Commission into Aboriginal Deaths in Custody appreciated the significance of corrections departments working with Aboriginal and Islander health and medical services. Recommendation 152 provides in part,

> That Corrective Services in conjunction with Aboriginal Health Services and such other bodies as may be appropriate should review the provision of health services to Aboriginal prisoners in correctional institutions …
>
> Particular attention should be given to drug and alcohol treatment, rehabilitative and preventative education and counselling programs for Aboriginal prisoners. Such programs should be provided, where possible, by Aboriginal people …
>
> The involvement of Aboriginal Health Services in the provision of general and mental health care to Aboriginal prisoners …

Prisoner services

Recommendation 37: That the Council of Australian Governments ensure the provision of adequate funding to Indigenous health and medical services and family well-being programs to establish preventive mental health programs in all prisons and detention centres and to advise prison health services. That State and Territory corrections departments facilitate the delivery of these programs and advice in all prisons and detention centres.

Mental health services
Mental health services
Mental health services

Carol

[Carol's grandmother was removed to Beagle Bay at the age of 10. She and her husband had 10 children. When her husband was transferred to the Derby leprosarium, all ten children were placed in the Beagle Bay dormitories. Carol's mother was 8 years old when she was removed. Carol was born in Broome in the mid-1950s. When she was three, her mother died leaving four children. Although her grandmother was still alive, Carol and her siblings were removed to the Beagle Bay dormitories. Carol spent the next 14 years there.]

Five generations of my family have been affected by removal of children. Four generations of my family have been removed from their mothers and institutionalised. Three generations of my family have been put into Beagle Bay Mission dormitories. Four generations of my family went without parently love, without mother or father. I myself found it very hard to show any love to my children because I wasn't given that, so was my mother and grandmother.

When I think back on my childhood days – sad, lonely and unloved childhood days – we should have been treated better than we were by the Church. We were mistreated badly. I was abused by the missionaries from all angles – sexual, physical and mental. I am a strong person in myself. I had to be strong, I had no-one to turn to, no-one to guide me through life.

6.30am every morning, straight from bed, we had to kneel and say our morning prayers. 7am we had to go to church for mass. If we didn't we would be punished, like going without a piece of bread for breakfast or get the strap or whipped on our palms. 7.30am we had to thank God before and after our breakfast. 8.30am before and after class we said our prayers. 10am we had to say another prayer before we had our cups of milk and morning tea break. 11am we had catechism taught to us which was part of praying and learning the history of our church. 12pm again we said our prayers before and after our lunch. 1pm we said another prayer before and after class. 5pm we prayed again before and after our supper. 6pm most times we had to go to church for Benediction or rosary. 7pm we would kneel and say the last prayer of the day, which was our night prayers.

We were locked up every night. Also during the day on weekends and public holidays. That was only when we didn't go out on picnics.

7am breakfast – very light which was only sago with milk or most times porridge. 10am morning tea time: one cup of Carnation milk. 12am lunch, very light sometimes one piece of bread covered with lard along with a small piece of boiled meat. We loved it all the same.

5pm supper, very light which was 'bubble-bubbles' which was only flour, sugar and water, and if we were lucky we would have a piece of fruit.

We had nothing else to eat, only if we stole vegetables from the garden. We had two big vegetable gardens. Every vegetable was grown there yet we were never given any. We never had vegetables. Things that we never saw on our meal table yet were sold elsewhere from Beagle Bay Mission. When it was my turn to work in the convent kitchen I saw that all the vegetables that our people grew were on their meal tables.

Everyone would think we were doing the laundries for a big hospital, how many times

and how we washed the missionaries' laundry. Every Sunday evening we had to soak the missionaries' laundry. Every Monday morning we washed clothes by hands or scrubbing board. We then had to rinse and put it into the big boilers. Then rinsed, then starched, then rinsed, then squeezed and hung out to dry. We had to iron all the clothes, plus mending and darning.

We made our own clothes for the girls and the boys that were in the dormitory. We never was given footwear, only when and if we were making our first communion, confirmation or crowning of Our Lady. It felt real good to wear shoes and nice dresses for only an hour or so.

We were treated like animals when it came to lollies. We had to dive in the dirt when lollies were thrown to us. The lollies went straight into our mouths from the dirt. We had to, if it was birthday or feast day of the missionaries, wish them a happy day, take our lollies and run, knowing what could happen. We had to sometimes kiss the missionaries on the lips, or touch their penises. I remember clearly on one occasion, I was told to put my hands down his pants to get my lolly.

The nuns taught us that our private parts were forbidden to touch. If we were caught washing our private parts, we would get into trouble from the nuns. I grew up knowing that our private parts were evil, yet missionaries could touch us when they felt like it. That is why when I grew up that I automatically thought when a man wanted sex that I had to give it to him, because that's what, y'know. Sometimes I had sex not for pleasure, but just to please the man.

Even at the dormitory, when we used to complain to the nuns about what the brothers and the priests had done to us, we were told to shut our mouths. That's why they used to always tell me I'm a troublemaker. Those same priests, they're still alive, they're still working down south. Even the nuns are still here in Broome; there's a couple of them still there.

It never happened to me, but I remember the priest … used to just walk into the dormitory and pick any girl out of the crowd, 'You, come with me', and take them. And I noticed, when those girls used to come back they were very upset. I can't say what really happened there, but 'til this very day, those people don't go to church.

The thing that hurt me the most while growing up is that we were pulled away from our sisters and brothers. My sister's a year younger than I, yet I could not hold her, cry with her, play with her, sleep with her, comfort her when someone hit her, and eat with her. We weren't allowed to be close to our sisters or brothers. The missionaries pulled and kept us apart.

I was taken out of school when I was only 15 years of age by the nuns and placed with the working girls. I had no further education. To leave the mission I had to have two people to sort of say they'd look after me. [Carol lived with an aunt and worked as a domestic for a family in Broome.] I remember being reminded many times about being sent back to Beagle Bay if I did not do my work properly or not listening to the them. I did not want to go back there, so I had no choice but to listen. This is one of many times I felt trapped. I was treated like a slave, always being ordered to do this or do that, serving visitors and being polite to them.

[At 19, Carol gave birth to a son.] I had no-one to guide me through life, no-one to tell

me how to be a good mother. A year later I fell pregnant with my second child. My son was only a year old and I kept being reminded by the Welfare and by my so-called family that they'd take my babies away from me. So instead of giving them the pleasure of taking my baby, I gave her up. I was still working for the M family and I was encouraged by a few people. My daughter was removed from my arms by policy of Welfare 5 days after she was born. I never saw my daughter for 20 years, until 2 years ago. He [Carol's employer] more or less encouraged me to put my baby up for adoption. Two months after that, he got me in bed. We had a relationship for so long – 4 or 5 years. And then I had a daughter to him. And this is what my trouble is now. I found my daughter, the one I gave up for adoption; but the last one, Tina, she's about 18 now, Mr M never gave me one cent for my daughter for the last 16 years. About a year ago he started helping me out, but then his wife found out, so now he won't help me. So my daughter now has to live in the same town as Mr M, knowing her father's in the same town, yet we could go without food. I reckon he should recognise her, stand up to his responsibilities.

[Carol has tried to document her stay at Beagle Bay but has been told there is no record she was ever there.] I haven't got anything to say I've been to Beagle Bay. It's only memories and people that I was there with. I don't exist in this world. I haven't got anything, nothing to say who I am.

Confidential evidence 504, Western Australia.

19 Responses of Churches and Other Non-Government Agencies

> With the wisdom of hindsight we can only wonder how as a nation, and as a Church, we failed to see the violence of what we were doing. Hopefully, today we are more vigilant regarding the values we espouse (Catholic Church of the Diocese of Darwin submission 536 page 2).

Sharing responsibility

In most cases of forcible removal government officials and agents were responsible for the removal under legislation or regulations. However, there were early cases of removal of children by missionaries without the consent of the parents. In Victoria the absence of government oversight of welfare services enabled churches and other non-government agencies to remove children from their families without any court order or other official approval.

The churches share some responsibility for forcible removals because of their involvement in providing accommodation, education, training and work placements for the children.

> With hindsight, we recognise that our provision of services enabled these policies to be implemented. We sincerely and deeply regret any hurt, however unwittingly caused, to any child in our care (The Daughters of Our Lady of the Sacred Heart Australian Province submission 541 page 1).

> To the best of our knowledge, at no time have the Church's child welfare services and organisations been given any legislative power or authority to forcibly or physically remove any children from their families. This is so in the case of any Aboriginal or Torres Strait Islander children. We do accept that there were cases where the actions of Church child welfare services and organisations were instrumental in keeping children separate from their families and in this respect the Church holds some responsibility in playing a role for the state to keep these children separate from their families (Joint Statement to the Inquiry on behalf of the Bishops' Committee for Social Welfare, the National Aboriginal and Torres Strait Islander Catholic Council and the Australian Catholic Social Welfare Commission).

The Aboriginal Legal Service of WA advised the Inquiry that 85% of the people it interviewed who had been forcibly removed as children had spent at least part of their childhood in the care of a mission. Nationally the proportion is probably somewhat lower.

The experiences of children cared for in church homes and missions varied considerably.

> As individuals, there are memories which we can recall with some fondness. The friendships that bonded us as orphanage kids, the weekends at Riddell Beach and other happy occasions. But as individuals also, each of us could pick out at least half a dozen grievances with Nuns as our caretakers – the discipline, the notes made on our records in relation to our intelligence, the removal of personal possessions, the removal of birth names, the denial of access to family members, the chores, being locked up… (former resident quoted by Holy Child Orphanage, Broome, submission 520 on page 1).

> **At the age of 16, when most of us left the care of the Church, we were young girls; we were very vulnerable. We didn't have much skills in terms of preparation for life or life experiences. So consequently most of us had kids, went from one relationship to another, from one broken marriage to another. Most of us have ended up being drunks and alcoholics at early ages. But there's been nothing there to help us through, to unshackle that shame and blame. And what the Church has done, it just continuously reinforced to us all the negative things about us. And it makes us feel guilty. And it's done nothing to remove any of that guilt. And what I'm saying is that the apology isn't enough. There's got to be some sort of public statement to say to us, 'You are not to blame for it. And we were wrong'.**
>
> *Confidential evidence 548, Northern Territory: WA woman removed to a Catholic orphanage at 4 years in the 1950s.*

> **I found the Methodist Mission [Croker Island] very helpful and myself, from my experience, I really can't condemn the United Church, or Methodist Mission. Because they've been excellent to us. There were one hundred children and they showed a little bit of affection to each of us, y'know. They didn't show any favouritism.**
>
> *Confidential evidence 544, Northern Territory: woman removed to The Bungalow at 5 years in the 1930s; after seven years transferred to Croker Island Mission.*

Contemporary attitudes

Many church organisations provided information, submissions and evidence to the Inquiry. Generally the churches expressed interest in assisting and supporting all Aboriginal and Torres Strait Islander people and doing what they can to remedy the hurt and damage suffered by those affected by forcible removal in particular. Many

statements expressing understanding of that hurt and damage, acceptance of a share of responsibility and regret were made publicly to the Inquiry (Chapter 14). The Australian Catholic Social Welfare Commission expressed a view we believe to be widely shared.

> … the Church has a moral responsibility to work towards healing the pain that separation has caused Aboriginal and Torres Strait Islander people (submission 479 page 36).

The Rev. Aubrey Quick, a former Methodist minister, also made this point.

> … the fact that things happened with even the best of motives does not absolve us from our present responsibility to make what amends we can (submission 234 page 1).

General proposals

The churches can provide practical assistance to those suffering the effects of forcible removals. The National Standing Committee of the Uniting Church in Australia recently passed a number of resolutions including,

> that Standing Committee support and encourage the Northern Synod and the Northern Regional Committee of Congress to continue discussions with the former Croker Island residents and if appropriate to bring recommendations as to how the Uniting Church within the limits of its resources may best express its support for the Croker Islanders and their descendants (submission 457).

The Australian Catholic Social Welfare Commission recognised the need for consultation with Indigenous people in the design of any programs the churches might offer.

> … in seeking to compensate Aboriginal and Torres Strait Islander people for the pain that its involvement in separation has caused, the Church must enter into honest and open dialogue with those people, in order that true reconciliation can occur (submission 479 page 36).

Of particular interest to Inquiry witnesses affected by forcible removal are,

1. provision of access to personal and family records and other information held in church archives,
2. the availability of counselling and related services provided by churches and non-government agencies, and
3. the return of mission and institution lands.

Access to personal and family records

Need for records

Churches, adoption agencies and other non-government agencies may hold critical information in their records to enable former residents or clients to establish

their own identities and personal histories and the identities of family members.

> The records of Koonibba Mission [SA] are mighty comprehensive so that I would be very surprised if anyone who wants to trace their family line, their ancestry, couldn't find the complete information that they desire in those church records (Rev. Clem Eckermann, Lutheran Church, evidence 262).

Private individuals may also hold relevant records. Examples include pastoral station managers who employed Indigenous workers and accommodated their families and anthropologists and former missionaries who undertook private genealogical research. Without this information people may be unable to prove their Aboriginality, locate family members or participate in family and community reunions. Indigenous people, especially children, were not in a position to maintain detailed genealogical, birth, marriage and death records themselves.

> Government and non-government records are vital in tracing a person's origins – these records may be the only way of finding your identity (Link-Up (NSW) submission 186 page 155).

Practical access problems

Privately-held record collections suffer from at least the same deficiencies as government departmental and archival collections. They are fragile, poorly indexed if indexed at all, often stored inappropriately and in some cases have been lost or destroyed accidentally or intentionally. To an even greater extent than government archives, church archives lack the resources to identify relevant records, preserve and index them and administer an access procedure. Rev. Paech of the Lutheran Church in South Australia advised that the Koonibba register for which Rev. Eckermann had such hopes cannot be located in church archives. The register was possibly given to the SA Government when the administration of Koonibba was transferred in 1963 (personal communication 10 December 1996).

> Much of the material has not even been sorted through and catalogued yet. It's all going on at the time and the archivist himself had only been in his position about 3 months at the time – had taken over from the previous archivist who'd retired – and so he was not able to help me in trying to even find which were the most helpful places to even start to look. But the archives are open to anyone, but my own opinion is that I doubt whether anything of personal significance is likely to result – but they are there (Rev. John Vitale, Lutheran Church, evidence 431).

Similar difficulties were described by the Anglican Church of Australia, Diocese of Adelaide. Some of the records relating to the Point Pearce mission had been destroyed by fire. In other cases some names had been deleted and there were gaps in the records.

> The Anglican Church holds some records, particularly concerning the Children's Homes, which may be helpful to Aboriginal people looking for personal information. They vary in content and nature, and they are still in the early stages of archival processing, and therefore need time to locate and review (evidence 259).

Policy deficiencies

The general experience of searchers interested in accessing privately-held records has been a negative one.

> I have found that it is quite difficult to access a number of files on behalf of clients. Church organisations and private organisations are unwilling to even understand the problems that this group encounter without archival information. The effect of not being able to access this information can have devastating consequences for people attempting to piece their family history together (Rosie Baird presentation submitted with Karu Aboriginal and Islander Child Care Agency submission 540 page 6).

> It is quite difficult to get access to some mission files. Negotiations have not yet been productive. Access to information of this sort is not only a right by virtue of citizenship, and the treatment that Stolen Generations received, but also it should be recalled that the institutions were the Stolen Generations' de facto parents. Their responsibility to assist access goes beyond mere citizenship (Karu submission 540 page 31).

A range of difficulties has been encountered.

> In some cases the problem is cooperation; some of these agencies refuse to give Link-Up any information about a child, and refuse access to their records. In other cases, the agency has closed and the records have been lost or destroyed, or the agency only keeps the records for a short time as a matter of policy … Since the record trail of any given person may move through a number of different placements, both government and non-government, one missing or inaccessible file can cause serious problems (Link-Up (NSW) submission 186 pages 155 and 156).

These difficulties are exacerbated in the case of records kept or taken by private individuals. Link-Up (NSW) reported, for example, its unsuccessful efforts to obtain records held by private landowners in whose pastoral property journals the births or deaths of Aboriginal residents were often recorded. There is a very significant risk that these records will be destroyed or will disintegrate for want of appropriate storage. The Inquiry was told that a former Darwin institution manager stores children's personal records in his garage, making them available to searchers at his own discretion. Some have been lost while the remainder are held in poor conditions in a humid tropical climate.

In July 1995 the Australian Cultural Ministers Council appointed an Archives Working Group. The Working Group's first project was to identify and survey the current state of access to records relating to Indigenous people. The report of that project was finalised late in 1996 and covered both government and non-government archives. However, the report is not comprehensive. Some record-holding agencies were undoubtedly not identified and some of those from whom information was requested did not respond.

Current access procedures

A number of church agencies employ archivists or other professional staff to administer records and to assist searchers.

> All of the Catholic organisations which responded to specific request from ACSWC [the Australian Catholic Social Welfare Commission] regarding access to records by individuals seeking personal information thought to be retained by an organisation have indicated that they are prepared either to give open access or restricted access to *bona fide* inquirers. Understandably, for reasons of confidentiality rather than an attempt to hinder the efforts of those who are seeking information, most organisations have indicated that access will be on a restricted basis (submission 479 page 16).

The Benedictine Community at New Norcia in WA advised the Inquiry of its commitment to the policy adopted by the Australian Society of Archivists (submission 486 page 10),

> … to design and implement service environments, systems, routines, finding aids and promotional material which do not discomfort or embarrass Aboriginal and Torres Strait Islander users, but which make appropriate access to records a culturally-sensitive, welcoming and relatively stress-free experience for Aboriginal Australians (ASA Bulletin June 1996 page 77).

The Inquiry was advised of a project being conducted jointly by the Australian Catholic Social Welfare Commission and the National Aboriginal and Torres Strait Islander Catholic Council to compile a listing of all relevant record repositories in the 28 dioceses and more than 200 religious orders and congregations (Joint Statement).

Where access can be provided, a charge is usually levied. However, while most churches expressed to the Inquiry their willingness to provide access, there is no legal requirement that they do so. Proposed extension of the Commonwealth's *Privacy Act 1988* will extend the eleven information privacy principles to non-government organisations which collect and record personal information. A searcher will have a right of access to personal information held about him or her by a non-government organisation (Principle 6). The searcher's consent will be required in most circumstances before the organisation will be permitted to disclose that information to a third party (Principle 11).

The Inquiry was told that the churches are already aware of the implications for individual privacy of permitting free public access, and even access by close family members, to their archives.

> … it is unlikely that personal records as such could be perused because this could involve breach of confidentiality with respect to others. We ask that all applications for information be made in writing, and we will endeavour to give every assistance (Anglican Church, Adelaide Diocese, evidence 259).

> There is a difficulty about giving access to archival materials at New Norcia to everybody who asks for it. It is rarely possible to find genealogical information on one family without at the same time giving information about related families. We find that some Aboriginal (and other) people resent other enquirers discovering information about their own family members in this way.

> Likewise there can be cases where records were written in a way that would now be found offensive to Aboriginal (and often equally to non-Aboriginal) people. Yet we feel history will be distorted and yet further misunderstood if such materials are bowdlerised, dispersed or destroyed. Other parties, including the New Norcia monks, are also mentioned in nearly all such records; they too should be recognised as having right of access to their contents.

> Enquirers are given every assistance, while we try to ensure that appropriate privacy of information is respected. Our archival access policy is under constant review (submission 486 pages 9-10).

Proposals

The National Standing Committee of the Uniting Church in Australia has urged synods and other church agencies,

> … to ensure that all assistance is given freely to people who were taken from their families, and, subject to privacy considerations, to other family members, who wish to study the records of the Uniting Church relating to the taking of the children and their institutional care (submission 457).

The Catholic Social Welfare Commission developed a detailed proposal for the preservation of and provision of access to records held by the Catholic Church. The proposal contemplated a standardised database with a capacity to make referrals nationally and a procedure to resolve conflicts which may arise regarding access to records (Catholic Social Welfare Commission submission 479 pages 15-18). The Commission called on State and Federal governments to fund the project.

The Catholic family welfare agency Centacare similarly asserted that governments are responsible for funding support. It complained that the absence of government funding has hampered a project commenced in 1992 to collate and centralise personal information relating to Catholic Children's Home residents (Centacare Sydney submission 478 page 4).

The Aboriginal and Islander Commission of the National Council of Churches also recognised the need for an injection of funds without, however, asserting a government responsibility to provide those funds.

> One suggestion we have … is to raise funds for a qualified NCCA [National Council of Churches] research team to organize the numerous church and mission archives which exist, but very many of which currently are in a woeful state of disarray. The goal is to locate, document, codify and research these church and mission archives, and to produce very high-quality (well-researched) resources which would be made available to the public … We feel that this would be the major contribution the ecumenical movement could make in redressing its involvement in this chapter of history, and in moving toward the process of healing and reconciliation between Australian Indigenous Peoples and the Christian community (letter to Sir Ronald Wilson dated 15 January 1996).

In 1993 the Aboriginal and Islander Commission of the National Council of Churches hosted the 'Martung Upah Indigenous Conference' which called for the churches to open their archives, mission and other church records to Indigenous

people.

The Victorian Stolen Generations group recently called for 'the government to publish a full list of archival material … not only the records held by government departments but material held by universities, private individuals and organisations that record the history of Aboriginal people in Victoria', 'to collate and archive the information' and 'to instigate a moratorium on destruction' (Resolution of November meeting). This resolution echoes that of the *Stolen Generations National Workshop 1996*.

> The National Workshop determines that all records relating to Aboriginal people and their communities, including those that are kept by governments, churches and private agencies, are the property of the people and communities to which they related. Thus, no agency (government or non-government) currently holding records relating to Aboriginal people has the right to destroy, alter or deny access by the owner to these records. Further, as the subject Aboriginal people and their communities are the owners of these records all intellectual property rights in such records reside in those people and their communities (submission 754 page 23).

Recommendations

Because of the role played by churches and missions in the placement and care of Indigenous children and families generally, many records were created which may now be essential to enable family and/or community links to be re-established. Like government record agencies, the churches have reasons for retaining these records. Some lack the resources, however, to preserve them appropriately and administer access. Some churches have deposited their records in State Libraries or other repositories. For example the records of Sister Kate's Home in Perth are now in the Battye Library.

Private collections

Recommendation 38a: That every church and other non-government agency which played a role in the placement and care of Indigenous children forcibly removed from their families, at the request of an Indigenous language, culture and history centre, transfer historical and cultural information it holds relating to the community or communities represented by the centre.

Recommendation 38b: That churches and other non-government agencies which played a role in the placement and care of Indigenous children forcibly removed from their families identify all records relating to Indigenous families and children and arrange for their preservation, indexing and access in secure storage facilities preferably, in consultation with relevant Indigenous communities and organisations, in the National Library, the Australian Institute of Aboriginal and Torres Strait Islander Studies or an appropriate State Library.

Recommendation 38c: That every church and non-government record agency which played a role in the placement and care of Indigenous children forcibly removed from their families provide detailed information about its records to the relevant Indigenous Family Information Service or Services.

We have proposed that the churches and other relevant non-government agencies should be represented on each State and Territory Records Taskforce. Private record agencies should implement the minimum access standards. The Catholic Social Welfare Commission, in a detailed submission relating to records, concluded that,

> … the principles which should guide access arrangements to any records containing personal information relating to an individual who is seeking to establish or trace their personal and family identity are:
>
> - as a general rule access to records should be permitted;
> - every assistance be given to ensure that access is available;
> - access be free of charge to *bona fide* inquirers;
> - maintenance of confidentiality at all times; and,
> - the provision of professional and culturally sensitive counselling to an inquirer prior to and during the access of personal files (submission 479 page 17).

Application of minimum standards and common guidelines

Recommendation 39: That church and other non-government record agencies implement the national minimum access standards (Recommendation 25) and apply the relevant State, Territory or Commonwealth common access guidelines (Recommendation 23).

Counselling services

Need

The emotional and psychological effects of forcible removal are documented in Part 3 of this report.

> Removal affects the individual, the family, the culture from which they were removed and the broader society. From Relationships Australia's experience these outcomes and consequences of forced removal of children are consistent with grief and loss on a large scale, which when unresolved, affect the quality of people's relationships (Relationships Australia submission 685 page 6).

Some church and other non-government agencies have turned their attention to survivors' needs for counselling and related support. The National Standing Committee of the Uniting Church in Australia has resolved to request,

> … synods to invite organisations such as Burnside in New South Wales, Copelen Family Services in Victoria and Adelaide Central Mission in South Australia to seek discussions with the Uniting Aboriginal and Islander Christian Congress with a view to entering into arrangements under which facilities, resources and expertise of the Uniting Church's family counselling services may be made available to the Aboriginal community for child care or adult counselling in an arrangement in which responsibility and authority would be negotiated (submission 457).

Church counselling services

Most churches provide services for individuals and families experiencing financial, emotional or spiritual distress. The range of services is usually related to the size of the organisation and the resources available to the church. Few services are specifically provided for Indigenous people, although they are available to Indigenous people seeking to use them. In practice, utilisation by Indigenous people depends on whether the service is culturally sensitive and appropriate.

A number of churches identified services specifically directed towards the needs of Indigenous people and relevant to the survivors of forcible removal. The Catholic Church, for example, offers Centacare programs including the Aboriginal Family Worker in Brisbane, the Financial Counsellor in Wilcannia-Forbes, Family Care Teams and Family Support Programmes generally and a number of other Catholic marriage and family mediation services across a number of regions which may be relevant to those affected by forcible removal (Centacare Catholic Community Service evidence 478, Australian Catholic Social Welfare Commission submission 479).

The Uniting Church's Burnside agency in New South Wales also identifies family support services, including family counselling specifically related to child behaviour problems within families as being relevant, along with parenting education programs, one of which has been developed in consultation with a rural Aboriginal community to ensure cultural relevance (Uniting Church in Australia submission 457).

Relationships Australia described a collaborative arrangement in the Hunter Valley with the Awabakal Aboriginal community in which training is provided to Aboriginal women to enable them to lead groups and develop counselling skills. Importantly, the collaboration results from the initiative of the Awabakal community which also determines training arrangements.

Evaluation

Relationships Australia and the Anglican Diocese of Adelaide both expressed reservations about their capacity to provide the counselling and related services needed to address some of the effects of forcible removal. The Anglican Diocese of Adelaide identified the absence of Indigenous staff in its own Family Connections Programme as a barrier to effective service delivery.

> [It] has been operating for approximately six years and has, until recently, worked with few Aboriginal families. Currently, out of a caseload of 32 families there are five Aboriginal families working with the Family Connections Programme and one Aboriginal family on the waiting list. All referrals come from Family and Community Services. For a programme with only non-Aboriginal workers this work presents a number of dilemmas and a great challenge and we question whether it is helpful to these families having non-Aboriginal workers working with them for reunification. It is an intensive programme and workers from the programme may spend up to 10 hours a week in a families home (Anglican Diocese of Adelaide evidence 259).

Relationships Australia, formerly the Marriage Guidance Council, identified 'obvious problems of accessibility and cultural appropriateness' and a lack of resources (submission 685 page 4).

> A further problem is that we already have waiting lists of 6-8 weeks in all areas. If we were to advertise specifically to provide a new counselling service for Aboriginal and Torres Strait Islander people we could not guarantee how soon there is a risk of violence or severe conflict in the family or relationship.

> Therefore while there is a need for access issues to be addressed the resource problem is the major hurdle and we believe that to address this, funding would need to be provided.

Non-government agencies with responsibility for counselling and support services for survivors of forcible removal must ensure the cultural suitability of their services, including through strategies to employ Indigenous staff, so that effective services are provided. Relationships Australia submitted that Indigenous organisations may be best placed to provide the services needed.

> There is also the important consideration of ownership of services for Aboriginal people. We do not believe that funding organisations such as ourselves is necessarily the way to go … funding to Aboriginal organisations to manage such programs in which expertise could be purchased from Relationships Australia and others, or joint projects may be a better solution (Relationships Australia submission 685 page 4).

The Inquiry endorses the view that services are best provided by Indigenous agencies. The existence of specialist agencies, however, does not relieve agencies funded and intended for all Australians from their obligation to ensure their services are accessible and appropriate for all, including Indigenous clients. This obligation is even more binding when there are no Indigenous agencies or when those which exist are poorly resourced and unable to deal with every need in the Indigenous community.

Counselling services

Recommendation 40a: That churches and other non-government welfare agencies that provide counselling and support services to those affected by forcible removal review those services, in consultation with Indigenous communities and organisations, to ensure they are culturally appropriate.

Recommendation 40b: That churches and other non-government agencies which played a role in the placement and care of Indigenous children forcibly removed from their families provide all possible support to Indigenous organisations delivering counselling and support services to those affected by forcible removal.

Restitution of land

> … it is a sad but truthful fact that the church and Christian people in the history of this Sate have contributed to the trauma, the decimation of the language and the culture among the Aboriginal community (Rev. Finlay submission 327 page 90).

Church responsibility

The loss of connection with and entitlements to land through forcible removal are discussed in Part 3. Some churches appear to understand that forcible removal has

caused these losses and the further losses that flow inevitably from dispossession.

> It must be acknowledged that, no matter how well intentioned the motives of the church were in its involvement in separating children from their families, it's complicity has contributed to the dislocation of the people concerned and therefore to their loss of land, language and identity (Anglican Church of Australia, Diocese of Perth submission 410 page 2).

> The staff members who served at Marribank [WA], the scatter homes and the hostels, with few exceptions, were not trained for cross-cultural work. Many acknowledge that they knew little of the cultures of the Aboriginal tribal groups. This had the inevitable effect of further isolating the children from their Aboriginal heritage. One of the social workers comments: Aboriginal values, traditions, and cultural mores were ignored in the care arrangements that were made for the children (Baptist Churches of WA and the Aboriginal and Islander Baptist Committee of WA submission 674 Page 15).

Church efforts

Some churches have expressed an intention or a willingness to return land acquired for the purpose of housing forcibly removed children or other land acquired for purposes relating to their missions to Aborigines.

> Recently, during research through our records in preparing this submission, Baptist Churches of Western Australia discovered Crown Lease of 8094 square metres still inadvertently held by us, at Kojonup Location 4086, Reserve No. 16908, in Trust for the purpose of a Cemetery 'Aboriginals'.

> We are willing to hand this land over to the Aboriginal people, as appropriate. (Baptist Churches of Western Australia submission 674 page 24).

The National Standing Committee of the Uniting Church in Australia has recently apologised,

> … to the people of Minjilang, traditional owners of Croker Island, that the church took over a large part of their ancestral lands without their permission, and used it for forty years to provide care for children separated from their parents (submission 457 page 2).

The process of returning mission land has not been straightforward. The Inquiry was told in Broome that the Catholic Church was willing to hand back land used for mission purposes and that negotiations were under way. The Catholic Church proposes to hand back most of the land, retaining some portions as freehold. It is negotiating for an ex gratia payment in the order of $500,000 from the WA Government in return for relinquishing the land it holds on trust. It is proposed to invest that amount for the benefit of the residents of the missions (Bishop Chris Saunders evidence 519).

Proposals

The Kimberley Land Council called on churches to 'resolve any outstanding land

issues with relevant communities' (submission 345 page 72). The KLC noted that Indigenous people lost land entitlements by being removed from their traditional country to missions. The practice of gathering children together in missions on country belonging to others created problems communities must grapple with today.

> Today around the Kimberley there are several large communities of people who have elsewhere been referred to as 'the historical people'. These are people who live in ex-mission communities on land which is not their traditional country, but is only their home place. They are the people who were taken away, or the children and grandchildren of people who were taken away.
>
> The mention of native title on the country they call home has often caused them great concern. They are afraid that they will have to leave once the land is handed back to the Traditional Owners. They are afraid the Traditional Owners will use their new control over land to kick them off, or that it will no longer be appropriate for them to continue to live there.
>
> So far there have been two claims in the Kimberley where this has been a factor. The Traditional Owners and the KLC have developed an approach where community areas are not claimed, although the surrounding country is. This is to ensure that members of the community who are not Traditional Owners do not feel threatened or obliged to leave. Traditional Owners will seek to control their country, but will have to be able to accommodate the needs of the communities that live there and have lived there for a long time. Traditional Owners recognise that it is not the fault of those 'newcomers' that they are there, and that for many it is their only home.
>
> Where the KLC does lodge a claim on behalf of Traditional Owners over an area where other groups have a strong historical connection, we are committed to helping to negotiate a solution over their respective land needs. People hold very strong historical connections to former mission or institution land and these connections must be acknowledged (submission 345 pages 21-22).

Recommendation

The return of land used by the churches would express their recognition that the policies and practices of forcible removal were wrong. It would indicate their refusal to profit from a practice most have publicly acknowledged was wrong.

Land holdings

Recommendation 41: That churches and other non-government agencies review their land holdings to identify land acquired or granted for the purpose of accommodating Indigenous children forcibly removed from their families and, in consultation with Indigenous people and their land councils, return that land.

Courtesy Bicentennial Copying Project, State Library of New South Wales.

Aboriginal children in canoe spearing fish, Port Macquaire area, NSW, 1905

Our home was out in the bush, many miles from Kempsey. It was an old wooden shack consisting of only two rooms. It may not sound like much but it was the only home I ever knew. We children were little free spirits, exploring the bush surrounding our home, building cubbie houses, and just being allowed to enjoy our childhood. Our big brothers were always our protectors, we could rely on them to look after us and not let us come to any harm.

Confidential submission 332, Queensland.

Part 6 Contemporary Separations

There were a lot of families on the outside who were saying my daughter hasn't come home, my son hasn't come home. You had a lot of families still fighting and then you had the bloody welfare saying to these families, 'We're not doing what was done in the sixties'. Bomaderry Home was left open as a big secret by the government and the welfare. And it must have been one of the best kept secrets that the Government kept. It was hard for the people on the outside to prove we was there when the government said we weren't.

My grandparents waited for me to come home and I never came home. My grandfather died in 1978 and my grandmother died in 1979. I came home in 1980.

This was the last generation that went through the system and it really hurt. I thought our people forgot us. If Bomaderry Children's Home was closed down at the same time those other two homes, my generation would not have gone through that. We could have avoided that.

A lot of the churches and government wanted to say that it's all over. It happened in 1930, 1920 was when children was going through the homes. This is what they were saying in the 70s to my people that it was all over. Yet me and a lot of other Koori kids was in the bloody Home screaming, pulling our hair out, 'Somebody come and get us'. But nobody could hear us and that was really frustrating.

Confidential submission 522, New South Wales: woman removed at 3 years in 1969 and placed in Bomaderry Children's Home.

> The fact remains that Aboriginal children are still being removed from their families at an unacceptable rate, whether by the child welfare or the juvenile justice systems, or both (Aboriginal Legal Service of WA (ALSWA) submission 127 page viii).

This Part of the report analyses contemporary separations of Indigenous children and young people from their families and communities by State and Territory mechanisms pursuant to the Inquiry's fourth term of reference. The focus is on the processes of juvenile justice particularly detention, child welfare particularly fostering and institutionalisation, family law and adoption.

Indigenous children and young people continue to be removed from their families through laws, policies and practices of the State or Territory.

> [W]hether we talk about the 1910s or 1940s or 1970s or even the 1980s, the tragic scenario is that Aboriginal children have, in large numbers, been separated from their families. In the past the dominating force was the assimilation policy. Now, it is contact with the child welfare and juvenile justice systems which leads to many Aboriginal children being removed from their families (ALSWA submission 127 page 343).

A high proportion of people affected by the past laws, practices and policies of forcible removal have had their own children taken from them in turn. The ALSWA survey of 483 clients who were removed in childhood revealed that more than one-third (35.2%) had had their children removed (submission 127 page 44). A process of second (or subsequent) generation removal occurred in more than one in three cases.

The following chapters detail the extent and nature of contemporary separations through a consideration of the legislation, policy and practices of juvenile justice, child welfare, adoption and family law. They analyse the reasons for continuing separations and, in particular, for the fact that Aboriginal and Torres Strait Islander children and young people are at much greater risk of removal by these processes than non-Indigenous children. The facts of contemporary separation establish a need for fundamental change in Australian law and practice.

Tony

When I was three months old [in 1965] the welfare department sent the police to my grandparents' house. They came armed with a warrant to have me removed. Despite any opposition my fate had been decided. I was taken away. My family were left with the guilt of being accused of child neglect.

In 1967 I was adopted into a white family. They had two sons of their own. It is documented that, from an early age, my adoption mother had feelings of rejection towards me. She wanted a white son. She was taking offence to me as I grew up and my skin got darker. I can remember her always making fun of me. She had a favourite song that she always sung to me. It was that old country song called, 'the biggest

disappointment in the family is you'. They adopted another son and my new brother was very fair, with blue eyes and blonde hair.

As I grew up, more problems arose. I began to notice that I was getting darker. My adoption father was often sticking up for me when my adoption brothers would come home and tease me about my colour. They were learning words like, boong, coon, abo …

I'd ask her why I was dark.

I'd ask her why I was dark. She would tell me it was because I kept playing with aboriginal kids at school. My adoption mother would make me feel guilty when I got into trouble for something. She would confirm her statement by saying things like, '… if you keep playing with aborigines, you'll end up turning into one'. I was beginning to believe that was why I was getting darker. I started to hate what I was turning into. I started to hate my own people.

In 1978 I went to high school. I was to be separated again. This time it was from my adoption brothers. They were sent to one high school and I was sent to another. When I wanted to know why, my adoption mother told me that she didn't want me to embarrass her sons.

Towards the end of 1978, I was running away from home and truanting from school. I was sick of my adoption family. I hated my adoption mother. I wanted them to send me back to the orphanage. I wanted my real mother. I didn't belong where I was. I just wanted to go back to where I believed my mother would come and get me one day. I committed my first offence at 11. I was trying to make my adoption family hate me so they'd send me back. I ended up back at the orphanage. When the welfare officer questioned me about my behaviour, I told him that I wanted to have my real family. He kept telling me that it was impossible. I didn't believe him and persisted in asking for many years to follow.

After a few months at the orphanage I was getting blamed for things that I wasn't doing. On one occasion I was blamed for starting a fire in the building. I never did it. They wanted to foster me with white families. I ran away. I was sick of getting into trouble and I was scared about being fostered. I just wanted my real family. I couldn't understand why they wouldn't take me home.

[After some months on the streets in Brisbane, at the age of 13 Tony was taken into care as uncontrollable.]

While at Wilson [youth centre] I felt like I was in a prison. In my mind, I hadn't done anything wrong to be sent there. I spent months asking what I'd done wrong. They told me that I was uncontrollable. I used to cry a lot. I kept asking the social workers to find my real mother. It was the same old story.

I ran away a few times. When I escaped I used to go to a family I'd met. They had aboriginal foster kids. I used to like going there. I felt that I had something in common with these kids. Everyone there liked me. The parents there treated me as if I was one of

their own kids. I ended up getting caught and sent back to Wilson. I was depressed again. The family who I'd stayed with made several attempts at fostering me. The welfare department blocked all attempts. I didn't know how to feel. All this time, the welfare couldn't wait to put me into a home. Then when I found a family that I wanted to stay with on my own, they wouldn't allow it. It was like nobody cared what I wanted. It was as if I had no say in anything. It was being arranged for me to be adopted again by another family. When I became aware of this, I did what I was beginning to do best, run away. This made matters worse. People were beginning to give up on me. I was finally sent to Boys Town [aged nearly 14].

I ran away from Boys Town several times. On one occasion that I ran away, I caught a train back up to Townsville. One of the passengers – a woman travelling with her boyfriend – took care of me. We got on real good. She had brown skin just like me. This woman kept asking me questions about who I was and where I came from. I was a runaway, so I was restricted to how much I could say, in fear of being caught. I was in love with this woman. I remember falling asleep with my head on her lap. We talked each other to sleep.

We talked each other to sleep.

The following day we arrived at Townsville station. She asked me if I had anywhere to stay. I told her no. Her and her boyfriend invited me to stay with them. I stayed only two days with them. She washed my clothes and made sure that I had a good feed. On the second day she went out with her boyfriend. I got jealous of her boyfriend and ran away when they left.

Until the age of 28 I wasn't aware just how close I was to finding my mother.

Later the next day I was arrested by the Townsville police. [Tony was returned to Boys Town where he stayed until he turned 15. He then found employment.]

It was a difficult time in my life. It was then that I was mature enough to realise the full ramifications of what everything was building up to. I started to convince myself that I was destined to spend the rest of my life alone. I often saw old people in the street, who were obviously homeless, and knew that that was how I was going to end up. I used to get really depressed about that. Those thoughts and feelings stayed with me for a very long time.

I was never sent back to my family. [When Tony was aged 17 his welfare officer recommended reintroduction to his birth family. The recommendation was ignored.] Nobody cared about the pain that I was feeling. So I tried my best to hide from it. Antisocial behaviour seemed the only way that I could deal with my problems for years to follow. I've been a loner since then.

[At 16 Tony stole a car from the family with whom he was staying and left the State. At 18 he committed a burglary and spent 10 months in prison.]

When I got out I started making contact with my adoption family by phone. It was becoming positive. My adoption mother refused me permission to go home to them

when I got my holidays from work. She claimed that, '… dad doesn't think it's a good idea'. That hurt me a lot. A year later I tried to contact them again. This time my adoption father answered the phone. I rang up to wish my adoption mother a happy birthday. When I asked, '…is mum there?', I was told that she had died two months earlier. It devastated me. While I was on the phone, I made it clear to my adoption father that I loved him. I felt terrible because I never got to say it to my adoption mother. I'd spent the previous two years trying to make amends.

My life fell apart once again. I became a drug addict and started to abuse alcohol and everyone around me.

[Tony was soon convicted of robbery with wounding in company. He is serving a 14 year sentence. Link-Up (Qld) located his family in 1993. His mother had died 9 years earlier. She had been the woman on the train.]

Confidential submission 82, Queensland.

21 Child Welfare – Care and Protection

> The way present legislation responds … is merely allowing Aboriginal community organisations to become part of the process … There is no support for the development of genuine Indigenous child care or child welfare as, for instance, there has been in the United States under the jurisdiction of the *Indian Child Welfare Act* (Nigel D'Souza, SNAICC, evidence 309).

Overview

Indigenous children throughout Australia remain very significantly over-represented 'in care' and in contact with welfare authorities. Their over-representation increases as the intervention becomes more coercive, with the greatest over-representation being in out-of-home care. Indigenous children appear to be particularly over-represented in long-term foster care arrangements. A high percentage of Indigenous children in long-term foster care live with non-Indigenous carers.

Over-representation of Indigenous children in care

The following table provides an overview of the over-representation of Indigenous children in substitute care in 1993. The highest rate of placement for Indigenous children was in Victoria and the lowest was in the NT. On average Indigenous children were seven times more likely to be in substitute care than their population share would indicate. Indigenous children comprise only 2.7% of Australian children but they were 20% of children in care in 1993.

Indigenous children in care in 1993

	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Total
Total children in care	135	4,694	123	2,112	1,195	498	2,504	1,102	12,363
Indigenous children in care	12[b]	829	52	615	293	55	300[c]	353	2,419
% Indigenous children in care	8.9	17.7	42.3	29.1	17.0	11.0	12.0	34.9	19.6
% child population who are Indigenous[a]	1.0	2.1	33.7	2.0	2.0	3.5	0.7	4.3	2.7
Indigenous children in care per 1,000 aged 0-17 years	15	26	3	19	28	13	40	18	20
Non-Indigenous children in care per 1,000 aged 10-17 years	1.6	3.0	2.3	2.6	3.3	3.9	2.2	2.2	2.7

a Figures for the Indigenous child population in each State are taken from the Australian Bureau of Statistics (1993b *1991 Census of Population and Housing, Aboriginal Community Profile* ABS Cat. No. 2722.0). The Aboriginal out-of-home care and census figures could well be underestimates because of

missing information in both of these counts. For example, no information was available on Aboriginal/non-Aboriginal status for 19.5% of the NSW population of children under care orders.

b Estimated from the percentage of children referred to care by the statutory agency.

c The Victorian Department estimates that there are approximately 300 Aboriginal children in specialised, Aboriginal managed out-of-home care programs, with the possibility of 'some others' with other agencies.

Indigenous children are much more likely than others to be 'notified' to a welfare department on the ground of abuse or neglect as the following table shows.

Abuse and neglect notifications, investigation, substantiation and orders, 1995-96

(number per 1,000 children)

	NSW	Vic	Qld	WA	SA	Tas	ACT[a]	NT
	55	90	42	28	62	27	104	10
	16	22	14	7	18	19	15	9
Finalised investigations								
Indigenous children			48	61	34	22	51	12	85	10
All children			14	12	10	5	14	9	11	5
Substantiations								
Indigenous children			30	32	15	9	25	3	48	6
All children			8	6	4	2	6	2	5	4
Care and protection orders, 30/6/96								
Indigenous children			17	16	19	8	na	8	26	2
All children			3	3	3	2	na	3	3	2

Source: Government Service Provision 1997 Table 10.1 page 536.

a The ACT rates are over-estimated due to the method of calculating the Indigenous population of the Territory.

Note: The table does not indicate what proportion of the children were in substitute care.

Indigenous children are more likely than non-Indigenous children to be removed on the ground of 'neglect' rather than 'abuse'. The graphs below contrast the proportions of Indigenous children and all children on care and protection orders nationally in 1992-93 on the grounds of neglect, sexual assault, emotional abuse and physical abuse. Substantiated cases of neglect constituted 40% of all cases for Indigenous children compared with 23% for all children.

There is broad agreement among commentators, State and Territory government departments and Indigenous organisations that Indigenous children who must be removed

from their families in their best interests are best cared for within an Indigenous cultural environment. There is also broad agreement that Indigenous people have a right to look after their own children and thereby sustain their own culture. This right is expressed by most Indigenous organisations as a right to self-determination and is variously expressed by government departments as either a right to self-determination or a right to self-management. In spite of this, Indigenous children continue to be removed from their families at a disproportionate rate and continue to be placed into non-Indigenous environments including group homes and foster families (Gilbert 1993, Thomas 1994, Dingwall et al 1983).

Categories of substantiated abuse and neglect involving Indigenous children

Categories of substantiated abuse and neglect involving all children

Source: Angus and Zabar 1995 based on 1992-93 figures provided to WELSTAT

There is also a general recognition that the underlying causes of the over-representation of Indigenous children in welfare systems include the inter-generational effects of previous separations from family and culture, poor socio-economic status and systemic racism in the broader society. These causes combine to produce cultural differences between welfare departments and Indigenous communities, substance abuse, violence, poor nutrition, alienation from social institutions including the education system, family services and the criminal justice system, limited and poor housing options and a loss of hope, particularly among younger people.

In this chapter we evaluate the role of government welfare departments and children's care and protection legislation in the continuing separation of Indigenous children from their families and communities and in addressing the underlying issues identified.

Australian welfare systems

Powers

In each State and Territory children's care and protection legislation authorises welfare departments to investigate allegations of child abuse and neglect and to respond with preventive measures and intervention. The grounds for intervention and removal in each jurisdiction are similar and cover categories of neglect and abuse and irretrievable breakdown in parental relationships with the child.

