

**HUMAN
RIGHTS
COMMISSION**

REPORT NO. 20

COMPLAINTS RELATING TO
THE PROTEST AT PINE GAP, NOVEMBER 1983

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HUMAN RIGHTS COMMISSION
6th Floor, AMP. Building, Hobart Place, Canberra City

Our Ref:

P.O. Box 629,
CANBERRA CITY, ACT. 2601
Telephone: 434122
Telegrams: Rightscom Canberra
Telex: AA 62090

31 October 1986.

The Hon. Lionel Bowen, Q.C., M.P.,
Deputy Prime Minister and Attorney-General,
Parliament House,
CANBERRA, A.C.T. 2600.

Dear Attorney-General,

Pursuant to section 9(1) (b) (ii) and (c) of the Human Rights Commission Act 1981, we present this report to you following the Human Rights Commission's inquiry and endeavours to effect a settlement in the matter of complaints arising from the protest at Pine Gap in the Northern Territory in November 1983.

Yours sincerely,



Chairman
for and on behalf of the
Human Rights Commission

Members of the Human Rights Commission

Chairman

The Hon. Dame Roma Mitchell, D.B.E.

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FUNCTIONS OF THE COMMISSION

Section 9 of the Human Rights Commission Act 1981 (Cwlth) reads:

9.(1) The functions of the Commission are -

- (a) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactments or proposed enactments are, or would be, inconsistent with or contrary to any human rights, and to report to the Minister the results of any such examination;
- (b) to inquire into any act or practice that may be inconsistent with or contrary to any human right, and -
 - (i) where the Commission considers it appropriate to do so - endeavour to effect a settlement of the matters that gave rise to the inquiry; and
 - (ii) where the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect a settlement of those matters - to report to the Minister the results of its inquiry and of any endeavours it has made to effect such a settlement;
- (c) on its own initiative or when requested by the Minister, to report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to human rights;
- (d) when requested by the Minister, to report to the Minister as to the action (if any) that, in the opinion of the Commission, needs to be taken by Australia in order to comply with the provisions of the Covenant, or the Declarations or of any relevant international instrument;
- (e) on its own initiative or when requested by the Minister, to examine any relevant international instrument for the purpose of ascertaining whether there are any inconsistencies between that instrument and the Covenant, the Declarations or any other relevant international instrument, and to report to the Minister the results of any such examination;
- (f) to promote an understanding and acceptance, and the public discussion, of human rights in Australia and the external Territories;

- (g) to undertake research and educational programs, and other programs, on behalf of the Commonwealth for the purpose of promoting human rights and to co-ordinate any such programs undertaken by any other persons or authorities on behalf of the Commonwealth;
- (h) to perform -
 - (i) any functions conferred on the Commission by any other enactment;
 - (ii) any functions conferred on the Commission pursuant to any arrangement in force under section 11; and
 - (iii) any functions conferred on the Commission by any State Act or Northern Territory enactment, being functions that are declared by the Minister, by notice published in the Gazette, to be complementary to other functions of the Commission; and
- (j) to do anything incidental or conducive to the performance of any of the preceding functions.

(2) The Commission shall not -

- (a) regard an enactment or proposed enactment as being inconsistent with or contrary to any human right for the purposes of paragraph (1) (a) or (D) by reason of a provision of the enactment or proposed enactment that is included solely for the purpose of securing adequate advancement of particular persons or groups or persons in order to enable them to enjoy or exercise human rights equally with other persons; or
 - (b) regard an act or practice as being inconsistent with or contrary to any human right for the purposes of paragraph (1) (a) or (b) where the act or practice is done or engaged in solely for the purpose referred to in paragraph (a).
- (3) For the purpose of the performance of its functions, the Commission may work with and consult appropriate non-governmental organisations.

CHAPTER I. THE INQUIRY

Arising out of the demonstration at Pine Gap in the Northern Territory in November 1983 by Women for Survival, the Commission received thirty-nine complaints of infringements of human rights. This report outlines the Commission's inquiries into the complaints and its endeavours to effect a settlement, and makes recommendations about aspects of the handling by police of largely peaceful protests.- It is made in pursuance of the Commission's functions under ss. 9(1) (b) and (c) and 16(2) of the Human Rights Commission Act.