In all jurisdictions the policy is to work with the family in such a way that the child will not have to be removed or, if removed, can be rapidly returned. Bringing a care application is a last resort. Preventive strategies include provision of intensive home-based care, respite care and attempts at consensual arrangements where a problem is detected. Parents may make voluntary undertakings and these may be reached in the context of a family conference. The family conference has now become an established

part of welfare practice. The format, formality and range of parties involved in these conferences vary considerably. Family conferences are usually mediated by a social worker from the welfare department. They may include the child, parents, extended family, an Indigenous child care agency and other professionals such as health workers and the police.

Where removal of the child cannot be avoided, family reunion is the primary objective in all jurisdictions. Where this is totally unfeasible, family contact at least should be maintained.

In all jurisdictions it is necessary to obtain a court order if a child is to be removed from the family under child welfare legislation, although temporary removal without a court order is lawful in emergencies. Care and protection applications are usually brought by the welfare department or the police. The proceedings take place in the Children's Court where the order made must be in the 'best interests of the child'. If the court finds allegations of neglect or abuse substantiated, a range of orders is available including parental undertakings, alternative care and supervision orders. Before placing a child in substitute care the court obtains an assessment report. At this point, in the case of an Indigenous child, the court may receive formal advice from an Aboriginal and Islander child care agency. Making the child a ward of the State is the last resort option.

Welfare departments fund family based services such as intensive home-based care and respite care. They provide and fund placement services for children found to be at risk. In all jurisdictions departmental policy is to deinstitutionalise out-of-home care, look for foster care options and, where institutions are used, support small home-like environments. Several out-of-home care options are commonly used including foster care, family groups homes, hostels and kinship care.

Philosophy

Many children suffer abuse or neglect. The State or Territory has an obligation to ensure their well-being and protection. The nature of the official response, however, has varied over time according to prevailing philosophies and ideologies.

In Western terms, welfare as a form of child saving has its origins in late 19th century middle-class concerns about the 'dangerous' classes, single mothers and working-class families in industrialised regions of England.

> Many child-savers saw poverty, destitution and the illegal activities of the lower classes as signs of biologically determined character defects. Under the influence of Lombroso, Galtin, Spencer and Darwin, the child saving movement became a moral crusade, seeking to correct and control the poor …

> The system [child welfare system] has been predicated on the view that children needed to be rescued from those parents who did not have the innate qualities, right values, correct attitudes

> and appropriate behaviours considered to be necessary for parents to act in a 'socially acceptable' way (Jamrozic and Sweeney 1996 pages 26 and 90).

In the 1970s the expectation that governments provide greater social equality and the recognition that inequalities underlie social problems gained currency. These understandings provoked a shift within welfare departments from protection to prevention and assistance. In the 1980s the re-emergence of a focus on abuse, particularly sexual abuse, in welfare work facilitated an ideological slip back into the notion of welfare workers as saviours of children from morally deficient individuals and families (Jamrozic and Sweeney 1996 page 98).

We have seen that Indigenous families were historically characterised by their Aboriginality as morally deficient. There is evidence that this attitude persists. A focus on child-saving facilitates blaming the family and viewing 'the problem' as a product of 'pathology' or 'dysfunction' among members rather than a product of structural circumstances which are part of a wider historical and social context (Gilbert, Thomas, Dingwall et al 1983). Indigenous families face both race and class prejudice among many welfare officers.

Indigenous efforts to retain their children

Indigenous communities have fought consistently to keep control over their children. Resistance to separations has taken various forms.

> There are no studies solely devoted to opposition by Aboriginal people to the removal of their children. It is a history that demands to be written, one that would provide a fascinating and tragic account of a struggle that has been at the core of the battle for survival of Aboriginal people. It is a subject that would highlight the role of Aboriginal women – and men in the protection of the only guarantee for their survival when they had little or no material possessions and negligible civil rights. Resistance moreover, did not occur in confrontational ways alone; more often than not it was through evasive means, given the absolute lack of power of Aboriginal People (SNAICC submission 309 page 4).

The formation of national Aboriginal organisations in the 1960s and 1970s followed localised struggles for Indigenous peoples' rights, including the rights of families and children. The effects of Aboriginal separations and placement with non-Aboriginal adoptive and foster carers were brought to general public attention at the first, second and third Australian Adoption Conferences in 1976, 1978 and 1982 and at the First Aboriginal Child Survival Conference in 1979.

During the 1970s the first Aboriginal and Torres Strait Islander Child Care Agencies (AICCAs) were established. In NSW the Aboriginal Children's Services was formed in 1975. Delegates at the First Australian Adoption Conference in 1976 encouraged the formation of the Victorian Aboriginal Child Care Agency.

> The Agency is geared to service delivery and community development. It aims at ultimately providing an autonomous community centred service for children, based on the notion that there already exists within the Aboriginal community, multiple and diverse resources which can be

> integrated into the Aboriginal Child Care Agency Program … Because it is an Aboriginal community organisation, the Aboriginal Child Care Agency can be easily sensitised to and reflective of the needs of Aboriginal families and children. This is vital as a breakdown between State welfare delivery and the participation of Aboriginal people, suspicious of programs stigmatised by child removal, has paralysed welfare operations. The Aboriginal Child Care Agency then, bridges this gap and operates outside the fear of 'Welfare' (Jackson 1979 page 3).

Aboriginal and Islander Child Care Agencies and Multi-functional Aboriginal Children's Services (MACS) are the two main Indigenous, community based, child care service providers in Australia. There are now approximately 100 such services across Australia. AICCAs fulfil a number of roles including provision of preventive services, involvement with children and youth under care and protection orders and provision of foster care and adoption services. MACSs provide services for 0 to 5 year olds including health services, child care, respite care, nutritional meals and play groups in one location. 'MACS offers a vital opportunity for early intervention and preventative assistance to take place' (SA Aboriginal Child Care Agency submission 347 page 27).

Welfare efforts to include the needs of Indigenous clients

State and Territory welfare departments have recognised that a very high proportion of their clients are Indigenous families and children. The historical and socio-economic context of Indigenous families and children and the nature of welfare practice leave Indigenous children at greater risk than any others of removal from their families and communities. In evidence to the Inquiry State and Territory governments stressed the need for Indigenous communities to exercise greater control over their children's welfare.

> The essence of self-determination in this context is an understanding that only Aboriginal people can find solutions to the problems which confront them, and that Aboriginal people have the right to make decisions concerning their own lives and their own communities and the right to retain their culture and develop it.

> Collaborative decision making, co-operation and consultation between the Department of Families, Youth and Community and Aboriginal and Torres Strait Islander agencies are key themes guiding current protection policy and practice. (Queensland Government final submission page 18).

The NSW Government stated that its policy on Aboriginal Affairs 'is based on a philosophy of Aboriginal self-determination and will promote Aboriginal esteem in both Aboriginal and non-Aboriginal communities' (NSW Government interim submission page 111).

> It is considered necessary that an Aboriginal program have the power to name its own components … For example the concept of Foster Carer is not readily translated from mainstream to Aboriginal society. Aboriginal people do not think of themselves as foster carers for children of their own kinship or other Aboriginal children. There are also some distasteful associations

> with terms such as foster care, foster parents etc … (WA Government submission Attachment 4 page 12).

Similar statements are found in each State and Territory Government submission (SA Government interim submission page 32, Victorian Government interim submission page 32, Tasmanian Government final submission page D-38, NT Government interim submission pages 58-9; see also ACT Government submission page 4).

The rhetoric of self-management, however, has not been matched by practical measures. The administrative, executive and judicial decision making about Indigenous children's welfare are controlled by child welfare authorities. Although Indigenous organisations in some jurisdictions have a right to be consulted, this typically occurs only at the final stages of decision making about a child, when recommendations are being made for a placement in substitute care.

> In general, my impression is that the welfare authorities are most willing to encourage Aboriginal people to participate in ways that do not involve a major shift of power and responsibility (Chisholm 1985 page 8).

Decision making about Indigenous children's well-being falls well short of accepted notions of self-determination. Moreover, it continues to fall short of government claims of 'partnership' and 'collaboration'.

Welfare departments have made changes to their practices in an effort to reduce cultural biases leading to Indigenous over-representation. One common strategy has been to establish an Aboriginal section of the department. This strategy has been criticised on the ground that the section is ' tacked on to the system, without altering its philosophy, structures, practices or processes' (Thomas 1994 page 40).

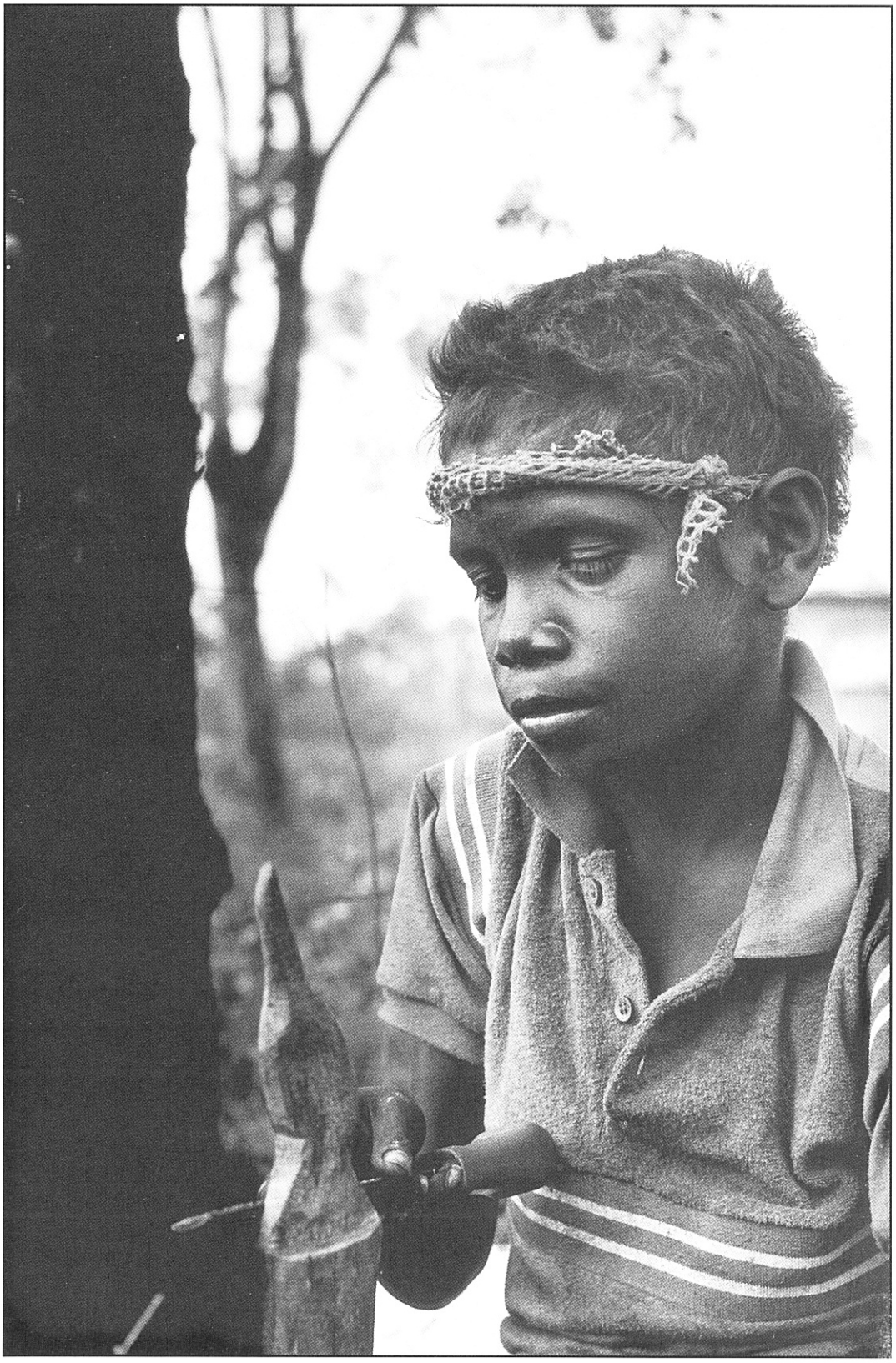
Accompanying the establishment of Aboriginal sections have been increased employment of Indigenous staff and an attempt to enhance the cultural sensitivity of existing staff and procedures. Each of these strategies also has its critics.

Indigenous organisations criticise the incorporation of Indigenous staff into welfare departments on the ground that these talented people cannot simultaneously be community resources. Public service employment inhibits the capacity of Indigenous staff to represent and advocate for their communities. Funding to employ a community member as a community development worker would frequently be preferred. Ideally both should be ensured as State and Territory administrations have a responsibility to provide appropriate and accessible services to all clients.

During the 1980s and 1990s there has been growing awareness of the problems of cross-cultural service delivery and of the need for cross-cultural training. However, the goal of culturally appropriate service delivery remains elusive. Policy statements from head office do not translate into practice in the field. Popular cross-cultural training models have limitations.

> Reliance on a view of culture as fixed rather than dynamic, and the tendency to stereotype whole groups by virtue of their ethnicity are the drawbacks of the simple pluralist model. Its promotion in the late 1970s and through the 80s – a highly successful enterprise – was largely achieved via a decade of so called 'cultural awareness' training, achieved through a 'cultural differences' approach. This is a process whereby you come to understand different ethnic groups by learning how they behave, eat, celebrate, raise their children and bury their dead. All these practices are quaint, interesting or even unbelievable: ultimately however, they serve to underline distinctness. This approach encouraged, even depended for its success, on the kind of generalisation that also leads to stereotyping of a negative kind (Kalowski 1992 page 4).

The single most significant change affecting welfare practice since the 1970s has been the acceptance of the Aboriginal Child Placement Principle.



Courtesy Heide Smith.

Kevin Portamini, Nguiu, NT

Aboriginal Child Placement Principle: State and Territory review

All Australian jurisdictions now recognise, either in legislation or policy, that, when Aboriginal or Torres Strait Islander children are to be placed in substitute care, they should be placed within their own culture and community where possible. Each jurisdiction also recognises that Indigenous people should be consulted about placements.

In four of the eight jurisdictions the Aboriginal Child Placement Principle (ACPP) is established in legislation. In two jurisdictions the involvement of Indigenous organisations, notably Aboriginal and Islander child care agencies (AICCAs), is also defined by legislation.

[Unless otherwise stated the information and data detailed below were provided by governments in submissions to the Inquiry. For ease of reference we include recent data on Indigenous children in care for each State and Territory.]

New South Wales

Under the *Community Welfare Act 1987* (NSW) the Director General of the Department of Community Services has ultimate power to place removed children.

Section 87 of the *Children (Care and Protection) Act 1987* prescribes the ACPP's preferred order of placement. If the child cannot remain with his or her current carers placement with the extended family as recognised by the child's community must be explored. If that is not possible, then placement with another Aboriginal person from the child's community should be explored. If that is not possible, then placement with a member of an Aboriginal family residing in the vicinity of the child's usual home should be explored. Finally, if none of these options is practical or if they would be detrimental to the welfare of the child, placement with a person considered suitable by the Director General may be made. The last option is only to proceed after consultation with the child's extended family and such 'Aboriginal welfare organisations' as are appropriate in relation to the child.

Indigenous children constitute 2.1% of the children in NSW yet they made up between 7.7% and 9% of notifications for neglect or abuse over the period from 1991-92 to 1994-95. Indigenous children have been between 3.5 and 4.5 times over-represented in notifications to the Department of Community Services. Indigenous children make up 21.3% of children in substitute care, approximately eleven times over-represented. The large increase in over-representation from the point of notification to substitute care orders is consistent with national trends.

Indigenous children in substitute care may still be placed in non-Indigenous care as the following table shows. However, there has been a recent quite substantial reduction of the use of non-Indigenous care for Indigenous children in NSW.

Non-Indigenous care for Indigenous children in care: NSW

	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96
% in non-Indigenous care	25.2	23.1	19.7	17.5	17.1	10.0

South Australia

In South Australia the ACPP is set out in section 5 of the *Children's Protection Act 1993*. This provides that no decision or order about where an Indigenous child is to reside can be made until the department has consulted with a recognised Indigenous organisation. The Minister is required to consult with the Indigenous communities before 'recognising' an Indigenous organisation. These organisations are then gazetted for the purposes of participation in decisions under the Act. By 1995 22 organisations had been gazetted. The Act stipulates that not only must a recognised organisation be consulted but also that proper consideration must be given to its submissions. The venue and nature of the consultations are to be as 'sympathetic to Aboriginal [or Torres Strait Islander] traditions as is reasonably practicable'. Family care meetings are provided for in the Act with a view to involving families in decision making about the care and protection of their children at risk (sections 27 and 28). A recognised organisation will also be involved.

> Section 5(2) A person or court, in making any decision or order under this Act in relation to an Aboriginal or Torres Strait Islander child, must, in addition to complying with the requirements of section 4, have regard –
>
> (a) to the submission made by or on behalf of a recognised Aboriginal or Torres Strait Islander organisation
> consulted in relation to the child; and
>
> (b) where there has been no such consultation – to Aboriginal traditions and cultural values (including kinship rules) as generally expressed by the Aboriginal community, or to Torres Strait Islander traditions and cultural values (including kinship rules) as generally expressed by the Torres Strait Islander community, as the case may require; and

(c) to the general principle that an Aboriginal child should be kept within the Aboriginal community and a Torres Strait Islander child should be kept within the Torres Strait Islander community.

The 'requirements of section 4' are to be observed when dealing with all children. They are that the safety and best interests of the child must direct all decision making under the Act, that serious consideration be given to keeping a child within his or her family and neighbourhood, preserving their religious, cultural, racial and ethnic identity and, taking into account the child's age and maturity, that serious consideration be given to his or her opinion, among other matters. Section 42 also places weight on preserving and enhancing a child's racial and cultural identity.

The order of placement preferences is set out in a departmental Practice Paper.

- In the child's home locality, with members of the extended family, or the same tribal language group, or another Aboriginal family,
- In a family group home or hostel run by an Aboriginal family, in the child's home locality for short term placements,
- In a different locality, with members of the extended family, or the same tribal language group, or another Aboriginal family,
- In a foster home, family group home or hostel run by a non-Aboriginal family which is sensitive to the special needs of Aboriginal children, preferably in the child's home locality (Practice Paper December 1993 page 1).

Indigenous children constitute less than 2% of all children in South Australia yet they constitute around 8% of children about whom the department is 'notified' (that is, about whom it is alleged they have suffered abuse or neglect) each year, a fourfold over-representation.

Notifications of SA Indigenous children

1992-93	1993-94	1994-95
7.1%	8.2%	8.0%

The extent of Aboriginal children's over-representation increases with further interventions after notification. Aboriginal children constitute 14% of departmental case loads, 10% of substantiated abuse cases and 17% of children under the guardianship of the Minister (that is, State wards). As at June 1995 Aboriginal children constituted 17.1% of all children in substitute care.

A study of Aboriginal children in long-term foster care in SA in 1988 found that at least 25% of all children in this care were Aboriginal (although departmental records appeared incomplete). Just over one-half (54%) of Aboriginal children in long-term care

were placed with non-Aboriginal foster parents and 51% had been in a long-term placement for four or more years. Just over one-third (37%) of the children in non-Aboriginal foster care were experiencing some negative or bad feelings about their Aboriginality whereas two-thirds (65%) of non-Aboriginal foster parents did not perceive racism as an important problem for their foster child (SA Aboriginal Child Care Agency Forum Inc 1988 pages 9, 10 and 17).

South Australia is still lagging behind national rates in the utilisation of Indigenous carers for Indigenous children in out-of-home care. Only 67% of children in such care were placed with Indigenous carers (*Government Service Provision* 1997 page 554).

Northern Territory

Like the NSW legislation, the NT *Community Welfare Act 1983* includes a presumption in favour of the ACPP. Section 69 obliges the Minister to ensure that every effort is made to place the child within his or her extended family. If this placement cannot be arranged to the Minister's satisfaction, placement with Aboriginal people who have the correct relationship with the child in accordance with customary law is the second preference.

Alternatives may be considered only where a placement according to either of these preferences would endanger the welfare of the child. At this stage the child's parents, other people with responsibility for the child's welfare under customary law and Aboriginal welfare organisations as are appropriate in the case of the particular child must be consulted. The aim is to find a placement that is in the best interests of the welfare of the child. In addition to consultations, the department must take the following factors into consideration in selecting a placement,

- preference for custody of the child by Aboriginal persons who are suitable in the opinion of the Minister,
- placement of the child in geographical proximity of the family or other relatives of the child who have an interest in, and responsibility for, the welfare of the child, and
- undertakings by the persons having the custody of the child to encourage and facilitate the maintenance of contact between the child and the child's own kin and culture.

The NT welfare department requires workers to apply the ACPP in all cases and to prioritise cultural continuity. The Act further obliges the Minister to provide support and assistance to Aboriginal communities and organisations for the welfare of Aboriginal children and families, including the training and employment of Aboriginal welfare workers (section 68). However, no powers or functions under the Act are delegated to Aboriginal organisations. The final decision about placements rests with the welfare department alone.

The ACPP has been legislatively recognised for over a decade in the NT. It is the jurisdiction with the lowest level of over-representation of Aboriginal children in substitute care.

Victoria

Decisions about children's welfare and child placement in Victoria are made in a process known as 'case planning'. The *Children and Young Persons Act 1989* (Vic) requires the welfare department to involve 'relevant members' of the child's Aboriginal community in case planning (section 119(1)(m)(i)).

Placement of an Indigenous child must be with a member of the child's community unless such a person is not reasonable available. In that case the child is to be placed with another Aboriginal person.

In the event that no Aboriginal carer is reasonably available for the child, a non-Indigenous carer may be selected. The approval of an Aboriginal agency must be obtained before such a placement can proceed (section 119(2)). As in South Australia, Aboriginal agencies are accredited for the purposes of the Act. The Victorian Aboriginal Child Care Agency (VACCA) is the most notable example.

In 1992 a protocol between the Department of Health and Community Services (CSV) and VACCA was signed. It reiterates that CSV has statutory responsibility in relation to child protection services for all children in Victoria under the age of 17 years. While the protocol does not delegate authority to VACCA, it affirms VACCA's right to be consulted and involved from the point of notification (that is receipt of an allegation regarding an Indigenous child's well-being) and that VACCA should be invited to all case conferences.

VACCA must be involved in all significant decisions made about an Aboriginal child. The Act lists the following significant decisions:

- decisions made in the course of investigations conducted after a notification is reviewed,
- decisions made in the course of preparing a protection report or disposition report,
- decisions made in assessing whether or not a protection application should be made,
- decisions relating to the placement or supervision of the child whether made before or after a protection application or protection order is made, and
- the holding of meetings for the purpose of formulating a case plan (*Children and Young Persons Act 1989* section 3).

No Aboriginal child is to be placed without VACCA's involvement in the decision although the department retains final decision making power. However, the Inquiry was told that VACCA is frequently not involved in decision making until very late in the process, sometimes only after the child has been in substitute care for more than two years (VACCA evidence 335).

The protocol also provides for CSV to contract out to VACCA the case management of an Aboriginal child on a protective order on a case by case basis. It also provides for mutual co-operation in training staff and a dispute resolution mechanism.

In addition to approving or vetoing the placement of an Indigenous child with a non-Indigenous carer, the agency has a role in the court process. A court cannot make a permanent care order for an Aboriginal child until it has received a report from an Aboriginal agency (section 112). VACCA advised the Inquiry that it is very reluctant to recommend permanent placements because they are contrary to the objective of family reunion (evidence 335). The court, however, is not bound to follow the advice of the agency.

Indigenous children constitute approximately 0.8% of all children in Victoria. In 1994 Indigenous children made up 8.7% of CSV clients. In 1994-95 Aboriginal children were three times more likely to be notified to the department than other children and as at June 1995 they were five times more likely to be on a protection order. As at 30 June 1994 Aboriginal children were twelve times more likely to be involved with placement and related support services than other children. Indigenous children are seriously over-represented at all stages of intervention and their rate of over-representation increases as the degree of intervention increases.

The rate of Victorian Indigenous children's over-representation in substantiated cases of neglect and abuse is similar to the national average for all children. However, the over-representation of Indigenous children in out-of-home care in Victoria far exceeds the national average for both non-Indigenous and Indigenous children in out-of-home care. The average out-of-home placement rate for children in the general population is 2.7 per 1,000. The rate of placement of Victorian Indigenous children in out-of-home care was 40 per 1,000 (Bath 1994 page 7).

Almost 80% of Indigenous children in out-of-home care in Victoria were placed with Indigenous carers at the end of June 1996 (*Government Service Provision* 1997 page 555).

Western Australia

Approval for the selection of placements for Aboriginal children removed from their families rests with the Director General of the State welfare department in WA. The ACPP is not specifically spelt out in legislation or policy but is covered by a general statement, inserted in 1984, under the heading of 'Substitute Care Policy in Relation to Aboriginal Child Placement'. The 'principles of Aboriginal children's welfare' are said to recognise the importance of customary roles and responsibilities of the Aboriginal extended family in child rearing. In pursuit of this objective, the maintenance of the child within his or her own family and community is to be the first priority of the department. The Principles are,

- … To acknowledge the importance of maintaining and promoting the relationship between the child, the parents, guardians or persons having the custody of the child (and where appropriate, the extended family of the child).

- To maintain the continuity of living arrangements in the child's usual ethnic and social environment.

- To consult with the child's parents and other persons with responsibility for the welfare of the child in accordance with Aboriginal customary law; and such Aboriginal organisations as are appropriate in the care of the particular child.

- To encourage Aboriginal control in matters relating to the welfare and care of Aboriginal children and practice sensitivity and have respect for Aboriginal cultural issues in providing child welfare services to Aboriginals.

The policy directs the department that '[o]ther than in serious crisis situations, child removal should be a planned and co-ordinated action based upon a case conference which includes consultation with relevant Aboriginal organisations/community persons'.

The policy offers no guidance on the order of priority for placement decisions or on the weight to be placed on cultural factors. While the department claims that the ACPP is put into practice through its close working relationship with Aboriginal child care organisations, the Inquiry received evidence of strained relations or non-existent relations in some areas (ALSWA submission 127 page 324, Broome and Derby Working Groups submission 518 page 3, Kimberley Land Council submission 345 page 28).

Indigenous children constitute approximately 4.3% of children in WA. In June 1994 they constituted 34% of all children in care. They are therefore approximately eight times over-represented in care orders.

Thorpe analysed 325 cases arising in WA between March and June 1987. He found that Indigenous children represented 23% of all neglect/abuse notifications and 32% of substantiated allegations. Further, substitute care was the outcome in substantiated cases for 52.5% of Aboriginal children compared with 22.5% of other children. 'The more coercive and intrusive the child protection operation becomes, so the over-representation of Aboriginal children increases' (Thorpe 1994 page 161).

WA recently reported that about 85% of Indigenous children in out-of-home care in the State were placed with Indigenous carers at the end of June 1996 (*Government Service Provision* 1997 page 555).

Queensland

The ACPP was adopted as the policy of the Queensland welfare department in 1987, having been adopted in draft form in 1984. If placement in accordance with the ACPP is not possible then arrangements which allow for a continuing relationship with parents and community should be developed. O'Connor reviewed the implementation of the Queensland policy for the Royal Commission into Aboriginal Deaths in Custody. He found ignorance of the policy and/or of its significance among departmental staff and

identified an urgent need for statutory recognition of the ACPP and for the development of Aboriginal care and support systems. The relevant legislation, the *Children's Services Act 1965 (*Qld), is currently under review.

Indigenous children constitute approximately 2% of Queensland children. The table below illustrates the proportion of children on care and protection orders who are Indigenous.

Indigenous children on care and protection orders in Queensland

1992	1993	1994	1995
27.4%	27.2%	26.4%	25.6%

Indigenous children were approximately 13 times over-represented in care and protection orders in Queensland between 1992 and 1995. Indigenous children's representation in substitute care is higher again with Indigenous children constituting 29.1% of all children in substitute care.

Tasmania

The Aboriginal Child Placement Principle is set out in the Tasmanian Family Services Operational Manual 1993. The Manual uses the wording adopted by the 1986 Social Welfare Ministers' Conference.

> When a child is to be placed outside his/her natural family, the Family Support Worker in the Aboriginal Centre, Family Support and Care Program must be contacted prior to placement.
>
> The order of priority of placement should be:
>
> A member of the child's extended family.
>
> Other members of the child's Aboriginal community who have the correct relationship with the child in accordance with Aboriginal customary law.
>
> Other Aboriginal families living in close proximity.
>
> This order of priority of placement is to be followed in the absence of good cause to the contrary at all times.

Departmental policy in Tasmania is to provide resources and engage the assistance of community organisations in the implementation of the ACPP. The Tasmanian Aboriginal Centre runs the Aboriginal Support and Care Program mentioned in the Operational Manual. The Centre advised the Inquiry that the department contravenes the

policy by failing to notify it of Aboriginal children in care (submission 325 page 13).

Indigenous children constitute approximately 3.8% of the child population in Tasmania. The following table shows Indigenous children made wards of the State as a proportion of total children made wards of the State.

Indigenous State wards in Tasmania

1991-92	1992-93	1993-94	1994-95	1995-96
7.6%	9.4%	17.9%	10.4%	3.4%

In 1995-96, for the first time, Indigenous children were not over-represented in wardship statistics. At the same time, however, as at June 1996 Indigenous children were still over-represented among all children on care and protection orders (8.4%).

ACT

Although the ACT Government supports the ACPP in principle, the ACPP is not included in the *Children's Services Act 1986* (ACT) which governs fostering. The legislation is currently under review and the Government expressed its commitment to include the ACPP in the new legislation (interim submission page 24). Neither the ACT welfare department nor any of the five non-government fostering services has been successful in recruiting any Aboriginal or Torres Strait Islander foster carers.

Indigenous children constitute approximately 1% of all children in the ACT. In 1994-95 Indigenous children constituted approximately 4.7% of abuse and neglect notifications and 7% of care and protection orders. This increasing over-representation with level of intervention is consistent with patterns in other jurisdictions.

Evaluation of the ACPP

Recognition of the ACPP has marked a great shift in child welfare practice. Indigenous people, however, cannot control its implementation. They are not assisted or permitted to determine the destiny of their children.

Incomplete legislative recognition

Despite government acceptance, the ACPP is still not legislatively recognised in Tasmania, WA, Queensland and the ACT. Legislative recognition has been recommended to governments on numerous occasions and in a range of reports and forums including the Australian Law Reform Commission report *The Recognition of Aboriginal Customary Laws* (1986). In 1986 the Council of Social Welfare Ministers' Conference passed a resolution supporting the ACPP. Recommendation 54 of the Royal Commission into Aboriginal Deaths in Custody called for legislative recognition of the ACPP and the role of AICCAs and all State and Territory governments have agreed to implement it. Only two States, Victoria and South Australia, have done so in full.

Inadequate consultation with AICCAs

The widespread acceptance of the ACPP has led to greater recognition of the importance of Indigenous children's cultural needs and to improved consultation processes with Indigenous people and agencies. In all jurisdictions Indigenous agencies in theory have an opportunity to advise on child welfare matters affecting Indigenous children. This advice is given, however, within an established bureaucratic framework that has its own requirements and approaches.

> The legislative base which underpins the functions of departmental officers in relation to child abuse is neither an adaptation nor a reflection of Aboriginal Traditional law. Thus, the very basis of definitions of responsibility of individuals involved in ensuring child protection is culturally biased and should be recognised as such (Harrison 1991 page 37).

The extent and style of consultation varies across jurisdictions. In Victoria, legislation acknowledges the importance of Indigenous organisations' advice and their right to offer an opinion. VACCA has a right to veto placement of an Indigenous child with a non-Indigenous carer and to veto the making of an order for permanent placement.

In South Australia the impact of the inclusion of Indigenous agencies is limited by the minimal requirement that decision makers need only 'have regard' to their opinions. Further, the Minister makes the final decision on which Indigenous organisations are to be gazetted.

In most jurisdictions the identity of 'relevant' agencies and the timing and quality of consultations are not specified. The result is that discussions typically occur too late in the decision making process and in too cursory a manner to permit an effective contribution to be made. Indigenous agencies could contribute to working with the family to prevent the child being removed, working with the family to prepare it to receive the child back, locating, training and supporting an appropriate Indigenous foster carer. All of these tasks require at least that the agency is notified as early in the intervention process as possible. AICCAs are further constrained in the effectiveness of their contribution to retaining Indigenous children within their families and communities by limited funding (recognised in ATSIC submission 684 page 106).

Inadequate funding of AICCAs

Funding of AICCAs and MACS remains inadequate. Funding is often from three different sources, State or Territory Governments, the Federal Department of Community Services and Health and ATSIC. While the role of Indigenous organisations is recognised as crucial, funding is often insecure.

> Services to Aboriginal children youth and families are fragmented, deficient in scope and of very limited quantity. Aboriginal families who are attempting to access services find that they may have to travel a large distance to access a particular service (SA ACCA submission 347 page 27).

Each jurisdiction has a process for consulting with Indigenous organisations about funding but Indigenous organisations are not included at all, let alone as partners, in the

decision making. For example in Queensland the funding process enables contributions from Indigenous stakeholders. They are afforded the opportunity to offer an opinion but are not included in the group which makes the decision. They do not decide how money allocated to Indigenous groups will be spent or to whom it will be given (Queensland Government interim submission page 20).

Numerous submissions to the Inquiry from Indigenous and non-Indigenous organisations pointed out that reversing the disproportionate levels of Indigenous children in out-of-home care will require the provision of resources to enable Indigenous communities and organisations to address child neglect and abuse issues in a manner which they consider is relevant to the local context.

> We contend that we have the right to choose our own destiny including control over our children. However we consider that the recent political shift towards non intervention does require a strong word of caution. With the current need to limit public spending, there is a tendency for Governments to 'leave' Aboriginal families and communities to look after their children. We believe it would be a very cruel reform indeed for authorities to cease intervening into the lives of children who really are in need, without providing the urgently needed resources that are necessary to give Aboriginal children the care and attention they require. Government help is required, in an enabling role, providing finance, technical, social, and economic skills so that Aboriginal people can get on with the job (working party representing the welfare department, Manguri, Centacare Cottages and Yorganop, quoted by WA Government submission, Attachment 4 on page 6).

'Partnerships' between Indigenous children's agencies and government departments, where they exist, are unequal partnerships. Departments retain full executive decision making power and the power to allocate resources affecting Indigenous children's welfare. Judicial decision making occurs within non-Indigenous courts. In no jurisdiction are Indigenous child care agencies permitted to be involved in the investigation of an allegation of neglect or abuse. The difference between being allowed to participate and having the right to make decisions is evident in Indigenous communities' experiences of child welfare systems.

Inappropriate evaluation of prospective foster carers

The high percentage of Indigenous children who are placed in substitute care, in combination with ethnocentric foster carer assessment and high levels of poverty in Indigenous communities, has resulted in a great shortage of Indigenous foster carers. The research and data available clearly indicate that numbers of Indigenous children are still being placed with non-Indigenous foster carers.

Submissions to the Inquiry made recommendations to address this problem including increased training and support for Indigenous foster carers, alternative models of out-of-home care such as small cottage homes, more accessible and flexible financial support arrangements for foster carers and the recruitment of foster carers by Indigenous organisations (see for example South Australian Aboriginal Child Care Agency submission 347 pages 31-32, WA Government submission, Attachment 4). It is noteworthy that in the ACT, where no Aboriginal foster care agencies exist, welfare agencies have been unable to attract any Indigenous foster carers.

The assessment of prospective foster carers is commonly the responsibility of government welfare officers.

> Past difficulties in placement practices involving Aboriginal children have arisen due to, in part, the imposition of white middle class standards and limited cultural sensitivity. Until now the selection criteria and the bureaucratic assessment processes have reflected the values of the dominant society which are alien to Aboriginal values and lifestyle (WA Government submission, Attachment 4 page 10).

The process itself operates as a powerful disincentive to Indigenous families to volunteer to be officially recognised, and subsidised, as foster carers.

> … We first started fostering with a church-based organisation. We had to do a 'fostering course' and they checked out our house and the rest of the family as well as a police check. That was a bit scary because you don't know what they are looking for.
>
> They asked about our financial position. We felt that was a bit unnecessary because Aboriginal people always have room for one more child. If we decided to be foster parents then we'll share whatever we have. We've never had a lot – but you can always spread another weetbix around!
>
> They sent a social worker who seemed to assess our mental state. They can't give kids to just anyone – they are just too precious, so we understood this. But it was unnerving, and we think this would probably turn potential foster parents away (quoted by Link-Up (NSW) submission 186 on page 179).

Delegation of assessments to Indigenous agencies is necessary to promote the acceptance of Indigenous carers for Indigenous children who must be removed from their families.

Failure of the welfare approach

Although significant, the ACPP operates within a broader context of government welfare activities which have not been able to accommodate Indigenous perspectives and needs.

Definitions of welfare, well-being, need and neglect

> … this year, in 1996, I was told by one district officer that an Aboriginal family was 'socially impoverished'. What the hell does that mean? No talk about how kind they are to grandkids. It's white values being placed on Aboriginal families once again, without even thinking about it. It's no wonder the gap between Aboriginal and non-Aboriginal continues to widen. You would think that we would have progressed more than this, but in our experience that's not the case (quoted by Link-Up (NSW) submission 186 on page 179).

> The FACS [SA] came to check my grand-kids. If they have muscles they are deemed O.K. The FACS check on the kids' skins, muscles, if they tremble. They said they were O.K. and they left us.

> We don't like Welfare. We don't want to give our kids to Welfare. I only see FACS come, but they don't help Anangu.

> We want the FACS visitor to advise women's Council of when and why they are coming in, so that the whole of AP [the Anangu Pitjantjatjara peoples] can consider the future of kids in question. The entire extended family (Harrison 1991 pages 25-29).

In Aboriginal communities responsibility for children generally resides with an extended kinship network and the community as a whole. Children are important for the future of the culture and their community has a right to their contribution. Raising children in Aboriginal communities commonly involves children living with kin and the extended family taking responsibility for them.

> Children are the responsibility of the entire family rather than the biological parents alone. Many Aboriginal people have been 'grown up' by members of the family other than their biological mother and father and this practice of growing up children is still very widespread today … As a result of the children being encouraged to think and have responsibility at a very early age, they have a large degree of autonomy (Daylight and Johnstone 1986 page 27).

The involvement of extended kin networks, close supervision of very young children, a high level of autonomy among older children and an emphasis on providing comfort and affection rather than discipline are features of Aboriginal child-rearing that are widely recognised in communities in different geographic locations and living different lifestyles. Yolgnu children in the Northern Territory from the age of three begin to transfer their physical and emotional dependence from their mother to their camp group and that between the ages of five and fifteen years they have a great deal of independence (Healy et al 1985). Among the Maran people of the Western Desert 'children are free to do very much as they like most of the time and are given very few explicit instructions by adults' (Tonkinson quoted by Thorpe 1994 on page 161; see also Hamilton 1981, Sansom and Baines 1987).

There is, therefore, a conflict of values. In Western societies a child's absence from the nuclear family over a period of time or regularly is considered abnormal and indicative of a problem within the family. An assessment of Aboriginal children's welfare files created in Victoria in 1980 and 1990 found that while there was a greater willingness to use extended family foster carers in 1990 there was still a lack of understanding and lack of acceptance of extended Aboriginal family relations (Thomas 1994). '[T]he functioning of the extended family within an Aboriginal cultural context is

seen as pathological or dysfunctional' (page 43). One 1990 file note recorded,

> Concerns were expressed around the number of people who may attend the home while the children are present [for Christmas]. Mrs A agreed to request that all extended family members other than her mother, will be asked to leave while the children are there (quoted by Thomas 1994 on page 43).

Thomas concluded from her review of the 1990 files,

> Extended family contact is construed as the source of potential conflict and abuse, and as such must be tightly controlled by the Department. In contrast with Aboriginal demands which label state practices isolating children from their families as abusive, Departmental concerns lie with the extended family itself (Thomas 1994 page 42).

'Normal' Aboriginal practice signals a problem to many welfare workers. The files created in 1990 continued to demonstrate welfare workers' perception of Aboriginality as a cause of delinquency and problems. Behaviour in both periods was frequently stereotyped in a racist way.

> Potential foster mother can already sense that she may already have Aboriginal tendencies, as she can be happily playing in the school ground with the other children and all of a sudden cut off and 'go walkabout'.

> I think failure as human beings may be an issue which will come up as that is a common experience with Aboriginal people (Thomas 1994 page 38).

Attitudes in 1990 were contradictory. In some files the child's Aboriginality and relationship with the community are seen as central and in others they are ignored. While recognition of the child's Aboriginality had improved by 1990, there was a continuing failure to contextualise the child's needs. There was also a failure to address racism in the education system, housing problems, lack of family relations where placement with a non-Indigenous family had broken down and more generally poverty and structural factors resulting in interventions.

A study of 335 children's case files in WA found that the exercise of discretion by welfare officers affects Indigenous children in an adverse manner (Thorpe 1994 page 170). Definitions of neglect are more subjective and culturally particular than definitions of abuse. This may contribute to the large number of Indigenous children found to be neglected. There has been no specific research into whether cultural bias contributes to the high percentage of substantiated neglect cases. However, cultural bias within welfare departments suggests that this is likely. A further factor is the high level of poverty in Indigenous communities.

Systemic inequalities

Submissions to the Inquiry reflected communities' grave concerns about social breakdown and its consequences, including alcohol, petrol and other substance abuse, domestic violence, poor nutrition, child abuse and other consequent problems. The primary reason for welfare intervention in Indigenous communities is neglect. Social inequality is the most direct cause of neglect. Adequate family assistance could make major inroads.

Welfare departments in all jurisdictions continue to fail Indigenous children. Although they recognise the Aboriginal Child Placement Principle, they fail to consult adequately, if at all, with Indigenous families and communities and their organisations. Welfare departments frequently fail to acknowledge anything of value which Indigenous families could offer children and fail to address children's well-being on Indigenous terms.

> Aboriginal families continue to be seen as the 'problem', and Aboriginal children continue to be seen as potentially 'savable' if they can be separated from the 'dysfunctional' or 'culturally deprived' environments of their families and communities. Non-Aboriginals continue to feel that Aboriginal adults are 'hopeless' and cannot be changed, but Aboriginal children 'have a chance' (Link-Up (NSW) submission 186 page 85).

The needs of Indigenous families and communities are neglected while Indigenous children continue to be disproportionately involved with 'The Welfare' and juvenile justice. Evidence to the Inquiry repeatedly indicated a community perception that the problems which result in removals need to be addressed in terms of community development. However, welfare departments continue to pathologise and individualise protection needs of Indigenous children. At the same time, recognition of past failures, under-resourcing and, in some instances, racist attitudes frequently result in a failure to intervene until the family crisis is of such proportions that separation is the most likely or even only possible course.

Indigenous communities throughout Australia gave evidence to the Inquiry of their need for programs and assistance to ensure the well-being of their children. Not a single submission to the Inquiry from Indigenous organisations saw intervention from welfare departments as an effective way of dealing with Indigenous child protection needs. Departments recognise that they need to provide culturally appropriate services but they fail to develop them.

> Despite changes of names from Department of Community Welfare to the Department of Community Development to the Department of Family and Children's Services (FCS) [WA] many Aboriginal people feel that the Department has remained a welfare institution reminiscent of Native Welfare. FCS still wields statutory control over families struggling to survive. Decisions which affect the lives of children are frequently made by staff without discussion with Aboriginal families. Many people facing crises with their families will often not seek assistance from the department because of their association with 'Welfare' who took the children away (Kimberley Land Council submission 345 page 28).

> It is not surprising, given the experiences of present and earlier welfare policy and practices, that Aboriginal perceptions of the current role of DCS [NSW] remain overwhelmingly negative. Despite the employment of Aboriginal field workers most interviewees expressed suspicion of and antipathy towards, DCS. Despite changes to policy and legislation, DCS practice remains, in the opinion of those interviewed, culturally inappropriate (*Learning From the Past* 1994 page 58)

> Families are concerned that any contact with FACS [SA] may result in their children being removed. Hence for programs involving the well-being of Aboriginal children to be successful, they need to be managed by and operated from Aboriginal organisations (SA ACCA submission 347 page 37).

Evidence to the Inquiry confirms that Indigenous families perceive any contact with welfare departments as threatening the removal of their child. Families are reluctant to approach welfare departments when they need assistance. Where Indigenous services are available they are much more likely to be used.

Failure to address serious problems within communities has been identified as being 'fuelled' by systemic problems with the provision of child welfare services to Aboriginal communities (Atkinson and Memaduma 1996). Cultural distortion together with incapacity to cope with the extent of the problems has led to Aboriginal children remaining in abusive situations which non-Aboriginal children would not be left in. Further it has prevented a constructive approach being taken to addressing 'crisis' situations.

> … too frequently in the area of child abuse, and similarly in the area of domestic violence there is a covert ideology that because these concerns are so significant among Aboriginal communities, their existence is presumed to be culturally sanctioned. This form of cultural reductionism, acts as a form of cultural apology, perpetuating and exacerbating the crises of child abuse in Aboriginal communities. Such a view has several critical attitudinal consequences amongst workers in their service understanding and intervention response.

> The cultural apologist position enables planners and workers to adopt a position of inevitable resignation over the problem of child abuse in Aboriginal communities, 'what else can you expect, that's the way Aboriginal people go on – you cannot expect any better'. Such an approach is clearly, an extreme form of cultural determinism, where child abuse is seen as a function of Aboriginal culture and not a consequence of the structural context of Aboriginal life in this country (pages 13-14).

Welfare officers may feel uncertain about when it is appropriate to intervene in an Indigenous family in crisis. The Sydney Aboriginal Mental Health Unit complained of intervention occurring too late.

> There is a failure to involve appropriate Aboriginal professionals at an early notification stage, involvement is always later …

> The recognition of the shameful legacy of the forced removal of children by government departments has led to a paradox of inaction. Community Services when notified of abuse or neglect frequently do *nothing*, hence compounding a situation of abuse and neglect.
>
> As a result of critical inaction, a child will sometimes suffer for an unnecessarily prolonged period and when action is taken, removal ensues because of the established chronicity. Involvement of appropriate Aboriginal professionals is often not instigated at the early notification phase, when a situation could have been most easily remedied.
>
> Hence the initial official neglect compounds the cycle of continued removal of children (submission 60 pages 4-5).

Ineffective responses to structural problems and individual circumstances lead not only to separations through late intervention but to loss of children through suicide, cultural breakdown and social disintegration. This loss is a serious concern to many communities.

A number of submissions to the Inquiry suggested that for many Indigenous children separation from land and kin was an extreme form of abuse and that the threat of children being removed was so frightening that the threat was abusive itself.

> In relation to understanding the concept of abuse in Anangu terms, the women were emphatic that the most destructive and harmful form of abuse which could be inflicted on any child was removal from their country and loss of their cultural heritage. This was identified as a form of emotional and mental abuse which could result in physical illness for the child (Harrison 1992 page 11).

The WA Working Party on *Guidelines for the Assessment of Aboriginal Caregivers* similarly recognised,

> Not telling children who their relations and country are is regarded by Aboriginal people as one of the most destructive and harmful forms of abuse (WA Government submission, Attachment 4 page 10).

Bureaucratic procedures

Indigenous people often see welfare departments as unable to assist them and their communities. They perceive the departments as bureaucracies which require a lot of paperwork, judge Indigenous people's lives and ultimately remove their children. The Inquiry was told repeatedly of the difficulty Indigenous carers encounter in obtaining the financial and other support they need to care for children. Kin care is often placed under stress because of a shortage of food and other necessities. Sometimes assistance which is provided does not go to the person caring for the child. Frequently women found the

Department of Social Security inaccessible. They could not handle the paperwork required to obtain assistance. At a community level Aboriginal organisations are often not linked into grant and funding programs and hence miss out on the opportunity to access funds from the range of available sources.

Older Pitjantjatjara women on the AP lands describe their experience of Family and Community Services as one where the department exercises blanket powers, fails to recognise AP protocols and fails to inform families when the department is visiting, why or what is likely to happen. This perception contrasts with the view of the Chief Executive Officer of SA Family and Community Services.

> … the challenge for us is to balance the legislative obligations we have and implementing these obligations in a way that gives Aboriginal agencies and people scope to ensure that we are meeting needs in terms that are appropriate for them, and in a way that enables Aboriginal families to make decisions about the future of their own young people, and in a way that enables Aboriginal agencies to play a significant part … it's entirely consistent with our current legislation that [in] decisions we make that involve Aboriginal families and children, we should be actively seen to have taken the advice of appropriate Aboriginal leaders and agencies (Mr Richard Deyell evidence).

The experience of Indigenous agencies contradicts government rhetoric of enhanced consultation and cultural sensitivity.

> … the reality is that child welfare officers who had three months training in some diploma course at TAFE are the ones who are exercising the rights over the ultimate destination of Aboriginal children. They have no understanding of the Aboriginal community. They have no knowledge of the culture of Aborigines. They have no understanding whatsoever in those courses about the disadvantages that Aboriginal people suffer and yet … they are the people who are exercising the delegated authority of the Director in determining what will happen to those kids (Michael Mansell, Tasmanian Aboriginal Centre, evidence 325).

Children with disabilities

Indigenous children with disabilities are over-represented in all welfare statistics, particularly in non-Indigenous substitute care. In May 1995 Aboriginal children represented 79% of all children with disabilities in care in the NT. Just over one-half (53%) of children in care were Aboriginal and almost half of these children had disabilities. Only 37% of Aboriginal children with disabilities were placed with Aboriginal carers (NT Government interim submission pages 54 and 56).

In August 1995 the first general meeting of people with disabilities, their carers and families took place on AP lands (South Australia). Anangu at the meeting said that disabled people on the lands are 'ngaltujara mulapa' – 'truly unfortunate' and the most disadvantaged.

> Many people spoke about the needs of these children to learn their own culture and language, including 'mara wangkani,' Anangu hand signs, instead of Australasian sign or Makston. Anangu also talked about welfare policies sounding good, but not resulting in any action on a community

> or family level … There was much discussion about Anangu starting their own welfare service based on the lands (Uwankaraku Meeting Report 1995 page 9).

The meeting set guidelines including,

- Compulsory cross-cultural training for non-Aboriginal foster families.
- Make plans for children with disabilities so everyone knows the story with families on top, not foster families and Welfare.
- More funds needed to make this work.
- Disability ngura (supported accommodation) for children with disabilities on the lands.
- Communities and Aboriginal organisations to take over more of the welfare role.
- Welfare needs to help families to visit their children by paying for the trips (Uwankaraku Meeting Report 1995 page 10).

These guidelines reflect the needs of many Indigenous communities, particularly remote communities or communities where disability facilities are not available. The NSW Council for Intellectual Disability pointed out in a submission to the Inquiry the incoherent and confused law, policy and practice affecting children with disabilities which have particularly negative effects on Indigenous children.

> Aboriginal children and young people with intellectual disability are in a position of double jeopardy, being devalued not only on the basis of their disability, but also their Aboriginality. Where Aboriginal children and young people with disabilities originate from rural and remote communities they are multiply disadvantaged (submission 848 page 3).

The Council noted the low participation rate of Aboriginal people in disability services and suggested this may lead to inappropriate welfare intervention being the only support available (page 5). The Council also noted that Indigenous children easily disappear into long-term non-Indigenous residential care without being detected. Other matters raised included the failure of services under the *Disability Services Act 1993* (NSW) to cater for Aboriginal children. The Act has established service principles which include the requirement to meet the needs of persons with disabilities who experience additional disadvantage including Aboriginal people to 'recognise the importance of preserving family relationships and the cultural and linguistic environments of persons with disabilities' and to establish transition plans where these needs are not met. However, the Council has reviewed several hundred of the 850 transition plans developed for specialist disability services and not a single plan addresses reunion of Aboriginal children with their families or takes steps to establish plans for substitute care arrangements for Aboriginal children with their family or community (submission 848 page 10).

In practice the Aboriginal Child Placement Principle appears to have only limited application for Indigenous children with disabilities. This situation urgently needs to be

acknowledged and addressed.

Conclusions

Welfare legislation and the language of welfare policy have changed. However, submissions to the Inquiry from Indigenous organisations working with Indigenous families indicate little change in practice. Paternalistic attitudes persist in welfare departments. Indigenous children continue to be severely over-represented within all State and Territory welfare systems. Departmental attempts to provide culturally appropriate welfare services to Indigenous communities have not overcome the weight of Indigenous peoples' historical experience of 'The Welfare' or the attitudes and structures entrenched in welfare departments.

Submissions to the Inquiry urged that culturally-appropriate welfare-related services are most effectively provided by Indigenous organisations.

> The Department of Community Services [NSW] should be reformed, or they should not have the responsibility of dealing with Aboriginal families. If DOCS is to be reformed then there needs to be drastic changes which ensure that the Aboriginal community is adequately consulted when any decision is made about the placement of an Aboriginal child. For example, a community panel could be created which sits as a consultative body when placement decisions are made. Alternatively a new organisation could be created which serves to empower the Aboriginal communities by providing the Aboriginal community with a real role to play in the management of child welfare within their own community (Western Aboriginal Legal Service (Broken Hill) submission 775 page 27).

> Real control over the delivery of our citizenship rights needs to be handed over to Aboriginal organisations and legitimate representative groups … Until this occurs then organisations such as Tangentyere Council will continue to struggle on shoe string budgets to deliver services to, and act as advocates on behalf of Aboriginal families whose lives are still impacted on by futile mainstream services, that use terms such as 'culturally appropriate' and have absolutely no idea what this means (Tangentyere Council submission 542 page 2).

All State and Territory governments have recognised the importance of Aboriginal self-determination or self-management in the provision of welfare services to Indigenous peoples. If the gap between intentions and experience is to be narrowed or closed these meanings and implications must be addressed.

For many Indigenous communities the welfare of children is inextricably tied to the well-being of the community and its control of its destiny. Their experience of 'The Welfare' has been overwhelmingly one of cultural domination and inappropriate and ineffective servicing, despite attempts by departments to provide accessible services. Past and current legislative and administrative policies together with bureaucratic structures and mainstream cultural presumptions create a matrix of 'Welfare' which cannot be reformed by means of departmental policy alone. If welfare services are to address Indigenous children's needs they need to be completely overhauled. Welfare services must be provided in a manner which is accepted by communities.

While broad schemes are administratively convenient, communities vary significantly in their aspirations, capacities and awareness of options. Child welfare models should be sufficiently flexible to accommodate these variations. Ultimately, child welfare appropriate to each community and region should be negotiated with those whose children, families and communities are the subjects of the system. Negotiation clearly implies empowerment of Indigenous parties and recognition of their true partnership in the reform process.

Endnotes

1 WELSTAT data are marred by inconsistency and variable quality between jurisdictions and overall are incomplete. All State and Territory welfare departments keep records of children in out-of-home care, whether placed by government or by private agencies. Varying definitions are used for the collection and collation of data. All agencies break down the figures into a range of categories including whether the child is Indigenous. The accuracy of this breakdown is not clear although it is known that a number of children who are Indigenous are not recorded as such. It is particularly difficult to make comparisons between States and Territories on the rate of children under departmental attention, and particularly in out-of-home care, because departments use different definitions and categories in the collection of data.

Nonetheless the data available clearly indicate serious over-representation of Indigenous children in all stages of contact with welfare systems. The level of over-representation increases as the level of intervention increases. Indigenous children are over-represented in all categories. Their over-representation is markedly higher among children removed for neglect compared with abuse. Torres Strait Islander children in Queensland – where the largest Torres Strait Islander population lives – appear to have higher rates of notification and substantiated findings of abuse compared with Aboriginal families.

Lance

Dad died when I was about two. My parents were married, but they often lived apart. When I was a little kid, they gave me to an Uncle and Auntie and the police took me away from them and put me in a Home. I have never been with my brothers and sisters at all. They were also put into the same Home. My brothers and sisters did not know that I existed until a nun said, ‘Come and meet your little brother’. I have some contact with them now. I see them once every six months. To me they are like acquaintances.

If I was in a stable Aboriginal family, I wouldn’t have the problems I have now – identifying myself as Koori. For ages I despised my parents; how could they just dump me in this Home? I hated them for what they were – Koories. I therefore hated Koories. I hated myself because I was Koori.

St Joseph’s Home – Sebastopol – is where I grew up. It was run by nuns wearing black habits. The only Aboriginal kids there were just me and another bloke. There were girls there too. I stayed there for seven or eight years. I bloody hated it. I remember going to bed crying every night and wetting the bed every night and every day moping around unhappy. I hated authorities. The nuns were really strict on you. We had a big dormitory where the boys slept. I used to go to bed crying. I remember a nun with a torch saying, ‘Stop crying’. I hid my head. She came back and hit me on the head with the torch. I still

have the scar today.

I did not know I had brothers and sisters …

I did not know I had brothers and sisters until I was aged twelve. I thought, 'How come I did not know about it? Where were they? How come they did not come and play with me?'. You did not really want to know them and find out Mum and Dad kept them and threw you away. You'd realise your fears were true.

Lake Condah Mission is where my parents came from. I suspect they grew up with their parents. My parents moved around heaps, although my mother doesn't now. We have a love/hate relationship. She loves me, but I hate her. I have never had a Birthday Card or Christmas Card. She is just a Mum in that she gave birth to me.

At age eight I was adopted out to these white people. They had three children who were a lot older – in their thirties and forties. I get on with them well. They send me Christmas Cards and Birthday Cards. It is good having people like that, but sometimes you know you are not really part of the family. You feel you should not really be there, eg,

'Come along Lance we're having a family photo taken'. I have not told them how I feel. They have tried real hard to make me feel part of the family, but it just won't work.

I got up to Year 11 at School. I got a lot of flak, 'How come your parents are white?'. On Father and Son Day, 'Is he the Postman or what?'. It was pretty awkward. It was always awkward. I was always a shy kid, especially among my Father's friends. 'Here is my son'. They would look at you. That look. 'You're still together?'. I remember waiting for my Mother at her work, which was a bakery. A bloke asked me, 'Where is your Mum'? He searched for an Aboriginal lady. I wished God would make me white and these people's son instead of an adopted son.

I still call them Mum and Dad. But when I go to my real Mum, I find it real hard to call her my 'Mum' because she has just been another lady – OK a special lady. Mum's Mum [ie adoptive mother] because she was there when I took my first push bike ride and went on my first date.

After Year 11, I got a couple of jobs. I got into heaps of trouble with the Police – drugs and alcohol. I could get my hands on it and escape and release my frustration. I saw Police … their fault as well as with me being taken away from my family. Slowly that decreased because a couple of cops came to my place, just to see how I was doing and just to talk to me. You can see the effects of stuff, such as alcohol, so I don't drink anyway. Alcohol took me away from my parents, who are chronic alcoholics. Mum is and Dad was. It took my brother [car accident at 18 years, high blood alcohol reading].

Three years ago I started taking interest in Koori stuff. I decided at least to learn the culture. I did not find the stereotype. I found that we understood what we were and that we were on a wave-length. I made a lot of friends and I am yet to make more. It becomes very frustrating. I am asked about a Koori word and I don't know. You feel you should know and are ashamed for yourself. I feel Koori, but not a real Koori in the ways of my people.

It is hard to say whether I was better off being taken away because the alternative never happened. I think the people I went with were better off economically and my education was probably better than what it would have been otherwise. I might have ended up in jail. I may not have had two meals or none and fewer nice clothes and been less well behaved.

If someone tried to remove my kids – over my dead body. I'd pack them up and move them away. Not the shit I've been through – no.

Confidential submission 154, Victoria: removed 1974.

> There can be little argument that the 'welfare principle' should apply in cases of custody of Aboriginal children. The problem, however, is who decides what is in the best interests of an Aboriginal child and what standards are used in reaching this decision (Australian Law Reform Commission 1982 page 17).

Overview

Adoption is the transfer, generally by order of a court, of all parental rights and obligations from the natural parent(s) to the adoptive parent(s). In Australia, legal adoption is relatively recent. It was first introduced in 1928 in Victoria, for example. Until very recently adoption involved near-total secrecy, partly in deference to the desire of adoptive parents to present the child as their own and partly because of the stigma of illegitimacy which typically attached to adopted children. The birth parents were not entitled to information about the adoptive parents, including the child's new family name, and there were safeguards to ensure that the birth parents would never interfere in the child's upbringing. The child was not entitled to information about the birth parents.

Non-relative adoption is a much rarer phenomenon today than it was even 25 years ago. Total adoptions in Australia halved from 6,773 in 1969 to 3,337 in 1980 (Healey 1993 page 30). By 1994-95 the figure had fallen to 535, 42% (224 children) of whom were adopted from overseas (Angus and Golley 1995 page 1). In Victoria in 1971-72, 1,488 children were placed for adoption. Ten years later the number was 287 (Lancaster 1983 page 27). In NSW in 1971-72 the welfare department arranged 3,882 adoptions. By 1991 the number had dropped to 154 (Healey 1993 page 30).

The reasons are clear and relate primarily to the significant reduction in the stigma and legal liabilities of illegitimacy, increased availability of contraception and abortion to control fertility and the availability of social security support for sole supporting parents. There has been a corresponding decline in the placement of Indigenous children for adoption. Moreover, because of the intensive work of Aboriginal and Islander child care agencies and the recognition of the Aboriginal Child Placement Principle, the majority of Indigenous children who are placed for adoption are placed with other Indigenous families.

As the following discussion indicates, however, the best results for Indigenous children – namely, security within their own families and communities or with significant continuing contact – are achieved in those jurisdictions where the ACCP is given legislative status and Indigenous child care agencies are most closely involved in placement decisions.

Adoption and Aboriginal values

Aboriginal people's attitude to adoption differs significantly from that of Torres Strait Islanders. Aboriginal traditional values and Law oppose adoption. It is 'alien to Aboriginal philosophies' (Randall 1982 page 346) and 'incompatible with the basic

tenets of Aboriginal society' (NSW Law Reform Commission 1994 page 192).

> Adoption is alien to our way of life. It is a legal status which has the effect of artificially and suddenly severing all that is part of a child with itself. To us this is something that cannot happen even though it has been done (Butler 1989 page 28).

This fact was recognised by the 1991 report of the Western Australian Adoption Legislative Review Committee.

> It is commonly recognised by the community that the adoption of Aboriginal children is alien to traditional Aboriginal child-rearing practices. It is also acknowledged that in the past, numbers of Aboriginal children were removed from their families and adopted into white families. The Committee endorses the growing community belief … that this practice should not continue.
>
> The Committee has therefore recommended that in the few instances when adoption is appropriate for an Aboriginal child, it should only be by persons from the child's community who have the correct kinship relationship or when this is not possible, by other appropriate Aboriginal person(s) (page 14).

The draft policy statement of the NSW Department of Community Services on the placement of Aboriginal children for adoption (dated 1987) makes a similar acknowledgement.

> Such a radical severance of parental ties is however alien to Aboriginal culture and it is acknowledged that in the past inappropriate use of adoption has caused great suffering for Aboriginal children and their parents.

Adoption and Torres Strait Islander values

Customary adoption is reported to occur in the islands of the Torres Strait, as elsewhere in the Pacific, and among Torres Strait Islander communities on the Australian mainland. It involves the permanent transfer of care responsibilities and is a 'social arrangement' which serves to entrench reciprocal obligations thereby contributing to social stability. Traditionally the chosen adoptive family was in the same 'bloodline' as the birth family. However, with 'inter-racial' marriage now more frequent, adoptive parent(s) may be related only by marriage. There is also a growing practice of giving a child to family friends rather than relatives. As in general Australian law, customary Torres Strait Islander adoption makes the child fully a member of the adoptive family (Ban 1993 page 4).

In the eyes of Australian law, customary adoptions are private adoptions. They are not prohibited but they are not legally recognised either. Difficulties arise in a number of contexts.

- The relinquishing family may seek the return of the child, for example when there may have been a misunderstanding as to the permanence or otherwise of the transfer

of care (Ban 1993 page 5).

- The child's birth certificate will not be amended. The certificate identifies the birth parents rather than the adoptive parents as the parents of the child. When the child obtains a copy, he or she may find out for the first time that his/her 'real' name is not the name being used (Ban 1994 page 8).
- The child's inheritance rights could become complex and confused, even denied. When a parent dies intestate '[d]isputes have arisen between adopted siblings and natural siblings over their parent's estate' because the Public Trustee has not recognised the adoption (Ban 1994 page 8).

From the perspective of increasingly progressive adoption practice, there are several concerns which would need to be addressed before a recommendation could be made for legal recognition of customary adoption.

- A formal assessment of the suitability of the adoptive family has not been made (except, of course, by the relinquishing parents).
- The basis of customary adoption is reciprocity rather than the best interests of the child.
- The child might be improperly viewed as a chattel.
- The child's family connections are, by custom, kept from him or her.

Islanders have also identified problems with the contemporary practice of adopting a child outside the extended family. Custody disputes may be more prevalent and there are risks of adoptive children marrying kin in ignorance of their natural relationship.

Laws, practices and policies

Adoption is effected by a court order in all Australian jurisdictions except Queensland where the adoption order is made by the head of the welfare department. The welfare department or authorised non-government adoption agency, having secured the informed consent of the birth parent(s) and located and approved a 'suitable' adoptive family, assists the adoptive family to apply for an adoption order. Even where parental consent has been obtained, the court must consider relevant matters before making the order. It is not a foregone conclusion. Where the birth parent(s) have not consented the court may, in defined circumstances, dispense with her (or their) consent. The practices of both adoption agencies and courts are relevant, therefore.

Although all Australian social welfare ministers and administrations endorse the Aboriginal Child Placement Principle in the adoption context, the statements and implementation of the Principle vary significantly. There are three basic approaches.

1. Incorporation of the ACPP only in policy directives.
2. Incorporation of the ACPP in legislation.

3. Incorporation of both the ACPP and the role of Aboriginal child care agencies in legislation.

Recognition in policy only

The ACPP is incorporated at the level of policy only in New South Wales, Tasmania, Western Australia and Queensland. Policy directs officers of the department recommending a placement. It does not necessarily direct the work of non-government adoption agencies. Unlike legislation it cannot direct the court ultimately making the adoption order. Moreover, the NSW policy has been in draft form since 1987 and has never been formally adopted.

The NSW draft policy does not set out the ACPP. It merely directs that Aboriginal children surrendered for adoption be placed with Aboriginal families. In Tasmania the policy restates the ACPP in the form adopted by the 1986 Social Welfare Ministers' Conference. It further directs departmental officers that the Aboriginal Family Support and Care Program is to be involved in the assessment and planning for all Indigenous children.

In WA the policy which is relied on to address adoption applies clearly only to the situation where the child is in need of care and protection and substitute care is being considered. It sets out the ACPP and requires that an Aboriginal child only be placed in a non-Aboriginal family or institution with the approval of the Director General. Such a placement 'should contribute to the best possible retention of the child's relationship with his parents and community, including regular contact'. The policy directs departmental officers to consult the Aboriginal child care agency (Yorganop) about placement issues in the metropolitan area.

Queensland legislation does not reflect the ACPP. The *Adoption of Children Act 1984* (Qld) simply directs the Director, who makes the adoption order, to place a child from any ethnic background with an adopter from a similar background, unless such an adopter is unavailable or the welfare and best interests of the child, in the Director's opinion, would not be best served by adoption in a family of the same background (section 18A).

The Act does not require preference to be given to the child's extended family, with further options in order being another person in the correct relationship to the child, another member of the child's Indigenous community and, finally, another Indigenous family as the ACPP requires. Regulations made in 1988 direct attention to the ability of the prospective adoptive parents to 'develop or maintain the child's indigenous ethnic or cultural identity' as one criterion for assessing the suitability of particular adoptive parents (Schedule 6).

Queensland departmental policy spells out the ACPP preferences in a way very similar to that of WA. Unlike the WA policy, however, it specifically refers to adoption as raising issues distinct from child protection. Thus, in the case of a proposed relinquishment for adoption, the parent(s) is to be counselled by an Indigenous worker

and counselling is to 'explore alternatives to adoption, including family support, custody and guardianship options'. There is no provision for the involvement of Indigenous agencies.

The survey of Queensland welfare authorities commissioned by the Royal Commission into Aboriginal Deaths in Custody found that the Aboriginal Child Placement Principle had not been fully or comprehensively implemented across Queensland due largely to the lack of proper monitoring. There was concern that some departmental officers were unaware of the policy (O'Connor 1990).

Statutory recognition of ACPP

The remaining States and the Territories spell out the Aboriginal Child Placement Principle in their adoption legislation. South Australia, the Northern Territory and the ACT express a preference for placement other than adoption for Indigenous children.

In SA the court must be satisfied that adoption is preferable to guardianship in the best interests of the child before making an adoption order. This provision makes adoption an order of last resort. Once it has been decided that adoption should proceed, the order must be made in favour of a member of the child's Aboriginal community who has the correct relationship with the child. Only if there is no such person willing and approved to adopt the child can an order be made for adoption by some other Aboriginal person. If the court intends to authorise the adoption of an Aboriginal child by a non-Aboriginal person, it must be satisfied that there are special circumstances and that the child's cultural identity will not be lost as a result (*Adoption Act 1988* section 11). The relinquishing parent can ensure that a relative adopts the child by limiting consent to adoption only by a relative (section 15(4)). Even where consent is general, however, the ACPP in section 11 will apply.

The ACT legislation prevents an adoption order being made at all in the case of an Aboriginal child unless the court is satisfied that it is not practicable for the child to remain in his or her parent's custody or in the custody of a 'responsible person' who is a member of the child's Indigenous community. The court also has to consider whether the choice of adoptive parents has taken into account both the desirability of the child being in the custody of an Indigenous community member and the desirability of the child being able to keep in contact with his or her birth parents and extended family and his or her entire Indigenous community (*Adoption Act 1993* section 21).

The NT provision is very similar while additionally making explicit reference to Aboriginal customary law (*Adoption of Children Act 1994* section 11). The court has a discretion to determine that custody within the extended family or with people who have the correct relationship with the child is not consistent with the welfare and interests of the child. The Act sets out the considerations relevant to the exercise of this discretion (Schedule 1). They include the principles that it is preferable for children to be placed in families having the same ethnic and cultural origins as the birth parent and, with respect to Aboriginal children, 'the desire and effort of the Aboriginal community to preserve the

integrity of its culture and kinship relationships'.

Statutory recognition of ACPP and role of AICCAs

Victoria goes further than the other States in providing more comprehensively for the involvement of Aboriginal organisations in the decision-making on adoption placements for Indigenous children. Indeed, Victoria incorporates further features which the Inquiry recommends should be adopted universally.

The Victorian *Adoption Act 1984* has been promoted by the Secretariat of National Aboriginal and Islander Child Care (SNAICC) as a model for the rest of Australia. The quality of this Act owes a great deal to the efforts and pioneering work over many years of the Victorian Aboriginal Child Care Agency.

1. The Act itself states that 'adoption is absent in customary Aboriginal child care arrangements' (section 50(1)).
2. The relevant provisions are said to be enacted in recognition of Aboriginal self-management and self-determination (section 50(1)).
3. The court is not to make an adoption order in respect of an Aboriginal child unless satisfied,
    - that the consenting relinquishing parent(s) has received counselling from a gazetted Aboriginal agency or has expressed in writing the wish not to receive counselling,
    - that the wishes of the parent(s) regarding the religion, race or ethnic background of the proposed adoptive parents have been considered in the selection of those parents, and
    - that the proposed adoptive parents are members of the same Aboriginal community as the relinquishing parent(s) or one of them is.
4. If a member of the same community is not 'reasonably available', then the adoptive parents, or one of them, must be a member of an Aboriginal community. If such parent(s) is not reasonably available then another family can be approved, provided a gazetted Aboriginal agency approves of the choice.
5. The relinquishing parent's consent and the court's adoption order can be made on the condition that the birth parent(s), other family and other community members have a right of continuing access to the child (sections 37 and 59; see also section 59A).
6. The Department is obliged by law to inform an Indigenous child of his/her Aboriginality when he/she reaches 12 years of age (section 114).

The role of gazetted Aboriginal agencies, notably the Victorian Aboriginal Child Care Agency, is further strengthened by departmental policy (Standards in Adoption 1986). This requires both departmental and non-governmental adoption agencies to maintain consultation with the Aboriginal agency during all stages in the placement of an

Aboriginal child. The Aboriginal agency must be consulted before any placement of an Aboriginal child, even when the proposed adoptive parents are Aboriginal (something left open by the Act). Finally, the policy makes clear that the Aboriginal agency has a right of veto over the proposed adoption of an Aboriginal child by non-Aboriginal applicants.

Numbers and effects

The following table summarises the data available on the adoption of Indigenous children in each State and Territory during the 1990s. In the five year period at least 60 Indigenous children were adopted (full SA figures are not available). One in every three of these children was adopted by a non-Indigenous family.

Adoptions of Indigenous children between 1 July 1990 and 30 June 1995

State	Number of children	Adoptive families
NSW	35	16 to non-Indigenous families + 1 to an unknown family (ie ethnicity unknown)
Victoria	0	
WA	7	1 to a non-Indigenous family
Queensland*	15	1 to a non-Indigenous family
SA	?	1 to a non-Indigenous family
NT	3	1 to a non-Indigenous family
Tasmania	0	
ACT	0	

S*ource: NSW Law Reform Commission Research Report 'Aboriginal Child Placement Principle' 1997, Appendix L.*

*Queensland data supplied to the Australian Institute of Health and Welfare shows 14 adoptions of Indigenous children only eight of whom were adopted by Indigenous families. However, Queensland states the information in the table is more reliable.

The reason for placement with non-Indigenous families is known for only four of the 16 NSW adoptees so placed. All four were State wards. The Aboriginality of two of the children was only traced late in the adoption process and their placement with non-Indigenous families followed consultation with Aboriginal workers. The other two were aged 16 and 18 years respectively, chose not to identify as Aboriginal and consented to their own adoptions (NSW Law Reform Commission 1997). The birth parent(s) of the South Australian child adopted into a non-Indigenous family consented to the adoption. The Queensland child was placed with a non-Aboriginal family at the request of the Aboriginal birth mother who has continuing contact with her child (NSW Law Reform Commission 1997).

In 1994-95 alone, 12 Indigenous children were adopted by non-relatives. Five of these children were adopted by non-Indigenous people. One non-Indigenous child was

adopted by an Indigenous person (Angus and Golley 1995 page 24).

The harm which can accrue to Indigenous children in 'inter-racial' adoptive families has been recognised for almost two decades in Australia.

> The problems of *identity confusion* and *alienation* appear to be related to those situations which place the child in limbo. On the one hand the child senses he is not fully accepted by the white community into which he has been adopted, and on the other hand he is isolated from his own Aboriginal community. What tends to fill the gap then of isolation from his own community are the often negative stereotypes of Aboriginal people commonly portrayed in the media, literature and in some instances by the adoptive family. Through constant exposure to this conflict the child inevitably becomes alienated from both cultures (Atkinson 1983 page 165).

There is evidence, both from within Australia and from comparable countries, that inter-racial adoptions are more prone to breaking down than intra-racial adoptions. The South Australian Aboriginal Child Care Agency estimated in the late 1980s that 95% of Aboriginal child/non-Aboriginal parents adoptions broke down and that 65% of these breakdowns occurred during adolescence or later teenage years 'when their adoptive parents were unable to cope with their problems of alcohol abuse, offending behaviour, drug abuse, depression, self-destructive behaviour, emotional stress and identity crisis' (Butler 1989 page 29). Especially predictive of future breakdown caused by the child's distress are parental denial or denigration of the child's Aboriginality, racial prejudice including harassment and taunts faced by the child at school which is not treated seriously by the parents and denial of contact between the child and Aboriginal role models (Atkinson 1983).

> Aboriginal children who are brought up by white families frequently face identity problems when they reach adolescence. White parents cannot understand their experiences and may reject the child or fail to help him resolve questions of identity and conflict between black and white cultures (*Homes for Blacks* 1976 page 161).

The case of James Savage (birth name Russell Moore) is illustrative.

> Savage was taken from his young Aboriginal mother shortly after birth [in 1963] … Unknown to his Aboriginal family, when only four days old, he was placed with the Savages, a white Australian couple, who subsequently adopted him and then moved to California when Savage was six and to Florida several years later. His adoptive family returned to Australia when Savage was seventeen, leaving him to fend for himself in the United States. By the time of his murder conviction he already had a considerable adult and juvenile record dating back to his early teens, as well as a drug and alcohol problem.
>
> [Family friends testifying at his trial stated] that Savage was disciplined more than his adopted brother and sister, that he seemed afraid of his adoptive father, and that he seemed out of place as a black person among whites … [Psychiatric expert evidence was given to the effect that he was substantially impaired emotionally and had a personality disorder to which drug and alcohol abuse had contributed] (Cronin 1992 page 15).

In possession of this evidence, the jury which convicted James Savage recommended life imprisonment in preference to the death penalty. He remains in prison in Florida, not to be released for 25 years.

Evaluation

Self-determination

The Victorian model gives Aboriginal agencies an entitlement to be consulted at all stages in the consideration of adoption of an Indigenous child and a right of veto over a proposed placement with non-Aboriginal adoptive parents. It is the strongest implementation of the principle of self-determination in adoption practice. Other jurisdictions recognise the importance of consultation with Indigenous agencies and, provided those agencies are adequately resourced, could readily take the additional step of entrenching the role of those agencies in the placement of Indigenous children.

A difficulty may arise in relation to children not identified as Indigenous by the relinquishing parent. The Aboriginal Child Placement Principle and the involvement of Indigenous agencies do not come into play until a child relinquished for adoption is identified as Indigenous. In Tasmania there is no formal definition of Aboriginality for this purpose. The department relies on the Aboriginal Family Support and Care Program to identify Aboriginal children. This is problematic, however, when a relinquishing parent does not identify the child as Aboriginal and also insists on the confidentiality of the adoption process. This would make it impossible to call on the Program for advice and assistance.

In Queensland, Victoria, Western Australia, South Australia (if, as expected, the definition in the *Children's Protection Act 1993* (SA) is used) and the ACT the familiar three-pronged definition of 'Indigenous' is used: a person is Indigenous if he or she is of Indigenous descent, identifies as Indigenous and is accepted as such by the Aboriginal or Torres Strait Islander community. In the case of a young child or baby, identification by the parent is substituted for self-identification. In Queensland, an Indigenous agency may be consulted, but only where there is no parent or other relative to provide the identification. In light of the relinquishing parent's right to confidentiality, this means that an Indigenous child will not be treated as such where the relinquishing parent does not identify as Indigenous herself or himself or does not identify the baby as such or where a non-Indigenous relinquishing parent does not notify the department that the child's other parent is Aboriginal or a Torres Strait Islander.

The practical problems are not entirely overcome by the alternative approach taken in NSW and the NT. There, self-identification and identification by the relinquishing parent are not aspects of the definition of Aboriginality. Instead a child is Indigenous if descended from an Indigenous person. The difficulty remains that the department often relies on information from the relinquishing parent as to the heritage of the child.

Legislation could require the department or non-government adoption agency to establish to the best of its ability the cultural heritage of every child surrendered for

adoption. This positive duty would authorise the department or agency to breach the mother's confidentiality to the extent needed to trace her own and the father's background, possibly by making enquiries through an Aboriginal Children's Service.

Non-discrimination

Failure to appreciate different child-rearing values in Indigenous societies leads non-Indigenous social workers and others to dismiss as neglectful the common practice of shared parenting. In the context of adoption it also leads adoption agencies to ignore the rights of Indigenous extended family members to have a say in the placement of the child and to dismiss the possibilities of placement orders less permanent than adoption in favour of the extended family and of adoption by an extended family member.

In Aboriginal culture, children are the responsibility of the extended family and not just the biological parents alone. Even under normal circumstances the extended family plays an important role in the upbringing of Aboriginal children. Where the biological parents cannot or do not provide for their own children's care, the maintenance of care is guaranteed through the extended family structure (WA Adoption Legislative Review Committee 1989 page 24).

The exclusion of the unmarried biological father and his family from the adoption decision, especially when the father's relationship with the birth mother was publicly declared, is viewed with dismay. Adoption legislation historically only required the consent of the biological father if he was legally married to the birth mother. If not, the biological father need not even be informed of the child's relinquishment for adoption.

The Australian Law Reform Commission recommended in 1986 that Aboriginal customary law marriages should be recognised for the purpose of requiring the consent of both parties to the adoption of their child (page 196). Traditional marriage now entitles the biological father to have a say in Victoria, SA and the NT. However, no jurisdiction formally provides for other family members to be consulted on the relinquishment decision.

> **Before my son's birth and adoption I had been living in a defacto relationship with the child's Mother Gloria since [early 1990] through till [early 1992] during which time we had a son together named Peter and upon her leaving me in [early 1992] to live in a 2ND defacto relationship … she was already pregnant with my 2nd son Andrew …**

> **At the time of my 2nd son's birth and adoption I had *no* knowledge of either his birth nor his adoption; because [two weeks after his birth] during a private discussion with Gloria she informed me that the child had died, therefore I feel wilfully & knowingly she deprived me of the knowledge and at the time the choice in the matter of adoption, deliberately lying to me for her own ends without consideration for family ties between Peter and Andrew, being full brothers.**

> **If, at the time of birth, I had been informed of Andrew's existence and that Gloria did not intend to keep him, then I myself would have applied for full custody of my son …**

Confidential submission 9, Queensland: father Aboriginal, mother non-Aboriginal; Andrew was adopted by an Aboriginal family.

The Queensland Department advised the Inquiry that,

> … in the case of a child whose parents were not married to each other at the conception of the child, and in relation to whom there is no other guardian by virtue of s. 6 of the *Act*, the consent required for the adoption of the child is that of the birth mother.
>
> However, this is not to say that the birth father is not considered and consulted by the Department in relation to the custody and guardianship of the child.
>
> Wherever possible, the Department attempts to ascertain the identity of the birth father of the child, and what his wishes are in relation to the child's future. The identity of the birth father is, however, often totally dependant on whether the birth mother wishes to, or will, identify him. Birth mothers are encouraged to discuss this with the birth father of their child …
>
> The information forms [received by the Department prior to approval of Andrew's adoption] contained the birth father's name and the information that the birth mother had not informed the birth father about the birth. The forms also contained the information that the birth mother had told family and friends that the baby had died. The forms do not specifically mention whether the birth mother had originally told the birth father about the pregnancy or whether she intended to tell the birth father himself that the baby had died.
>
> The birth father was not contacted about the child or the adoption (document on file, confidential submission 9).

The full involvement of Indigenous child and family service agencies in placement decision-making is the best safeguard of equity for Indigenous children and their families. The entrenchment in legislation of the Aboriginal Child Placement Principle, with its declaration that the best interests of Indigenous children are typically best served by their remaining in the Indigenous community, preferably in their own families and communities, would further protect them from the potentially discriminatory effects of placement in non-Indigenous families.

The assessment of prospective Indigenous adoptive families is another area in which discrimination is likely to occur. The qualifications and procedures applying to prospective adoptive parents can deter and even disqualify a high proportion of Aboriginal adopters.

It is essential that the roles of recruiting, assessing, training and supporting Indigenous adoptive parents and, in rare cases where it is in the child's best interests,

non-Indigenous adoptive parents for an Indigenous child are taken on by Indigenous community-based children's and family services agencies. The following summary of Indigenous concerns raised at the First Australian Conference on Adoption in 1976 can be qualified 20 years later by reference to departmental cross-cultural training initiatives and employment of Indigenous officers. However the central analytical point remains valid.

> Current adoption law and practice reflects the values of white professional middle class society and is totally unresponsive to the needs of Aboriginal children requiring care. Criteria adopted for the selection of parents disqualify most Aborigines and reflect underlying values and assumptions which are often diametrically opposed to those characterising Aboriginal society. For the Aboriginal child growing up in a racist society, what is most needed is a supportive environment where a child can identify as Aboriginal and get emotional support from other blacks. The supportive environment that blacks can provide cannot be assessed by whites and is not quantifiable or laid down in terms of neat, easily identifiable criteria. Criteria adopted by Social Welfare Department which relate to wealth, material possessions and employment reflect 'standards' in the dominant society. Such standards are not accepted by blacks and are not considered to be adequate substitutes for love and unqualified acceptance as an Aborigine (*Homes for Blacks* 1976 page 163).

> Aboriginal people maintain that they are uniquely qualified to provide assistance in the care of children. They have experienced racism, conflicts in identity between black and white and have an understanding of Aboriginal life-styles … These people … are in a unique position to understand the needs of Aboriginal children and have a breadth of experience and empathy with Aboriginal children that few professional social workers could claim to have … Thus control of placement of Aboriginal children by blacks should not be dependent on blacks possessing white man's qualifications, but should be in recognition of their experiences which enable them to determine what is in the best interests of each child (*Homes for Blacks* 1976 page 164).

Legal marriage between the adoptive parents was long a pre-requisite and remains so in some jurisdictions. The requirement has been relaxed in NSW by treating the traditionally married couple as de factos (section 19) and in Victoria (section 11), SA (section 4) and the NT (section 13) by recognising tribal or traditional marriage as qualifying the partners to adopt.

The standard application procedure usually includes 'making application in the approved form' and paying an assessment fee.

> First, few aboriginal families apply through the formal channels for adoption of a child. The procedure for applying to adopt or foster a child is unnecessarily bureaucratic and aborigines are alienated by the process of form filling, numerous interviews and home visits. They object to the imposition of white middle class values and standards imposed by social welfare officers, which produce in them feelings of inadequacy and inferiority.

> Second, the criteria adopted in each of the states reflect values of the dominant society and are often indiscriminantly applied to all persons seeking to adopt or foster a child, whether the child is white or of racial origin.

> The criteria are alien to aboriginal values and lifestyle and few aboriginal families meet them all (Sommerlad 1977 page 170).

A focus on Aboriginal values and practices can neglect the quite different values and customs of Torres Strait Islanders. It is potentially discriminatory to include Torres Strait Islanders, in legislation, policy and practice, under the rubric 'Aboriginal'. Their different values are less likely to be accorded respect.

Cultural renewal

Children are the most precious of cultural resources. Adoption practice which emphasises their retention in their communities will best enable those communities to secure their cultural survival. The Aboriginal Child Placement Principle directs adoption agencies to prefer people who have the appropriate cultural relationship with the child.

Coherent policy base

Adoption practice in relation to Indigenous children needs to be consistent with Indigenous family welfare practice generally. There remain significant differences within jurisdictions in relation to child welfare and adoption on key matters such as whether the Child Placement Principle is entrenched in legislation and what role is played by Aboriginal and Islander child care agencies. In NSW for example the Principle is entrenched in welfare legislation but not in adoption legislation. In South Australia gazetted Aboriginal agencies play a role in welfare placements but not in adoption placements.

Adequate resources

Two key resource issues arise in this context. The most significant is the resourcing of Indigenous agencies,

- to consider the situation of each child referred fully: including thorough research into the child's and parents' background and family and community connections,
- to recruit, train and provide continuing support to prospective Indigenous adoptive parents,
- to counsel prospective relinquishing parents: including tracing the child's father and his family to ensure they are consulted and being able to access family support information as needed.

As discussed in Chapter 21, AICCAs are inadequately resourced to perform these roles as effectively as needed.

The second resource-related issue is that of the training provided to adoption decision-makers, notably departmental officers, workers in non-government adoption agencies, judges and, in Tasmania, magistrates. All require thorough induction in the principles underlying the legislation and departmental policy relating to the placement of Indigenous children. The skills needed by the departmental officer and adoption agency

include recognising an Indigenous child, knowledge of local Indigenous culture and family relationships, ability to involve relevant Indigenous agencies from the start of the process and through all stages, sensitivity to the impact of the history of forcible removals on Indigenous people's contacts with welfare officers, and a commitment to the principle of self-determination. Judges dealing with Indigenous adoptions, like judges in other situations involving Indigenous people, require training in Indigenous culture, values and relationships as well as Indigenous history, especially the history and impacts of forcible child removal, if they are to perform their roles adequately.

Conclusion

Adoption is contrary to Aboriginal custom and inter-racial adoption is known to be contrary to the best interests of Aboriginal children in the great majority of cases. The table above shows that adoption of Indigenous children has been reduced to or almost to nil in jurisdictions where the Aboriginal Child Placement Principle is entrenched in legislation and welfare departments and adoption agencies are required to work with Aboriginal and Islander child care agencies when placing Indigenous children. Where the Principle finds its only recognition in departmental policy, adoption of Indigenous children continues.

Graham

I was adopted as a baby by a white European couple. They were married at the time. They couldn't have children and they'd seen the ads about adoption and were keen to adopt children.

There were seven of us altogether. They adopted four people and had two of their own. The first adopted person was Alex. He was white. The next one down from that is Murray who was American Indian. Next down from that was me, Graham. The next person down from that was Ivan and they were the five who were adopted into this white family. The next two after that were their own.

My adopted mother loved children and that's why she wanted to do this so-called do-gooder stuff and adopt all these children. After that, from what I can gather is she did the dirty on my adopted white father and they broke up. He walked out and started his own life, and she was left with seven children. Alex was 10 years older than me and he had to take on many of the roles.

Then from there on in, one by one we were kicked out at the ages of 13. It wasn't her own family members [the two youngest] that were kicked out. It was the five that were adopted. I must say Alex never got kicked out, although he suffered. He had to look after us and he couldn't go out and do what a teenager did and go roller skating or … So he

never got kicked out because she needed him to look after us basically.

Twelve, thirteen was the age at when she decided like we're uncontrollable, we've got this wrong with us, we've got that wrong with us, we've got diseases, we're ill all the time, we've got mental problems, we've got this, we've got that. She used to say that to us, that we had all these things wrong with us.

Murray was the first to go. When he turned 13 he got booted out because she made out that he had this wrong with him again. He stole things, he did this, he did that. He went to an institution. So seeing that we're Indigenous we all had the double effect: one was adoption and one was institutionalisation.

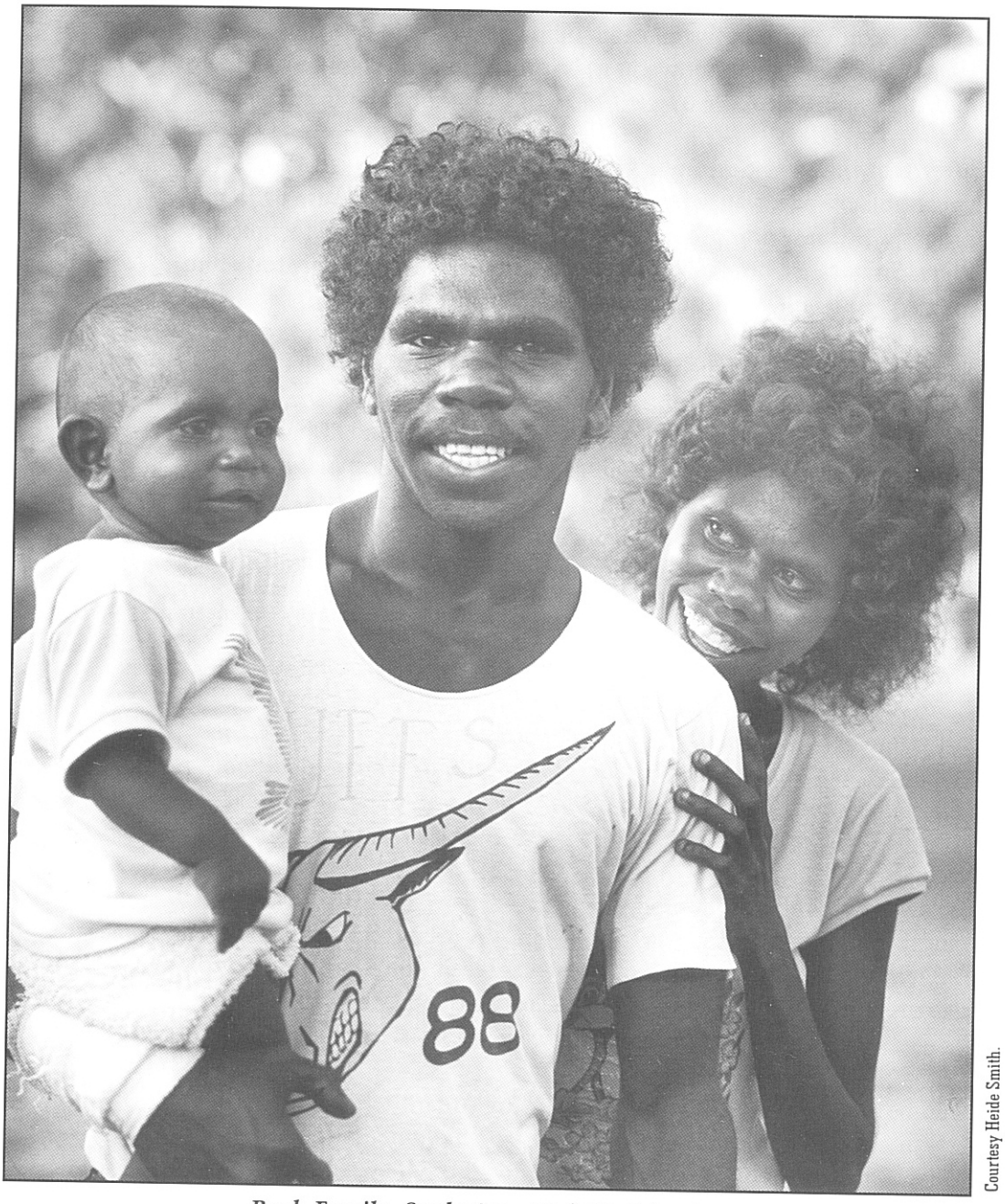
They took Murray. He went to [a Queensland boys' home]. Murray got caught up in the prison scene because he started stealing and whatever. He was angry. He was in the Home for two years. He got involved in a few stealings and he had to go to Westbrook institution which is a lock-up.