2. Between 11 and 25 November 1983 a Women for Survival Peace Camp was held near the Joint Defence Space Research Facility at Pine Gap, which is situated a few kilometres from Alice Springs. Associated with a move by some of the women over the relatively low perimeter fence into the protected area surrounding the communications installations, some one hundred and eleven arrests took place between 13 and 15 November. The Commission received a telegram on Monday 14 November alleging that the rights of women detained in the Alice Springs Watchhouse had been infringed.

3. The Commission sent two officers to be available to persons who might wish to complain, and to be available to the appropriate authorities and any other relevant persons. They arrived in Alice Springs on Wednesday 16 November. One left on Friday 18 November and the other on Saturday 19 November. While in Alice Springs, the Commission's officers moved among various groups within the community, including representatives of local concerned women, of Women for Survival, of the Northern Territory Police and of the Australian Federal Police (AFP). The work culminated in a meeting convened by a group of local concerned women with three representatives of the Women for Survival, the three senior officers from the Northern Territory Police Force and the AFP, six local

concerned women and an officer of the Commission. The report of the officers, which was made on their return, was on 23 November provided to the then Attorney-General, Senator the Hon. Gareth Evans, Q.C. It is reproduced as Appendix 1.

4. The protest at Pine Gap and the incidents arising from protection of the installation by the Northern Territory Police Force and the AFP were the subject of some discussion in the Parliament. However, as the Attorney-General made clear in response to a question by Senator Crowley, the decision of the Commission to send two officers to Alice Springs was made by it. A copy of a press statement by the Attorney-General, which contains the text of the Question Without Notice and his response, appears as Appendix 2.

5. The Commission, which had been in touch with developments from the time of receipt of the initial telegram, reviewed the situation at its meetings in December 1983 and January, March and May 1984.

6. In early December 1983, letters were written to all the Commonwealth Departments which might have a concern in the incident - the Attorney-General's Department, the Departments of the Prime Minister and Cabinet, Administrative Services and Special Minister of State, advising them of the Commission's receipt of the complaints and seeking their assistance in resolving them. The Departments of Administrative Services, Prime Minister and Cabinet, and Special Minister of State replied advising that the subject matter of the complaints did not appear to fall within their areas of responsibility. In its reply, the Department of the Special Minister of State advised that it had referred the Commission's letter to the Commissioner of the AFP, who is responsible for police operations. The Attorney-General's Department wrote on 27 January 1984 that it would reply substantively after it had considered the jurisdictional question that appeared to arise.

7. In early to mid December 1983 the Commission also wrote to all the complainants, to the Commonwealth and Northern Territory Ombudsmen and to the Commissioners of the AFP and the Northern Territory Police Force, to advise of its action in writing to the several Commonwealth Departments.

8. The Commission subsequently sent to the Commonwealth Ombudsman complaints it had received from three of the complainants, which it had decided to treat as representative complaints. It so advised the Commissioner of the AFP and discussed with the Northern Territory Ombudsman means of avoiding duplication between his office and the Commission in handling complaints in this matter received in common. Some twenty-one complaints were shared with the Northern Territory Ombudsman.

9. On the matter of jurisdiction, the Commission received advice from the Attorney-General's Department in April 1984 to the effect that under the Human Rights Commission Act the Commission had jurisdiction to make inquiries into the complaints made by the women arrested. Under s.9(1) (b) of the Act, one of the functions of the Commission is to inquire into any act or practice that may be inconsistent with or contrary to any human right. In relation to the AFP, there is direct authority because acts or practices are defined in the Act as including acts done by or on behalf of the Commonwealth. In the case of the Northern Territory Police, s.68(1) of the Judiciary Act 1903 (Cwlth) provides that:

68.(1) The laws of each State respecting the arrest and custody of offenders or persons charged with offences, and the procedure for-

- (a) their summary conviction; and
- (b) their examination and commitment for trial on indictment; and
- (c) their trial and conviction on indictment; and
- (d) the hearing and determination of appeals arising out of any such trial or conviction or out of any proceedings connected therewith and for holding accused persons to bail, shall, subject to this section, apply and be applied so far as they are

applicable to persons who are charged with offences against the laws of the Commonwealth committed within that State, or whose trial for offences committed elsewhere may lawfully be held therein.

Insofar as the Northern Territory Police were holding the complainants with the object of charging them with offences under the Commonwealth Crimes Act, they were operating under an enactment of the Commonwealth and on behalf of the Commonwealth. In the view of the Commission, supported by advice from the Attorney-General's Department (see Chapter II), their actions also fall within the jurisdiction of the Commission under the Human Rights Commission Act.