There's a difference between care and protection and care and control. Where Murray first went into care and protection and then he had to go into care and control.

After that the next person to go wasn't me. I wasn't quite 12, 13, the uncontrollable age. Ivan, who was the one aged below me, wasn't adopted properly. He was sort of fostered in a way. There was a legal technicality there. So because he wasn't adopted properly, another family took him over and he's still with them today [now an adult].

So I didn't realise my time was coming, but basically when I hit the ages of 12 and 13 I was next to go. She met this new fellow. She wouldn't marry him until I was out of the scene. She basically said, 'Oh Graham is uncontrollable'. So she got rid of me as best way she could without her feeling that she was doing wrong.

Confidential evidence 441, New South Wales: Graham was placed in short term respite care but his adoptive mother did not retrieve him. The court stepped in and an order for care and protection was made in 1985. He was placed in the same boys' home as his brother Murray. He was 13 years old. He remained in the Home until he turned 18. Having failed almost every subject in secondary school, Graham is now about to complete a university degree.



Courtesy Heide Smith.

Bush Family, Snake Bay, Melville Island

I don't want to have kids, not in this society. 'Cause I reckon it's cruel to have a child in this society. If I was taken away, my mother must have been taken away from her mother, and if I was taken away from my mother, of course my child would be taken away from me.

Confidentialevidence 166, South Australia: woman fostered as a baby in the 1960s.

23 Family Law

Family law plays a role in the 'placement and care' of Indigenous children when parenting disputes come before the Family Court of Australia (except in WA where the State Family Court deals with all family law matters) or those lower courts, presided over by magistrates, which have power to deal with them. The parents do not have to be married: children born outside marriage are treated in the same way as children born within a marriage.

A parenting dispute is typically between the child's two natural parents. The parents may disagree where the child is to live (formerly 'custody' and now 'residence') or whether the other parent should be entitled to see the child and, if so, how often (formerly 'access' now 'contact'). Disputes which could result in an Indigenous child being ordered ('residence' order) to live in a non-Indigenous family and community are usually those where one parent is Indigenous and the other is not. Alternatively, the Indigenous parent's mother, sister, brother, new partner or other relative may be in a dispute with the child's non-Indigenous parent or family.

In evidence to the Inquiry, Family Court Justice Richard Chisholm pointed out the difference between a Family Court residence order dispute and a welfare placement dispute (for example, relating to foster care or adoption). He concluded that the Aboriginal Child Placement Principle can be comfortably applied, consistently with the best interests of the child, in the latter case but not in the former.

> I think there is a very important distinction to be drawn between situations in which a child welfare agency has to make a decision about placing a child and they have to decide which foster parents or adoptive parents … they might place a child in, where the child has been separated from the family for one reason or another. And that's a situation where the decision-maker has to choose from a range of possible placements for a child. That seems to me to be quite a different situation from what used to be called 'custody cases' where you have got a competition between two people who each claim the child and the decision-maker has to choose between them.
>
> … if you are in a situation where you've got a range of possible placements to choose from it seems to me that it is much easier to have a rule that says, 'Prefer some placements to others' (evidence 654).

In other words, the guiding principle of the best interests of the child is easier to accomodate within the Child Placement Principle when there is a range of placement options than when the choice is between two biological parents.

Family Law Act 1975

The *Family Law Act 1975* (Cth) was amended in 1996 (effective from 11 June). Two relevant provisions introduced co-operative parenting which means that, regardless of where the child resides, both parents share continuing responsibility for all decisions

relating to the child, except with respect to residence and contact and amended slightly the guidelines for determining the child's best interests (previously the child's 'welfare') (Lisa Young submission 816 pages 4-5).

Under the *Family Law Act* the best interests of the child are the paramount consideration in any decision about a child. Justice Chisholm explained how 'best interests' has been interpreted.

> [It] covers a wide range of matters. It 'is not to be measured by money only, nor by physical comfort only … The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded' … [It includes] 'all factors which affect the future of the child' … It includes the child's happiness … It includes both the immediate well-being of the child and matters relevant to the child's healthy development … (submission 654 pages 5-6).

The fact that the child's best interests are paramount means that the court's orders will seek to secure those best interests even if this seems unfair to one of the parents.

> … when the governing principle is that the child's best interests are the paramount consideration, the court's single task is to make whatever orders it considers will best promote the welfare of the children who are the subject of the proceedings. It follows that the court will make the orders that it considers will best promote the welfare of the child, even if such orders lead to what might be regarded as injustice between the parties (Justice Richard Chisholm submission 654 page 7).

The guidelines

Deciding what is in a child's best interests is largely a matter within the discretion of the particular judge. However, the *Family Law Act* provides some guidance on what matters have to be taken into account in making that decision. Section 68F (paraphrased) lists,

- the wishes of the child;
- the relationship the child has with each parent and other people;
- the likely effect of any change (for example, of residence);
- the child's right to maintain personal relations and direct contact with both parents regularly and the practical difficulty and expense of that;
- the capacity of each parent to provide for the needs of the child, including emotional and intellectual needs;
- the child's maturity, sex and background, including any need to maintain a connection with the lifestyle, culture and traditions of Aboriginal peoples or Torres Strait Islanders;
- protecting the child from physical or psychological harm;
- the parents' attitudes to the child and to their responsibilities as parents;
- whether there has been violence in the family;

- whether stability is to be preferred (that is, avoiding further litigation); and
- anything else the court considers relevant.

The full significance of the inclusion of reference to Indigenous peoples specifically in the guidelines is not clear and will need to be spelt out by the court. Do the guidelines direct a judge to recognise an Indigenous child's need to maintain a connection with his or her culture? Or do they simply invite the judge to decide whether the particular child has that need? A literal interpretation supports the latter view and Justice Chisholm tentatively came to this conclusion in evidence to the Inquiry.

> My own tentative view is that the significance of that provision [section 68F] is probably more to set out a checklist of things to be looked at rather than an attempt to attach weight to particular factors (evidence 654).

Similarly, family law lecturer, Lisa Young, submitted that the list of matters to be taken into account 'merely helps the Court keep at the forefront of its mind the sorts of issues that are relevant to such a determination' (submission 816 page 4). This interpretation is supported, too, by the absence from the Act of any reference to the child's right, 'in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language' (article 30 of the *Convention on the Rights of the Child*). The absence of reference to this right in the Act is odd in light of the fact that the 1996 amendments were largely driven by a desire to reflect more closely the *Convention on the Rights of the Child* (Lisa Young submission 816 page 4).

The court often obtains much of the evidence about the matters listed in the guidelines from a 'Family Report' (section 62G). The court can order a Family Report and it will be done by a family and child counsellor or a welfare officer, typically social workers or psychologists. The counsellor interviews all the people involved, including significant people in the children's lives, and often visits the home or homes. The counsellor makes 'a professional assessment of the emotional and psychological factors present in the two competing family systems set up by the separated parents, and the children's and parents' roles within those systems' (Hume and Stewart 1996 page 14). Sometimes, too, the counsellor will ascertain the child's wishes:

children cannot give evidence in the Family Court and the parents are recommended not to prejudice the issue by presenting evidence themselves of their child's wishes (Hume and Stewart 1996 pages 3 and 14; under Order 23 Rule 5 the court may take a child's evidence in chambers but in practice this is never done).

Long-term welfare of Indigenous children

The Family Court has recently dealt emphatically with the related topic of how to decide the best interests of a child in the long-term when there is a dispute between an Indigenous parent (or family) and a non-Indigenous parent (or family). Previously there was a tendency to ignore the significance of Aboriginality and Aboriginal culture, some judges and magistrates taking the view that 'the need to treat people equally before the

law prevents them giving much weight to [these] issues' (Nicholson 1995 page 11).

However, following the 1995 case *In the marriage of B and R*, the court is more likely to understand the profound difficulties faced in adolescence and later life by the great majority of Indigenous children brought up in non-Indigenous families. The court in that case rejected the 'equality' argument as based on a misunderstanding of the true nature of equal treatment. It would in fact be unjust to treat as equals people who are not.

> … all people should be treated with equal respect. By recognising that this represents the essential content of the ideal of equality, one realises that equal justice is not always achieved through the identical treatment of individuals (*B and R* page 621).

In *B and R* the Full Court of the Family Court held that 'the Aboriginality of a child is a matter which is relevant to the welfare [now best interests] of the child'. The court summarised a wide range of research on the subject (page 605).

> A. In Australia a child whose ancestry is wholly or partly indigenous is treated by the dominant white society as 'black', a circumstance which carries with it widely accepted connotations of an inferior social position. Racism still remains a marked aspect of Australian society …
>
> B. The removal of an Aboriginal child from his/her environment to a white environment is likely to have a devastating effect upon that child, particularly if it is coupled with a long term upbringing in that environment, and especially if it results in exclusion from contact with his/her family and culture.
>
> C. Generally an Aboriginal child is better able to cope with that discrimination from within the Aboriginal community because usually that community actively reinforces identity, self-esteem and appropriate responses …
>
> D. Aboriginal children often suffer acutely from an identity crisis in adolescence, especially if brought up in ignorance of or in circumstances which deny or belittle their Aboriginality. This is likely to have a significant impact upon their self-esteem and self-identity into adult life.

The court concluded that, because of the relevance of the child's Indigenous ancestry to his or her future well-being, the Family Court should order the appointment of a special 'separate representative' for every Indigenous child involved in a parenting dispute. The role of the separate representative (that is, separate from the legal representatives for the mother and father or other family) would include 'to examine these issues and ensure that all relevant evidence and submissions are placed before the court' (page 624).

The court refused to import a presumption that, all other things being equal, an Indigenous child's interests are best served by living with the Indigenous parent or other

family member. Thus there is still no automatic preference for the Indigenous parent and the court 'will not assume that Aboriginality is either an advantage or a disadvantage' (Justice Richard Chisholm submission 654 page 9). On the other hand, it was acknowledged that 'many of the matters … referred [to] above are now so notorious that it would be expected that a trial judge would take judicial notice of them' (page 624). At the same time, the judge will also need 'the detail and thrust of that material to be marshalled and presented to the court by an appropriately qualified expert so as to avoid the risk that the case may turn upon varying degrees of individual [ie judges'] knowledge' (page 624). This would be the role of the separate representative.

Effectively, then, the Full Court has directed that a separate representative is to be appointed in every case involving an Indigenous child to gather evidence relating, especially, to the relationship between the child's Indigenous heritage and his or her future well-being and interests.

Justice Chisholm told the Inquiry,

> Hopefully, the decision of *B and R* will now put some of that expert evidence … into the cases so that it will be available to judges who read the cases. But that's no substitute for expert evidence in the particular case and, of course the expert evidence in a particular case might relate to the precise community that's involved. We can make some generalisations about Aboriginal people or Indigenous people, but there are often some quite significant differences from one community to another and you might want specific evidence about a particular community (evidence 654).

Lisa Young, however, raised a concern with the Full Court's requirement in *B and R* that, 'at least for the predictable future', evidence establishing the relevant issues in each case will still need to be adduced (page 624).

> There is an interesting analogy here with parenting cases involving homosexual parents. While the Court has gone through in detail the kinds of prejudicial arguments used against such parents, and largely discounted them, they still find the list of questions a useful checklist! In other words, they need to be reconvinced at every turn that homosexual parents are not naturally 'bad parents'. My concern here is that the Court's approach [in *B and R*] is similar in that it is saying they acknowledge these facts as notorious but want them proved in every case just in case they do not apply for some reason in one case. No doubt such a case may come up but there is no danger that the relevant arguments won't be put when that happens. Asking every applicant to take responsibility for these issues is the wrong solution – this is simply a matter of judicial education … Heterosexual parents are not asked to prove that they are not naturally bad parents, Caucasians are not put to proof of matters of such notoriety, why should Aboriginal (or homosexual) parents be? (submission 816 page 8).

Kinship obligations

The Family Court clearly has preferred the biological parent over a disputant extended family member in making custody (now residence) orders, although there is no presumption that that should be the case. Nevertheless, the Court, at least in reported cases, has yet to prefer an Indigenous child's grandmother, for example, over the child's natural, non-Indigenous father or mother. Moreover, section 61C recognises only the

parental responsibility of each of the biological parents and fails to recognise the child-rearing obligations of others.

By privileging parents and relegating the rights of other family members, the Australian family law system conflicts with Aboriginal child-rearing values. In Aboriginal societies child-rearing responsibilities are shared.

> [In Arnhem Land, NT and Mornington Island, Qld] it was the responsibility for an Aunt or Uncle to grow up the child of their sister or brother. It is a belief amongst Aboriginal people living in these areas that because an Aunty or an Uncle are not too emotionally involved with the child that they are able to make the best decisions for his education needs and the future role of the child in becoming a responsible member of the Aboriginal family group (Randall 1982 page 342).

By privileging stability of residence, the system similarly entrenches a bias against the Aboriginal practice of mobility of children among responsible adults and their households.

It seems that Indigenous families respond to the cultural inappropriateness of Australian family law by avoiding the Court and dealing with family disputes informally, or under traditional Law. As Chief Justice Nicholson recently acknowledged,

> Historically, indigenous peoples have had little contact with the Court and have been reluctant to seek out the Court's services, even in circumstances where their traditional methods of resolving disputes have failed (1995 pages 11-12).

When a non-Indigenous parent seeks a residence or other parenting order, however, the Indigenous parent and family have no choice but to engage with the Family Court. Section 60B of the Act, which sets out the principles relating to children's welfare, does recognise the child's right of contact 'with other people significant to their care, welfare and development'. This provision invites the submission of evidence in the particular case as to who those people are and how they might be involved in future. Judges familiar with Indigenous cultural values will be able to appreciate the significance of such evidence.

Judges, in common with all other professionals dealing with Indigenous families and children, require ongoing education comprising the history and effects of forcible removal as well as Indigenous cultural values, especially those relating to child-rearing. As Family Court Chief Justice Nicholson stated recently,

> … if cases do go to court, and obviously some of them will, justice will not be achieved unless the judicial officer dealing with the particular case has some understanding of the cultural background of the persons with whom he or she is dealing. Misapprehension on the part of the judicial officer as to the meaning of evidence is likely to be productive of serious injustice … (1995 page 7).

'Cross-cultural' training was planned for 1995 and 1996 for some Family Court

judges (Nicholson 1995 page 13, Cooke 1996 page 13). It was suggested to the Inquiry that judicial education needs to be ongoing.

> … one of the failings of judicial education programmes is that they seem to be one-off affairs. Judges may only deal sporadically with cases involving Aboriginal parties (given the small number of cases that actually reach a final trial) and cannot be expected to keep at their fingertips knowledge passed on over the course of a few days some years ago … Moreover, education involves more than placing information at someone's disposal and judges should have the opportunity to engage with the material in more depth in a more appropriate environment (Lisa Young submission 816 page 10).

All officers of the Family Court involved in parenting disputes will need ongoing training to ensure accessibility for, and to avoid discrimination against, Indigenous people.

Relevant staff include counsellors and Registrars. The critical role of the counsellor or welfare office preparing a Family Report points to the need to ensure all such staff are thoroughly trained. Our recommendation relating to the role of separate representatives and Aboriginal and Islander Child Care Agencies will only be effective if implemented within an environment of heightened awareness and sensitivity on the part of counselling staff, registrars, judges and all other court officers.

Western Australia

Unique among the States and Territories, Western Australia established its own State Family Court in 1975. The State Act allowed custody and access decisions about all children, whether born in a marriage or not, to be made in the same court on the same principles. Elsewhere in Australia children of a marriage were dealt with under the Commonwealth's *Family Law Act 1975* and ex-nuptial children under separate State legislation (except in the Territories where Commonwealth legislation applied). In the 1980s the other States transferred their jurisdiction over ex-nuptial children to the Commonwealth to permit those children to be dealt with under the *Family Law Act*.

A significant degree of uniformity has been maintained since between the Commonwealth Act and the WA Act. However the Commonwealth amending legislation in 1996 disturbed that uniformity. Legislation to restore uniformity is awaiting enactment in WA. The Inquiry's recommendations are directed explicitly to the Commonwealth's legislation on the understanding that Western Australia will amend the State Act in line with the Commonwealth.

24 Juvenile Justice

> The juvenile justice system is mimicking the separation policies of the past (Western Aboriginal Legal Service (Broken Hill) submission 775).

> The most distressing aspect about the level of juvenile justice intrusion in the lives of young Aboriginal and Torres Strait Islander people is the fact that entry into the system is usually the start of a long career of incarceration for many (SNAICC submission 309 page 28).

The removal of Indigenous children and young people can occur by way of juvenile justice intervention either through the use of police custody or through the incarceration of a young person in a juvenile detention centre. The length of separation can vary from a few hours or days to months or years. However, as submissions to the Inquiry noted, the effects of the separation can last a lifetime.

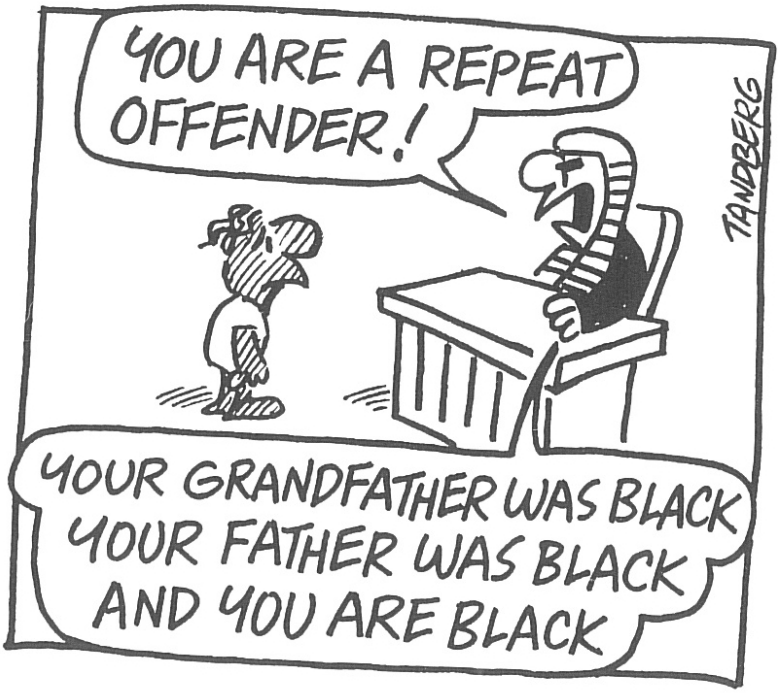
The disproportionate number (or over-representation) of Indigenous children and young people in the juvenile justice system and in particular in detention centres has been recognised for two decades. One of the earliest attempts to assess its level occurred in 1977 during a symposium organised by the then Commonwealth Department of Aboriginal Affairs on the care and treatment of Indigenous young people in detention centres (Sommerlad 1977). During the 1980s there were numerous reports which outlined the over-representation of Indigenous young people in various State or Territory jurisdictions (Cunneen and Robb 1987, Semple 1988, Gale et al 1990, Cunneen 1990). These studies indicated Aboriginal over-representation in police interventions, in court appearances and in juvenile detention centres.

Aboriginal child care agencies and Aboriginal legal services throughout Australia consistently drew attention during the 1980s to the problems associated with the high levels of criminalisation of Indigenous youth (D'Souza 1990). Some commentators argued that the over-representation of Indigenous young people in juvenile corrections represented a continuation of earlier removal policies by way of a process of criminalisation (Cunneen 1990 and 1994, O'Connor 1994). Aboriginal organisations supported this interpretation in submissions to the Inquiry (see ALSWA submission 127, Western Aboriginal Legal Service (Broken Hill) submission 775 and SNAICC submission 309). Also supporting this argument is research in most Australian jurisdictions indicating not only that Indigenous young people are over-represented in the juvenile justice system but that they are most over-represented at the most punitive end of the system, in detention centres (Gale et al 1990, Wilkie 1992, Crime Research Centre 1995, Luke and Cunneen 1995, Criminal Justice Commission 1995). This phenomenon is now recognised by many governments (for example, Queensland Government interim submission page 90).

During the 1980s and early 1990s many Indigenous communities grappled with developing alternative mechanisms for dealing with young people who offend. These alternative Indigenous mechanisms have tended to be localised, inadequately funded and

without any legislative base. However, a key principle in these developments has been implementing self-determination at the grass roots level. In other words, communities have continually sought their own solutions to the problem of the over-representation of Indigenous young people in the juvenile justice system (Dodson 1995, Dodson 1996, Cunneen and White 1995 pages 152-3).

The principle of self-determination and the need for the development of Indigenous community responses to deal with Indigenous young people were fundamental to the main recommendation from the Royal Commission into Aboriginal Deaths in Custody designed to prevent the removal of Indigenous youth through juvenile justice or welfare intervention. Recommendation 62 called on governments to negotiate with Aboriginal communities and organisations to find solutions. ATSIC has reminded the Inquiry of the importance of this recommendation (submission 684 page 42).



The processes of juvenile justice separations

Police custody

The police play a pivotal role in the separation of Indigenous children and young people from their families and communities. The Inquiry has already documented this role in the history of removal policies. However, police still have a major function in bringing about separations. Most obviously, Indigenous children and young people are separated from their families and communities by being placed in police custody and held in watchhouses, lock-ups or cells.

The Australian Institute of Criminology specifically drew the links between past removal policies and contemporary use of police custody.

> For many Aboriginal people, police officers taking children into custody and locking them in the cells, particularly in circumstances where this would not happen to a non-Aboriginal child, is a continuation of the practices of the past that have led to the Inquiry being established (submission 686 page 4).

The issue of Indigenous children and young people in police custody was addressed by the Royal Commission into Aboriginal Deaths in Custody. A key recommendation was 'that, except in exceptional circumstances, juveniles should not be detained in police lock-ups' (Recommendation 242). The Convention on the Rights of the Child also requires that arrest and detention following arrest should be measures of last resort (article 37(b)). Alternatives should be utilised unless the circumstances are exceptional. An evaluation of State and Territory responses to Recommendation 242 found that it has not been adequately implemented (Cunneen and McDonald 1997 pages 182-184).

The Australian Institute of Criminology presented an analysis of the results of the August 1995 National Police Custody Survey which shows the extent to which police custody is utilised.

> The significance of the survey's findings to the Inquiry is that they help to illustrate the continuing heavy involvement of Indigenous children (compared to non-Indigenous children) in the criminal justice system, in particular the elevated proportion of Aboriginal children being held in the cells by police (submission 686 page 2).

The following table shows the number and percentage of Indigenous and non-Indigenous youth aged 10 to 17 held in police custody nationally during the August 1995 survey period.

National Police Custody Survey, August 1995

	Indigenous youth		Non-Indigenous youth		Total	
Age	No	%	No	%	No	%
10	-	-	1	100	1	100
11	4	57	3	43	7	100
12	24	67	12	33	36	100
13	65	59	46	41	111	100
14	105	59	73	41	178	100
15	151	44	190	66	341	100
16	155	38	250	62	405	100
17	200	30	474	70	674	100
Total	704	40	1,049	60	1,753	100

Note: It is not possible to distinguish Aboriginal from Torres Strait Islander young people in any juvenile justice data.

Some 40% of all young people held in police custody during the survey period were Indigenous. Indigenous children and young people comprise only 2.6% of the national youth population. In fact, the rate of custody per 100,000 Indigenous young people is 1,333 compared to a rate of 52 for non-Indigenous youth. The over-representation factor is 26.

The majority of children taken into police custody under the age of 15 years were Indigenous. That children of such a young age should be separated from their families, communities and community organisations is highly disturbing, particularly when such separations are not a feature of police interaction with non-Indigenous children. The issue of the relatively young age of Indigenous young people detained in police custody was

raised by the ALSWA which told the Inquiry that one in five Indigenous young people detained in WA police cells was 14 years of age or younger. Of these 92% already had an arrest history (ALSWA submission 127 page 334).

The following table shows the distribution of police custody of young people by jurisdiction throughout Australia. Not all States and Territories resort to the use of police custody to the same extent. Nevertheless, the data demonstrate that over-representation of Indigenous young people in police custody is a significant problem and that there are differential patterns of policing Indigenous children and young people compared to non-Indigenous children and young people.

Young people in police custody in each State and Territory, August 1995

	Indigenous youth		Non-Indigenous youth		Total	
State	No	%	No	%	No	%
NSW	108	36	192	64	300	100
Vic	16	7	209	93	225	100
Qld	176	42	245	58	421	100
WA	228	61	146	39	374	100
SA	123	39	196	61	319	100
Tas	3	9	31	91	34	100
NT	45	69	20	31	65	100
ACT	5	33	10	67	15	100
Aust	704	40	1,049	60	1,753	100

The majority of young people held in police custody in Western Australia and the Northern Territory were Indigenous young people. This issue is of particular concern in WA where the overall number in police custody is also high: 61% of young people held in police custody were Indigenous.

Other jurisdictions with large Indigenous populations also had relatively high proportions of Indigenous young people in police custody. These included Queensland with 42%, SA with 39% and NSW with 36%. WA also accounted for 32% of all Indigenous young people in Australia who were held in police custody, followed by Queensland which accounted for 25% of the total.

The Australian Institute of Criminology made a number of important points in relation to the use of police custody for Indigenous young people.

> While there are many occasions where police officers will need to detain children who have committed offences or who are at risk of coming to harm, holding them in the cells at police lockups can rarely if ever be justified. In many cases, doing so breaches the police's own standing orders and perhaps legislation. Apart from the most exceptional circumstances (and that surely cannot be 61% of the time in WA!) it breached Recommendation 242 of the Royal Commission into Aboriginal Deaths in Custody (submission 686 page 4).

In WA detention in police cells is often not related to criminal matters at all. In the Kimberley region over 50% of juveniles detained in police cells were there because of alcohol use (ALSWA submission 127 page 334 referring to Crime Research Centre research). Public drunkenness is not a criminal offence in WA, although police retain the power to detain intoxicated persons. In addition, the Inquiry was told that the *Young Offenders Act 1994* (WA) permits too much discretion to police officers by failing to place a positive onus on them to find alternatives to police cells when a young person is intoxicated (ALSWA submission 127 page 347).[1]

The *Convention on the Rights of the Child* article 37(c) requires the separation of juveniles from adults when young people are deprived of their liberty (see also ICCPR article 10(2)(b)). Article 37(c) of CROC also requires that every child is to be treated in a manner which takes into account the needs of persons of his or her age. The Commonwealth Government submitted a reservation on the relevant sections of both treaties,[2] arguing that geography makes total segregation difficult to achieve and that responsible authorities should have the discretion to 'determine whether it is beneficial for a child or juvenile to be imprisoned with adults' (quoted by Aboriginal and Torres Strait Islander Social Justice Commissioner 1996 on page 205). The available empirical evidence strongly suggests that the 'discretion' disadvantages Indigenous young people.

Juvenile detention centres

> The detention of Aboriginal youth is a form of child removal. This cannot be denied or ignored. Incarceration and its ensuing deprivation of liberty is a destructive and dehumanising experience (ALSWA submission 127 page 340).

Concern about the over-representation of Indigenous young people in detention centres developed from the early 1980s. Most of the research was State-based, reflecting the nature of separate juvenile justice jurisdictions across the nation. There was great difficulty in deriving comparable national data on Indigenous over-representation. Indeed, the Royal Commission into Aboriginal Deaths in Custody noted, 'At no level of the criminal justice system is statistical information more inadequate than it is with respect to juvenile offenders' (*National Report* 1991 Volume 2 page 254). Although acknowledging the difficulties of interpreting the available data, there was a perception that the over-representation of Indigenous young people was increasing (*National Report* 1991 Volume 2 page 263).

Some of the data provided to the Inquiry indicate the upward trend in the

incarceration of Indigenous young people during the late 1980s and early 1990s. The NSW Government noted that the proportion of Indigenous young people in detention centres had increased in the four years to 1994 (interim submission page 81). No explanation was given as to why this may have occurred.

All Australian States and Territories have submitted quarterly returns to the Australian Institute of Criminology on the number of juveniles held in detention centres since 1982. However, it is only since 1993 that national information has been included which identifies whether a young person is Indigenous or not, thus permitting comparisons to be made.

Nationally some 36% of youth in juvenile correctional institutions on 30 June 1996 were Indigenous. The rate of incarceration was 540 per 100,000 Indigenous young people compared to a non-Indigenous rate of 25 per 100,000.

Young people in juvenile corrective institutions, 30 June 1996

	Indigenous youth			Non-Indigenous youth			Total	
State	No[a]	%	Rate[b]	No[a]	%	Rate[b]	No[a]	%
NSW	102	30	746	238	70	36	340	100
Vic	4	6	132	66	94	13	70	100
Qld	84	61	594	53	39	14	137	100
WA	61	57	734	45	43	23	106	100
SA	18	22	572	65	78	42	83	100
Tas	6	23	301	20	77	37	26	100
NT	9	69	110	4	31	29	13	100
ACT	1	14	324	6	86	17	7	100
Aust	285	36	540	497	64	25	782	100

Sources: Australian Institute of Criminology submission 686 and Atkinson and Dagger 1996.

a These figures do not include young people over the age of 17 years who are held in juvenile correctional centres. Some jurisdictions (such as NSW) have significant numbers of young people in this category. Nationally, at 30 June 1996 an additional 37 Indigenous young people 18 years or older were held in juvenile institutions (Atkinson and Dagger 1996).

b Rate per 100,000 of the relevant population. Rates quoted by the Australian Institute of Criminology are correct to two decimal places. The above rates have been rounded for ease of reading.

This table shows the number of Indigenous and non-Indigenous young people held, the percentage of the total which each group comprised and the rate of incarceration for each group. The majority of young people in juvenile correctional institutions in NT (69%), Queensland (61%) and WA (57%) were Indigenous.

However, NSW had the highest number of Indigenous young people incarcerated (102) as well as the highest rate (746 per 100,00). WA's rate of 734 was only slightly lower than that in NSW. Queensland and SA also had extraordinarily high rates (594 and 572 respectively). Nationally some 87% of Indigenous young people in detention are held in only three States: NSW, WA and Queensland.

Jurisdictional differences also indicate important considerations in relation to policy development. For example, unless we assume that Indigenous youth in WA are six times more criminal than Indigenous youth in Victoria, we need to consider what it is about government policy and legislation that leads to greater levels of incarceration of young people in the former State. Similarly the variations in incarceration by jurisdiction also have a positive side to them. They indicate that patterns of imprisonment 'are not the product of immutable factors. They can vary. They can change. They can be improved' (Dodson 1995 page 20).

Level of over-representation for Indigenous youth, 30 June 1996

Age	NSW	Vic	Qld	WA	SA	Tas	NT	ACT	Aust
10-17	20.5	9.8	41.1	31.6	13.7	8.2	3.8	19.0	21.3

This table shows the level of over-representation of Indigenous young people to non-Indigenous young people in correctional institutions by comparing the rates of incarceration in each jurisdiction. Thus in Queensland for example an Indigenous young person is 41.1 times more likely to be in juvenile correctional institutions than a non-Indigenous young person. Queensland has the highest level of over-representation, followed by WA and NSW. For Australia as a whole, Indigenous youth are 21.3 times more likely to be in a detention centre than non-Indigenous young people.

The sex of a young person is also a significant factor as the following table shows.

Comparing males and females in juvenile corrective institutions, 30 June 1996

	Males		Females		Total	
	No	%	No	%	No	%
Indigenous	258	90.5	27	9.5	285	100
Non-Indigenous	465	93.6	32	6.4	497	100
Total	723	92.5	59	7.5	782	100

Young males comprise the majority of youth in detention centres, irrespective of whether they are Indigenous or not. Most separations which arise directly as a result of

criminalisation and incarceration affect young Indigenous males.

However, the table above also shows that Indigenous girls form a higher proportion of all girls in detention centres than Indigenous boys for all boys. Indigenous girls comprise 46% of all girls incarcerated while Indigenous boys comprise 36% of all boys.

Both of these points have important implications for the development of policy responses. To reduce the extent to which Indigenous young people are separated from their families and communities by incarceration requires a consideration of gender. The greatest possible reduction in separations would be achieved by policies that reduce Indigenous male incarceration. However, policies also need to consider the specific factors that may lead to the incarceration of girls such as previous physical and sexual abuse, drug and alcohol problems, homelessness and so on. These factors clearly have a greater impact on Indigenous girls than non-Indigenous girls since they constitute nearly half of all girls incarcerated.

A further point raised by the Australian Institute of Criminology relates to the extent to which Indigenous young people are held in correctional institutions on remand. At 30 June 1996, some 40% of Indigenous youth in institutions were on remand. The remaining 60% were serving custodial sentences. The data relating specifically to Indigenous girls showed that 59% were detained on remand. An analysis of the data over the period 1993 to 1996 showed that ‘at a national level, the gap between sentenced and remanded Indigenous juveniles appears to be closing … Queensland appears to demonstrate the most consistent trend in this direction’ (Australian Institute of Criminology submission 686 pages 6-7). Policy reforms are needed to secure further reductions in the numbers of Indigenous young people detained on remand.

Australian Institute of Criminology data enable a consideration of changes in the rate and number of incarcerated young people based on quarterly reports for the three year period September 1993 to June 1996.

Changing populations in juvenile corrective institutions

September 1993 to 30 June 1996

	Indigenous		Non-Indigenous	
	No	Rate	No	Rate
Sept 93	211	408.0	472	24.1
Dec 93	220	425.4	511	26.0
Mar 94	257	486.8	525	26.8
June 94	271	513.3	479	24.4
Sept 94	248	469.7	465	23.7
Dec 94	249	471.6	462	23.5
Mar 95	309	585.3	509	25.9
June 95	260	492.5	527	26.9
Sept 95	274	519.0	497	25.3

Dec 95	254	481.1	491	25.0
Mar 96	276	522.8	478	24.4
June 96	285	539.8	497	25.3

There were 26% more Indigenous young people in detention at the end of June 1996 than there were at the end of September 1993. The rate per 100,000 of the Indigenous youth population incarcerated increased by 24% from 408.0 to 539.8. During the same period, the number of non-Indigenous young people in detention centres increased by 5%, while the rate increased by a similar percentage (4.7%). There has been a fluctuating but overall increase in Indigenous rates of incarceration in NSW and WA. In Queensland there was a steady rate of increase until early 1995 and then a levelling out of the rate (Atkinson 1996 page 6).

The Australian Institute of Criminology concluded,

> There appears to be little cause for optimism in relation to the over-representation of Indigenous juveniles in detention. Of particular concern are the consistently high numbers of Indigenous youth in detention in NSW, Queensland and WA; the likelihood that very young detainees will be Aboriginal, the steady increase in the rate of detention of Indigenous juveniles in Australia; and, an apparent upward trend in the proportion of Indigenous remandees to sentenced Indigenous detainees. The level of over-representation of Indigenous juveniles in detention in Australia appears to be rising (submission 686 page 8).

A further factor to be considered is the location of detention centres. Most detention centres in Australia are hundreds, if not thousands, of kilometres away from many Aboriginal communities from which the detention population is drawn. The distance makes it extraordinarily difficult for parents and relatives to visit incarcerated young people and therefore exacerbates the effects of removal. This particularly affects Indigenous children and young people because they are more likely to come from a non-urban background (Luke and Cunneen 1995). The problem has received attention previously in the research literature (Wilkie 1991 page 156, Cunneen and White 1995 page 236) and in evidence to the Inquiry (NSW Government supplementary information, WA Government supplementary information).

Finally, Indigenous children tend to enter the juvenile justice system at an earlier age and stay in the system for longer (Queensland Government interim submission page 90, Criminal Justice Commission 1995 page 16 and Wundersitz 1996 page 204). Not only is the rate of removal of Indigenous young people from their families much higher than non-Indigenous young people, they are comparatively younger and more geographically isolated from their family and kin.

Juvenile justice legislation

Legislation, policy and practice provide the framework within which removals occur. Indigenous young people, like other young people in Australia, are subject to the criminal law and a range of other laws. ‘Juvenile justice legislation’ refers primarily to the legislation which establishes a separate system for dealing with young people when they have been suspected of committing, charged with or convicted of a criminal offence.

In all Australian jurisdictions, except Tasmania, welfare matters have been separated from justice matters. In other words, children or young people who are deemed to be in need of care and protection are dealt with separately and in a different way from young people charged with a criminal offence. The separation has been accomplished in various jurisdictions either through separate legislation for criminal matters and welfare matters such as in NSW (the *Children (Criminal Proceedings) Act 1987* and the *Children (Care and Protection) Act 1987*) or within the same legislation such as in Victoria where the *Children and Young Person's Act (1989*) establishes separate divisions of the Children's Court – the Family Division and Criminal Division – effectively separating welfare matters from criminal. Tasmania is the only Australian State to continue to operate under a system that mixes welfare and criminal matters (*Child Welfare Act 1960)*. However, Tasmania is currently considering separating the jurisdictions by way of a *Youth Justice Bill* and *Children and Their Families Bill* (Cunneen and White 1995 pages 189-193, Tasmanian Government submission page D-23).

The formal separation of welfare and juvenile justice is not always apparent in practice, however. Indeed, young people who have contact with the child welfare system are more likely to come into contact with the juvenile justice system.

> Our belief is that there is actually a link between the two [juvenile justice and child welfare] in the sense that those who are taken from their families and placed in alternate care or out of home care, whether in institutions or foster care, are much more likely to come before the attention of the criminal justice system (SNAICC submission 309 page 28).

This phenomenon is particularly apparent with Indigenous young people.[3] The formal separation has had effects which have not necessarily been beneficial. Some commentators have argued that a 'justice' model emphasising the 'rule of law' and 'due process' has in fact lead to a failure to consider discretionary issues particularly as they are exercised by police. Factors such as the utilisation of police discretion on the street, over-policing, police-youth conflict and racism have been ignored (O'Connor 1994 page 210, Naffine et al 1990) although they are the very issues likely to lead to disproportionate criminalisation of Indigenous young people (Cunneen 1994).

Juvenile justice legislation varies between jurisdictions and there are differences as to precisely what is covered by the legislation in each jurisdiction. Generally speaking, juvenile justice legislation covers,

- principles applicable to dealing with young people accused or found guilty of offending,
- definitions of a 'young person' or 'child',
- police powers to proceed against a young person through the use of arrest, attendance notices or the issue of summons, as well as stipulating a preference for the use of attendance notices or summons rather than arrest,
- diversionary schemes (such as cautioning, panels or family group conferences) and how they should be utilised.,
- special considerations for young people relating to release on bail or detention in

custody,

- the Children's Court's special jurisdiction over children, what criminal matters the Children's Court can determine and which matters must be dealt with by a higher court,
- appealing against a Children's Court decision,
- sentencing options,
- special requirements relating to restitution and compensation, and
- establishment of detention centres and their operations (Cunneen and White 1995 page 177).

Indigenous young people, like other young people, are also subject to a range of general criminal laws and laws relating to criminal procedure. An Indigenous young person is most likely to come before the Children's Court for a violation of the law under the Crimes Act or Criminal Code. Young people are also subject to the law governing public order under the various Summary Offences Acts and Police Offences Acts in different States and Territories. Again a sizeable proportion of young people brought before the courts will be there for violations of public order governed by this type of legislation. Public order charges are particularly prevalent against Indigenous youth.

Indigenous young people may also be subject to any general sentencing laws. For instance, in NSW the *Sentencing Act 1989* sets out requirements in relation to fixed terms, minimum terms and additional terms of imprisonment, as well as the relationship between parole periods and imprisonment. In some cases specific sentencing requirements covering such matters as mandatory sentences or additional terms will be included in the juvenile justice legislation. The WA *Young Offenders Act 1994* and recent amendments to the NT *Juvenile Justice Act 1995* are examples of juvenile justice legislation containing specific sentencing regimes.

This report does not analyse section by section the Commonwealth, State and Territory legislation affecting Indigenous young people. Rather, it indicates some of the general issues which were common areas of concern among witnesses to the Inquiry. Some of the specific criticisms of particular pieces of legislation will be dealt with in later sections.

The particular vulnerability of children entitles them to special protection during investigation. Special considerations relate to the cultural background of the young person, particularly Indigenous young people. The ALSWA specifically noted that the WA legislation fails to address these issues comprehensively (submission 127 page 346). However, it is a problem common to most Australian juvenile justice legislation.

Some jurisdictions have adopted a general principle on the need to consider the cultural background of a child in any decisions made under juvenile justice legislation (for example section 4(g) of the Queensland *Juvenile Justice Act 1992*). However, this is inadequate in ensuring that key principles such as the right of Indigenous self-

determination and the maintenance of Indigenous children with their families and communities are adhered to. There is no obligation to negotiate with Indigenous communities. When asked by the Inquiry how the court was provided with information which makes section 4(g) a meaningful obligation, the Queensland Government responded that 'Aboriginal and Torres Strait Islander staff or community members provide information directly to the courts or indirectly through Departmental staff' (final submission page 60). However, other evidence suggests that consultation in practice may be poor (Cunneen and McDonald 1997 pages 174-176).

There are also considerable variations in the extent to which police procedures for dealing with young people are set out in law. In some jurisdictions the process by which police should give cautions or the criteria which should be used in deciding which children should be cautioned for particular types of behaviour are not articulated in the legislation. For instance, many of the important decisions made in relation to the treatment of juveniles in NSW occur without a legislative base. Police cautioning of juveniles is regulated by 'Commissioner's Instruction 75 – Child Offenders'. There is no legislative support for the process and it exists essentially as a use of police discretion endorsed by the Police Commissioner (NSW Government interim submission page 77).

Police exercise wide discretion as to how a young person will be dealt by the authorities. The adverse use of this discretion in regard to Indigenous young people is a critical issue in drawing Indigenous youth further into the juvenile justice system.

Another key issue with juvenile justice legislation, with direct implications for self-determination, is that Indigenous interests are largely ignored when legislation is being introduced or amended. The ALSWA stated in relation to WA,

> The lack of consultation and total absence of negotiation with the Aboriginal community on this Bill is contrary to recommendations of the Royal Commission into Aboriginal Deaths in Custody … No other Aboriginal community organisations were consulted in this process (submission 127 pages 344-5).

In NSW there was no consultation with Indigenous organisations when the *Children (Parental Responsibility) Act 1994* was introduced. In the NT there was strong opposition by Indigenous organisations such as the North Australian Aboriginal Legal Aid Service (NAALAS) and the NT Aboriginal Justice Advisory Council (AJAC) to recent legislation introducing minimum mandatory imprisonment for certain offences. A recent survey of the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody noted that inadequate consultation and negotiation with Aboriginal organisations about legislative changes was a national problem (Cunneen and McDonald 1997 pages 125-130, 170).

Finally, the lack of adequate funding for Indigenous community-based alternatives to the formal juvenile justice system is a national problem. The lack of alternatives undermines self-determination at the local level and results in greater numbers of Indigenous young people ending up in institutions, effectively removed from their families and communities.

In addition Indigenous people generally are not in control of the design and implementation of preventive programs for Aboriginal youth. The attention of the Inquiry was drawn to the findings of Wilkie that,

> [Most] targeted prevention programs have as their primary, stated target young Aboriginal offenders … Some of the services funded have an almost 100% Aboriginal client population. Yet few are managed by Aborigines and none are directly controlled by the local Aboriginal community. On the other hand most which cater for Aboriginal young people do not employ Aboriginal staff (quoted by ALSWA submission 127 on page 194).

By and large, the main diversionary schemes in the various States and Territories have been introduced without proper negotiation with Indigenous communities and organisations and without a framework for control by Indigenous organisations where communities desire such control. Often this occurs at the same time as State and Territory governments publicly espouse a commitment to self-determination.

Juvenile justice policy and program responses

Each State and Territory has developed a range of policy and program responses to address the issue of Indigenous over-representation in police custody and detention centre populations. The following sections briefly describe the various initiatives available in each State and Territory.

New South Wales

The NSW Government advised the Inquiry that the State's Police Service has been participating in a whole-of-government approach to the problem of Aboriginal young people in the juvenile justice system. Two areas of relevance to the Inquiry are the Police Service's 'Youth Policy and Action Plan' and the 'Aboriginal Policy Statement and an Aboriginal Strategic Plan'.

The Youth Policy and Action Plan aims to increase the use of alternatives to arrest, restrict the use of courts to a last resort and enhance fair treatment of young people. The Aboriginal Strategic Plan aims to reduce the number of Aboriginal people entering the criminal justice system and has a number of target policy areas. An advisory mechanism, the Aboriginal Police Council, was established in 1992. There are also 50 Aboriginal Community Liaison Officers in NSW, four regional Aboriginal co-ordinators and an Aboriginal client consultant. In addition there are 147 Aboriginal police officers (NSW Government interim submission page 78). An Aboriginal Employment Strategy was launched in December 1995 to raise Indigenous employment in the Police Service to 2% or greater.

The Department of Juvenile Justice has developed a number of programs for Indigenous young people including the Metropolitan Bail Hostel and the Nardoola Bail Hostel both of which provide accommodation and supervision for up to six Aboriginal

young people. The Nardoola program is also expected to provide additional accommodation for young people on conditional discharge and a day program for young people on Community Service Order placements. The Dubbo Aboriginal Bail Support Program assists Aboriginal young people who have committed minor offences but are likely to be refused bail because they lack suitable accommodation (NSW Government interim submission page 87).

The Aboriginal Mentor Program involves Aboriginal people acting as mentors for Indigenous young people who are on remand or under supervision. The mentors provide support, guidance and advocacy and assist in meeting areas of identified need such as training. In the Riverina area the Safe Haven program recruits, trains and supports Aboriginal carers to provide assistance for Indigenous young people when they are unable to remain in or return to their own homes.

The South Sydney Youth Services – Court Support and Post Release Program targets both Aboriginal and non-English speaking background young people who have had previous contact with the juvenile justice system and are at risk of re-offending or about to be released from a detention centre. The program provides supervision of community-based orders, referrals for counselling and follow-up work.

The Ending Offending Program is a general program which provides an alternative for all young people facing incarceration. It is a compulsory program of one day a week for 12 weeks covering a range of lifestyle, drug and alcohol, employment and personal development issues.

The Department of Juvenile Justice has 53 identified Aboriginal staff positions. Of these, 19 are juvenile justice officers with responsibilities for supervision and the preparation of court reports. There are nine Aboriginal Program Development Officers responsible for Indigenous non-custodial programs and liaising with Aboriginal communities. In addition, there is a Coordinator of Aboriginal Programs.

South Australia

The SA Government recognised the over-representation of Indigenous young people in the juvenile justice system and identified three programs specifically designed to impact on offending levels: the ‘cautionary diversion program’ designed to divert Indigenous young people at the point of contact with the police, the ‘Family Connections Program’ which uses intensive family intervention and the ‘Alternative to Detention Program’ (interim submission page 41). The cautionary diversion program involves a number of youth workers operating in particular areas to assist in maximising the use of cautions by police and reducing the number of arrests through a number of identified strategies. The program is to operate along the lines of the Youth Support Group in Adelaide which has apparently been disbanded (Wundersitz 1996 page 205).

The Inquiry was told of a number of programs and alternatives for young people, some specifically for Indigenous youth. Diversionary programs include the Youth at Risk Program. There are also sentencing alternatives such the ‘Operation Flinders’, a

wilderness trek with several weeks of follow-up support, and Frahn's Farm, an Aboriginal run rehabilitation program (Planning Advisory Services 1995 appendix 1). Aboriginal 'safe houses' or bail hostels have been established in Adelaide and Port Augusta.

Victoria

Indigenous juvenile justice policy is implemented in Victoria through a number of key strategies including a sentencing hierarchy which facilitates community-based diversion, a stronger court advice function, a Bail Advocacy Service and After Hours Bail Placement Service, the Koori Justice Workers Project and a recognition of the importance of primary prevention.

The Koori Justice Workers Project operates through local Aboriginal co-operatives and other Indigenous organisations. The positions are funded by the Victorian Department of Human Services but the nature of the specific tasks which are undertaken are developed at the community level. The project was initiated to address the problem of Indigenous young people failing to complete non-custodial orders. It now operates with a focus on crime prevention, advocacy and supervision. The project allows juveniles on orders or in diversionary programs to be supervised by members of the Aboriginal community. The Victorian Government advised the Inquiry that 'the project developed as a self-management model and funding was provided to the local Aboriginal communities who assumed responsibility for the employment, supervision and support of a Koori Justice Project worker' (interim submission page 68). A recent report by the Aboriginal and Torres Strait Islander Social Justice Commissioner described how the project has been working successfully at Lake Tyers (Dodson 1996 pages 52-53).

In Victoria the rate of over-representation of Aboriginal young people fell substantially between 1993 and 1994. In 1993 Indigenous young people were 37.3 times more likely to be in a juvenile corrections centre than non-Indigenous young people. By 1994 the rate/ratio had reduced to 11.9 (Mackay 1996a). A further reduction of 46% in the total numbers of Aboriginal young people on correctional orders was reported between March 1994 and March 1995 (Dodson 1996 page 52). The lower juvenile detention figures are said to reflect a broad shift in policy direction from incarceration to diversion, as well as the success of specific initiatives such as the Koori Justice Workers Project. The Victorian Government noted that in the six areas where the projects are located 'there has been a significant reduction in the number of Aboriginal young people placed on custodial and non-custodial juvenile justice orders' (interim submission page 68). The Koori Justice Workers Project is an example of best practice in the area (Cunneen and McDonald 1997 pages 83-4). A Koori Advisory Committee has been established to advise on juvenile justice generally.

The reduced rate of Indigenous juvenile detention in Victoria is particularly pleasing in the context of a number of personal submissions to the Inquiry concerning incarceration in Turana detention centre during the 1980s. These included a 14 year old Aboriginal boy incarcerated for shoplifting and a profoundly deaf Aboriginal boy

incarcerated when his foster placement broke down and there was no alternative accommodation available (confidential submissions 458 and 662, Victoria).

Northern Territory

The NT Government informed the Inquiry of a long-term decrease between 1989 and 1995 in the number of juveniles sentenced to detention in the NT and the number held on remand. This reduction was attributed to the development of community based correctional programs.

The employment of Aboriginal Community Corrections Officers (ACCO) in specific communities to supervise court orders and the use of 'culturally appropriate' community service orders have been credited with the reduction in custodial orders. The NT Juvenile Offender Placement Program (JOPP) has been designed to minimise the use of police cells for young people. Aboriginal caregivers can provide accommodation and support to young people who might otherwise be remanded in custody.

The NT Government advised of plans for further expansion of the ACCO program and the development of a trial program of 'community supervision' where Indigenous organisations are paid on a fee for service basis to supervise court orders (interim submission page 53). However, as noted below, the Inquiry is particularly concerned that legislative changes introducing mandatory imprisonment and punitive work orders are likely to undermine existing reductions in custodial levels.

Tasmania

The Tasmanian Government advised the Inquiry of proposed new legislation, currently in draft form, which aims to respond more appropriately to juvenile offending. The *Youth Justice Bill* and the *Children and Their Families Bill* differentiate between young people who offend and those in need of care and protection (Tasmanian Government submission page D-23). The *Youth Justice Bill* will introduce police cautions and diversionary programs including family conferencing. Some offences will be prescribed for court and not open to the use of diversionary options. Cautioning may involve the use of Aboriginal elders.

The range of non-custodial options will be increased under the proposed legislation. Community Service Order options will be expanded to include education and training and they will also be available for children under 15. Other proposed non-custodial options include fines, probation, undertakings and reparation. It is also proposed to start negotiations with Aboriginal organisations in relation to supervision of the non-custodial orders (Tasmanian Government submission Appendix 21, Cunneen and McDonald 1997 page 177). The proposed legislation has been commented upon favourably by youth advocates (National Children's and Youth Law Centre 1996 page 4). The limitations are noted below.

The Tasmanian Government also wishes to establish an Aboriginal Youth Justice Strategy and has approached the Tasmanian Aboriginal Centre in relation to the proposal. It has suggested a number of principles and possible initiatives (Tasmanian Government

submission pages D-26 to D-28).

Western Australia

The WA Government provided little information on any programs specifically designed for Indigenous young people. Facilities such as Gwynne Lea Cottage and Warramia Farm are available for young people on bail, supervised release or community based court orders. There is also a supervised release program which enables young people to serve the final half of a detention order under supervision in the community. The Killara Youth Support Service offers a program of counselling and support for 'at risk' young people and those who have just commenced offending. Camp Kurli Murri (also known as the Laverton Work Camp) is an 'alternative sentencing option' for the courts. All of these programs are available to all young people.

The WA Government noted that funds are made available to Aboriginal communities to develop community programs for young people to discharge court orders. The Kanpa facility near Warburton takes Indigenous young people while on bail or subject to a court order. An Aboriginal Family Support Program is being piloted in Geraldton and Perth to support elders to provide role models and support for young offenders (WA Government supplementary information).

Queensland

The Queensland Government drew attention to a number of programs designed to reduce the level of Indigenous over-representation. The Youth and Community Combined Action (YACCA) strategy is a preventive program. Four Indigenous-specific projects are funded under this program in Aurukun, Palm Island, Murgon/Cherbourg and Brisbane (interim submission page 92).

A number of other projects have been established in areas with high rates of reported juvenile offences and high rates of detention orders for Indigenous young people. These include a 'Crime Clean-up Team' in Inala and a young offender project in Ipswich (Teen Care Indigenous Youth Service) which provides culturally-appropriate supervision and other programs. Aboriginal Outreach Projects have been established at Cairns and Murgon to assist in the supervision of orders. Some Indigenous people have been employed as Adolescent Resource Workers to work with 'high risk' or 'high need' Indigenous children (Queensland Government interim submission pages 94-95). Taken together, these programs are said to reflect the Government's commitment to self-determination in the area of juvenile justice.

The Conditional Bail Program offers courts alternatives to remanding children in custody. The program focuses on children who would otherwise be unlikely to be granted bail or to comply with bail conditions. Programs can be individually designed. They may involve existing projects or engaging a community organisation on a fee for service basis. Slightly more than half of the children referred to the program have been Indigenous. The Queensland Government credits the program with a reduction in the number of

Aboriginal and Torres Strait Islander children remanded in custody (interim submission page 93). However, Indigenous young people are still massively over-represented among those detained in police watchhouses in Queensland (Queensland Government final submission page 59).

One of the most promising changes in dealing with young offenders in Queensland originated with the Yalga Binbi Institute and the Queensland Corrective Services Commission (QCSC). The Yalga Binbi Institute reported on problems facing Indigenous communities in maintaining law and order at the local level. To address the issue the Institute recommended a community development approach whereby communities, clans and family groups identify what roles they could play in changing patterns of criminal behaviour. The development of Aboriginal law was strongly supported as part of developing community justice mechanisms. Issues of law and order were to be addressed in a way that 'the community understands is right and in accordance with its own customs, laws and understandings about justice' (Adams and Bimrose 1995 page 37).

Community justice groups have developed in Kowanyama, Palm Island and Pormpuraaw. These groups are complex reflections of the communities they represent. For example, the Kowanyama Justice Council has eighteen members (nine men and nine women) representing the Kokoberra, Kokomnjena and Kunjen linguistic groups in the community. It has been argued that the success of Kowanyama Justice Council is reflected in dramatic decreases in arrests for offences and a drop in the number of children appearing before the local Children's Court. Similar successes have been claimed for the Palm Island Elders Group (Adams and Bimrose 1995 pages 40-43).

> The use of Aboriginal Law is central to the Elders emphasis on making kids, teenagers and their families accountable for their actions. Elders ask kids involved in a dispute and their families to front up to a meeting held in a local community hall 'before his or her own people'. Each party is given a chance to explain their version of the incident. The Elders give their view of how the child or the group of kids has behaved and then they ask the kids and families to respond. The group considers whether the child's actions are as a direct result of wider issues such as overcrowding, neglect or other conflicts at home and may recommend referrals and increased support to the family. Sitting down and talking with the child's parents and counselling is a vital part of the Elder's work (Dodson 1996 page 56).

The community justice groups have been commented upon favourably in a recent report to ATSIC (Cunneen and McDonald 1997 pages 72-76). However, there is also real concern in Queensland that the funding for local justice initiatives is not being handled adequately by the Office of Aboriginal and Torres Strait Islander Affairs and that there are unnecessary restrictions.

> Any initiatives developed will need to fall within the confines of the existing State systems. In particular, it should be noted that justice groups have no statutory authority … Consequently, justice groups have no direct responsibility under the Program for punishing misbehaviour or criminal offenders.

> Responses to law and order problems suggested by justice groups are essentially a means to bring forward Aboriginal and Torres Strait Islander communities' views and advice which may be incorporated into State systems, where appropriate (Queensland Office of Aboriginal and Torres Strait Islander Affairs 1996b page 13).

The appropriate process is one of negotiation between Indigenous people and government authorities. This approach, however, leaves little room for negotiation and has been described as antithetical to the principle of self-determination. The Queensland Government argued that the Local Justice Initiatives Program 'is an expansion of the concept originally piloted by the QCSC at Palm Island' and 'provides significant potential for communities to develop justice initiatives for young people' (interim submission page 100). However, there are serious doubts raised by the imposed restrictions. The restrictions also apparently contradict the Government's position on self-determination.

ACT

The ACT Government provided minimal information to the Inquiry on programs specific to Indigenous young people. It noted that 'where possible young Aboriginal people on Community Service Work Orders are placed within the local Aboriginal community' and that as part of individual case plans Indigenous youth in detention can participate in 'Aboriginal cultural, health and education programs' (interim submission page 25).

Commonwealth

The Commonwealth Government's submission to the Inquiry did not address the issue of what the role of the Commonwealth might be in preventing contemporary separations through juvenile justice intervention. It did, however, refer to a number of programs which provide generalist or Indigenous-specific services to young people and their families covering areas such as employment, education, health and family services.

Causes of separation

All States and Territories have programs and policies that are specific to Indigenous children and young people. Nonetheless the over-representation of Indigenous young people remains a critical issue. There are a number of specific factors relevant to this including policing issues, the problems associated with the nature and use of non-Indigenous diversionary schemes and a range of sentencing issues.

Policing

Submissions to the Inquiry raised many issues concerning police responses to Indigenous young people including Aboriginal/police relations, police powers, the utilisation of police discretion and the regulation of police behaviour.

The policing of Indigenous young people occurs within the broader context of Aboriginal/police relations. Those relations are themselves structured by both the history of British colonisation of Australia and the colonial relations forged with Indigenous peoples, as well as the nature of contemporary race relations and the extent of racism against Indigenous people within Australian society.

> Racism is endemic in Western Australia and is experienced in every area of society. However, the working conditions of police and the awesome power they wield can result in racism being reproduced in a particularly heightened and intensified form. Aboriginal juveniles are often singled out for police attention (ALSWA submission 127 page 364).

Several submissions to the Inquiry stated that over-policing is a major problem in many Aboriginal communities (for example, Western Aboriginal Legal Service (Broken Hill) submission 755, ALSWA submission 127 pages 247-251). The ALSWA reiterated the need for protocols to regulate the interaction between police and Aboriginal communities. Protocols should address over-policing, policing needs in remote communities, interaction between police and community wardens (in WA), procedures for negotiation and involvement in decisions relating to policing priorities and methods.

Major recommendations of the Royal Commission into Aboriginal Deaths in Custody also addressed the issue of over-policing and the establishment of protocols (Recommendations 88, 214, 215 and 223).These recommendations have been poorly implemented (Cunneen and McDonald 1997 pages 94-97, 100-102).

Most Indigenous young people do not believe that Aboriginal/police relations are improving. A 1994 survey by the Australian Bureau of Statistics showed that some 40% of Indigenous young people thought Aboriginal/police relations were much the same as five years ago, 18% saw an improvement and 20% thought relations were worse (1996 page 24).

However, there are also localised success stories. The reduction in juvenile offending in Kowanyama in Queensland is due in part to the partnership between the local police sergeant and the Kowanyama Justice Council (Adams and Bimrose 1995 page 42). Cooperative approaches between police and Aboriginal communities in the development of night patrols can improve Aboriginal/police relations, reduce police custody levels and lower juvenile offending levels (Dodson 1996 pages 60-62).

Policing public order

A range of legislative powers enables police to intervene against Indigenous young people in public places. These can include specific provisions within public order legislation, local government ordinances and laws and, in some cases, the use of welfare provisions which provide police with certain powers over young people in public places. Although the specific laws are particular to certain jurisdictions or, in some cases, local areas, the issue is a national one because of the common experience of Indigenous young people.

Arrests for public order offences still constitute a significant reason for the involvement of Indigenous young people in the juvenile justice system. The Western Aboriginal Legal Service (Broken Hill) drew attention to the disproportionate use of public order offences against Indigenous people in western NSW (submission 755). In Victoria, the most common single category of crime for which Indigenous young people were apprehended was public order offences – nearly 20% of all charges against Indigenous young people in 1993-94 (Mackay 1996b page 14). There was also a 43% increase in this category for Indigenous young people between 1993-94 and 1994-95 (Mackay 1996a page 7). In other jurisdictions the figures are broadly comparable. In NSW around 16% of police cautions and courts appearances for Indigenous young people involved public order offences (Luke and Cunneen 1995 page 11). Evidence from WA indicates that the proportion of Aboriginal juveniles charged with good order offences has increased since 1990. 'This result gives some support to the proposition that the police are using good order offences to clear Aboriginal youth from the streets' (Crime Research Centre 1995 page 5).

Section 138B of the *Child Welfare Act 1947* (WA) is an example of a welfare provision used in public order policing. This section allows police to 'clean the streets' by using legislation originally aimed at children in 'moral danger'. There have been numerous complaints about the way this legislation has been used as a form of 'moral policing' which disproportionately impacts on Aboriginal children and young people (ALSWA submission 127 page 342). It has also been noted that, instead of being taken 'to their place of residence' as required under the legislation, children have 'illegally been put in paddy wagons and taken to the police station for their parents to collect' (Dodson 1995 page 23).

Beresford and Omaji have noted that the juvenile justice legislation 'has done little to discourage the tendency to lock up children suspected of having a social problem' in WA (1996 page 115). The same can be said of other jurisdictions. In Queensland the government has encouraged police to use existing 'care and control' powers under the *Children's Services Act*. These sections of the legislation provide for intervention and the use of custody for young people who have not committed a criminal offence but are deemed to be 'at risk' (Cunneen and McDonald 1997 page 173).

The *Children (Parental Responsibility) Act 1994* (NSW) give police power to remove children and young people from public places. The Act empowers police to demand the name, age and address of a young person and remove young people under the age of 16 years from public places if they are unsupervised and the officer believes that there is a likelihood of a crime being committed or that the young person is at risk. The young person can be taken home or to a 'place of refuge' for up to 24 hours. A young person commits an offence if he or she leaves the 'place of refuge'. This power operates only in two areas within the State. It was reviewed in 1996 and its repeal has been recommended. The NSW Government is also proposing a Street Safety Bill to give police the power to break up groups of three or more young people congregated together where the officer has a reasonable suspicion that they are likely to intimidate or harass others.

Local government by-laws and local ordinances can create more punitive

approaches to the policing of Indigenous young people. Cunneen and McDonald (1997 page 170) have discussed how the local laws that cover Southbank Parklands in Brisbane are being used to create an 'Aboriginal free' zone. They note that Aboriginal youth are being harassed in Southbank and the Brisbane Mall areas by being required to show identification and provide their names. The effect has been to drive Indigenous young people away from the areas. In December 1995 the *Southbank Corporation Act* was amended to give police officers and security guards the power to stop people, ask for their name and address and request them to leave the area for 24 hours if they are regarded as causing a nuisance. There are also bans available for up to 10 days if the person disobeys a direction (Murray 1996).

There have been real inequities on the part of local governments in the standards of service provision and infrastructure between Aboriginal and non-Aboriginal communities (ALSWA submission 127 page 204). Failure to provide services for young people and families is likely to increase the risk of intervention by regulatory agencies of welfare and juvenile justice.

The police power to ask a young person for his or her name and address is also used inappropriately. The Inquiry was told that section 50 of the *Police Act 1892* (WA) which provides police with this power in WA is abused and should be repealed (ALSWA submission 127 page 367). Certainly, many Indigenous young people believe that they are stopped and questioned by police without adequate reason (Howard 1996). In South Australia police harassment of Indigenous young people was raised in community meetings with the Inquiry (evidence 308 page 1). The inquiry on children and the legal process being conducted jointly by the Human Rights and Equal Opportunity Commission and the Australian Law Reform Commission has been told of hundreds of young people having their names and addresses taken by police on typical weekends in Queensland and WA. That inquiry will report further on this issue.

Police discretions

When a young person is suspected of committing an offence, a police officer has a range of options available on how to proceed. These include a warning and no further action, a formal caution, and charging the young person by either issuing a summons[4] to appear in court on a certain date or by arresting the young person, conveying him or her to a police station, charging with an offence and determining bail.

The officer has a common law discretion to warn the young person and take no further action, except perhaps to record the details of the suspected offence and offender in his or her notebook. These informal warnings are sometimes referred to as 'warnings', 'informal cautions' or 'cautions on the run' and are different from a formal police caution.

All Australian States and Territories have some form of official police cautioning system. In some States (SA, WA and Queensland) police cautioning is provided for in legislation. In other States such as NSW, cautioning is regulated by police guidelines. In Tasmania the use of police cautions has been piloted and will be provided for in the new

legislation. The available evidence overwhelmingly confirms that Indigenous young people do not receive the benefits of cautioning to the same extent as non-Indigenous young people. Unfortunately, most police services do not provide routine data comparing Indigenous and non-Indigenous cautioning rates. This lack of information severely hinders policy evaluation.

Recent interviews with Aboriginal Legal Service solicitors in the NT indicated a relatively infrequent use of cautions by police for Aboriginal young people. Solicitors were of the view that the system was generally harsh for Indigenous young people who were treated and processed much the same as adults. Police cautions are only available for first offenders, a factor which defeats the purpose of diversion and is likely to discriminate significantly against Indigenous young people (Cunneen and McDonald 1997 page 181).

Aboriginal youth are less likely to be cautioned than non-Aboriginal youth in WA (ALSWA submission 127 page 334 referring to Crime Research Centre data). Aboriginal youth account for 12.3% of cautions (Crime Research Centre 1995 page 6). Of all Indigenous youth who are formally processed by the police around one-third receive a police caution and the remaining two-thirds are charged with an offence.

Conversely, two-thirds of non-Indigenous young people are cautioned and the remaining one-third are charged (Crime Research Centre 1995 page 18). The cautioning system in WA 'as it is employed at present, further disadvantages [Aboriginal juveniles] and further increases the disproportionately negative treatment they receive under the juvenile justice system' (submission 127 page 369). Furthermore the Inquiry was told that police are attaching conditions to cautions although there is no provision to do so in the legislation (submission 127 page 369). Contrary to Recommendation 240 of the Royal Commission into Aboriginal Deaths in Custody, police cautions are issued in WA without the involvement of parents (submission 127 page 369).

Factors which Western Australian police are required to take into account when deciding whether to caution include offending history and seriousness of the offence. They also include 'extra-judicial' factors such as family background, school attendance and employment. These are precisely the types of factors likely to cause discrimination against Indigenous youth (Gale et al 1990 pages 56-58).

In Victoria police instructions indicate that the preferred order of dealing with juveniles is 'no further action', a caution under the police cautioning program, proceed by way of summons, arrest, charge and consider bail, and finally arrest, charge and remand in custody as a last resort. Arrest should only take place in 'exceptional circumstances' and must be authorised by an officer of at least the rank of senior sergeant. However, the Victorian Government advised the Inquiry that in Victoria in 1995-96 Indigenous young people were significantly less likely to receive an official police caution than non-Indigenous young people (11.3% compared to 35.6%). Indigenous young people apprehended by police were twice as likely to be proceeded against by way of arrest (46.6%) compared to non-Indigenous youth (23.5%). As a result, while slightly more than one-third of non-Indigenous youth apprehended by police avoid appearing in court

(and the likelihood of a conviction and criminal record), little more than one in ten Indigenous young people are similarly treated. Put another way, 'the percentage of Aboriginal offenders dealt with through the police caution program is one-third the rate of non-Aboriginal offenders' (Victorian Government final submission page 121; see also Mackay 1996a pages 9-10).

The Inquiry was told that in NSW,

> … there is concern about the differential use of police cautions particularly for Aboriginal juvenile offenders. Measures are being introduced by the Police Service to encourage greater use of police cautions in dealing with young people generally and in particular with Aboriginal young people (NSW Government submission page 77).

However, despite recognising the need for change, the NSW Government simply noted that 'police use of discretion (arrest, bail, caution, etc) is currently undergoing detailed review' (submission page 77). In NSW an Aboriginal young person is less likely to receive a caution than a non-Aboriginal young person on a similar charge with a similar criminal history. In other words a non-Indigenous young person is treated more favourably than an Indigenous youth in similar circumstances (Luke and Cunneen 1995 page 29).

In Queensland the perception of Indigenous organisations such as the Aboriginal Justice Advisory Council and various Aboriginal Legal Services was that there was discriminatory intervention by police against Indigenous young people in the first instance and, arising out of that intervention, Indigenous young people were less likely to be cautioned and more likely to be charged than non-Indigenous youth. Police cautions are not issued to Indigenous young people in situations where public visibility and public order are seen as issues (Cunneen and McDonald 1997 page 181).

In South Australia, Aboriginal young people are half as likely to receive a police caution as non-Aboriginal youth: 17% of Indigenous youth matters end in a police caution compared to 36% of non-Indigenous matters (Wundersitz 1996 page xx). The situation is particularly noteworthy because SA has only recently introduced official police cautions as part of a new juvenile justice strategy. The failure of Aboriginal young people to receive the benefits of police diversion was a feature of the old South Australian juvenile justice system. The problem has been reproduced although the legislation and particular programs have changed (Gale et al 1990, Wundersitz 1996 page xx).

Currently there is a general trend to provide in legislation for Indigenous elders to issue cautions in place of police officers. This is proposed in section 12 of the new Tasmanian *Youth Justice Bill* and in NSW government proposals for new legislation (NSW Attorney-General's Department 1996 page x). Section 14 of the Queensland *Juvenile Justice Act 1992* provides for cautioning by Aboriginal and Torres Strait Islander elders instead of police at the request of an authorised police officer.

The situation in Queensland shows the need not simply to change legislation but

also to provide greater control over police decision-making and systems for continuing monitoring. According to the Queensland Government 'the use of respected persons to administer cautions allows for cautions to be more meaningful to Aboriginal and Torres Strait Islander children' (interim submission page 90). However, the available data on the use of cautions is 'extremely unreliable' and cannot distinguish between Indigenous and non-Indigenous young people (Queensland Government final submission page 43). Furthermore, 'information is not available at this time' as to the extent of use of respected elders in the cautioning process instead of police, although 'a survey could be conducted … providing appropriate funding could be obtained' (Queensland Government final submission page 61). The Government does not know the extent of compliance with, or effectiveness of, its legislative initiatives in this area.

Two separate reports show that Queensland police are not using Indigenous elders to administer cautions (Aboriginal and Torres Strait Islander Overview Committee 1996 page 67, Cunneen and McDonald 1997 page 181). This is contrary to the intent of the legislation and breaches Recommendation 234 of the Royal Commission into Aboriginal Deaths in Custody which requires Indigenous community involvement. It is also contrary to the specific wishes of Indigenous people themselves who desire to have greater involvement (Cunneen and McDonald 1997 page 181). The Queensland example shows that without control over police discretion Indigenous people are unlikely to be given the opportunity to caution their young people, despite legislative provisions.

Arrest and charges

The Royal Commission into Aboriginal Deaths in Custody recommended the review of legislation and instructions to ensure that young people are not proceeded against by way of arrest unless such an action is necessary. The test should be more stringent than with respect to the arrest of adults (Recommendation 239). The recommendation is consistent with the Convention on the Rights of the Child which requires that arrest should be used only as a last resort. In some Australian jurisdictions there are legislative directions preferring the use of a summons or court attendance notice rather than arrest.

Indigenous young people are less likely to receive less intrusive interventions such as police cautions or referrals to diversionary options. They are more likely to be proceeded against by way of arrest rather than the use of a summons or court attendance notice. Arrest is a punishment in itself and may lead to higher levels of custody because Children's Courts are more likely to impose custodial sentences on young people brought before them by way of arrest than on the basis of a summons (Gale et al 1990). Thus proceeding by way of arrest doubles the possible avenues to custody, either by way of bail refusal or by way of custodial sentence.

Indigenous organisations see arrest as the police's preferred option for dealing with Indigenous young people in most jurisdictions (Cunneen and McDonald 1997 pages 178-9). Available data strongly support the view of Indigenous organisations. In both NSW and Queensland approximately two-thirds of matters before the Children's Court are brought by way of arrest and one-third by way of summons (Luke and Cunneen 1995, Criminal Justice Commission 1995).

Even in jurisdictions where summons are used more frequently Indigenous youth do not benefit from the use to the same extent as non-Indigenous youth. In the NT in 1994-95 Indigenous young people comprised 70% of young people proceeded against by way of arrest and 53% of young people proceeded against by way of summons (NT Government Exhibit 38). In SA Indigenous young people are far more likely to be brought into the system by way of arrest than non-Indigenous youth (41% of Indigenous youth enter the system by way of arrest compared to 25% of non-Indigenous youth) (Wundersitz 1996 page 204).

In Victoria non-Aboriginal young people are more often brought before the Children's Court by way of summons than arrest. However, for Aboriginal young people arrest is still the favoured police option (Victorian Government final submission page 121). Between 1993-94 and 1994-95 there was a 46.4% increase in Indigenous youth formally processed by the Victorian police, compared to a 4.6% increase for non-Indigenous young people in the same period (Mackay 1996a page 6).[5] Improving police responses to Indigenous young people is fundamental to lessening the number of separations through the use of custody. In Victoria 'the cycle of arrest of Aboriginal juveniles has not been broken' (Mackay 1996a page 4). Relatively effective initiatives such as the Koori Justice Project which has successfully diverted more Aboriginal juveniles from detention centres will be undermined if arrest rates are not reduced.

> As adults, the criminal justice system is not as likely to impose non-custodial sentences on repeat offenders. Whilst the current generation of Aboriginal juveniles are being processed by police as offenders at incredibly high rates, the full effects of this phenomenon will not take effect for another couple of years when many of these juveniles reach adulthood … [The] statistics paint a grim picture of what is likely to be an explosion in the number of young Aboriginals entering the adult prison system in the next few years (Mackay 1996a pages 4 and 14).

As a result of legislative and policy changes in WA there has been a reduction in the number of charges and arrests for young people. However, the rate of decrease for Aboriginal young people has been significantly lower than for non-Aboriginal youth (ALSWA submission 127 page 333).

Other evidence shows that many Indigenous young people are arrested during their adolescent years. According to the 1994 survey by the Australian Bureau of Statistics some 25% of Indigenous youth reported being arrested during the previous five years. Of this group, 60% stated that they had been arrested more than once. Some 14% of all Indigenous youth surveyed stated that they had been harassed ('hassled') by police (1996 page 22).

The ABS survey also showed important differences on the basis of both sex and geographical location. Indigenous male youth reported being arrested (38%) and being hassled by police (21%) at roughly three times the rate of females reporting arrest (12%) and being hassled (7%). Indigenous youth in capital cities also reported greater arrests and hassles with police than Indigenous young people in other urban and rural areas (1996 page 22). There were also differences between jurisdictions as to the proportion of Indigenous youth reporting being arrested or hassled by police. Indigenous youth in Victoria reported both the highest level of being hassled by police (36% of Indigenous young people) and being arrested (34% of Indigenous young people). WA and SA also

had high proportions of Indigenous young people reporting arrests (both 33%) (1996 page 26).

Finally, police discretion also affects the number and nature of charges laid against a young person. 'Over-policing' by way of unnecessary and trivial charges has long been an issue in Aboriginal/police relations. The Royal Commission into Aboriginal Deaths in Custody noted that 'young Aboriginals are unnecessarily or deliberately made the subject of trivial or multiple charges, with the result that the appearance of a serious criminal record is built up at an early age' (*National Report* 1991 Volume 2 page 275; see also International Commission of Jurists 1990, Howard 1996).

Notification and interrogation

The special vulnerability of both young people and Indigenous people during police interrogation has been noted for many years. These vulnerabilities may be amplified when the person is both young and Indigenous. Guidelines for the conduct of NT police when interrogating Aboriginal people were originally spelt out by the NT Supreme Court as the *Anunga Rules* (1976). They have been adopted to varying degrees in police instructions and guidelines in other jurisdictions. All Australian jurisdictions require the presence of an adult when juvenile suspects are being interrogated. In some jurisdictions the requirement exists in legislation, in others it takes the form of police guidelines (Warner 1994 pages 32-3). Courts retain the discretion to admit evidence obtained in the absence of an adult. In most jurisdictions notification of a solicitor is provided for only in police guidelines and is only required when requested by the young person.

The Royal Commission into Aboriginal Deaths in Custody made a number of recommendations requiring police to advise Aboriginal Legal Services and parents when young people are taken to a police station for interrogation or after arrest (Recommendations 243, 244 and 245). No interrogation should take place without the presence of a parent, responsible person or officer from an organisation with responsibility for Aboriginal juveniles. Notification is seen as a protection against the abuse of custody and against pressure being applied to a young person to make false admissions (Cunneen and McDonald 1997 page 185). The purpose of these recommendations is to protect the rights of young people and to prevent miscarriages of justice and unlawful detentions by police. Their main failing is that they do not stipulate that compliance be assured through the use of legislation, despite well documented failures of compliance with police guidelines (Warner 1994 pages 35-8).

The Inquiry was told that some police are 'extremely reluctant' to contact Aboriginal Legal Services prior to a person being questioned and charged (ALSWA submission page 244). Other issues raised by the ALSWA included refusal of access to a telephone when in custody, Aboriginal people being unclear as to what they were being charged with and an unhelpful approach by some police in providing police facts to the defendant's legal representative (submission 127 page 246). The ALSWA recommended the amendment of section 19 of the *Young Offenders Act 1994* (WA) to include a number of rights in relation to telephone calls, legal representation and the presence of an

independent third person (submission 127 pages 347-8). The ALSWA advised the inquiry that the Police Orders applicable to the questioning of juveniles were not adhered to in practice (submission 127 page 367). Significant numbers of young people are interviewed without being accompanied by an independent adult (Cunneen 1990, Warner 1994 pages 35-6, Howard 1996).

In other jurisdictions there are similar deficiencies. In Darwin NAALAS maintained that it was not always notified when an Aboriginal child was in police custody. The NT Police response to the Royal Commission recommendation was one of only 'qualified support' because of difficulties that may be encountered with notification. There is nothing in the NT juvenile justice legislation to govern police interrogation and there is no right to contact a solicitor. In northern Queensland there are still cases where young people are locked up overnight in police watchhouses without Aboriginal agencies being notified until next day. Parents were not advised regularly. It appeared to Yuddika Aboriginal Child Care Agency and Njiku Jowan Aboriginal Legal Service that there is no set procedure or protocol for notification of Indigenous agencies (Cunneen and McDonald 1997 page 186).

Police custody and bail

Most States and Territories have programs designed to minimise the use of police custody for Indigenous young people. These programs usually involve some form of advocacy and placement service to guarantee access to bail. However, the detention of Indigenous children and young people in police watchhouses as a result of being refused bail by police or being remanded in custody by an order of the court remains a significant problem throughout Australia. The national data on the use of police custody (which included detentions for drunkenness, as well as bail refusal) are presented above. Detention in police custody, except in exceptional circumstances, is contrary to recommendations of the Royal Commission into Aboriginal Deaths in Custody and the Convention on the Rights of the Child. In many jurisdictions laws have created greater impediments to the granting of bail to Indigenous young people than when the Royal Commission first reported (Aboriginal and Torres Strait Islander Social Justice Commissioner 1996 page 199).

In South Australia the Inquiry was informed that the two bail houses operated by the ACCA were insufficient and required more secure funding. The SA ACCA recommended that police be required to use Indigenous bail houses as an alternative to secure care at all times (submission 347 pages 35-6).

The Victorian Aboriginal Legal Service told the Inquiry of occasions when juveniles are held in police cells, including an instance of a young person being held for one week in a Mildura police station. In Tasmania juveniles are held in police cells in Hobart because there is no alternative within reasonable distance. In central Australia, Aboriginal organisations such as the Central Australian Aboriginal Legal Aid Service and Tangentyere Council have reported cases where young people are held inappropriately in police custody because they are unable to raise bail even for relatively minor offences.

In Cairns Indigenous young people are kept in the watchhouse because of a lack of

alternative facilities. At times, no arrangements are made for the presence of a parent or visitor during the period in custody (Cunneen and McDonald 1997 page 183). Tharpuntoo Aboriginal Legal Service stated 'one of the problems is that there is not available to Aboriginal juveniles on Cape York the same options [to avoid the use of police custody] as are available elsewhere. For example there is no supervised bail program on Cape York Peninsula for young people' (quoted by Cunneen and McDonald 1997 page 173). Most Aboriginal young people who are arrested in the Cape region are bailed back to their community. Those who are refused bail are taken to Cairns then Townsville. This results in a separation of hundreds of kilometres from family and community.

Data supplied to the Inquiry by the Queensland Government indicate that in every year since 1992 over one-half and sometimes more than two-thirds of young people detained overnight in police watchhouses were Indigenous young people.[6] The major reason was that police refused bail. Indigenous young people, particularly those transported from remote communities, could wait between three and five days in the police watchhouse to be transported to a detention centre (Cunneen and McDonald 1997 page 183-4). This is contrary to a protocol between the Department of Families, Youth and Community Care and the Police Service relating to custody of young people in watchhouses. A young person should only be held in a watchhouse overnight if the young person will appear in court the next day and it is impractical to transport the young person to a nominated place immediately. A young person may be held longer than overnight only if there are exceptional circumstances preventing transportation or bringing the young person before the court (Department of Family Services and Aboriginal and Islander Affairs 1993 section 10-2).

There is no reason to believe that the situation in Queensland is unusual – except that it actually has available data on the number of Indigenous young people in police watchhouses. Most jurisdictions are unable to supply regular data on police bail refusals for Indigenous young people.[7] Information from the 1995 Police Custody Survey shows the extent nationally of Indigenous young people in police cells.

As noted previously, the Australian Government made reservations to articles of UN treaties relating to separation of juveniles from adults in police and prison custody. According to the National Aboriginal and Islander Legal Service Secretariat, this reflects the lack of commitment to fully implementing the recommendations of the Royal Commission into Aboriginal Deaths in Custody (Cunneen and McDonald 1997 page 182). It has been argued that,

> … non-compliance with the requirements in the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child should be limited to cases genuinely relating to the best interests of the juveniles or geographic necessity (Aboriginal and Torres Strait Islander Social Justice Commissioner 1996 page 207).

The available evidence shows the widespread and disproportionate use of police custody for Indigenous juveniles. The lack of alternative facilities may well explain this in part. However, the lack of facilities is itself indicative of governmental failure to

address the issues of adequate resourcing, particularly where there are already limited but innovative alternative bail programs which involve Indigenous communities.

Diversionary schemes

In general terms, diversionary schemes are mechanisms and programs to divert young people away from the formal processes of the Children's Court. The most simple form of diversion is the use of warnings and cautions by police such as those referred to above. Diversionary schemes may involve some type of community involvement in the design and administration of the scheme, although this is by no means a necessary feature. Indeed there has been a general lack of Indigenous consultation, negotiation and control over those schemes.

> 'Diversionary' programmes are frequently rigid in their structure. Contrary to Recommendation 62 [of the Royal Commission into Aboriginal Deaths in Custody], they are not designed in close consultation with Indigenous communities or adapted to local circumstances. They are packaged in remote 'policy' units and driven or posted into communities.

> We see diversion delivered to us in a package because 'they' know what is best for 'us'. The paternalism of such diversion reflects the earlier policies of 'care and protection' and 'assimilation' that permitted the removal of Indigenous children from their families up until the 1970s (Dodson 1996 page 31).

The problem has been referred to as a 'one size fits all' solution to Indigenous issues. These simple models of dispute resolution fail to understand the complex reality of Indigenous communities and ignore fundamentally the principle of self-determination (Dodson 1996 page 61, Canadian Royal Commission on Aboriginal Peoples 1996 page 219).

In recent years 'family group conferencing' has become an increasingly favoured option for diversion. The conference brings together the young offender and support persons, the victim and supporters and police and youth workers with the aim that the young offender will develop a sense of responsibility for the offence. The objective is to reach a mutually agreeable resolution for the harm that has been caused by the offence and to reintegrate the offender into the community. Various forms of 'conferencing' have been established in most jurisdictions. By and large, they adapt and modify parts of the New Zealand system of family group conferences.

The New Zealand system derives from extensive consultation with Maori communities and is reflective of Maori traditions.[8] The Australian adaptations have been referred to as 'hybrids' with 'the real spirit of the diversionary process completely lost in all but a few cases' (Dodson 1996 page 42). Other grounds of criticism include,

- Conferencing suffers from the 'one size fits all' approach to Aboriginal justice – a model is imposed on Aboriginal communities to which they are expected to adhere.
- The new systems lack basic commitments to negotiation with Indigenous

communities and show no understanding of the principle of self-determination.

- Conferencing models do not respect important cultural differences.
- In SA, WA and the pilot projects in the NT, Tasmania, NSW, ACT and Queensland, police control some or all of the following: the key decision-making of who accesses conferences, how the conferences are operated and a final veto over the agreement that might be reached.
- The application of the conferencing model can lead to further blaming and stigmatisation of Indigenous young people and their families for offending behaviour.

The adaptation of family group conferencing has been significantly compromised in many parts of Australia. The trial conferencing project in Alice Springs occurred without Aboriginal community consultation. Aboriginal organisations considered that Aboriginal young people were unlikely to benefit from the program. Repeat offenders were not being considered for conferencing, which effectively excluded most Aboriginal young people (Cunneen and McDonald 1997 page 171). In South Australia the Pitjantjatjara Council noted little change as a result of new juvenile justice legislation which introduced conferencing. There was no knowledge of any conferencing panels in the Pitjantjatjara lands. Independent evaluation of barriers to the use of alternatives in SA noted in relation to the Anangu Pitjantjatjara Lands that,

> The local Youth Justice Co-ordinator has insufficient resources to organise Family Conferences. The most time consuming and culturally difficult task involves the identification of family members who are appropriate to participate in the conference and then subsequently arranging for them to come together for a Conference. Very few victims of offences are involved in family conferences resulting in a central feature of the scheme being omitted from the process (Planning Advisory Services 1995 page 27).

There has been inadequate consultation with Indigenous communities during the development of the model and, where consultation has occurred, there has been insufficient regard for Indigenous views (Dodson 1996 page 33).

It has been argued that panels and family conferencing can be successful with adequate cultural sensitivity and Aboriginal community involvement ‘but schemes which increase alienation and which are imposed by police on families of the offender and the victim will not succeed’ (Aboriginal and Torres Strait Islander Social Justice Commissioner 1996 page 199). ATSIC supports greater evaluation of the potential benefits of the scheme to Indigenous young people (submission 684 page 42). The lack of commitment to Indigenous involvement and fundamental change marks an enormous divergence between the New Zealand model of conferencing and what has occurred in Australia. In New Zealand the change,

> … has both created new structures and has shifted the balance of forces … if we are to capture what is, in relation to Aboriginal peoples, its most innovative characteristic, it must be read as an empowering and de-colonising process which has lead to the recovery of lost authorities, social

> relationships and ceremonies while reducing the extent of welfare and penological colonialism (Blagg forthcoming page 5).

In WA Aboriginal organisations have argued that lack of empowerment for Aboriginal families or communities inhibits the effectiveness of diversionary options which are offered. '[The] current systemic discrimination against Aboriginal youth in the operation of the diversionary processes will be perpetuated by the new legislation' (Ayres 1994 page 20). Observations of conferencing in SA have suggested that 'the most striking aspect of the model developed *for* Indigenous people are the problems encountered with cultural difference' which include inadequate understanding of Indigenous social structure, language barriers, different communication patterns and different spatial and temporal patterns which derive from cultural obligations (Dodson 1996 pages 46-47). It is perhaps not surprising that Indigenous young people were less likely to experience a 'successful' conference than non-Indigenous youth (Wundersitz 1996 page 204).

The adaptation of the model from New Zealand rested on the spurious assumption that there were homologous social structures among various Indigenous cultures – in other words that Indigenous people all over the world are the same (Blagg forthcoming). There is nothing in the current or proposed Australian conferencing schemes which might allow for the model to be adapted and developed by Indigenous communities.[9] Providing as a 'guiding principle' of conferencing that they should be 'culturally appropriate' is tokenistic if there is no framework provided for significant Indigenous contribution to or control over the form and substance of conferences.[10]

The South Australian Government noted that the Department of Family and Community Services 'is committed to a model of conferencing with Aboriginal people that will facilitate the sharing of responsibility for planning, decision making, care and action' (interim submission page 44). However, there is no statutory obligation to consider cultural issues,[11] the model itself is assumed to be appropriate and the problem to be resolved is essentially one of overcoming 'logistic' problems such as distance and developing the 'processes' which will ensure the involvement of Aboriginal families.

The problem of police control over conferencing is widespread. Blagg and Wilkie (1995) suggested that Aboriginal organisations were sceptical that police could be viewed as independent arbiters in the process and that power and control over diversionary options were being extended without any screening or regulatory processes (Blagg forthcoming pages 18-19). In WA the Juvenile Justice Teams were intended to mirror the New Zealand Family Group Conferences. However, the composition of a Team may include only representatives of the police and the Ministry of Justice, a responsible adult and the young person. Referral to a Team can be made by the police or the Children's Court. As a result,

> [The] Juvenile Justice Team model is a half-baked and inadequate version of the New Zealand model that will not live up to its potential (ALSWA submission 127 page 348).

These Teams are inadequate because they have restricted membership, the

conferences lack specific time frames, they are restricted to minor non-scheduled offences by first offenders, there are no legal safeguards for the young person and the police have control over who is referred to the teams (ALSWA submission 127 page 348, Beresford and Omaji 1996 pages 103-5).

Indigenous young people are not being referred as frequently to Juvenile Justice Teams for conferences as non-Indigenous youth. 'Only a small percentage of Aboriginal young people are being referred to the Teams and … this percentage is gradually decreasing' (WA Government submission Exhibit 19 Appendix 4; see also Crime Research Centre 1995 page 6).

In NSW the Attorney-General's Department has recommended that the pilot Community Youth Conferencing scheme be abandoned partly because of attitudinal problems on the part of police and lack of referrals of Indigenous youth to the conferences. A new system is proposed called 'accountability conferences'. It is proposed that referrals could be made by the court and the Director of Public Prosecutions as well as by the police. It is also proposed that there should be a presumption in favour of conferencing for a greater number of offences (NSW Attorney-General's Department 1996 pages xii-xiv).

In Tasmania the draft *Youth Justice Bill* proposes that referrals be made by the court.

In SA Indigenous young people are less likely to be referred by police to the conferences and more likely to be referred to court. Indigenous young people comprise 12% of referrals to conferences but 19% of referrals to court. In addition Indigenous young people (36%) are almost twice as likely as non-Indigenous youth (19%) to be referred straight to court without the benefit of either a conference or a police caution (Dodson 1996 page 33, Wundersitz 1996 page 204).

In Queensland recent amendments to the *Juvenile Justice Act 1992* establish 'community conferences' as an option. Only police officers are authorised to make referrals to a community conference as an alternative to court, although the court can refer a matter to a conference after a hearing where guilt has been determined.

The problems associated with the police role in the conferencing process show how different the systems developed in Australia are from the original New Zealand model. There were significant reforms to policing practices in New Zealand at the same time as the introduction of family group conferences. These reforms included stricter controls on police powers in relation to young people. The Australian variations have simply seen conferencing as expanding the options available to police. Blagg argues that 'the significant dimension of the process from a Maori perspective was the degree to which it did precisely the opposite and restricted police discretion' (forthcoming page 7).

The use of police in the conferencing process has particular significance for Indigenous communities given the history of removals and prior police intervention. The role of police, combined with cultural differences and language difficulties, may cause Indigenous young people and their families to appear 'un-cooperative' (Dodson 1996

pages 46-47). The police presence increases the reluctance of Indigenous people to attend meetings and contributes to a non-communicative atmosphere for those Aboriginal youth who do attend (WA Aboriginal Justice Advisory Council submission 343, Exhibit 1 page 44; see also Crime Research Centre 1995 page 28). The process may degenerate into further stigmatising of Indigenous young people and their families.

The problem is accentuated if conferencing supplants other social justice and crime prevention strategies. White (1991) noted that blaming parents for juvenile offending has developed a particular currency which serves to displace other structural explanations of juvenile crime such as poverty, unemployment and racism.

The 'criminalisation of inadequate parenting' has particular significance for Indigenous families. Welfare intervention during the assimilationist period was partially justified by pathologising Indigenous family structures and parenting styles. Indigenous children were removed because Indigenous families could not provide a 'proper' home environment on welfare grounds. The same type of 'blaming' Indigenous families could result in future interventions and removals.

The available theoretical, observational and empirical evidence strongly suggests that family group conferencing as currently administered, far from being a panacea for offending by Indigenous young people, is likely to lead to harsher outcomes. It is a model that, by and large, has been imposed on Indigenous communities without consideration of Indigenous cultural values and without consideration of how communities might wish to develop their own Indigenous approaches to the issue. Even in new proposals for conferencing such as those in NSW and Tasmania where the police role in referral is somewhat circumscribed, there is no provision for Indigenous organisations and communities to make decisions about whether their children would be best served by attending a conference. The best provision among the new proposals requires only that an elder or other community representative be invited to a conference involving an Indigenous young person.[12]

In submissions to the Inquiry some governments identified this problem. None offered an appropriate solution.

> The organisation, systems and delivery of service have evolved from non-Aboriginal frameworks, and are based on a Western system of thought, culture and values that is very different to Aboriginal traditions and culture. Aboriginal people are, therefore, inevitably alienated to some degree from the systems and structures that exist to provide them with services (SA Government interim submission page 42).

The solution proposed by the SA Government is essentially one of greater Aboriginal involvement in service delivery – in making the existing framework of laws and policies culturally appropriate. 'The development of culturally appropriate models of service delivery, and fostering the self-determination of Aboriginal people, is an ongoing challenge' (interim submission page 42). Yet the solutions proposed aim in essence to make the existing non-Indigenous system 'work' for Aboriginal people.[13]

Similarly, when questioned about the lack of Indigenous involvement in family group conferencing, the WA Government identified factors such as remoteness, the difficulty of locating the whereabouts of families because of mobility, failure or refusal to attend and 'a wary attitude towards a justice system that is alien to most traditional values and has never really worked for them' (supplementary information page 11).

There are successful Indigenous diversionary schemes, such as the Koori Justice Workers in Victoria and the community justice groups in a number of Queensland communities. The essential feature of these schemes is that they have developed from community involvement in finding solutions to specific problems. The communities have received funding from government departments but the control, content and form of intervention is determined by the community.

Successful schemes have an inherent respect for developing solutions founded on the right of self-determination.

> The success of these programmes makes one thing clear. Solutions to our problems require a collaborative, intelligent, co-ordinated approach which honours the principle of self-determination …
>
> Empowering our old people and revitalising dispute resolution through community programmes have the potential to restore a greater degree of social control and divert our kids from custody (Dodson 1996 page 59).

Developing community justice solutions within a context of self-determination is essentially a practical task. Governments are not required to relinquish their responsibilities but they are required to relinquish control over decision-making for Indigenous communities. Successful Indigenous community justice responses require efficient, practical and continuing support from governments to facilitate communities in the difficult process of finding acceptable solutions. At the same time structural issues must be addressed by governments. These are the underlying social and economic issues which cause crime and demand a co-ordinated Commonwealth, State and Territory response.

Sentencing

Article 37(b) of the *Convention on the Rights of the Child* states that 'no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time'. Other international instruments require that imprisonment is a sanction of last resort for juveniles: Rule 1 of the *UN Rules for the Protection of Juveniles Deprived of Their Liberty* and Rules 17.1(b) and 19.1 of the *UN Standard Minimum Rules for the Administration of Juvenile Justice*.

Indigenous young people generally receive harsher sentences in the Children's Court than non-Aboriginal young people, particularly at the point of being sentenced to

detention (Gale et al 1990, Crime Research Centre 1995, Luke and Cunneen 1995, Criminal Justice Commission 1995). Where data are available, government submissions to the Inquiry support this picture.[14]

Tasmanian Indigenous youth comprise 3.3% of the relevant youth population, 13% of young people on community-based supervised orders and 19.5% of young people detained (Tasmanian Government submission page D-21).

In Queensland in 1994-95 Indigenous young people comprised 31% of all finalised Children's Court appearances, although only 3.6% of the youth population. At the lower end of the sentencing scale Indigenous youth were less over-represented. For example, they comprised 21% of those reprimanded and 16% of those fined. In contrast, at the harsher end of the sentencing scale, the level of over-representation was greater with 56% of detention orders being made against Indigenous youth (interim submission page 94). Two other recent reports in Queensland confirm these points (Criminal Justice Commission 1995, Queensland Aboriginal Justice Advisory Council 1995).

The sentencing decision is a complex one taking a wide range of factors into account. A number of points are particularly relevant to the process of sentencing Indigenous young people.

- Indigenous young people brought before the courts are more likely to come from rural backgrounds and are more likely to appear before non-specialist Children's Courts. Geographic isolation also raises issues of inadequate legal representation, fewer non-custodial sentencing options and harsher sentencing attitudes by non-specialist magistrates.
- Indigenous young people are more likely to have been previously institutionalised, less likely to have received a diversionary alternative to court and are more likely to have a greater number of prior convictions than non-Indigenous young people. Each of these factors increases the likelihood of a custodial order.
- The existence of a prior record strongly influences the sentencing decision. Indigenous young people tend to have a longer criminal history and are therefore at greater risk of incurring custodial penalties. Because intervention occurs at a younger age with Indigenous children, they accumulate a criminal record much earlier than non-Indigenous children.
- Discrimination at earlier stages of the system results in Indigenous young people being less likely to receive diversionary options and being more likely to receive the most punitive of discretionary options. These factors compound as the young person moves through the system. Apparently equitable treatment at the point of sentencing may simply mask earlier systemic biases.
- The current sentencing trend is to treat 'repeat offenders' more harshly, either by way of mandatory sentences or greater reliance on sentencing principles of retribution, general and specific deterrence and community protection. This will have its greatest negative effect on Indigenous young people. They are precisely the group who, for reasons discussed above, are more likely to have longer criminal histories.

Repeat offenders

Recent changes to sentencing laws in the NT, WA and Queensland are likely to increase the levels of incarceration of Indigenous young people. Western Australia and Queensland are already the States with the highest rates of over-representation of Indigenous young people in custody.

A recent amendment to the NT *Juvenile Justice Act* imposes a mandatory 28 day period of detention for 15 and 16 year olds found guilty of a second 'nominated' property offence such as criminal damage, stealing, unlawful entry of a building and unlawful use of a motor vehicle. The amendment also creates 'punitive work orders' as an additional sentencing option over and above Community Service Orders. According to the Attorney General at the time the amendment was tabled in Parliament, 'The punitive work order will be hard work; it will be public. Those serving a punitive work order will be obvious to the rest of the community. They will be identifiable as PWOs either by wearing a special uniform or some other label' (NT Attorney-General ministerial statement, 'Criminal Justice System and Victims of Crime', 20 August 1996).

In WA the *Criminal Code* was amended to provide for mandatory 12 month custodial terms for adults or young people convicted of their third break and enter offence. In WA the Inquiry was told that the *Sentencing Act 1995* (WA) fails to recognise Aboriginal customary law and does not recognise the principle of imprisonment as a sanction of last resort. The principle in fact was deleted from the *Criminal Code* in 1995. The ALSWA expressed concern that the sentencing principles in the *Young Offenders Act 1994* are inadequate. Section 125 directs the court to give primary consideration to the protection of the community when sentencing young offenders who are part of the 'target group'. The court is to put this consideration ahead of all others, including section 46 which states that 'accepted notions of justice' must be incorporated into sentencing decisions. Members of the 'target group' are multiple offenders who have served two separate custodial sentences and have committed a further serious offence. This group is likely to have a significant over-representation of Indigenous young people, given their over-representation in juvenile detentions centres (submission 127 pages 371-372).

The legislation also allows for a remand in custody 'for observation' for a period of 21 days to allow for psychological tests, assessment and recommendations concerning future treatment. The ALSWA drew attention to abuse of the power by magistrates which came to light in the so-called 'Ice Cream Boy' case. That case involved a young Aboriginal boy who had been remanded for observation for 30 days (contrary to the legislation) after appearing on a charge of stealing an icecream. The matter came before Judge Yeats of the Children's Court of WA who found that it was the third occasion that the young person had been remanded under section 49, each time for 30 days, within a period of 12 months. Judge Yeats described this as an 'inappropriate use' of section 49 to 'remand a young person in custody for one month on a charge of stealing an ice cream valued at $1.90'. The judge found that section 49 was being used to 'remove the child from the community' (submission 127 pages 355-356).

The *Young Offenders Act 1994* (WA) also empowers the Director of Public

Prosecutions to seek a Special Order of the court to increase the custodial sentence of a young person by 18 months where the young person has a record of re-offending and has committed a serious offence. The prior offending histories of Indigenous young people and their greater likelihood of receiving a custodial sentence mean that they are more likely to be affected by these provisions. 'Aboriginal youth and country youth are discriminated against by this section as one of the qualifying pre-conditions for the special order is an exhibited pattern of repeated detention for any offence and these groups of offenders are more likely to receive detention sentences for minor offences' (ALSWA submission 127 page 351). The ALSWA called for the Special Order provisions to be repealed.

> The Aboriginal and Torres Strait Islander Social Justice Commissioner has found these sections of the WA legislation to breach,
>
> • article 3 of CROC because the interests of the child are made secondary to the protection of the community when sentencing,
>
> • article 9(1) of the *International Covenant on Civil and Political Rights* and article 37(b) of CROC which provide protection against arbitrary arrest and detention because detention is arbitrary if it is imposed by a process contrary to 'accepted notions of justice',
>
> • the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules) because rehabilitation is no longer seen as an important or dominant consideration, and
>
> • article 37(b) of CROC and recommendation 92 of the Royal Commission into Aboriginal Deaths in Custody which require that imprisonment be imposed as a last resort and only for the minimum necessary period are breached (Dodson 1995 pages 38-39).

Submissions to the Inquiry called for a review of juvenile justice laws in WA as 'a matter of urgency' (Kimberley Land Council submission 345 page 74, ALSWA submission 127 and Broome and Derby Working Groups submission 518).

A recent South Australia proposal to introduce general deterrence as an additional sentencing principle in the *Young Offenders Act 1993* did not proceed. The proposal was to make general deterrence a discretionary consideration in the Youth Court and a mandatory consideration for juvenile offenders having more serious matters determined in the higher courts.

The Queensland Government has recently introduced legislation to increase the maximum penalty for juveniles from 14 years imprisonment to life imprisonment for certain offences and to transfer more cases from the Children's Court to the jurisdiction of the District Court, which is also likely to increase sentences. Other amendments have introduced 'community protection' as an additional principle in the legislation. A Queensland Aboriginal Justice Advisory Council report on juvenile justice noted that 'despite increased sentencing options and the introduction of Aboriginal elder cautioning, research … indicates that the *Juvenile Justice Act*, to date, has failed to prevent nor reduce the rate of Aboriginal or Torres Strait Islander representation in the juvenile

justice system' (1995 page 69).

Punishing parents

Holding parents responsible for offences committed by children and young people has been proposed or introduced as a response to juvenile crime in many Australian jurisdictions in recent years. It rests on the assumption that 'bad' parenting is a causal factor in juvenile offending. In many jurisdictions courts can also order that parents pay restitution for offences committed by their children.

The impact of this type of legislation on Indigenous families was raised specifically in evidence to the Inquiry. Whatever the merits or otherwise of holding non-Indigenous parents responsible, there are particular concerns in relation to Indigenous people. In part these arise from the application of the non-Indigenous juvenile justice system to Indigenous people and the history of defining Indigenous parents as 'bad parents' and using this as a pretext for intervention and removal of children.

Section 58 of the *Young Offenders Act 1994* (WA) allows the court to punish parents for the actions of their children. The ALSWA argued that this section 'is open to abuse by magistrates and Justices of Peace who may be racist or ignorant of Aboriginal family and parenting roles and consequently may seek to impose fines on Aboriginal responsible adults … It is very much an irrational clause to appease the political view that being tough on parents solves juvenile crime' (submission 127 page 349). The ALSWA viewed the provision as hypocritical and discriminatory because the State is exempt from being a 'responsible adult' where the children and young people who have committed an offence are in the State's care.[15]

Legislation in other States has been criticised for vague definitions of what might constitute 'wilful neglect' on the part of parents or 'substantial contribution' to the offence committed by the young person (for example, section 197 of the Queensland *Juvenile Justice Act 1994*). Similar provisions can be found in the NSW *Children (Parental Responsibility) Act 1994* and the Tasmanian *Statute Law Revision (Penalties) Act 1994* and *Child Welfare Act 1960* (Hil 1996 page 281). Both the NSW and Queensland legislation allow the parents to be charged with criminal offences should they breach the court order.

Other recent amendments to the Queensland legislation provide courts with a coercive power to compel parents to attend the court when their children are charged with a criminal offence. A maximum penalty of $3,750 can be imposed on a parent failing to comply with such an order.

Non-custodial sentencing options

The *Convention on the Rights of the Child* requires that 'a variety of dispositions … shall be available to ensure that children are dealt within a manner appropriate to their well-being and proportionate both to their circumstances and the offence' (article 40(4)). Several recommendations of the Royal Commission into Aboriginal Deaths in Custody were designed to increase the availability and use of non-custodial sentencing options as

well as Indigenous involvement in and control over the nature of community-based orders (Recommendations 111-114, 236). Recommendation 236 in particular proposed that 'governments should recognise that local community based and devised strategies have the greatest prospect of success and this recognition should be reflected in funding'.

There are a number of interconnected issues relating to non-custodial sentencing options including the appropriateness of their design for Indigenous young people, their availability both in legislation and in practice, their relative use by magistrates compared to custodial sentences and the supervision of the orders by the relevant department. Non-custodial orders are directly relevant to the issue of contemporary removals. Without adequate alternatives there is an increased likelihood that custodial sentences will be imposed. However, inappropriate or poorly supervised non-custodial options may increase the failure of Indigenous young people to successfully complete the orders and so may result in detention.

In WA Youth Community Based Orders are the principal supervised non-custodial option for young people. The Inquiry was told that Aboriginal people are not involved in the development of these 'community-based' options. A secondary concern was the ability of the department to supervise the orders adequately (ALSWA submission 127 page 350). This leads to another set of problems and potential further criminalisation. Indigenous people have the highest level of non-completion in every community-based order category (submission 127 page 267).

The failure to use non-custodial sentencing options as often as possible was also raised. Part of this failure relates directly to sentencing disparities between specialist Children's Courts, primarily in the large cities, and rural courts constituted by non-specialist magistrates or, in WA, lay Justices of the Peace. Because the majority of Indigenous young people appear in non-specialist country courts, any sentencing disparity disproportionately affects Indigenous children (Luke 1988). Recent data supplied by the Senior Children's Court Magistrate in NSW indicated that non-specialist country courts impose longer minimum terms and shorter additional terms than specialist magistrates and that in some country circuits young people are about two and a half times more likely to receive a custodial sentence than in specialist Children's Courts (Scarlett 1996 page 5). This pattern effectively means that Indigenous young people are more likely to receive a custodial order than a non-custodial order and that the order is more likely to have a longer mandatory imprisonment period (the minimum term) and a shorter potential period of supervision after release to the community (the additional term).

In WA lay Justices of the Peace try and sentence for many criminal offences in rural areas. They impose higher fines than magistrates for comparable offences, capacity to pay was considered in only a minority of cases and half of the defendants fined by the Justices of the Peace defaulted on their fine (ALSWA submission 127 page 254). Again these differences directly affect Indigenous youth because they are more likely to be sentenced in areas where Justices of the Peace preside over courts. The ALSWA strongly argued that the power of Justices of the Peace in WA to determine charges and impose penalties,

> [Significantly] contributes to on-going Aboriginal juvenile over-representation in detention centres … While these powers remain in place, Aboriginal juveniles in the rural and remote areas will continue to be subjected to an unregulated second class system of justice (submission 127 page 373).

The Inquiry was informed of 'a great need to find alternative placements and programs for Aboriginal juveniles' (ALSWA submission 127 page 374). In WA alternatives could involve placement within Aboriginal communities and work on Aboriginal owned stations. In NSW the Inquiry was informed that 'the Government should put resources into programs that will divert Aboriginal children from the criminal justice system and at the same time empower communities to take control of social problems in their own communities' (Western Aboriginal Legal Service (Broken Hill) submission 755). The Tasmanian Aboriginal Centre (TAC) stated that 'resources need to be directed to the Aboriginal community to establish alternatives to imprisonment and detention of young Aborigines' (supplementary submission 325 page 4). Lack of resources has prevented the TAC from continuing with a program of placing Aboriginal children at Rocky Cape as an alternative to detention (supplementary submission 325 page 4).

Indigenous organisations in Queensland have complained of the failure to use community service orders frequently enough and to resource Aboriginal devised and controlled community-based programs adequately (Cunneen and McDonald 1997 page 177). Generally, the major issue to emerge in relation to Indigenous community-based strategies is the failure to provide adequate resourcing. 'It is clear that no matter what non-custodial options are available in juvenile justice legislation, a central issue will be the extent to which they can be utilised in practice' (Cunneen and McDonald 1997 page 178).

Conclusions

State and Territory governments cannot be accused of doing nothing in relation to specific programs for Indigenous young people. On the contrary, all jurisdictions can point to various initiatives. The issue is whether governments are doing enough in light of the massive levels of over-representation and, more importantly, whether what is being done reflects the types of solutions which Indigenous people see as important.

The Inquiry was told of two Indigenous-run programs that had come into conflict with State governments. In Queensland Piabun provides an innovative approach to developing self-esteem and deterring offending among young people. It was established by a group of Brisbane community elders to supervise Indigenous young people on court orders (Piabun submission 398). Initially the program had the support of the Department of Family Services and Aboriginal and Islander Affairs and the program claimed considerable success in preventing re-offending. State government funding for the program was stopped in December 1995 and not recommenced until the later part of 1996 (Mark Johnson submission 751 page 7). It was suggested that the decision to stop funding was related to resistance by the elders to greater departmental control over the project (submission 398).

A widely recognised Aboriginal-run program in WA is the Lake Jasper Project. The project assists Indigenous young people and their families. Originally it was funded by the Australian Youth Foundation and later by the State Government. However State support has been withdrawn. The Inquiry was told that the project was established 'amidst massive opposition from all sections of the community'. 'We structured the program and gave it what we considered to be strong Aboriginal values … to assist the kids with some of the social problems, some of the cultural problems and spiritual problems that they were having' (Mike Hill evidence 416). The WA Government told the Inquiry that the Division of Juvenile Justice does not refer young people to the Lake Jasper project although, if they were referred by the courts or other agencies, Juvenile Justice officers would provide supervision of orders (Exhibit 19).

> I believe the government has a political problem with the project and it's about self-determination. I don't think the government likes or wants to have Aboriginal people in autonomous areas of self-determination. It's far too dangerous (Mike Hill evidence 416).

Consistent with the right of self-determination, the Royal Commission into Aboriginal Deaths in Custody recognised that Indigenous organisations should play a key role in the sentencing process of Indigenous young people. Recommendation 235 states,

> That policies of government and the practices of agencies which have involvement with Aboriginal juveniles in the welfare and criminal justice systems should recognise and be committed to ensuring, *through legislative enactment*, that the *primary sources* of advice about the interests and welfare of Aboriginal juveniles should be the families and community groups of the juveniles and specialist Aboriginal organisations, including Aboriginal Child Care Agencies (emphasis added).

Nowhere is this recommendation adequately implemented. Recent research on the extent to which Indigenous organisations have a role in the sentencing process shows only limited and discretionary involvement. Nationally there has been some improvement but nowhere is the change as extensive as the Royal Commission recommendation demanded (Cunneen and McDonald 1997 page 175). The Tasmanian Government's reading of Recommendation 235 is illustrative.

> The proposed Youth Justice Bill enables families and other interested parties *to be involved* in decisions on the sanctioning of young people through the cautioning and family conferencing process (submission page D-25, emphasis added).

The limitations of this approach in relation to both cautioning and conferencing have been noted above. Linda Briskman, an academic and researcher for the Secretariat of National Aboriginal and Islander Child Care, told the Inquiry,

> … self-determination seems to be equated with little more than consultation … When you look at government self-determination policies, control is still maintained very strongly. Governments have actually been unwilling to transfer power to Aboriginal communities … that's the crux of the problem (submission 134 pages 6 and 9).

The Inquiry was repeatedly told that Indigenous people want greater control over what is happening to their children and young people. For example, the Broken Hill office of the Western Aboriginal Legal Service informed the Inquiry of measures which local Aboriginal community leaders have argued would be appropriate non-custodial options in western NSW. These include the use of elders' panels to determine appropriate responses and the use of available land resources such as Mootwingee National Park and Wienteriga Station where young people could diverted from detention centres and supervised by an Aboriginal unit. These responses are about taking 'some control over juvenile justice', redressing destructive policies, empowering elders and 'bringing children into closer contact with their culture' (submission 755). In Tasmania the TAC would like to use Rocky Cape, St Helens and Badger Island, all of which have significant cultural meaning for Aboriginal children, as sites for alternative programs for Indigenous young people (supplementary submission 325 page 4).

Detention centres

Isolation is a key problem for Indigenous young people incarcerated in juvenile institutions. United Nations Rules provide that children should have the right to regular and frequent visits (at least twice each week) and the right to communicate by writing or telephone (at least twice each week). A recent survey of NSW juvenile detainees found that 90% received less than the minimum standard in relation to visits and 76% less than the minimum standard in relation to telephone communications (NSW Ombudsman 1996 page 70).

In Western Australian the Inquiry was told,

> Juvenile justice legislation … is extremely harsh. For Kimberley parents it means that their children end up in detention centres in Perth where they fear children learn to become criminals and suffer isolation and separation from their families and the racism that is endemic to these institutions (Broome and Derby Working Groups submission 518).

> Isolation is acute for young people from the country, most of whom are Aborigines. It is extremely difficult for their relatives to visit them. Recognising this, prescribed visiting hour restrictions are waived … However, this concession, in fact, hardly addresses the issue of ability of family members to get to Perth to visit their children in the first place. Traditionally-oriented young people are especially vulnerable in these institutions with their totally alien environments and regimes. Isolation can be crippling. These inmates are almost never visited by their families and they are less likely than others to know any other inmate. They may also experience language difficulties (Wilkie 1991 pages 156-7).

Recent interviews with 33 Indigenous young people in detention centres in NSW found that 17 had reported receiving no visits from their families (Howard 1996 page 19). The problems were made evident in evidence to the Inquiry.

> **My own grandson's been taken down to Wagga to the Riverina Juvenile Justice Centre. We was only able to visit him once [from Broken Hill] because of the distance – the miles, and**

> **the money. We just haven't got the money … to go down there. And they are locked away from us. We got no access to them … Because we're very isolated it doesn't give us the chance to get down and see our kids.**
>
> *Confidential submission 762, New South Wales.*

Most detention centres in NSW are concentrated around the Sydney metropolitan area. The NSW Government advised the Inquiry that financial assistance can be provided to families to visit children in detention centres and that the decision to construct two new centres in Grafton and Dubbo will allow Indigenous young people to remain closer to their communities. However, a recent report by the NSW Ombudsman found that the Department of Juvenile Justice had seriously underspent funds set aside to help families visit their children. In addition there were restrictive rules on visiting and telephone contact and the withdrawal of contact as a punishment, as well as allegations of staff mistreatment of young people (NSW Ombudsman 1996 page xiv). More generally it was found that,

> Many shortcomings impact negatively on the dignity and rights of detainees … In some centres, even very basic issues such as food and clothing were found to be substandard. Privacy and respect for individual and cultural differences were also commonly ignored (NSW Ombudsman 1996 page iv).

Building smaller regionally based detention centres specifically to mitigate the isolation of Indigenous children is a vexed issue. New detention centres may divert resources from community based options and lead to a further growth in the numbers of Indigenous young people in detention. The Aboriginal and Torres Strait Islander Social Justice Commissioner has argued against this option, preferring instead to see 'a proliferation of Indigenous community-based programs for Aboriginal young offenders' (quoted by NSW Ombudsman 1996 on page 73). However, the NSW Ombudsman recommends the development of smaller detention centres in non-metropolitan areas (1996 page 74).

Similar problems are apparent in juvenile detention centres in Queensland. The report of the Queensland Aboriginal and Torres Strait Islander Overview Committee draws attention to allegations of staff mistreatment of young people, misuse of handcuffs, abuse of 'time-out rooms' and 'lock-down' procedures, children being placed in danger of sexual abuse, the employment of inappropriate staff and unacceptable emotional and physical disciplinary procedures in some Queensland detention centres. In addition, there have been lack of cultural awareness, lack of culturally appropriate programs and resistance to family and organisational contacts for Indigenous residents (1996 page 59). Similar issues were brought to the attention of the Inquiry by a former Official Visitor who noted among other things,

> The atmosphere of violence is so great in the detention centres that I felt intimidated being there … staff have no idea of how to relate to Aboriginal and Torres Strait Islander children. They are often yelled at, physical restraint is applied in a very horrible and threatening manner … Often

> boys will have no family visits for long periods of time … boys are forced to sit around all day in the centres with few programs to attend and nothing meaningful to do … they have very few rights and suffer because of racism (submission 427 pages 1-2).

The TAC criticised the standards of care at the Ashley Youth Detention Centre in Tasmania (submission 325 page 122). The Government advised that all complaints have been investigated and a review of the Centre has been completed (Tasmanian Government submission page D-29). Most detention centres now have some type of specific art, educational or cultural program for Indigenous detainees. Some detention centres have Aboriginal Support Groups who visit detainees.[16] However, the extent to which these programs can compensate for removal from family, community and country must be questioned.

> The provision of Indigenous specific cultural education and support programs within the centre can in no way compensate her for the loss of culture which is the result of her removal to a juvenile justice detention centre. The unique impact that removal has on Indigenous young offenders when considered in the context of Indigenous culture and the long history of removal policies which have specifically affected Indigenous people and their social structures and culture cannot possibly be dealt with by the superficial provision of 'cultural' programs within a centre (Aboriginal and Torres Strait Islander Social Justice Commissioner quoted by NSW Ombudsman 1996 on page 75).

Cultural programs are important but they need to be evaluated in terms of their quality and in terms of staff commitment to ensuring their success. They should not be seen as compensating for the effects of removal.

A related issue is the employment of Indigenous youth workers in detention centres. Indigenous young people find it easier to relate to Indigenous workers. A survey of NSW detention centres found that the proportion of Aboriginal workers in detention centres varied between 1% and 6% of each detention centre workforce while the proportion of Indigenous inmates varied between 12% and 50% (NSW Ombudsman 1996 page 77). The Ombudsman recommended a review of employment strategies for Indigenous workers as well as greater cross-cultural training for staff.

The Inquiry was told in Western Australia, South Australia and Tasmania that there is a need to establish Aboriginal-run facilities as alternatives to detention centres (Broome and Derby Working Groups submission 518, confidential submission 289 WA, Tasmanian Aboriginal Centre supplementary submission 325 page 4). The TAC envisaged that such an alternative facility would deal with both young offenders and children in cases of breakdown in family support (submission 325 page 4).

Juvenile deaths in custody

The death in custody of an Indigenous young person constitutes the final and absolute removal of that young person from his or her family and community.

Fifteen Indigenous young people died in custody in the eight years between May 1989, when the Royal Commission into Aboriginal Deaths in Custody ceased

investigations, and May 1996 (Aboriginal and Torres Strait Islander Social Justice Commissioner 1996 page 199). Five of these deaths were in institutional settings and ten were a result of police interventions (nine in police pursuits and one 16 year old youth shot dead after threatening police with a replica pistol).

A review of those deaths by the Aboriginal and Torres Strait Islander Social Justice Commissioner found extensive breaches of Royal Commission recommendations in relation to Indigenous young people, many relating to the circumstances leading up to the use of custody. Perhaps most disturbing was the finding that, as the Indigenous juvenile population increases proportionate to the non-Indigenous youth population, the likelihood of increasing numbers of Indigenous young people dying in custody will also increase unless significant reforms are introduced (1996 page 199).

Conclusions

The issues affecting Indigenous young people in the juvenile justice system have been identified and demonstrated time and time again. It is not surprising that Indigenous organisations and commentators draw attention to the historical continuity in the removal of Indigenous children and young people when the key issues in relation to juvenile justice have already been identified for some time yet the problem of over-representation appears to be deepening.

The issues relating to policing and the courts have been well documented since Eggleston's pioneering work in 1976. Problems with Aboriginal/police relations across most of Australia were well documented in the early 1980s (ADB 1982, Roberts et al 1986) and in national inquiries and regional studies in the late 1980s and early 1990s (International Commission of Jurists 1990, *National Report* 1991, HREOC 1991). The failure to accord fair treatment to Indigenous young people in diversionary options such as police cautioning or less intrusive methods such as summons and court attendance notices has been demonstrated since the mid-1980s (Cunneen and Robb 1987, Broadhurst et al 1991, Wilkie 1991). The failure of other diversionary schemes such panels to meet the needs of Indigenous youth has been described since the end of the 1980s (Gale et al 1990, Broadhurst et al 1991, Wilkie 1991).

Failure to comply with police instructions regarding the presence of a parent or adult, failure to notify Aboriginal Legal Services and the inadequacy of police guidelines in regulating police behaviour have been commented upon periodically for a decade and a half (for example, Rees 1982, Cunneen 1990, Warner 1994).

All of these issues were addressed comprehensively in the findings and recommendations of the Royal Commission into Aboriginal Deaths in Custody. The Royal Commission went on to address the need for self-determination and negotiated solutions between governments and Indigenous people in its *National Report* in 1991.

New legislation has done little to confront the issues which affect Indigenous young

people or to reduce the levels of police and detention centre custody. Some of the legislative changes such as the repeat offender sentencing regimes are unashamedly punitive in their intent. Others, such as the introduction of new diversionary schemes, have been perceived as more enlightened. Whole legal systems regulating juvenile justice have changed in some States like SA, WA and Queensland in the last few years. Yet a recent review and evaluation of the new South Australian system could be applied to most of Australia.

> These figures clearly suggest that, in overall terms, the position of Aboriginal youths within the new juvenile justice system does not seem to be any better than under the old system. They are still being apprehended at disproportionate rates and once in the system, are still receiving the 'harsher' options available (Wundersitz 1996 page 205).

Why have new regimes failed? The evidence before the Inquiry suggests several reasons. Many of the more progressive changes have been restricted in form, content and applicability. They have been designed and implemented as non-Indigenous systems with the expectation of finding solutions to the problems facing Indigenous people. Tokenism pervades some of the changes, particularly in relation to police cautioning and family conferencing schemes. Finally, the 'underlying issues' which contribute so substantially to Indigenous offending levels have still not been addressed.

The juvenile justice system provides the linchpin for the criminalisation and removal of a new generation of Indigenous children and young people. The reasons for this intervention can be linked to a number of specific factors relating to policing and the administration of justice, as well as the interaction of the many underlying social and economic issues which are likely to spark intervention.

> It needs to be borne in mind, however, that in relation to many Aboriginal youths who become enmeshed with the criminal justice system, we are talking about youths whose formative experiences have involved profound neglect, routine violence, emotional and physical deprivation (including some instances of virtual starvation) and sexual abuse (Crime Research Centre 1995 page 2).

This chapter has not dealt with the 'underlying issues' per se although they are clearly important in understanding why Indigenous young people come into contact with juvenile justice agencies in the first instance. The underlying issues of socio-economic disadvantage and dispossession influence contact with both child welfare and juvenile justice agencies.

Endnotes

1 Police retain the power under section 18 of the *Young Offenders Act 1994* (WA). A young person suspected of intoxication can be detained in a police lock-up if no responsible person can be located (Beresford and Omaji 1996 pages 115-6).

2 The Australian Government submitted reservations to article 37(c) of CROC and articles 10 (2) and (3) of the ICCPR (see Aboriginal and Torres Strait Islander Social Justice Commissioner 1996 pages 205-7).

3 A recent NSW survey indicated that wards are 15 times more likely than other young people to be incarcerated in detention centres. Indigenous children and young people comprised 9% of all wards but 37% of wards who received a juvenile justice court assessment (Community Services Commission 1996 pages 8 and 24).

4 Various types of summons exist in different jurisdictions including court attendance notices and citations. Some jurisdictions also have infringement notices for some offences which are similar to a parking fine.

5 Formal processing includes arrest, summons and caution.

6 Indigenous young people comprised 58%, 63%, 69% and 54% of watchhouse juvenile detentions over the four year period (Queensland Government final submission page 59).

7 'The police recording system is unable to provide meaningful data with regards to bail application outcomes' (Victorian Government final submission page 122).

8 The NZ *Children, Young Persons and Their Families Act 1989* provides for family group conferences (FGCs). The NZ model and Australian adaptations have been discussed by Alder and Wundersitz 1994 and Hudson et al 1996. For an Australian Indigenous perspective on NZ FGCs, see Dodson 1996 pages 42-45.

9 In NSW the only recognition of cultural difference is that the administrator of conferences, when choosing a convenor to run the conference, 'would need to consider among other things, whether it is possible to match the young person with a Convenor from the same cultural background, distance considerations, and so on' (NSW Attorney-General's Department 1996 page xv).

10 The eleventh 'guiding principle' of the proposed NSW 'accountability conferences' is that 'it should be culturally appropriate' (NSW Attorney-General's Department 1996 page 38).

11 Section 3(2) of the *Young Offenders Act 1993* (SA) lists a number of statutory policies. Paragraph (e) requires proper regard for a youth's sense of racial, ethnic or cultural identity. However, there are no specific requirements in relation to either police cautions or family conferencing for culturally appropriate Indigenous participation – let alone decision making.

12 For example, section 30(2)(c)(v) *Youth Justice Bill* (Tas). The WA *Young Offenders Act 1994* requires that when the offender is a 'member of an ethnic or other minority group' the Juvenile Justice Team should include a person nominated by members of an ethnic or minority group where practicable.

13 A recent review of the SA juvenile justice system recommended that a separate Aboriginal conferencing team be established to increase Aboriginal attendance, provide information, determine appropriate support people, act as co-ordinators and seek feedback from the community 'regarding the development of more culturally appropriate conferencing processes' (Wundersitz 1996 page 125). However there is no more general recognition of a decision-making role for Aboriginal communities or their organisations as a right of self-determination (Wundersitz 1996 page 208).

14 The only apparent exception is the ACT where 4% of juveniles in custody were Indigenous and 5% of juveniles on Community Service Orders were Indigenous. No numbers or details of other sentencing outcomes were supplied (ACT Government interim submission page 25). The Victorian Government noted that its 'Department of Justice is unable to provide any data in relation to differential sentencing options for Aboriginal and non-Aboriginal offenders' (final submission page 122).

15 States and Territories typically exempt themselves from responsibility for the behaviour of young people under their care and protection (see Hil 1996 page 281).

16 For instance the Queensland Government listed the following programs: Aboriginal Life Skills, Offending Behaviour Program, Self-Discovery through Drama and Music, Elders Visits and Cultural

Education (interim submission page 96). There is also a Community and Culture Integration Program with the aim of maintaining, developing and restoring the cultural, community and family links of Indigenous young people in detention (final submission page 45).

25 Underlying Issues

State and Territory legislation, programs and policies in the areas of child welfare, adoption and juvenile justice are intended to provide a non-discriminatory framework for the administration of services. In many cases, programs are designed with the objective of reducing the extent of contemporary removals of Indigenous children and young people. In spite of this, the over-representation of Indigenous children among children living separately from their families and communities, temporarily or permanently, remains high. It must be acknowledged that there are broad social, economic and cultural causes for continuing removals.

Many submissions to the Inquiry drew attention to the need for a broad approach to understanding the reasons behind contemporary removals of Indigenous children and young people (for example, ALSWA submission 127, SNAICC submission 309, NSW Aboriginal Education Consultative Group (AECG) submission 362). 'A broad and detailed approach is necessary because some current laws, policies and practices which initially may not appear relevant to the terms of reference of the National Inquiry, on close examination, are very relevant (submission 127 page 11). These include 'health, housing, education, employment, the legacy of historical abuse, denigration and loss of identity, substance abuse and despair' (submission 127 page 337).

Law, policy and practice are affected by poor socio-economic conditions which make Indigenous children and young people more vulnerable to removal. For example, stress factors arising from socio-economic position and demography arise in welfare department interventions in all families. These factors are particularly prevalent in Indigenous families. In Queensland 12% of the population receives government benefits, 51% of protective services' clients receive benefits and 62% of Aboriginal and Torres Strait Islander protective services' clients are in receipt of benefits. In a study of stress factors experienced by client families in Queensland a higher percentage of Indigenous clients faced stress factors in every category. The categories with the greatest disparity between Indigenous and non-Indigenous clients' experiences of stress factors are substance abuse (68% compared with 37%), cultural dislocation (38% compared with 15%), accommodation problems (40% compared with 33%) and geographical isolation (30% compared with 20%). These stress factors also affect contact with juvenile justice systems (Queensland Government final submission page 35).

> It is facile and dishonest to pretend that many of our kids don't get into trouble … Given the circumstances they are born into, the stack of disadvantages against them, they are not doing too badly. Any group of young people growing up in our world, with our socio-economic profile, would act up and get into strife. Lay the veneer of history, prejudice and cultural disjuncture over their starting point and the problem deepens (Dodson 1995 page 26).

The frustration felt by Indigenous young people can be expressed in behaviours that are destructive to the individual and the community. To understand that behaviour it is necessary to consider the nature of the socio-economic conditions in which Indigenous people live. Some factors arise from cultural difference. Others are the results of

dispossession and marginalisation – poverty, ill-health, poor education, high unemployment and homelessness.

Demography

The demographic profile of Indigenous peoples in Australia has an important influence on the absolute numbers of Indigenous children and young people likely to come into contact with juvenile justice and welfare agencies. As a result, it affects the number of Indigenous children and young people separated from their families and communities.

The 1991 Census showed double the proportion of young people in the Indigenous population compared to young people in the non-Indigenous population. Approximately 15% of the Indigenous population is under five years of age, compared to 7% in the general population. Young people aged 10 to 15 years comprise 14% of the Indigenous population in Australia. For all Australians the proportion is 9%. Approximately 22% of the total Australian population is under 15 years compared to 40% of the Indigenous population (Dodson 1995 page 15). By 2000 this age group of Indigenous young people will grow by 26%. The same age group in the general population will grow by 1%.

The Australian Institute of Criminology has estimated, based on current imprisonment levels and demography, that by 2001 there will have been a 15% increase in the number of Indigenous young people in detention (ALSWA submission pages 339-340; see also Dodson 1995 page 15).

Indigenous children have a far higher rate of removal from their families as a result of neglect compared with abuse than the general population. Neglect is the most prevalent reason for substitute care in the under two age group and more generally among young children. In 1993 12% of Indigenous children involved in substantiated abuse and neglect were under the age of one compared with 7% for all children (Angus and Zabar 1995 page 17). The relationship between poverty and neglect and the projected demographic change together are likely to cause similar increases in welfare interventions to those expected in juvenile justice.

Family and cultural relations

Indigenous societies in Australia have very different cultural concepts of childhood and youth. Generally they do not impose the same separation or exclusion of children from the adult world as non-Indigenous society does. Responsibility for children and young people is shared through the kinship system and the wider community (Watson 1989, Sansom and Baines 1988).

Cultural difference, particularly different family structures, can lead to adverse decisions by juvenile justice, welfare and other agencies, particularly where cultural difference is not understood or does not inform policy development and implementation. At its worst, cultural difference can be treated as a type of abnormality or pathology

because it differs from a perceived dominant cultural norm. In other words, if Indigenous child-rearing is seen as pathological or abnormal, Indigenous families will be more liable to intervention by social workers, police and courts. Assimilation can become an implicit result as the values of the dominant group are imposed on Indigenous people.

As well as differences in child-rearing practices, there are significant differences in family structures between Indigenous societies and the dominant culture. A survey of Indigenous people conducted by the Australian Bureau of Statistics in 1994 (the 1994 ABS survey) showed that Indigenous youth (15 to 24 year olds) have different household relationships with their parents than non-Indigenous youth. Less than half (45%) of Indigenous youth lived with their parents compared to nearly two-thirds of non-Indigenous youth. Indigenous youth were more likely than non-Indigenous youth to live as partners in a relationship (21%), to be lone parents (9%) or to live with other relatives (14%).

There were also significant differences in family structure for Indigenous children aged 10 to 15 years compared to non-Indigenous children in the same age group. The 1991 census showed that over one-third (37%) of these Indigenous children lived in single parent families, compared to 13% of non-Indigenous children in the same age group; over one-third (36%) lived in an extended family unit, compared to 1.5% of non-Indigenous children in the same age group; and the typical size of these households was nearly twice the size of non-Indigenous households (4.6 persons compared to 2.6) (Groome and Hamilton 1995 page 22).

Different cultural patterns such as family structure and child rearing practices can lead to poor service provision or poor access to entitlements. The Report of the Aboriginal Women's Task Force noted that extended family responsibilities in child-rearing lead to situations where women with responsibilities for child-rearing, such as grandmothers, were not necessarily receiving entitlements such family allowances (Daylight and Johnstone 1986 pages 31-32). The attitudes of non-Indigenous staff in government agencies with a direct role in the provision of services for Indigenous people also need to be considered. The attitudes which governed the management of Aboriginal children during the first two-thirds of the twentieth century may have changed officially but may still influence the way services are administered (ALSWA submission 127).

Cultural difference is also evident in the ethnocentric assessment of Indigenous parenting and family structures by welfare departments. From the late 1970s studies have identified the ethnocentric nature of social background reports and psychological tests administered to Aboriginal young people coming under state supervision (Milne and Munro 1981). The reports displayed prejudices in relation to Aboriginal culture, family life and child rearing practices through descriptions of 'dysfunctional families' and 'bad home environment' (Gale et al 1990 page 102, Carrington 1993 page 48).

Ethnocentric assumptions about family structure, individual and family dynamics and cultural values lead not only to unnecessary interventions but also to inappropriate arrangements for children in substitute care. Recurring themes are,

- the implicit or explicit interpretation of extended familial responsibility as 'abandonment' or 'inadequate supervision',
- the implicit or explicit interpretation of travel to maintain familial and cultural relationships and responsibilities as 'instability',
- differences in the level of freedom and responsibility accorded to Indigenous children interpreted as 'lack of supervision' or 'lack of control' over children, and
- the cultural biases which become incorporated in assessments and reports may be used to justify more interventionist decisions by child welfare and juvenile justice agencies as well as decisions in relation to matters such as child removal, adoption and custody.

Cultural factors were also examined in the 1994 ABS survey. The results point to the importance of Indigenous culture in the lives of young people. Over two-thirds (68%) of Indigenous youth had attended cultural activities in the previous 12 months. Over half (56%) identified with a clan, tribal or language group. Just over 70% recognised particular homelands.[1] Almost one in five Indigenous young people spoke an Aboriginal or Torres Strait Islander language and for 13% an Indigenous language was the main language. In rural areas, 42% of young people spoke an Indigenous language and for 38% of youth in rural areas an Indigenous language was the main language spoken (ABS 1996 pages 2-5). The results of the survey point to the active role played by culture in the lives of Indigenous young people and the active part played in cultural life by Indigenous youth.

Domestic violence

The Inquiry was told that domestic violence is a problem in many communities (ALSWA submission page 322). It particularly affects Indigenous women and their children. The failure to deal with domestic violence and the failure to meet the legal needs of Indigenous women for protection against violent spouses inevitably affects the children and young people of families where violence is a problem. According to the 1994 ABS survey, many Indigenous young people identified family violence as a problem in their area. This view was more pronounced among Indigenous young women than young men (47% compared to 36%) (ABS 1996 page 23).

The majority of Indigenous children 'find high levels of warmth, acceptance, support and personal security in their homes. There are, however, Indigenous homes where there is violence and abuse. We met a number of young people who left their homes because of the unbearable tensions within them' (Groome and Hamilton 1995 page 28). Research has found a connection between a range of juvenile offences, problem behaviour such as truanting and domestic violence in the home (Beresford and Omaji 1996 page 45).

Domestic violence is a frequent feature in welfare department interventions into Indigenous families. Domestic violence may cause the child's home or a relative's home to be assessed as unsuitable for the child. The mother of the child may be in hospital as a

result of domestic violence and the department may intervene while the child is in alternative care. The mother may be in a refuge as a result of domestic violence and be assessed as having unsuitable accommodation. Frequently domestic violence is one of the many stresses affecting a mother's capacity to look after her children. Many communities have identified domestic violence as a serious problem affecting children's well being.

> The most frequently cited example of child abuse was in the context of an incident of domestic violence, in which children were frightened of the situation and ran away scared. The children almost always ran away to their kami (grandmother) (Harrison 1991 page 9).

Alcohol and substance abuse

Domestic violence often occurs in conjunction with alcohol and other substance abuse. Alcohol is a factor in a very high number of welfare and criminal justice interventions in Indigenous families. It is associated with incapacity to care for children, violence, lack of money for food and other essentials, stealing, poor health and many other problems. The relationship between alcohol and other substance abuse and intervention by child protection and criminal justice agencies is undisputed.

Substance abuse is a major problem for Indigenous young people in some communities (Beresford and Omaji 1996 pages 134-6). It can lead to intervention by welfare or juvenile justice authorities.

> The criminal justice system continues to remove Aboriginal children from their families. In a stunning illustration of this, recently a 15 year old boy, with no criminal history approached a police station in the far west of New South Wales with the proceeds from a recent break, enter and steal. He claimed to have been responsible for the crime. He asked to be locked up and taken away from his community 'so I can get away from the petrol sniffing'. The police obliged and he was refused bail and prosecuted. Subsequently, information revealed that he had not committed the crime at all. Rather, he had simply taken himself to the only community service option in the town which he felt could do something about his desire to 'get away from the petrol sniffing'.

> The fact that a 15 year old boy found it necessary to go to the criminal justice system in order to get assistance for a social/medical problem is an appalling situation (Western Aboriginal Legal Service (Broken Hill) submission 775).

Communities in WA have attempted to use by-law making provisions under the *Community Services Act 1979* (WA) to control the sale and distribution of alcohol. They have been hindered by delays in proclaiming their communities as 'communities' under the Act and in processing and approving by-laws. Some communities which have requested assistance to become dry have been forced to wait for years (Crough and Christophersen 1993 page 126). Others, however, in the Northern Territory and WA have successfully worked with the Federal Race Discrimination Commissioner to restrict the supply of alcohol to their members.

Indigenous women are looking at all avenues to address alcohol abuse. Some of

their initiatives include programs to help men, 'beat the grog' campaigns, Alcoholics Anonymous, training alcohol counsellors and night patrols. Alcohol and other substance abuse such as petrol sniffing are at the heart of social problems and exist at crisis proportions in some communities.

Health

Alcohol and substance abuse is not the only health issue. Poor health, the failure of governments to remedy environmental health problems and mental illness are all parts of life for many Indigenous people including children and young people (submission 127 pages 157-68). Article 24 of the *Convention on the Rights of the Child* declares the right of children to the enjoyment of the highest standards of health and to facilities for the treatment of illness and rehabilitation of health.

The 1994 ABS survey showed that one-quarter of Indigenous youth reported a long-term illness or condition. The major illness reported was asthma, followed by ear or hearing problems, skin problems and chest problems (ABS 1996 page 6).

Hearing loss is endemic in Indigenous children and linked to poverty. The incidence varies between areas, but an estimated minimum of 20% of Indigenous pupils in urban areas are affected by marked hearing loss resulting from otitis media. 'Problems with hearing are one of the major causes of low performance in language skills among Aboriginal children and can also be related to behavioural issues' (Groome and Hamilton 1995 page 25). Numerous reports, including those of the Royal Commission into Aboriginal Deaths in Custody and the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, have drawn attention to the connections between hearing loss, behavioural problems and intervention by juvenile justice or welfare agencies (*National Report* 1991 Volume 2 pages 364-8, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 1994 pages 325-31).

Poor nutrition is a direct cause of many diseases. Often poor nutrition in childhood combined with substance abuse such as petrol sniffing leads to serious adulthood diseases and disability. Welfare interventions in Indigenous families are frequently related to poor nutrition. For example Indigenous children are severely over-represented in cases of 'failure to thrive', one of the most common reasons for neglect orders being sought for children under two years. Indigenous children with disabilities are the most likely to be placed in non-Indigenous substitute care and in juvenile detention centres.

The Aboriginal Mental Health Unit (NSW) commented upon the impact of forcible removals on Indigenous people's mental and general health.

> Presenting issues arise predominantly from major grief or loss, trauma, the consequences of family members' removal and disruption of the strong bonds of family and kinship which characterised Aboriginal culture … we believe that it has been the single most significant factor in emotional and mental health problems which in turn have impacted on physical health (submission 650 page 4).

Stress is another health issue which affects Indigenous families. It is related, among other factors, to living in poverty and to unemployment and under employment. In the 1994 ABS survey nearly 30% of individuals aged 15 years and over reported worrying about going without food. This worry was particularly prevalent in households where no-one was working and where there were dependent children (ABS 1995a page 13).

Housing

The Inquiry was told that 'without housing, an individual's education, economic and socio-cultural developments are severely curtailed. Without adequate housing, family cohesion and ability to care for children is severely inhibited' (ALSWA submission 127 page x). Aboriginal people have problems accessing adequate housing primarily for three reasons.

> Firstly, the most significant influences are the philosophy, policies and practices of Homeswest. Secondly, the difficulty in obtaining adequate private rental accommodation disadvantages Aboriginal people. Thirdly, the practice of allocating housing to Aboriginal communities often in remote and fringe areas of the State further disadvantages them (ALSWA submission 127 page 118).

The WA Aboriginal Legal Service criticised Homeswest's policies on eviction and threatened eviction. '[M]any of the policies of Homeswest amount to direct and indirect discrimination against Aboriginal applicants and tenants' (submission 127 page xi). It drew attention to the high level of discretion at the regional level in placing Aboriginal families and argues that Aboriginal people are treated less favourably (submission 127 pages 121-148). 'There are places in the Pilbara and Kimberley regions where the state of housing can only be described as unacceptable for human habitation' (submission 127 page 152). Other reports and inquiries have drawn a similar picture of Indigenous housing throughout Australia.[2]

Unsatisfactory housing can have a direct link with the removal of Indigenous children and young people.

> **It's really awful. It is so difficult to try to bring up my children and send them to school when I am moving from one place to another. Since I was kicked out of Homeswest accommodation I haven't been able to find any accommodation. I live on Social Security and I have two children who are in high school. It is hard enough for our children to stay at school but when they have to move from school to school because we need to move and have a roof over our heads, it is very unsettling for them. That's why I have only got the two older boys. My daughter who is only ten lives with an aunty of mine in B. I wanted to look after her but some social worker from the Department said that it was best if we stayed in one place for my daughter's development. I was too scared to argue with the social worker because I know what the Department can be like.**
>
> *Quoted by ALSWA submission 127 on page 117.*

According to the 1994 ABS survey, some 95% of Indigenous young people lived in

private dwellings, of which three-quarters were rented. The percentage of Indigenous youth in rental accommodation was about twice the national youth average. Indigenous young people were far less likely to have the security offered by home ownership. In addition, about one-third of all Indigenous young people living in private dwellings stated that the accommodation was unsatisfactory. The main problems reported were the need for repairs, not enough bedrooms and not enough living space (ABS 1996 page 12). Indigenous families are 20 times more likely to be homeless than non-Indigenous families (Dodson 1996 page 79).

Employment and income

The national picture of Indigenous employment and income shows little improvement in recent years.

The 1994 ABS survey reveals that despite efforts to increase the status of the Indigenous labour force to that of the general population there was no movement in this direction during the early 1990s. Most new jobs for Indigenous people were connected with the expansion of Community Development Employment Programs (CDEP). One result of the reliance on CDEP employment has been a greater level of part-time employment among Indigenous workers than among the general workforce (ABS 1995b page 1). The 1994 review of the Aboriginal Employment Development Policy found that Indigenous people were three times more likely to be unemployed and experience greater longer-term unemployment, the employment situation of Indigenous men had worsened in urban areas, average incomes had declined relative to the national average and there had been no reduction in welfare dependency (cited in ABS 1995b page 7). Family income levels are significantly influenced by employment levels.

The 1991 Census showed that 60% of single parent Indigenous families had incomes of less than $20,000 a year, compared to 43% on non-Indigenous single parent families. Half (51%) of two parent Indigenous families had incomes of less than $30,000 a year, compared to 20% of non-Indigenous two parent families. Yet Indigenous families are on average nearly twice the size of non-Indigenous families (Groome and Hamilton 1995 page 24).

According to the 1994 ABS survey, the proportion of Indigenous youth employed or looking for work (the labour force participation rate) was 58%. Of these, nearly half were unemployed (47%). The unemployment rate of Indigenous young people aged between 15 and 19 years was 50%, more than twice that of all Australian youth (22%) (ABS 1996 pages 16-17). The level of unemployment among Indigenous young people is an important indicator of the likelihood of coming into contact with juvenile justice agencies (Gale et al 1990, Walker and McDonald 1995).

Of those Indigenous young people who were employed, some one-third were working on CDEP projects. In rural areas, over 62% of young people employed were on CDEP projects (ABS 1996 page 17). Nearly half of the Indigenous young people surveyed by the ABS were dependent on some form of government payment as the main

source of income. For 29% the main source of income was through employment. Another 21% reported no income at all (ABS 1996 page 21).

The fact that one in five young people report no income at all is a disturbing feature likely to increase the probability of criminalisation. The Royal Commission into Aboriginal Deaths in Custody drew attention to the large number of Indigenous young people who could not find work and the apparent relationship between unemployment and contact with juvenile justice agencies (*National Report* Volume 1 page 378). The 1994 ABS survey found that higher rates of arrest contribute to lower employment rates in the Indigenous population, particularly for male teenagers (ABS 1995b page 2). The survey 'established a strong negative relationship between arrest rates and subsequent employment outcomes … The analysis found that, all other things being equal, the fact of having been arrested within the previous five years prior to the survey reduced the chances of employment by half' (ABS 1995b page 2). In other words, unemployment among those who were arrested was double the rate of those who had not been arrested. The issue is particularly important because nearly 40% of Indigenous male youth reported being arrested during the previous five years (ABS 1995b page 40). Unemployed persons, adults and youth, also reported a higher proportion of multiple arrests than those who were employed (ABS 1995a page 58).

Education

A number of submissions to the Inquiry drew attention to the relationship between past racist policies and practices in education which excluded or marginalised Indigenous children and contemporary low secondary school retention rates and low participation rates in tertiary education. Truanting and early school leaving are intimately connected with the likelihood of child welfare and juvenile justice intervention (NSW AECG submission 362 page 4, ALSWA submission 127 page 185).

Past educational policies have contemporary consequences.

> In our recent past, the education and training system … have been tools to systematically strip Aboriginal communities of not only our culture, but the living heart of our communities, our children … Schools were not only used to deny Aboriginal children a culturally appropriate education whether separated or not, they were also used as points from which Aboriginal children were 'removed' (NSW AECG submission 362 page 1).

Until comparatively recently, several jurisdictions had 'policies of not allowing Aboriginal children to attend country schools if the local whites protested. Schools which did admit Aboriginal students usually practised a strict physical segregation in classrooms. Both these practices, which highlight more obvious forms of institutional racism, occurred within the memory of many of the parents of today's adolescents' (Groome and Hamilton 1995 page 20). In Western Australia, where Aboriginal children were excluded from schools until the 1950s, 'a cross generational pattern of alienation from schools as white institutions [has] resulted from the policies' (Beresford and Omaji 1996 page 54).

During the early part of the twentieth century there was a belief, reinforced by psychologists and educators, that Indigenous students only had a limited 'mental ability'. Although these views have been discredited as science they still 'appear to enjoy currency among some teachers' (Groome and Hamilton 1995 page 57). Where 'special classes' exist, Aboriginal students are more likely to be drafted into them on the basis of Aboriginality rather than need (Groome and Hamilton 1995 page 42). The Inquiry was told that the contemporary over-representation of Indigenous children and young people among students who are suspended or excluded from schools reflects the earlier history of educational policies towards Indigenous people (NSW AECG submission 362).

In WA, Beresford and Omaji argue that the over-representation of Indigenous young people in school suspensions requires an investigation into a range of factors including the cultural appropriateness of the rules, the cultural compatibility of the learning styles adopted, the nature of racism in the school and social disadvantage factors. Disengagement of Indigenous children and young people from school is in itself likely to set-up young people for intervention by welfare and juvenile justice agencies either because of truanting or through the more general connection between non-attendance at school and juvenile offending (Beresford and Omaji 1996 page 69).

There is a documented lack of educational achievement by Indigenous children when measured by attendance, retention and attainment levels. Schools and teachers fail to provide Indigenous students with the educational experiences the students and their parents expect (Groome and Hamilton 1995 page xii). While there has been some increase in retention rates and participation in post-secondary education and training, the rates are still much lower than average (ABS 1995b page 2).

According to the 1994 ABS survey, 81% of Indigenous 15 year olds reported attending school compared to 92% of all Australian 15 year olds. For 16 year olds the proportions were Indigenous 57%, total 80%; and for 17 years old they were Indigenous 31%, total 60% (ABS 1996 page 13). Retention rates were higher for Indigenous girls and there were marked variations in retention rates between jurisdictions (Groome and Hamilton 1995 page 6).

No other national figures of attendance rates are available. However, South Australian figures for 1993 show that the average attendance rate for Indigenous children at primary school was 85.5% compared to 93.1% for the total population. The comparable figures for secondary school were Indigenous 78.4%, total 89.4%. The attendance rate for Indigenous girls was lower than for boys. 'The implications of these figures are that Aboriginal students are likely to lose between two and four years of schooling through absenteeism. Rates for the total population are less than half these' (Groome and Hamilton 1995 page 3).

Reasons for low attendance include disaffection with school, difficulties of attending school arising from poverty, family pressures particularly in single parent families, high levels of sickness and high death rates among adults and the consequent social

obligations (Groome and Hamilton 1995 page 4). However, it is clear that some Indigenous students abandon school because of the pressures of racism and cultural dominance (NSW AECG submission 362 page 1, Groome and Arthur Hamilton 1995 page xii).

> A significant number of [Indigenous] students, when asked to reflect on why they had left schools, said that they had felt depersonalised and had lost self-esteem under the pressure of racial harassment and 'put downs' from both teachers and students (Groome and Hamilton 1995 page 45).

Racism from teachers is a more difficult experience to deal with than racism from other students. The types of racism experienced include racial abuse and vilification, negative comments about families and behaviour on the basis of race, prejudicial treatment, negative personal comments about 'extra money' and 'special benefits' (Groome and Hamilton 1995 page 37).

The poor educational results for Indigenous students are also reflected in the rates of suspensions and exclusions from schools. Indigenous children and young people comprise 12% of school suspensions in New South Wales, although they make-up only 3% of the student population (NSW AECG submission page 4). Children as young as five years of age are being suspended, excluded and expelled from schools (NSW AECG submission 362 page 5).

Successful Indigenous secondary students share a strong and growing sense of identity. In these cases Indigenous identity was a source of strength to achieve.

> For the majority of the Aboriginal students with whom we spoke, identity was a central issue. They were proud of their heritage and culture, especially in the face of racist attacks. These students felt that they possessed a culture in a way in which their peers did not. Most had a sense of the spiritual dimension of Aboriginality that separated their culture from others … The biggest single tangible indicator of the depth of Aboriginal identity was the virtually unanimous feeling that there should be much more Aboriginal Studies taught in schools for the benefit of all students (Groome and Hamilton 1995 page 11).

Levels of formal education among adults in Indigenous families are lower than for all Australians. The 1991 Census showed that the level of post-secondary qualification was four times lower among Indigenous adults, vocational qualifications were half the national rate and the proportion of Indigenous parents with no recognised qualifications was 26% higher than all Australians. Most Indigenous young people had left school by Year 10 or earlier. The proportion of 15 to 24 year old Indigenous young people who attained post-secondary qualifications (10%) was less than half that of all Australian youth (23%) (ABS 1996 page 14). Despite both the history of non-Indigenous educational policies towards Indigenous people and the contemporary profile of lower educational attainment, research has shown that the majority of Indigenous parents have a strong desire to see their children achieve at school (Groome and Hamilton 1995 page 26).

Racism in education and poor educational results are directly linked to juvenile justice and welfare intervention. Early entry into the juvenile justice system is 'nearly

always associated with the alienation of the children from the education system' (NSW AECG submission 362 page 1). The 1994 ABS survey found a relationship between education and reported arrests. 'Rates of arrest were highest amongst persons who had left school but not completed Year 12 and had no formal qualifications compared to those who had either completed Year 12 or obtained post-school qualifications. Rates were lowest among those still at school' (ABS 1995a page 58). The Royal Commission into Aboriginal Deaths in Custody also identified the effect of high arrest rates on poor education and problems with transition into the workforce (*National Report* 1991 Volume 2).

The submission from the NSW AECG to the Inquiry noted, after drawing the links between racism, marginalisation, school exclusion and entry into the juvenile justice system, that the provision of culturally appropriate education and training is crucial to prevention of contemporary removal of Indigenous children and young people (NSW AECG submission 362 page 5).

Inter-generational effects and later removal

The effects of separation on past generations can be handed on and contribute to further separation of children from their parents today. Many submissions to the Inquiry raised this issue. It has also been noted in previous Inquiries (HREOC 1993). Both Indigenous people and non-Indigenous experts in mental health and genocide studies have commented on the inter-generational effects outlined above and these have been discussed in more detail in Part 3 of this report.

Separation is linked with psychiatric disorders and with trauma and loss. Separation from the primary carer may render a person less secure and create later difficulties in forming relationships. Those who have been separated may carry with them a fear concerning the loss of their own children. In some cases children in successive generations have been removed. Beresford and Omaji, in an extensive analysis of Indigenous youth and involvement in the WA juvenile justice system, argue that it 'is impossible to overstate the destructiveness of forcible removal' (1996 page 33). Removal and institutionalisation had a number of effects including loss of opportunities to acquire cultural knowledge, lack of good models of relationships and parenting and a sense of unresolved psychological trauma. All of these factors have affected children and increased their likelihood of institutionalisation.

Many of the children of those who were removed have not been exposed to, or in some cases have rejected, the controls and authority of Indigenous culture (ALSWA submission 127 page 338).

> **Sean is my son. He is 16 years of age. He is in jail at the moment. He has been in and out of jail since he was 12 years of age. He does not know how much it hurts me to see him locked up. He needs his family. I need him.**

When I go and visit him he tells me that he is very sorry for what he has done to me. He just cannot seem to help himself. He just cannot help getting into trouble with the cops.

'Sean has been in and out of jail for a number of offences. He does not really know what he wants in life. It is very hard for him and for me … I have to look after five other children who are all younger than Sean …

Things have not changed that much from when I was taken away from parents and placed in a mission at Norseman. By the time I got out, my mum had died and I could not find my father. I think he had gone somewhere over east and from what I heard he hit the bottle pretty badly.

Sean's father had also been taken away from his parents. He had gone to Mogumber Mission. He left me when Sean was only two years of age … Sean's dad could not cope with his childhood. He was subjected to sexual abuse and made to work really hard.

No wonder Sean is the way he is. I and Sean's dad have had our own problems and I suppose they have rubbed off on Sean.

Quoted by ALSWA submission 127 on pages 335-6.

There is clearly a direct association between removal and the likelihood of criminalisation and further instances of removal. The compounding effects of separation and criminalisation were shown dramatically in the Royal Commission into Aboriginal Deaths in Custody investigations. Forty-three of the 99 Indigenous people who died in custody had been removed from their families as children; 43 had been charged with an offence at 15 years of age or younger (*National Report* 1991 Volume 1 pages 5-6).

Discussion and recommendation

Addressing the underlying issues identified in this chapter is necessary to remedy both the effects of past removal and the causes of contemporary removals.

> This tragic experience [of removal], across several generations has resulted in incalculable trauma, depression and major mental health problems for Aboriginal people. Careful history taking during the assessment of most individuals and families identifies separation by one means or another - initially the systematic forced removal of children and now the continuing removal by Community Services or the magistracy for detention of children, rather than the provision of constructive support to families and healing initiatives generated from within their own communities. The process has been tantamount to a continuing cultural and spiritual genocide both as an individual and a community experience (submission 650 pages 4-5).

A recent review of the South Australia juvenile justice system noted,

> Because of their high unemployment rates, low educational levels, low family incomes, etc., Aboriginal youth are at higher risk of offending in the first place. The introduction of far-reaching social justice strategies designed to address the inequitable position of Aboriginal people within the South Australian (and Australian) community are clearly required. But although this was one of the key recommendations of the Royal Commission into Aboriginal Deaths in Custody, the extent to which this is occurring seems to be limited (Wundersitz 1996 page 205).

Social justice measures taken by governments should have special regard to the inter-generational effects of past removals. Parenting skills and confidence, the capacity to convey Indigenous culture to children, parental mental health and the capacity to deal with institutions such as schools, police, health departments and welfare departments have all been damaged by earlier policies of removal.

Unless these conditions are altered and living conditions improved, social and familial disruption will continue. Child welfare and juvenile justice law, policy and practice must recognise that structural disadvantage increases the likelihood of Indigenous children and young people having contact with welfare and justice agencies. They must address this situation.

The denial of social justice violates the basic citizenship rights of Indigenous people in Australia. Citizenship rights include rights to standards of health, housing, education and equality before the law enjoyed by other Australians.

> There is growing concern about the abject failure of governments – state, territory and commonwealth – to adequately address the rights of Australia's Indigenous people. All the reports on Aboriginal services and funding are indicating that the situation for Aboriginal people is not improving. Health, education, housing, water, infrastructure, and roads are all basic citizenship rights of Australians, yet Indigenous people are not receiving an equal level of service outcomes (Northern Land Council submission 765 page 16).

Earlier inquiries have made detailed recommendations relating to social justice. Commonwealth, State and Territory governments have committed themselves to implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody addressing social justice. The Inquiry commends those recommendations and draws attention to the link between the appalling living conditions in many Indigenous communities and the need for a social justice response built on the right to self-determination.

The previous Commonwealth Government committed itself to a social justice package as the third tidr of response to the High Court's decision in *Mabo (No 2)*.[3] The Council for Aboriginal Reconciliation, ATSIC and the Aboriginal and Torres Strait Islander Social Justice Commissioner each prepared a report on how to achieve social justice for Indigenous Australians. The Cape York Land Council urged the Inquiry to 'strongly advocate' to government the implementation of a social justice package (submission 576; see also Northern Land Council submission 765 pages 3 and 16).

Indigenous groups argued that Aboriginal and Torres Strait Islander social justice

should not be seen simply as a package of goods and services to be delivered to their communities. 'It entails accepting the rights of Indigenous peoples and establishing processes which translate abstract principles into the actual enjoyment and exercise of rights' (Dodson 1995 page 97). These rights are both individual human rights and collective rights that arise from the status of Aboriginal and Torres Strait Islander peoples as Indigenous peoples. They include the right of Indigenous peoples to self-determination.

Social justice

Recommendation 42: That to address the social and economic disadvantages that underlie the contemporary removal of Indigenous children and young people the Council of Australian Governments,

1. **in partnership with ATSIC, the Council for Aboriginal Reconciliation, the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner and Indigenous community organisations dealing with Indigenous family and children's issues, develop and implement a social justice package for Indigenous families and children, and**
2. **pursue the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody which address underlying issues of social disadvantage.**

Endnotes

1 A homeland has been defined as an area with which an Indigenous young person recognise an ancestral or cultural links.

2 For example, see the *National Report* of the Royal Commission into Aboriginal Deaths in Custody, the *Toomelah* and *Mornington* reports of the Human Rights and Equal Opportunity Commission and the Aboriginal and Torres Strait Islander Social Justice Commissioner's *Fourth Annual Report*.

3 The other two tiers of response were the Commonwealth *Native Title Act* and the Aboriginal Land Acquisition Fund.

26 A New Framework

An entrenched pattern of disadvantage and dispossession continues to wreak havoc and destruction in Indigenous families and communities. This situation has been described in the preceding chapters of this Part. State and Territory legislation, policy and practice in the areas of child welfare, care and protection, adoption and juvenile justice do not comply with the evaluation criteria established by the Inquiry (see Chapter 15).

They do not comply with the right to self-determination as applied to Indigenous peoples. In general terms, they have been developed upon an assumption that consultation and participation in service delivery are adequate responses to Indigenous needs. Even consultation has been lacking in many areas of legislative change and policy development in issues directly affecting the likelihood of removal of Indigenous children and young people from their families and communities.

The Secretariat of Aboriginal and Islander Child Care (SNAICC) submitted that the 'critical principle of the right to self-determination has been all but ignored and swept under the carpet in relation to Aboriginal families and children' (submission 309 page 31). According to SNAICC, respect for self-determination has been stronger in other areas of policy such as health and education than in relation to families and children.

State and Territory policy and practice are often affected by on racial discrimination, in particular, by indirect discrimination. The evidence presented to the Inquiry indicates that Indigenous children and young people do not receive equal treatment before the law. The juvenile justice system produces massive levels of criminalisation and incarceration of Indigenous youth. Indigenous children are grossly over-represented at each stage of child welfare intervention. Their level of over-representation increases as the degree of intervention increases, with the greatest over-representation being in out-of-home care. The failure to ensure equality before the law breaches article 26 of the *International Covenant on Civil and Political Rights*. It breaches article 5 of the *International Convention on the Elimination of All Forms Racial Discrimination* which requires States to prohibit and eliminate racial discrimination. It breaches the *Racial Discrimination Act 1975* (Cth) which implements the provisions of the Convention. Article 2 of the Convention requires state parties to implement policies to eliminate racial discrimination. These policies include reviewing government legislation and practices which have the effect of creating or perpetuating racial discrimination.

Cultural renewal is another evaluation criterion established by the Inquiry. The continuing removal of Indigenous children and young people from their families and communities interferes with the enjoyment of culture, religion and language. The failure to remedy the disadvantage that leads to removal demonstrate a failure to ensure the conditions for the exercise of the right to enjoyment of cultural life and for cultural renewal.

The Aboriginal and Torres Strait Islander Social Justice Commissioner has concluded that Australian governments have been guilty of human rights abuses in relation to Indigenous children and young people and that the gross over-

representation of Indigenous youth in juvenile institutions raises issues under the Convention (Dodson 1995 pages 35-38). Submissions and evidence to the Inquiry support this view.

State and Territory legislation, policy and practice violate existing or emerging human rights norms in relation to young people. Most importantly, they do not comply with the fundamental principle of eliminating the unjustified removal of Indigenous children and young people from their families and communities. These principles reflect the minimum requirements against which existing legislation, policy and practice must be evaluated.

> The system of legislation, policy and service delivery dealing with children in this country is itself a structural barrier to the rights of Aboriginal children. The fragmentation of the fields of children's services, broadly speaking, is subverting and undermining the rights of Aboriginal and Torres Strait Islander children. Unless we take a national approach to legislative and policy matters regarding Aboriginal children, the situation will remain intolerable and hopelessly inadequate to deal with the present crises and certainly will be no closer to recognising the 'right of self-determination' of Aboriginal and Torres Strait Islander children (SNAICC submission 309 page 34).

Existing systems have failed miserably. Nowhere is this failure more profoundly reflected than in the inability of States and Territories to reduce the number of Indigenous children placed in care, held in police cells and sentenced to detention centres.

The starting point for a new framework is the right to self-determination. For this reason this right is discussed at some length. The framework is also built upon Australia's other human rights commitments, especially those conferring rights on Indigenous peoples and on children and young people generally.

The Inquiry supports the eventual transfer of responsibility for children's well-being to Indigenous peoples and proposes a framework for negotiating autonomy measures (Recommendation 43). It would be inappropriate and untimely for the Inquiry to pre-empt the results of these negotiations by outlining in this report the features of a self-government scheme.

Evidence to the Inquiry and substantial research findings establish conclusively the need for a fundamentally different approach if the objective of eliminating unjustified and unnecessary removal of Indigenous children from their families and communities is to be achieved. This goal is consistent with article 6 of the draft *Declaration on the Rights of Indigenous Peoples*.

> Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and to full guarantees against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext.

Self-determination

The right to self-determination

Independent states long denied that their Indigenous peoples enjoy the

recognised international right of all peoples to self-determination. Self-determination is a collective right exercised by peoples. States preferred to describe their Indigenous populations as minorities, reserving the term 'peoples' to describe nations and emerging post-colonial nations. However, according to the Chairperson of the United Nations Working Group on Indigenous Populations, Professor Daes, 'Indigenous groups are "peoples" in every political, social, cultural and ethnological meaning of this term' (quoted by Coulter 1995 on page 131). Indigenous leaders in Australia have also argued that Indigenous peoples in Australia are 'peoples' within the meaning of the term (Dodson 1993).

Once it is accepted that Indigenous peoples have a right of self-determination, debate surrounds the question what that right involves. Article 1 of the *International Covenant on Civil and Political Rights* defines the right of self-determination as involving the free choice of political status and the freedom to pursue economic, social and cultural development. The Covenant is binding on Australia.

Article 27 of the Covenant provides that 'persons belonging to ... minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language'. Many international legal scholars consider that article 27 implicitly recognises a right to self-government or autonomy for Indigenous peoples and other minorities when that is necessary to protect their cultural distinctiveness. Some scholars have gone further and argued that customary international law recognises a right of cultural self-determination for Indigenous peoples (Iorns 1996 page 8). One aspiration Indigenous peoples have for the draft *Declaration on the Rights of Indigenous Peoples* is that it will put beyond doubt their right of self-determination.

'[The] free choice of political status carries no necessary implications' (Dodson 1993 page 41). Self-government, regional autonomy and integration into an existing nation state are all possible exercises of the right. Coulter summarises what self-determination means for some Indigenous peoples.

> It is clear that Indigenous leaders mean self-determination to include freedom from political and economic domination by others; self-government and the management of all their affairs; the right to have their own governments and laws free from external control; free and agreed-upon political and legal relationships with the government of the country and other governments; the right to participate in the international community as governments; and the right to control their own economic development (Coulter 1995 page 131).

Self-determination is only likely to involve secession from an existing nation state in exceptional circumstances. Professor Daes has stated that self-determination for Indigenous peoples,

> ... means that the existing State has the duty to accommodate the aspirations of Indigenous peoples through institutional reforms designed to share power democratically. It also means that Indigenous peoples have the duty to try to reach an agreement, in good faith, on sharing power within the existing State, and to exercise the right to self-determination by this means and other peaceful ways, to the extent possible ... Furthermore, the right of self-determination of indigenous peoples should ordinarily be interpreted as the right to negotiate freely their status and representation in the State in which they live (quoted by Iorns 1996 on page 13).

The Working Group developed the draft *Declaration on the Rights of Indigenous*

Peoples and governments are now discussing it through the United Nations Commission on Human Rights. 'The purpose of the present standard setting is to recognise the specificity of a numerous group which has been largely ignored by the international community. The draft declaration is essentially seeking to protect the *collective* rights of Indigenous peoples' (Burger and Hunt 1994 page 411). Although it will not be binding, the Declaration is significant because it has been drafted in negotiations with Indigenous peoples' representatives and reflects the aspirations of Indigenous peoples. It has been referred to as 'an historic statement of Indigenous people's rights' (Coulter 1995 page 123). Aboriginal and Torres Strait Islander peoples played an important part in the development of the draft Declaration, as did the Australian Government. It reflects more fully than any other international instrument the current goals of Indigenous peoples.

The draft Declaration affirms that Indigenous peoples have the right to self-determination. '[I]t may be said without exaggeration that all Indigenous peoples, certainly those which have participated in the drafting of the declaration, consider this right fundamental' (Burger and Hunt 1994 page 412). Other provisions in the draft Declaration apply this fundamental right to particular areas of activity. They affirm 'the right of Indigenous people to control matters affecting them' (Coulter 1995 page 128).

Article 4 provides,

> Indigenous peoples have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as their legal systems, while retaining their rights to participate fully, if they choose, in the political, economic, social and cultural life of the State.

Article 31 sets out the extent of self-governing powers of Indigenous peoples.

> Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.

Articles 19, 20 and 23 recognise a right to autonomy or self-government and control over decisions affecting them, including a right to maintain and develop Indigenous decision-making institutions and a right to determine and develop social and economic programs affecting them and to administer those programs through Indigenous institutions.

In negotiating the draft 'practically no Indigenous representatives have spoken of a right to secede from an existing country' (Coulter 1995 page 131). According to the Aboriginal and Torres Strait Islander Social Justice Commissioner, in the Australian context '[a] threat to Australia's territorial integrity is not a necessary concomitant of self-determination' (Dodson 1993 page 52). Indeed, international law specifically rejects interference in the domestic affairs of nation states or in matters which interfere with the existing territorial integrity of nation states. '[A] people exercising their right to self-determination may choose from – and may even be confined to – a

range of possible outcomes other than "independence"' (Nettheim 1988 page 119).

Governments expressed concerns during the negotiations about the relationship between self-determination and secession. Canada asserted that Indigenous self-determination 'could not be used to justify any action that would dismember or impair … the political unity of sovereign democratic states' but it accepted a right to self-determination within those boundaries.

> The Government of Canada accepts a right of self-determination for Indigenous peoples which respects the political, constitutional and territorial integrity of democratic states. In that context, exercise of the right involves negotiations between states and the various Indigenous peoples within those states to determine the political status of the Indigenous peoples involved, and the means of pursuing their economic, social and cultural development (Canadian Government 1996 page 2).

Australia played an important role in the development of the draft Declaration. Its comments on self-determination in 1995 echoed those of Canada in recognising the right.

> [It means] Aboriginal control over the decision-making process as well as control over the ultimate decision about a wide range of matters including political status, and economic, social and cultural development. It means Aboriginal people having the resources and capacity to control the future of their own communities within the legal structure common to all Australians…
>
> Indigenous peoples, like all other peoples in independent states with representative government, do not have a right of secession, although they do have a right of self-determination (quoted by Iorns 1996 on page 15).

Australia sees the right of self-determination as an evolving right. It involves more than just the right of equal participation in national affairs but also includes 'preservation of culture, distinct identity and language, together with a power to take decisions over their own affairs'. In practice 'the extent of that right remains a matter of political debate, particularly where autonomy or self-government for our Indigenous people may be seen to conflict with the rights of others within the Australian community or with overall governmental responsibility to achieve particular outcomes' (quoted by Iorns 1996 on page 15).

Clearly, the implementation of self-determination is important for juvenile justice, child welfare, adoption and family law matters. It is the principle grounding a right for Indigenous people to exercise control over matters directly affecting their children, families and communities. The Indigenous perspective on self-determination provides for the development of control over these areas of social life through processes which may involve some form of autonomy or self-government. Australia's position internationally has certainly not precluded these developments. State governments too have formally supported a broad view of self-determination. For example, the Queensland Government told the Inquiry,

> The essence of self-determination in this context [juvenile justice and child welfare] is an understanding that only Aboriginal people can find solutions to the problems which confront them, and that Aboriginal people have the right to make decisions concerning their own lives

> and their own communities and the right to retain their culture and develop it (final submission page 18).

Implementing self-determination in Australia

The Indigenous right to self-determination has been slowly accepted over the last 25 years. Although restricted interpretations of the right have applied in practice, nevertheless self-determination has been seen as critical in various State, Territory and Commonwealth laws and policies.

However, transfers of power are generally limited in scope and accompanied by resourcing of Indigenous organisations which is inadequate to allow them to fulfil their functions. Many Indigenous communities have demanded the right to exercise self-determination in the provision of services to their communities while many others already do so with limited resourcing and powers. No community has jurisdiction over matters so central to their survival as child welfare and juvenile justice.

Self-determination was a key component in the development of the Commonwealth approach to land rights legislation during the 1970s and underpinned the development of specific legislation covering Indigenous councils and associations. The establishment of ATSIC in the late 1980s and the more recent establishment of the Torres Strait Regional Authority (TSRA) further recognised the importance of self-determination in Indigenous affairs.

Discussing greater autonomy for the Torres Strait, the Chairperson of the TSRA, Gaetano Lui, stated, ‘the central force behind this plan [for the TSRA] is our strong commitment to empowering our people to determine their own affairs. It is about controlling our own destiny and putting power back in the hands of our people’. The Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs, Senator John Herron, replied, ‘it is a view that fits well with the Government approach to Indigenous affairs’ (Herron 1996 page 5).

States and Territories have also transferred some decision-making powers to Indigenous peoples. Hundreds of Indigenous corporations have been established across the country to provide governmental-type services to their communities. Aboriginal and Torres Strait Islander child care agencies are among these. In addition, Indigenous councils with similar powers to local governments have been established in the Northern Territory and Queensland. In South Australia Anangu Pitjantjatjaraku, an Aboriginal corporation established under the *Pitjantjatjara Land Rights Act 1982* (SA), is recognised as a local governing body. Land rights legislation in some other jurisdictions have provided for the exercise of some governmental-type powers.

In WA legislation authorises the recognition of Aboriginal community councils for the purpose of making community by-laws (*Aboriginal Communities Act 1979*). Some 29 communities have by-law making powers, some of which relate to law and order. Recognition of community councils under the Act and approval of by-laws are at the discretion of the Minister.

In the NT Indigenous community councils exercise local government powers under the ‘community government’ provisions of the *Local Government Act*.

Aboriginal local governing bodies recognised for local government funding purposes have also been established under NT and Federal incorporation legislation.

> Councils on Aboriginal land in the Northern Territory are severely limited in what they can do and have to follow the rules and regulations of the NT government. The NT Government's legislation for community Government is a white-mans system and is in direct conflict with the rights of Traditional Land Owners ... He said that what the Northern Territory and Commonwealth governments were doing is to 'manage' Aboriginal people but not giving them real control. Aboriginal Councils are more accountable to the Northern Territory and Commonwealth Governments than they are to their own communities (Kumantjay Ross quoted by *NT Aboriginal Constitutional Convention Report* 1993 on pages 19-20).

Some decision-making power was transferred to Indigenous communities in Queensland by the *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984*. Community councils are primarily responsible for local government services with some additional functions such as community police, community courts and management of natural resources. During the last few years the majority of councils have adopted model by-laws creating a range of offences relating to assault, property damage and alcohol-related conduct (Queensland Government final submission page 56).

There are practical and legislative limitations on the power of Queensland community councils including in the administration of justice. Community police suffer from poor training, poor facilities and high turnover rates. 'Community courts are only operating on a handful of communities at present. Their usefulness is restricted by current requirements that they operate strictly along the lines of a magistrates' Court' (Queensland Government final submission page 56). Although the by-laws passed by community councils apply to juveniles, State police typically charge juveniles under other legislation. At present 'community police have no jurisdiction to enforce offences against juveniles and community courts have no jurisdiction to hear offences against juveniles' (Queensland Government final submission page 61). There are currently no provisions to deal with child welfare matters.

The limitations of the legislative framework under which the community councils operate in Queensland was the focus of the Legislation Review Committee (1991). The Committee found that there was wide Indigenous support for communities exercising greater autonomy than was currently available and that the legislation does not provide a 'culturally appropriate structure for government' (page 1). The Committee recommended that legislation should permit Indigenous communities to develop constitutions to suit their own conditions. These constitutions could specify the type of government structure most suitable for the community and the powers the community would exercise. Communities could choose to undertake government functions for health, education and law (including the recognition of customary rights, laws and traditions and the administration of justice, police and corrections).

In 1996 the Queensland Government introduced the Alternative Governing Structures Program (AGSP) to assist communities develop decision-making structures and processes by providing funds for the development of community-based plans. The Office of Aboriginal and Torres Strait Islander Affairs assists communities in negotiating with the relevant body for their plans to be implemented (Office of

Aboriginal and Torres Strait Islander Affairs 1996a). One of the strengths of the AGSP is that it applies to all Aboriginal and Torres Strait Islander communities in Queensland, including urban and semi-urban communities, and is not limited to those operating under the *Community Services Acts 1984* (Office of Aboriginal and Torres Strait Islander Affairs 1996a pages 13-14).

The organisers of the NT's Aboriginal Constitutional Convention prepared a document on Aboriginal self-government which outlined some of the definitional issues and areas of potential responsibility.

> 1. What is Aboriginal self-government?
>
> A process of redrawing the ancestral domain through the right of Aboriginal self-government. This is a fundamental human right of Indigenous people.
>
> The inherent right of Aboriginal people to govern themselves is not beyond the capacity of the Federal Government to recognise and demarcate. It is simply creating a fairer division of the power and sovereignty…
>
> 4. What does Aboriginal self-government mean?
>
> • Greater Aboriginal self-determination and autonomy;
>
> • Owning the design of decision making structures that are appropriate to the local situation, needs, and culture;
>
> • Control and authority over internal affairs;
>
> • Setting own priorities and determine policy, program design;
>
> • Selectively taking on the delivery of services eg. education, child welfare, social services, health, policing and justice, land and resource planning and environment protection (Reynolds 1996 pages 141 and 143).

Australian governments have not fully considered the relationship between Indigenous self-determination and the federal distribution of powers. However, many Indigenous organisations have experience of local control and regional co-operation.

> Aboriginal local governing bodies generally face a larger struggle to achieve equitable conditions for their communities and consequently the need for regional unity is increased. However because of the cultural value placed on local control, the regional unity is achieved without compromising the fundamental autonomy that traditional land owners have over their traditional areas.
>
> The model is a micro-scale of federal-style distribution of powers between levels of authority. Aboriginal local governing bodies have considerable experience in making such a model work (Pitjantjatjara Council Inc 1994 page 41).

Implementing self-determination in other countries

A number of submissions to the Inquiry (ALSWA submission 127, SNAICC

submission 309, Anglican Church Social Responsibilities Commission submission 525) and research commissioned by the Inquiry (Iorns 1996) drew attention to the development of Indigenous self-determination models in other countries. In these examples, self-determination for Indigenous peoples has involved the complete or partial transfer of jurisdiction for the administration of juvenile justice and child welfare. The devolution of self-government powers to Indigenous peoples in Canada has occurred in the absence of federal government recognition of an obligation at international law but rather in recognition of the desirability of the transfer in the interests of Indigenous survival and national well-being (Iorns 1996 page 21).

United States

The decisions of Chief Justice John Marshall during the first half of the nineteenth century recognised that Indian tribes have an inherent right of tribal sovereignty and are entitled to self-government. In 1832 in *Worcester v Georgia* the Supreme Court struck down a series of laws enacted by the State of Georgia which would have had the effect of nullifying the Cherokee Nation's constitution and its customary law. It affirmed that, although no longer completely sovereign, Indian nations retained their inherent right to self-government. Since then Indian governments have been entitled to exercise legislative, executive and judicial powers, subject to the powers of the US Federal Government. Most Indian nations have some land on which to base their government structures and authorities (Iorns 1996 page 22).

Two developments of particular interest to this Inquiry are the *Indian Child Welfare Act* and tribal courts. Commonwealth legislation along the lines of the *Indian Child Welfare Act 1978* has been recommended to the Inquiry in numerous submissions (see for example SNAICC submission 347, Anglican Social Responsibilities Commission submission 525 pages 9-11).

The *Indian Child Welfare Act 1978* is a Federal Act passed by the US Congress in response to the American Policy Review Commission's recommendations. The Commission was established by Congress in the mid-1970s to examine, among other matters, current law and practice as it affected Indian people. The Task Force's Final Report outlined the need for Indian child welfare legislation.

> The Task Force Report cites a frequently asked question: since both Indian and non-Indian systems act in the best interests of the child, what difference does it make as to who makes decisions about Indian children. The answer to the question is then set out in the Report. The difference is that these decisions are inherently biased by the cultural setting of the decision maker … when decisions are made by non-Indian authorities (quoted by Thorne undated on page 1).

The Task Force noted the discretionary nature of child welfare interventions and the cultural judgments explicitly and implicitly made by non-Indian welfare officers when intervening in Indian families (Thorne undated page 3).

In the hearings which preceded passage of the *Indian Child Welfare Act*, the Congressional Committee found that Indian children are the most vital resource for the continued existence of Indian Tribes and therefore must be protected. It also found that an alarmingly high proportion of Indian families were broken up by the often unwarranted removal of children by public and private agencies and that an

alarmingly high proportion of these children were placed in non-Indian homes and institutions. ‘States have failed to recognise the tribal, social, and cultural standards prevailing in Indian communities and families. The Act was passed to remedy these problems’ (Thorne undated page 7).

The *Indian Child Welfare Act 1978* gives exclusive jurisdiction to tribal courts in child welfare proceedings about Indian children who live on or have their permanent home on a reservation. Congress can make an exception to this rule by giving jurisdiction to a State Court. State courts have joint jurisdiction with tribal courts over welfare matters which involve Indian children who do not have permanent residence on a reservation. State courts must transfer jurisdiction to tribal courts if this is requested by the parent, Indian custodian or Tribe unless one parent objects, the tribe has declined to handle the matter or the State court finds ‘good cause’ not to transfer the case (section 101).

If a State court has jurisdiction over a welfare matter pertaining to an Indian child the *Indian Child Welfare Act* sets out a number of safeguards for that child. The Indian custodian of the child and the child’s Tribe can intervene and participate at any point in the proceedings and all parties have a right to examine all reports and documents filed with the court (section 102). Parties seeking orders have to demonstrate to the court that active efforts have been made to provide remedial services. The party seeking a care order has to notify the parent, Indian custodian and the child’s Tribe of the proceedings (section 102(d)). The Indian custodian or Indian parent has a right to court-appointed counsel (section 102(b)). Voluntary relinquishment must be in writing and a judge must be satisfied that the terms of the agreement are understood by the parent or Indian custodian. Voluntary consent to foster care arrangements can be withdrawn at any time (section 103(a) and (b)).

Section 105 incorporates an Indian Child Placement Principle. An emergency removal of a child is permitted where the child is in imminent physical danger (section 112). In these circumstances either the case must be referred expeditiously to the tribal court or the child must be returned home.

The most litigated and debated provisions of the *Indian Child Welfare Act* relate to the shared jurisdiction between State and tribal courts over Indian children who live off reservations. In *Mississippi Band of Choctaw Indians v Holyfield* (1989) both parents were Indians and residents of the reservation. The mother gave birth to twins in a town 200 miles from the reservation. The parents both signed a consent to adoption form and 31 days after the birth a Final Decree of Adoption was issued by the Chancellor of the Court of Harrison County. No reference was made to the children’s Indian status anywhere in the proceedings. The Tribe sought an order to nullify the adoption decree on the basis that under the *Indian Child Welfare Act* it had exclusive jurisdiction over the child. In a one page judgment the Supreme Court of Mississippi affirmed the adoption on the basis that the mother had intentionally given birth off the reserve and neither parent had lived on the reserve after the birth. On appeal the US Supreme Court found that the parents had been domiciled on the reservation at the date of birth and so the tribal court had had sole jurisdiction. The Supreme Court noted that, because three years had passed since the adoption, nullification of the adoption and separation of the twins from their adoptive parents would cause much pain. Nevertheless the Supreme Court declined to determine the

matter holding instead that ‘we must defer to the experience, wisdom, and compassion of the tribal courts to fashion an appropriate remedy’. The case was sent to the tribal court for determination.

The Supreme Court commented,

> Tribal jurisdiction under s1911(a) was not meant to be defeated by the actions of individual members of the tribe, for Congress was concerned not solely about the interests of the Indian children and families, but also about the impact on the tribes themselves of the large numbers of Indian children adopted by non-Indians ... In addition, it is clear that Congress’ concern over the placement of Indian children in non-Indian homes was based in part on evidence of the detrimental impact on the children themselves of such placements outside of their culture (page 105 reproduced in *The Indian Child Welfare Handbook* undated).

The Supreme Court of Utah had encapsulated much of the debate in an earlier decision cited with approval by the US Supreme Court in *Holyfield*.

> This relationship between Indian tribes and Indian children domiciled on the reservation finds no parallel in other ethnic cultures found in the United States. It is a relationship that many non-Indians find difficult to understand and that non-Indian courts are slow to recognise. It is precisely in recognition of this relationship however, that the ICWA designates the tribal court as the exclusive forum for the determination of custody and adoption matters for reservation-domiciled Indian children, and the preferred forum for non domiciliary Indian children (*In re Adoption of Halloway* 1986 pages 969-970).

Tribal courts were first established in 1883 as an adjunct to the process of assimilation to outlaw customary law and ‘civilise’ Indians. The tribal courts which operate today derive from the *Indian Reorganisation Act 1934*. Indian tribes were authorised to establish tribal constitutions and governments and to enact laws covering internal matters including law and order. The tribal courts could be established as part of a tribal constitution or as a part of a law and order code.[1]

Some 108 Indian tribes operate tribal courts, ranging from small tribes of 65 members and courts that deal with three cases annually to the Navajo nation of nearly 200,000 members and a judicial system that handles 40,000 cases annually. Not surprisingly the court systems vary dramatically ‘depending upon the population of the reservation they service, the demand for services, the funding available, the extent of jurisdiction possessed by the courts, and the philosophical orientation of the tribal governments’ (Canadian Royal Commission on Aboriginal Peoples 1996a page 191).

Tribal courts have broad jurisdiction, including criminal law. However, tribal criminal codes cover essentially offences falling within a summary jurisdiction. Major offences, including homicide, rape and drug offences, must be dealt with in a federal court. The *Indian Civil Rights Act 1968* restricts the operation of tribal courts by limiting the penalties they can impose to a maximum fine of $US5,000 or one year in prison or both. That Act also imports into tribal law the protections of the US *Bill of Rights* including criminal law protections with due process guarantees.

The US tribal court system was extensively reviewed by the Manitoba Aboriginal Justice Inquiry (1991) and the Canadian Royal Commission on Aboriginal Peoples (1996a). Clear advantages and disadvantages were catalogued. On the

negative side, partly as result of the way they were established, the tribal courts and the codes they enforce are not uniquely Indian. Tribal courts were a form of dispute resolution imposed by the federal government (Canadian Royal Commission on Aboriginal Peoples 1996a page 184). At the same time, the tribal court system is not simply a static creation of the federal government. It is a dynamic system which in some instances has been changing to incorporate Indigenous cultural values. The limits imposed by the federal government have not restricted the development of Indigenous justice systems. For instance, the Navajo Nation has undertaken a program over the last decade to introduce Navajo common law as the law of preference in written opinions, as a means of interpretation of codes and as the source of principles and rules. Traditional justice methods have been adapted through the introduction of a Navajo Peacemaker Court (Canadian Royal Commission on Aboriginal Peoples 1996a pages 187-191).

While acknowledging shortcomings of the tribal court system, the Commissioners of the Manitoba Aboriginal Justice Inquiry noted that American Indian tribes were committed to the preservation and expansion of their court system. The system was perceived by tribal members to be,

> … more understanding of their situation, more considerate of their customs, their values and their cultures, more respectful of their unique rights and status, and likely to be more fair to them than the non-Aboriginal justice system has been. In such a situation, where the court has the inherent respect of accused and the community, the impact and effect of its decisions will be that much greater …
>
> All this leads us to conclude that tribal courts clearly have played a vital role in meeting the needs of American Indians for a fair, just and culturally acceptable legal system (1991 Volume 1 pages 296 and 298).

Canada

The Canadian Government has recognised Aboriginal autonomy and self-government and has made specific settlements with different Aboriginal First Nations including land claim settlements and self-government agreements. The Canadian Government announced in 1995 that it would negotiate with Aboriginal First Nations to define the exact powers to be transferred, the jurisdictions to be exercised and the nature of fiscal responsibilities (Iorns 1996 page 23).

The devolution of child welfare and criminal justice, including juvenile justice, to Aboriginal nations has occurred to some extent in a number of areas. A number of Aboriginal self-government agreements which have been negotiated, including four Yukon agreements, have explicitly included jurisdiction over child welfare matters.

A joint approach to criminal justice issues is being developed in some Aboriginal nations (Iorns 1996). As a result of the Yukon self-government agreements, the Yukon First Nations will not unilaterally exercise power over the administration of justice for at least ten years, during which time power can only be exercised subject to a separate joint justice agreement (page 25). A different approach has been taken by the Sechelt Peoples who were granted self-government under Federal legislation. The Sechelts have been granted almost total control of their affairs including their own constitution. The arrangement attempts to replace externally imposed authority with

'internally legitimised tribal authority' (ALSWA submission 127 page 221).

The Canadian Royal Commission on Aboriginal Peoples considered at length the relationship between Indigenous self-determination and the development of native criminal justice systems including juvenile justice. The Commission concluded,

> The Aboriginal right of self-government encompasses the right of Aboriginal nations to establish and administer their own systems of justice, including the power to make laws within the Aboriginal nation's territory ...

> The right to establish a system of justice inheres in each Aboriginal nation. This does not preclude Aboriginal communities within the nation from sharing in the exercise of this authority. It will be for the people of each Aboriginal nation to determine the shape and form of their justice system and the allocation of responsibilities within the nation (1996a page 177).

The Royal Commission report does not offer a 'blueprint' by pre-determining or circumscribing the shape of Aboriginal justice systems. The Commission recognised that Aboriginal justice initiatives have tended to be small scale and developed on an ad-hoc basis. 'Often these initiatives fight the same battles over and over again with different orders of government and with differing results and almost always operating with limited budgets and under the shadow of a pilot program mentality' (page 179). In addition the Royal Commission recognised that different Aboriginal nations and communities will have different preferences and timetables for change.

> Some may wish to give priority to justice processes that take place outside the courtroom; others may see the development of an Aboriginal court system as more responsive to the problems facing them; yet others may wish to proceed along both paths simultaneously to ensure that the system works in an integrated and complementary fashion. It is not our purpose to predetermine or circumscribe choice but rather to create conceptual and legal space for these developments to occur (page 197).

The Royal Commission was primarily concerned with providing a framework for the development of Aboriginal justice systems on a more comprehensive basis. It therefore considered in detail the jurisdictional basis for establishing Aboriginal justice systems (pages 219-257). It found that Aboriginal people's inherent right of self-government is recognised and affirmed in section 35 of the Canadian *Constitution Act 1982*. The right is not absolute and is exercised within the framework of Canada's federal system. It encompasses the right of Aboriginal nations to establish and administer their own systems of justice including the power to make laws within the Aboriginal nation's territory (page 310).

The Royal Commission concluded that 'Aboriginal jurisdiction in relation to justice should be treated as a right; the exercise of that right should, however, be progressive and incremental, dependent upon the choice, commitment and resources of each Aboriginal nation' (page 257). The 18 recommendations on criminal justice provide a framework for facilitating the development of an Aboriginal jurisdiction. The first of these is that,

> Federal, provincial and territorial governments recognize the right of Aboriginal nations to establish and administer their own systems of justice pursuant to their inherent right of self-

> government, including the power to make laws, within the Aboriginal nation's territory (page 312).

Other recommendations provide that Aboriginal justice systems should have a choice concerning the types of matters they will determine and which offenders will come before them. Offences and offenders not dealt with by the Aboriginal justice system would be dealt with by the non-Aboriginal justice system. Non-Aboriginal residents within Aboriginal jurisdictions should have a choice of where their case will be heard except if the offence is unique to the nation's system and is designed to protect cultural values.

The Royal Commission recommended that Aboriginal justice systems should include an appellate structure with a pan-Canadian Aboriginal appeal body. Appeals from that body would be to the Canadian Supreme Court. There should be negotiation between federal and provincial governments and Aboriginal nations for agreements to govern the nature of Aboriginal justice jurisdiction, the establishment of Aboriginal charters to supplement the *Canadian Charter of Rights and Freedoms* and the need to prioritise the interests of Aboriginal women and children in the development of Aboriginal justice systems.

Recommendations

In Canada and the United States governments have shown their willingness to depart from the culture of control which has characterised relationships between Indigenous peoples and colonial societies. The change in attitudes in the Canadian context is evident in the inter-governmental negotiations between Indigenous peoples on a regional basis. The governments of Canada through creative and inclusive federalism have recognised Indigenous Canadians' jurisdiction in a broad range of areas including those affecting children's well-being. They have also acknowledged and made a commitment to negotiating self-government on a local and regional basis with Indigenous peoples.

> Given the vastly different circumstances of Aboriginal peoples throughout Canada, implementation of the inherent right cannot be uniform across the country or result in a 'one-size-fits-all' form of self-government (Government of Canada 1995 page 4).

The Canadian Government's range of negotiation options include Indigenous Canadians living on and off a land base.

> Metis and Indian groups living off a land base have long professed their desire for self-government process that will enable them to fulfil their aspirations to control and influence the important decisions that affect their lives (Government of Canada 1995 page 19).

In contrast to the Canadian experience, Australian 'self-governance' models have been established within paternalistic legislative frameworks in which limited powers are delegated and functions are performed with inadequate resources, often in adverse circumstances.

Self-determination and responsibility for children

Self-determination can take many forms. It could involve a regional agreement

and/or the establishment of regional authorities.[2] Alternatively, it may take the form of community constitutions. It can cover a range of areas including matters dealing with children and juveniles.[3] There are many possibilities from the exercise of local government style powers through to the development of State-like powers within the federal structure.

The Northern Land Council provided the Inquiry with a view of self-determination which implied full self-government.

> By self-determination we mean far more than the forms of quasi-control allowed through certain government institutions such as ATSIC or community government councils in the NT. This may include special funding arrangements with Commonwealth, states and territory governments (submission 765 page 16).

Some communities or regions may see the transfer of jurisdiction covering juvenile justice, welfare and adoption as central to exercising self-government. Others may wish to work within the existing structure modified to provide legislative recognition of the right of Indigenous organisations to have the key role in the decision-making processes. The level of responsibility for children which Indigenous communities wish to take must be negotiated by the communities themselves.

Many submissions to the Inquiry supported this approach.

> Self-determination [is] the right of Aboriginal people to build mechanisms within our own communities for dealing with a range of issues that everybody else deals with at the moment on our behalf.

> Even if a child commits an offence within the city area or the community, we are not saying that nothing should be done with that child, but we do believe that whatever punishment, or whatever outcome of that child being picked up by police or authorities, is not a matter for the authorities or the police or the courts to deal with. It is really a matter for the Aboriginal community. Unless we are given the right and we are entrusted and given the opportunity to build up the mechanisms within our community to deal with these issues there is no end in sight …

> If we are going to break down that system there has got to be a beginning where the Aboriginal community is able to build up the mechanisms. One of the reasons why we cannot deal with it at the moment is that we have never been given the chance and we have never been resourced, we have never been given the trust, and never really had the opportunity …

> [There are] some *ad hoc* arrangements that take place here and elsewhere in Australia, where the department does not know what to do with our kids, when the police do not know what to do with our lads on the street, they dump them on us. Now, we try as best we can to cope with that issue, but if it was done more formally and a structure set up so the Aboriginal community can build up over a period of time our ability and our mechanisms to deal with this issue then … It does not matter which Aboriginal child is taken away from its parents, or picked up by police or the authorities, you take them to the Aboriginal community to be dealt with and you exclude the operation of the general law.

> Now, there may be some limitation on that. It depends on the severity of the issues which gave rise to the child attracting the attention of the authorities ... In the next five or ten years it may well be impossible for the Aboriginal community to deal with some youth who have been involved in some very, very serious offences and so there may be limitations on the sorts of things that we deal with, but it seems to me that should not stop negotiations taking place between the Aboriginal community and governments as to where those limitations are and how the mechanisms can be built up between and within Aboriginal communities (Michael Mansell, Tasmanian Aboriginal Centre, evidence 325).

The Aboriginal Legal Service of WA recommended 'that Local, State and Commonwealth governments facilitate the transition of identified Aboriginal communities to limited or complete self-government (or any other plan that is considered appropriate for the particular community), including any legislative reform, training, infrastructure development or provision of any other assistance that may be required' (submission 127 page 222). Tangentyere Council (NT) called for a change in the 'structural relationship of Aboriginal people to the State' (Tangentyere Council submission 542 page 4).

Link-Up (NSW) drew the Inquiry's attention to Canadian Children's Services. 'The destiny of Aboriginal children should be determined by Aboriginals as is the case in the Canadian First Nation Peoples Children's Services' (Link-Up (NSW) submission 186 page 176).

The Kimberley Land Council and Broome and Derby Working Groups (WA) both stated,

> …we believe that control should be placed in the hands of Aboriginal people themselves, not government departments. Aboriginal people are in a position to assess the situation of clients and determine how best to deal with problems and can draw on their knowledge of extended families, Aboriginal tradition and culture to provide indigenous ways of dealing with crises situations (submission 345 page 28 and submission 518).

ATSIC noted that in 'both current policies, and the development of new policies in relation to Indigenous children, governments must consolidate the principles of self-determination and empowerment' (submission 684 page 42).

Before informed decisions can be made there needs to be proper negotiation between government and Indigenous communities and organisations relating to self-determination in juvenile justice, welfare and adoption matters. Communities must be in a position to make choices about what they see as suitable long-term solutions to particular issues.

There are no insurmountable constitutional, legal or administrative barriers to transferring or sharing jurisdiction. The development of night patrols in Tennant Creek and Alice Springs in the NT are practical examples of Aboriginal people taking initiatives and exercising a level of control in the maintenance of law and order. They establish that core functions can be shared to the satisfaction of Indigenous people and government authorities. These are practical examples of shared jurisdiction in maintaining law and order (Dodson 1996 pages 62-63).

Funding

In 1992 the Council of Australian Governments endorsed a 'National Commitment to Improved Outcomes in the Delivery of Programs and Services to Aboriginal Peoples and Torres Strait Islanders'. This commitment arose from an agreement by all levels of government on the need for co-ordination of delivery of programs and services to Aboriginal and Torres Strait Islander peoples. Guiding principles of this agreement are empowerment, self-determination and self-management by Aboriginal and Torres Strait Islander people. The commitment is consistent with a co-operative approach which recognises the responsibility of all levels of government for the delivery of services to Indigenous people.

States and Territories currently have responsibility for welfare and juvenile justice services to all sectors of the community. The Commonwealth has special responsibility to Indigenous people under the 'races power' in the Constitution and under human rights treaties ratified under the 'external affairs power'. Shared financial responsibility for the implementation of the recommendations of this Inquiry is required to fulfil these State, Territory and Commonwealth responsibilities. The need for proper funding was endorsed by the Social Responsibilities Commission of the Anglican Church.

> It will not be possible for the Australian States to implement ... minimum standards without additional funding for training and for the support of Indigenous communities. Indigenous communities may not have the necessary expertise or resources initially to fulfil their roles in arrangements giving them more direct control over services ... control over services is not a euphemism for poor quality provision (submission 525 page 11).

The provision of funding must take cognisance of the principle of self-determination. Funding arrangements have been criticised for their excessive legality and complexity, onerous reporting provisions, failure to acknowledge organisations intellectual property. Indigenous organisations wherever possible should be the decision makers or at a minimum have primary input into funding decisions.

Other human rights

Australia has ratified many international conventions which establish human rights standards to which Australia is required to conform. Indigenous people in Australia have increasingly looked to international conventions to offer protection from discrimination and promotion of human rights (Dodson 1993).

A number of submissions called on the Inquiry to consider and incorporate the provisions of the *United Nations Convention on the Rights of the Child* (CROC) which was ratified by Australia in 1990. The Aboriginal Legal Service of WA noted that the Convention imposes an obligation on governments to protect the family unit, the interest of children growing up in a family where possible and the right of individuals to a family life. 'Children, like adults, have rights to freedom from arbitrary interference with family life, freedom from arbitrary detention, liberty of the person and freedom of choice of residence' (submission 127 page 359).

Article 3.1 of CROC states that 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'. CROC envisages that it will normally be in the child's 'best

interests' to be brought up with his or her birth family and by both parents (articles 9 and 18). CROC also recognises a right of the child to inherit and participate in the culture(s) into which he or she was born and an obligation on the state to provide assistance where children are removed from their cultural environment (articles 8.1, 20, 29.1(c) and 30).

> Article 20.
>
> 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
>
> 3. …when considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

> Article 30.
>
> In those States in which ethnic, religious or linguistic minorities or persons of indigenous origins exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her culture, to profess and practise his or her own religion, or to use his or her own language.

According to the ALSWA 'these principles create a double issue in regards to Aboriginal youth, in that they are to be protected both as children and as members of an Indigenous culture' (submission 127 page 360).

Article 12 of CROC recognises the child's right to have the opportunity to express his or her views in any judicial or administrative proceedings which affect him or her, provided the child is capable of forming views. The views of children should be given weight in accordance with their age and maturity.

Self-determination

Recommendation 43a: That the Council of Australian Governments negotiate with the Aboriginal and Torres Strait Islander Commission, the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Secretariat of National Aboriginal and Islander Child Care and the National Aboriginal and Islander Legal Services Secretariat national legislation establishing a framework for negotiations at community and regional levels for the implementation of self-determination in relation to the well-being of Indigenous children and young people (national framework legislation).

Recommendation 43b: That the national framework legislation adopt the following principles.

1. **That the Act binds the Commonwealth and every State and Territory Government.**
2. **That within the parameters of the Act Indigenous communities are free to formulate and negotiate an agreement on measures best suited to their individual needs concerning children, young people and families.**

3. **That negotiated agreements will be open to revision by negotiation.**
4. **That every Indigenous community is entitled to adequate funding and other resources to enable it to support and provide for families and children and to ensure that the removal of children is the option of last resort.**
5. **That the human rights of Indigenous children will be ensured.**

Recommendation 43c: That the national framework legislation authorise negotiations with Indigenous communities that so desire on any or all of the following matters,

1. **the transfer of legal jurisdiction in relation to children's welfare, care and protection, adoption and/or juvenile justice to an Indigenous community, region or representative organisation,**
2. **the transfer of police, judicial and/or departmental functions to an Indigenous community, region or representative organisation,**
3. **the relationship between the community, region or representative organisation and the police, court system and/or administration of the State or Territory on matters relating to children, young people and families including, where desired by the Indigenous community, region or representative organisation, policy and program development and the sharing of jurisdiction, and/or**
4. **the funding and other resourcing of programs and strategies developed or agreed to by the community, region or representative organisation in relation to children, young people and families.**

National minimum standards

Indigenous organisations must have a key role in policy development and program delivery and in decision-making in individual cases concerning children, whether juvenile justice, child welfare or adoption, either within a self-government framework or within the existing State or Territory legal framework. The right of Indigenous peoples to self-determination requires this.

> The standing of Aboriginal and Torres Strait Islander parents, families and communities to actively participate in and shape juvenile justice programs, which have such a disproportionate impact on our children, should be beyond question (Dodson 1995 page 27).

The Royal Commission into Aboriginal Deaths in Custody stressed the need for governments and Aboriginal organisations 'to negotiate together to devise strategies to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems' (Recommendation 62). The Royal Commission was not prescriptive. Instead 'a conscious decision was made not to attempt to provide a blue-print for a "perfect" system, but rather to recommend a co-operative, negotiated, community-based approach to addressing problems' (Dodson 1996 page 200). This was also the approach of the Canadian Royal Commission on Aboriginal Peoples in relation to criminal justice issues.

The approach adopted by the Inquiry is consistent with that of the Royal Commission. We recommend negotiations for nationally binding minimum standards of treatment for Indigenous children and young people. The negotiating partners should include the Commonwealth, State and Territory Governments and peak

Indigenous organisations with responsibility for families and children, the Aboriginal and Torres Strait Islander Commission (ATSIC), the Secretariat for Aboriginal and Islander Child Care (SNAICC) and the National Aboriginal and Islander Legal Services Secretariat (NAILSS), together with the Aboriginal and Torres Strait Islander Social Justice Commissioner.

The national standards legislation should be applicable to all Indigenous children whether subject to Indigenous community jurisdiction, State or Territory jurisdiction or shared jurisdiction as negotiated between the Indigenous community and the State or Territory.

In the case of children remaining under State or Territory jurisdiction or subject to shared jurisdiction, we have come to the conclusion, based on overwhelming evidence, that some provisions are essential as minima if the goals of eliminating unnecessary removals of Indigenous children from their families and communities and reversing their over-representation in child welfare and juvenile justice systems are to be achieved. Additional standards should be negotiated which are consistent with the minima recommended. Subject to the national standards legislation, individual communities, regions and representative organisations may negotiate the details of their particular relationships with the institutions of the State or Territory under Recommendation 43c.3.

The negotiation and adoption of minimum standards for juvenile justice, child welfare and adoptions applicable nationally will address the rights and needs of Indigenous children, prevent unjustified removals and provide an open framework in which Indigenous control over child welfare and juvenile justice can develop where this is desired. Minimum standards do not preclude development of higher standards in any one jurisdiction, region or community. They establish the benchmark from which particular systems can develop in ways which suit the requirements of Indigenous children and communities in different areas. This approach was advocated by the Anglican Social Responsibilities Commission.

> The legislative control of child welfare and juvenile justice is in the hands of the States. The States cannot be assumed all to be of one mind, or can that mind be assumed to be of good intent. In the Social Responsibilities Commission's [SRC] view action by the Commonwealth is necessary … Any legislation by the Commonwealth should be directed towards providing benchmarks by which State provision will be regulated (submission 525 page 10).

Under the Australian *Constitution* child welfare, juvenile justice and adoption have been matters within the exclusive legislative power of the States (with the Commonwealth exercising that power for the Territories until the grant of self-government). The Commonwealth's responsibility for Indigenous children's rights flows from Australia's adoption of international human rights treaties. This adoption, moreover, has expanded the Commonwealth's legislative power. Arguably the Commonwealth has constitutional power to legislate to protect Indigenous children's well-being relying on its powers to legislate with respect to external affairs and for the people of any race (Wilkinson 1994, Nicholson 1995).

National standards for Indigenous children

Recommendation 44: That the Council of Australian Governments negotiate with the Aboriginal and Torres Strait Islander Commission, the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Secretariat of National Aboriginal and Islander Child Care and the National Aboriginal and Islander Legal Services Secretariat national legislation binding on all levels of government and on Indigenous communities, regions or representative organisations which take legal jurisdiction for Indigenous children establishing minimum standards of treatment for all Indigenous children (national standards legislation).

National standards for Indigenous children under State, Territory or shared jurisdiction

Recommendation 45a: That the national standards legislation include the standards recommended below for Indigenous children under State or Territory jurisdiction or shared jurisdiction.

Recommendation 45b: That the negotiations for national standards legislation develop a framework for the accreditation of Indigenous organisations for the purpose of performing functions prescribed by the standards.

Responsibility for children

One objective of national minimum standards is the elimination of removals of Indigenous children from their families and communities consistently, in particular, with the *Convention on the Rights of the Child* and the right of self-determination. The standards should ensure both the human rights of Indigenous children including the best interests principle and the right of self-determination for Indigenous peoples. The development of Indigenous law and practice in accordance with existing human rights norms is recognised in the draft *Declaration on the Rights of Indigenous Peoples*.

> Indigenous people have the right to promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognised human rights standards (article 33).

Article 9(1) of CROC requires that state parties ensure children are not separated from their families except where separation is necessary for the best interests of the child. The Genocide Convention and the draft *Declaration on the Rights of Indigenous Peoples* prohibit the removal of Indigenous children from their people. '[E]ven where an Aboriginal child must be separated from his or her parents in the best interests of the child, that child should not be separated from his or her culture and should be placed as close to the parents as possible' (Iorns 1996 page 6). In most cases the best interests of the child will require placement within his or her community. The right of self-determination and the elimination of removal are consistent with the requirement that the best interests of the child be served in the vast majority of cases.

> Any aboriginal child growing up in Australian society today will be confronted by racism. His best weapons against entrenched prejudice are a pride in his aboriginal identity and cultural heritage, and strong support from other members of the aboriginal community. We believe that the only way in which an aboriginal child who is removed from the care of his parents can develop a strong identity and learn to cope with racism is through placement in

> an environment which reinforces the social and cultural values characteristic of aboriginal society. We believe that white families are unable to provide such a supportive environment (Aboriginal task group report to the First Australian Conference on Adoption 1976, relied upon by the Family Court in *B and R* 1995 page 605).

> In the context of [high] adult mortality and high incidences of imprisonment, other social problems and a generally hostile environment we have to ensure not only that our children are taken care of, but that they also grow up with a strong belief in themselves and their people. We do this because they are the inheritors of this land, they are its guardians and we must bring them up with the same values and attitudes that we have tried to uphold (Butler 1989 page 29).

Welfare departments in all jurisdictions continue to fail Aboriginal and Torres Strait Islander children. Although they recognise the Aboriginal Child Placement Principle, they fail to consult adequately, if at all, with Indigenous families and communities and their organisations. Welfare departments frequently fail to acknowledge anything of value which Indigenous families could offer children and fail to address children's well-being on Indigenous terms.

> Aboriginal families continue to be seen as the 'problem', and Aboriginal children continue to be seen as potentially 'savable' if they can be separated from the 'dysfunctional' or 'culturally deprived' environments of their families and communities. Non-Aboriginals continue to feel that Aboriginal adults are 'hopeless' and cannot be changed, but Aboriginal children 'have a chance' (Link-Up (NSW) submission 186 page 85).

The needs of Indigenous families and communities are neglected while Indigenous children continue to be disproportionately involved with 'the welfare'. Evidence to the Inquiry repeatedly indicated a community perception that the problems which result in removals need to be addressed in terms of community development. However, welfare departments continue to pathologise and individualise protection needs of Indigenous children. At the same time, recognition of past failures, under-resourcing and, in some instances, racist attitudes frequently result in a failure to intervene until the family crisis is of such proportions that separation is the most likely or even only possible course.

Indigenous communities throughout Australia gave evidence to the Inquiry of their need for programs and assistance to ensure the well-being of their children. Not a single submission to the Inquiry from Indigenous organisations saw intervention from welfare departments as an effective way of dealing with Indigenous child protection needs. Departments recognise that they need to provide culturally appropriate services but they fail to develop them.

> Despite changes of names from Department of Community Welfare to the Department of Community Development to the Department of Family and Children's Services (FCS) [WA] many Aboriginal people feel that the Department has remained a welfare institution reminiscent of Native Welfare. FCS still wields statutory control over families struggling to survive. Decisions which affect the lives of children are frequently made by staff without discussion with Aboriginal families. Many people facing crises with their families will often not seek assistance from the department because of their association with 'Welfare' who took the children away (Kimberley Land Council submission 345 page 28).

> It is not surprising, given the experiences of present and earlier welfare policy and practices, that Aboriginal perceptions of the current role of DCS [NSW] remain overwhelmingly negative. Despite the employment of Aboriginal field workers most interviewees expressed suspicion of and antipathy towards, DCS. Despite changes to policy and legislation, DCS practice remains, in the opinion of those interviewed, culturally inappropriate (*Learning from the Past* 1994 page 58).

> Families are concerned that any contact with FACS [SA] may result in their children being removed. Hence for programs involving the well-being of Aboriginal children to be successful, they need to be managed by and operated from Aboriginal organisations (SA ACCA submission 347 page 37).

Evidence to the Inquiry confirms that Indigenous families perceive any contact with welfare departments as threatening the removal of their child. Families are reluctant to approach welfare departments when they need assistance. Where Indigenous services are available they are much more likely to be used.

Standard 1: Best interests of the child – factors

Recommendation 46a: That the national standards legislation provide that the initial presumption is that the best interest of the child is to remain within his or her Indigenous family, community and culture.

Recommendation 46b: That the national standards legislation provide that in determining the best interests of an Indigenous child the decision maker must also consider,

1. **the need of the child to maintain contact with his or her Indigenous family, community and culture,**
2. **the significance of the child's Indigenous heritage for his or her future well-being,**
3. **the views of the child and his or her family, and**
4. **the advice of the appropriate accredited Indigenous organisation.**

Standard 2: When best interests are paramount

Recommendation 47: That the national standards legislation provide that in any judicial or administrative decision affecting the care and protection, adoption or residence of an Indigenous child the best interest of the child is the paramount consideration.

Standard 3: When other factors apply

Recommendation 48: That the national standards legislation provide that removal of Indigenous children from their families and communities by the juvenile justice system, including for the purposes of arrest, remand in custody or sentence, is to be a last resort. An Indigenous child is not to be removed from his or her family and community unless the danger to the community as a whole outweighs the desirability of retaining the child in his or her family and community.

Standard 4: Involvement of accredited Indigenous organisations

Recommendation 49: That the national standards legislation provide that in any matter concerning a child the decision maker must ascertain whether the child is an Indigenous child and in every matter concerning an Indigenous child ensure that the appropriate accredited Indigenous organisation is consulted thoroughly and in good faith. In care and protection matters that organisation must be involved in all decision making from the point of notification and at each stage of decision making thereafter including whether and if so on what grounds to seek a court order. In juvenile justice matters that organisation must be involved in all decisions at every stage including decisions about pre-trial diversion, admission to bail and conditions of bail.

In the context of family law, section 68L of the *Family Law Act 1975* (Cth) authorises the Court to order a separate representative for the child or children in a parenting dispute. The Full Court of the Family Court in the 1994 case *Re K* set guidelines for when a child should normally have a separate representative. One circumstance is 'where there are real issues of cultural differences' (Lisa Young submission 816 page 8). In all cases involving Indigenous children the court must ensure that the child is represented. Representation is essential to ensure that the child's Indigenous heritage and associated needs and interests are understood by the court and properly taken into account.

The expertise of Indigenous community-controlled organisations providing services for Indigenous families and children, notably the Aboriginal and Islander Child Care Agencies (AICCAs) has been called upon by the Family Court. Separate representatives should be alert to the existence and expertise of these organisations and would be expected to consult them in every case.

Standard 5: Judicial decision making

Recommendation 50: That the national standards legislation provide that in any matter concerning a child the court must ascertain whether the child is an Indigenous child and, in every case involving an Indigenous child, ensure that the child is separately represented by a representative of the child's choosing or, where the child is incapable of choosing a representative, by the appropriate accredited Indigenous organisation.

Indigenous child placement principle

The Indigenous Child Placement Principle provides the framework for the care of Indigenous children who cannot remain with their parents. It meets both the child's best interests and the needs of the Indigenous community.

> Because of the negative attitudes towards Aborigines that still exist in our community, it is inevitable that an Aboriginal child will be subjected to racial taunts by their peers and, if that child is isolated from Aboriginal family and community supports, it is most likely that he or she will develop psychological and emotional problems ... In order to cope with these issues, and others surrounding his or her Aboriginal identity, it is of paramount importance that the child remain or be placed in an Aboriginal family, preferably the natural or extended family. The child will be with people who have experienced the problems that he or she will

> inevitably face and be able to address them effectively (ACCA report submitted by the separate representative and quoted by the Family Court in *B and R* 1995 page 597).

This approach mirrors that adopted in Britain by the National Foster Care Association in 1989.

> Denying a child's colour, being 'colour-blind', is not in the child's long-term interests. It is one way in which white carers have attempted to protect themselves and the children they care for from the reality of racism. But denial makes things worse for the child, who cannot share with their white carers the offensive and damaging racist behaviour they may experience.

> Becoming familiar with black people, learning about black history and achievements, and knowing the music and language of their own culture will help the children to begin to build up an inner store of self-worth of their blackness. This will help them to combat the damage done by racism. The child or young person needs direct contact with black people who are positive about their own black identity and needs positive black role models to counteract the negative images so often presented by the media (excerpted in Gaber and Aldridge 1994 page 217).

There is a great deal of variation among jurisdictions in the wording of their Aboriginal Child Placement Principles. Chisholm commended the NSW *Community Welfare Act 1987* requirement that placement contrary to the ACPP must not occur unless application of the Principle would cause detriment to the child (1988). Only Victoria and SA provide statutory recognition of the role of Aboriginal organisations. Aboriginal people have noted the importance of 'respecting law', 'keeping law strong' by making correct skin placements and recognising blood ties as well as cultural ties in defining extended family and correct placements.

Many arguments can be made in favour of entrenching the Principle and the role of AICCAs in legislation. Where procedures and policy are legislatively provided for they are more likely to be adhered to. Their implementation can be reviewed and monitored by courts. Legislative recognition facilitates standing on the part of parties who may otherwise be excluded from proceedings (for example AICCAs). Statutory recognition of a right to participate in decision making would relieve AICCAs from dependence on the goodwill of the welfare department or individual officers.

Legislation establishes a firmer and clearer foundation for lines of authority and the exercise of legitimate power (for example the demarcation of responsibilities between AICCAs and departments). It provides a sound basis for funding agencies to recognise services which require funding to fulfil functions.

Standard 6: Indigenous Child Placement Principle

Recommendation 51a: That the national standards legislation provide that, when an Indigenous child must be removed from his or her family, including for the purpose of adoption, the placement of the child, whether temporary or permanent, is to be made in accordance with the Indigenous Child Placement Principle.

Recommendation 51b: Placement is to be made according to the following order

of preference,

1. **placement with a member of the child's family (as defined by local custom and practice) in the correct relationship to the child in accordance with Aboriginal or Torres Strait Islander law,**
2. **placement with a member of the child's community in a relationship of responsibility for the child according to local custom and practice,**
3. **placement with another member of the child's community,**
4. **placement with another Indigenous carer.**

Recommendation 51c: The preferred placement may be displaced where,

1. **that placement would be detrimental to the child's best interests,**
2. **the child objects to that placement, or**
3. **no carer in the preferred category is available.**

Recommendation 51d: Where placement is with a non-Indigenous carer the following principles must determine the choice of carer,

1. **family reunion is a primary objective,**
2. **continuing contact with the child's Indigenous family, community and culture must be ensured, and**
3. **the carer must live in proximity to the child's Indigenous family and community.**

Recommendation 51e: No placement of an Indigenous child is to be made except on the advice and with the recommendation of the appropriate accredited Indigenous organisation. Where the parents or the child disagree with the recommendation of the appropriate accredited Indigenous organisation, the court must determine the best interests of the child.

Adoption

Adoption for Indigenous children should be a last resort and, where it is desirable in the child's best interests, should be within the Indigenous community except when the child's best interests require some other placement. Culturally appropriate alternatives to adoption should be preferred. They include,

1. custody and guardianship arrangements short of adoption,
2. culturally appropriate counselling of prospective relinquishing parents and their families ensuring that alternatives are explored and adequate family support is offered to enable them to keep the child, and
3. 'open adoption' which secures continuing contact between the child and his or her parents, other family members and community.

> While adoption is seen as the answer for some Aboriginal children, it certainly does not represent the total answer. Aboriginal values, culture and family life provide a very different context or texture from that of the dominant society and adoption assumed different meanings against this context. If adoption law and practice is to be responsive to the particular needs of the Aboriginal community, then it must be flexible in its application and be in harmony with their family life, culture and values. Viable alternatives to legal adoption through the white system must be available so that placement of each individual child is determined by the needs of that child and his family, rather than by the straitjacket of

> bureaucratic procedures (*Homes for Blacks* 1976 page 163 reporting the collective view of Aboriginal participants at the First Australian Conference on Adoption in 1976).

When adoption is determined to be in the child's best interests, the child should remain in contact with his or her biological family and community. His or her cultural and native title entitlements and future rights and responsibilities may depend on the continuity of these ties. His or her spiritual and emotional well-being almost always does. 'Open adoption' is the most appropriate for Indigenous children (and possibly for all children). Open adoption has been variously defined.

> There is no universally accepted definition of open adoption. Definitions range from 'an adoption in which the birth parent meets the adoptive parents; relinquishes all legal, moral, and nurturing rights to the child; but retains the right to continuing contact and knowledge of the child's whereabouts and welfare' to 'shar[ing] with the child why a mother would place the child for adoption' (NSW Law Reform Commission 1994 page 53).

The first definition reflects the Inquiry's intentions. In addition the child should retain the right to contact and knowledge of the biological family's whereabouts. The family as a whole, and not just the natural parents, should remain in contact. 'Family' for these purposes must be defined according to the customs and Law of the particular Indigenous community. To protect the best interests of the child the degree of contact between child and natural family would be determined ideally by agreement between the natural and adoptive families or, failing that, by court order. The advice of the relevant Indigenous child and family service agency would be invaluable in either case.

Standard 7: Adoption a last resort

Recommendation 52: That the national standards legislation provide that an order for adoption of an Indigenous child is not to be made unless adoption is in the best interests of the child and that adoption of an Indigenous child be an open adoption unless the court or other decision maker is satisfied that an open adoption would not be in the best interests of the child. The terms of an open adoption order should remain reviewable at any time at the instance of any party.

Juvenile justice

> The overall picture in relation to Aboriginal juvenile justice issues remains, for the most part bleak in many areas of the State … The reforms that have been made to the system have yet to make sustained inroads into rates of arrest and incarceration for Aboriginal children and young people (ALSWA submission 127 page 333).

Minimum standards for Indigenous juvenile justice must be founded on a number of key principles and themes, many of which have been discussed above. These include,

- legislative recognition of the need to eliminate the removal of Indigenous children and young people from their families and communities and a legislative preference for diversion of Indigenous children and young people to Indigenous bodies,
- the need for Indigenous communities and organisations to have a key role in

deciding the future of individual Indigenous children and young people who become the subject of juvenile justice intervention, and

- the need for Indigenous communities and organisations to have a key role in policy development and program implementation, where they desire this.

A substantial body of literature has documented the too frequent use of arrest by police when dealing with Indigenous young people (Blagg and Wilkie 1995, Luke and Cunneen 1995). Indigenous young people are more likely to be proceeded against by way of arrest than informal mechanisms such as warnings and cautions or less intrusive mechanisms such as summonses and court attendance notices. Rules 1 and 2 aim to minimise the use of arrest and to increase the use of warnings and attendance notices (see Blagg and Wilkie 1995 page 193).

There is widespread dissatisfaction with infrequent notification to Indigenous organisations when Indigenous young people are detained and questioned by police. Failure to notify Indigenous organisations such as legal services increases the likelihood of bail being refused and of children's rights being infringed. Rule 3 requires immediate notification, Rule 4 requires that the organisation be consulted in police decision-making about whether and if so how to proceed against the young person and Rule 5 prohibits interviewing the young person unless his or her representative is present.

Rules 5-8 inclusive controlling the interrogation of Indigenous young people by police are consistent with those proposed by Blagg and Wilkie based on the *Convention on the Rights of the Child* (1995 pages 304-5) and with Recommendations 243 and 244 of the Royal Commission into Aboriginal Deaths in Custody. Blagg and Wilkie argued that these standards are required by CROC and should be applicable to all children and young people.

Indigenous young people are massively over-represented among young people detained in police cells. Bail refusal, inability to satisfy bail conditions, unnecessary transportation of young people from remote communities and the failure to support and utilise Indigenous alternatives to police custody are major reasons for Indigenous young people's detention in police cells. Rules 9-12 inclusive aim to reduce the disproportionate numbers of Indigenous young people refused bail, given unrealistic bail conditions and detained in police cells. In the case of bail refusal Indigenous alternatives are to be used in preference to detention in police cells.

Juvenile justice throughout Australia is moving towards two systems based on race. It is developing into two systems for two categories of offenders: those who are minor offenders and those who are serious and/or repeat offenders. Minor offenders are channeled into the various diversionary programs such as police cautioning and conferencing schemes. Serious and repeat offenders, on the other hand, become ineligible for diversionary programs and are dealt with more punitively through sentencing regimes that are more akin to adult models and in some jurisdictions include mandatory minimum terms. The segregation of treatment for 'minor' and 'serious' juvenile offenders is occurring predominantly along racial lines.

Indigenous young people are less likely to receive non-custodial sentences and more likely to be sentenced to detention. Diversion of the young person into programs

designed for Indigenous children must be the preferred sentencing option in all but the most serious cases demanding a custodial penalty. There are successful Indigenous controlled diversionary programs in various jurisdictions. However, they are limited in number, under-resourced and under-utilised by the courts. Indigenous young people who are diverted are, therefore, unlikely to benefit from programs designed and delivered by their communities. As a result they are more likely to fail to complete their sentences and to receive a custodial penalty in response to breaching their non-custodial order. The Inquiry was referred to research by the University of WA's Crime Research Centre which noted that the effects of Aboriginal young people not receiving diversionary treatments or of 'failing' them are compounding.

> The courts may perceive Aboriginal youth to have 'failed to respond' to diversionary options such as cautioning and family group conferences and consequently 'up-tariff' them, that is, give them a more severe disposition than justified by the current offence alone (ALSWA submission 127 page 370).

Indigenous children and young people do not receive the same benefits of diversionary options as non-Indigenous young people. Moreover, existing diversionary options are not of Indigenous making. The diversionary options in most instances are alternatives created by the non-Indigenous juvenile justice system for non-Indigenous young people. To the extent that they extend to Indigenous young people they are imposed on them and their communities. The inevitable consequence of this process is entrenched over-representation of Indigenous young people in detention centres.

Rules 13 and 14 aim to limit the sentencing options of courts to diversion into an Indigenous non-custodial program except in the most serious cases. Rule 15 requires the court to give its reasons in writing whenever a custodial sentence is imposed on an Indigenous young person.

> The existing criminal justice system, anchored in a philosophy of punishment and an architecture of imprisonment, can blind us to alternative means to achieve peace and order within a framework of justice (Canadian Royal Commission on Aboriginal Peoples 1996a page 214).

Standard 8: Juvenile justice

Recommendation 53a: That the national standards legislation incorporate the following rules to be followed in every matter involving an Indigenous child or young person.

Recommendation 53b: That the national standards legislation provide that evidence obtained in breach of any of the following rules is to be inadmissible against the child or young person except at the instance of the child or young person himself or herself.

Rule 1. ***Warnings***

Arrest and charge are actions of last resort. Subject to Rule 2, a police officer is to issue a warning, without charge, to a child or young person reasonably suspected of having committed an offence without requiring the child or young person to

admit the offence and without imposing any penalty or obligation on the child or young person as a condition of issuing the warning.

Rule 2. ***Summons, attendance notice***

A child or young person may be charged with an offence when the alleged offence is an indictable offence. The charging officer must secure the suspect's attendance at the court hearing in relation to the charge by issuing a summons or attendance notice unless the officer has a reasonable belief that the suspect is about to commit a further indictable offence or, due to the suspect's previous conduct, that the suspect may not comply with a summons or attendance notice.

Rule 3. ***Notification***

When a child or young person has been arrested or detained the responsible officer must notify the appropriate accredited Indigenous organisation immediately of the fact of the arrest and make arrangements for the attendance of a representative of that organisation.

Rule 4. ***Consultation***

The responsible officer, in accordance with Standard 4, must consult thoroughly and in good faith with the appropriate accredited Indigenous organisation as to the appropriate means of dealing with every child or young person who has been arrested or detained.

Rule 5. ***Interrogation***

No suspect or witness is to be interviewed in relation to an alleged offence unless,

a. a parent or person responsible for the suspect or witness is present, unless the suspect or witness refuses to be interviewed in the presence of such a person or such a person is not reasonably available,

b. a legal adviser chosen by the suspect or witness or, where he or she is not capable of choosing a legal adviser, a representative of the appropriate accredited Indigenous organisation is present, and

c. an interpreter is present in every case in which the suspect or witness does not speak English as a first language.

Rule 6. ***Caution***

No suspect or witness is to be interviewed in relation to an alleged offence unless,

a. the caution has been explained in private to the suspect or witness by his or her legal adviser or representative,

b. the interviewing officer has satisfied himself or herself that the suspect or witness understands the caution, and

c. the suspect or witness freely consents to be interviewed.

Rule 7. ***Withdrawal of consent***

The interview is to be immediately discontinued when the suspect or witness has withdrawn his or her consent.

Rule 8. ***Recording***

Every interview must be recorded on audio tape or audiovisual tape. The tape must include the pre-interview discussions between the suspect or witness and the interviewing officer in which the officer must satisfy himself or herself that the suspect or witness understands the caution and freely consents to be interviewed.

Rule 9. ***Bail***

Unconditional bail is a right. The right to bail without conditions can only be varied where conditions are reasonably believed due to the suspect's past conduct to be necessary to ensure the suspect will attend court as notified. The right to bail can only be withdrawn where it is reasonably believed, due to the nature of the alleged offence or because of threats having been made by the suspect, that remand in custody is necessary in the interests of the community as a whole.

Rule 10. ***Bail review***

The suspect has a right to have the imposition of bail conditions or the refusal of bail reviewed by a senior police officer. In every case in which the senior officer refuses to release the suspect on bail, the officer must immediately notify a magistrate, bail justice or other authorised independent person who is to conduct a bail hearing forthwith. The suspect is to be represented at that hearing by a legal adviser of his or her choice or, where incapable of choosing, by a representative of the appropriate accredited Indigenous organisation.

Rule 11. ***Bail hostels***

When bail has been refused the suspect is to be remanded in the custody of an Indigenous bail hostel, group home or private home administered by the appropriate accredited Indigenous organisation unless this option is not available in the locality.

Rule 12. ***Detention in police cells***

No suspect is to be confined in police cells except in extraordinary and unforeseen circumstances which prevent the utilisation of alternatives. Every suspect confined in police cells overnight is to be accompanied by an Indigenous person in a relationship of responsibility to the suspect.

Rule 13. ***Non-custodial sentences***

Custodial sentences are an option of last resort. Every child or young person convicted of an offence who, in accordance with Rule 14 cannot be dismissed without sentence, is to be sentenced to a non-custodial program administered by the appropriate accredited Indigenous organisation or by an Indigenous community willing to accept the child. The child's consent to be dealt with in this way is required. The selection of the appropriate program is to be made on the advice of the appropriate accredited Indigenous organisation and, where possible, the child's family.

Rule 14. ***Sentencing factors***

The sentencer must take into account,

a. the best interests of the child or young person,

b. the wishes of the child or young person's family and community,

c. the advice of the appropriate accredited Indigenous organisation,

d. the principle that Indigenous children are not to be removed from their families and communities except in extraordinary circumstances, and

e. Standard 3.

Rule 15. ***Custodial sentences***

Where the sentencer, having taken into account all of the factors stipulated in Rule 14, determines that a custodial sentence is necessary, the sentence must be for the shortest appropriate period of time and the sentencer must provide its reasons in writing to the State or Territory Attorney General and the appropriate accredited Indigenous organisation. No child or young person is to be given an indeterminate custodial sentence or a mandatory sentence.

Commonwealth, State and Territory governments must ensure effective policy evaluation and monitoring of implementation. Particular attention should be paid to,

1. the extent to which Indigenous children and young people are dealt with formally by police or courts in preference to referral to an Indigenous organisation for participation in a diversionary program,
2. the extent to which Indigenous children and young people are dealt with by way of arrest in preference to summons or attendance notice,
3. the extent to which Indigenous children and young people are held in police cells and the reasons for their detention,
4. the extent and nature of bail refusal and bail conditions which cannot be met,
5. the extent and nature of sentences to detention for Indigenous children and young people, and
6. comparative recidivism rates between Indigenous children and young people sentenced to Indigenous community-based options compared to those sentenced to detention.

The results of these evaluations must be made public.

Family law

Although now more in tune with the *Convention on the Rights of the Child*, the *Family Law Act 1975* (Cth) does not incorporate the child's right under article 30.

> In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

The Family Court in *B and R* stated 'we strongly agree with the importance to be attached to these rights'. These rights should be included among the principles underlying that Part of the Act dealing with children's welfare. Section 60B(2)

currently sets out four principles which are described as underlying the objects of the Part unless contrary to the child's best interests. The objects of the Part are 'to ensure children receive adequate and proper parenting to help them achieve their full potential' and 'to ensure that parents fulfil their duties' (subsection 1). The four principles are,

> (a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
>
> (b) children have a right of contact, on a regular basis, with both their parents and with other people significant to their care, welfare and development; and
>
> (c) parents share duties and responsibilities concerning the care, welfare and development of their children; and
>
> (d) parents should agree about the future parenting of their children.

The 'cultural rights' of Indigenous children should be recognised similarly in this subsection. While our recommendation refers solely to Indigenous children, it does so only because we are restrained by our terms of reference. Proper recognition of article 30 would include all children from ethnic, religious or linguistic minorities.

The Act should explicitly recognise that every Indigenous child has a need to maintain a connection with his or her Indigenous culture and heritage. Section 68F, the best interests checklist, currently invites the judge to consider *whether* an Indigenous child needs to maintain contact with his or her culture. In our view, the Act should direct the judge to take account of that need. Inclusion of these principles will not pre-determine a dispute in favour of the Indigenous parent since the best interests of the child remains the sole consideration.

Family law

Recommendation 54: That the *Family Law Act 1975* (Cth) be amended by,

1. **including in section 60B(2) a new paragraph (ba) 'children of Indigenous origins have a right, in community with the other members of their group, to enjoy their own culture, profess and practice their own religion, and use their own language', and**
2. **replacing in section 68F(2)(f) the phrase 'any need' with the phrase 'the need of every Aboriginal and Torres Strait Islander child'.**

Endnotes

1 The Canadian Royal Commission on Aboriginal Peoples also noted that there is another group of tribal courts known as 'traditional courts' operating among Pueblo Indians in southwest USA. They operate under inherent tribal jurisdiction and apply customary law supplemented by tribal enactments (1996a page 183).

2 For example the proposed Kimberley Regional Agreement or the Torres Strait Regional Authority.

3 For example the developments recommended by the Queensland Legislation Review Committee and the proposed Alternative Governing Structures Program.