10. The complaints were directed at actions by the two police forces. Complaints similar to those received by the Commission had also been sent to the Northern Territory Ombudsman and to the Commonwealth Ombudsman. As both Ombudsmen have power to inquire into complaints against the police, the Commission at this point desisted from further inquiries on the ground that the subject matter of the complaints was being dealt with under statutory powers by other statutory authorities. It was in frequent contact with the former Ombudsman of the Northern Territory, Mr Russell Watts, to whom it extends its thanks for his co-operation. His report was tabled in the Legislative Assembly of the Northern Territory on 22 August 1984 and the Commission has felt it unnecessary to work in detail over the matters on which he reported. Similarly, the Commonwealth Ombudsman has reviewed a number of complaints relating to the AFP, and the Commission has felt it unnecessary to traverse the same ground in detail in its inquiries.

11. In July 1985 the Chairman of the Commission wrote to the Special Minister of State, as the Minister to whom the AFP are responsible, to the Attorney-General as Minister with responsibility for the Judiciary Act and human rights generally, and to the Commissioner of the Northern Territory Police Force. She advised them that to facilitate the inquiry process the Commission had selected the three representative

complaints referred to earlier as reasonably covering all the complaints made to it by the thirty-nine complainants. The letters to the Special Minister of State and the Northern Territory Commissioner of Police set out briefly the complaints received by the Commission, as refined in discussions with two of the representative complainants (the third became impossible to contact despite repeated efforts) and with the two Ombudsmen, and are annexed as Appendixes 3 and 4 respectively.

12. In brief, the main issues raised with the AFP, along with a reference to the relevant human rights in the International Covenant on Civil and Political Rights (ICCPR) (text at Appendix 5), were:

the use of the AFP helicopter during the protest
(Articles 21 and 22.1)

the way in which protesters were selected for arrest
(Article 9.1)

delays in informing the complainants of the charges against them (Article 9.2)

13. In relation to the Northern Territory Police Force, the main matters, again with a reference to the relevant ICCPR Articles (text at Appendix 5), were:

the manner in which fingerprints were obtained (Articles 7 and 10.1)

the strip searching of complainants (Articles 10.1,
7 and 17)

access to legal advice (Article 14(3) (b))

access to medical attention (Articles 10 and 7)

general atmosphere and attitudes (Articles 3, 7, 10.1,
14.3(a) and (b) and 26)

14. The Commission received two letters from the Special Minister of State, the Hon. Mick Young M.P. He said that he had taken up with the AFP the matters raised in the Chairman's letter of 8 July 1985 and that the Commonwealth Ombudsman had been making inquiries into the matters raised. The Attorney-General replied to the effect that the actual

practices complained of were not committed by persons employed in his Department or in any of the agencies for which he has responsibility. The Commissioner of the Northern Territory Police Force sent two letters in which he referred to the inquiries of the Northern Territory Ombudsman and indicated that he considered he should take no part in the investigation, although indicating that he would be happy to consider any advice the Commission might have without suggesting that it did have jurisdiction. Copies of these letters are reproduced at Appendix 6.

15. The Northern Territory Ombudsman completed his inquiries in mid-1984. His report was ordered to be printed by the Legislative Assembly of the Northern Territory on 22 August 1984.² In his report he referred to the fact that the Commission had received complaints from twenty-one persons who had also complained to him and that the allegations made to the Commission 'are either identical or similar to those lodged with the Northern Territory'. He indicated that on completion of its own inquiries, the Commission would submit a report to the Attorney-General. The Northern Territory Ombudsman's report is comprehensive, and runs to seventy-three pages in single spaced typing. It canvasses specifically all the issues raised with the Commission, except the matter of general atmosphere and attitudes, and the Commission draws on the statements of fact and findings in its review of the human rights issues in Chapter III.

16. In May 1986 the Commonwealth Ombudsman advised the Commission that his inquiries into the complaints had been completed. He advised that a new administrative policy had been issued by the AFP concerning the use of helicopters in situations similar to those prevailing at Pine Gap. The effect of the policy is that there will be few, if any, circumstances where a helicopter will be used in such situations. Further, it was his view that the actions of the AFP in making arrests were reasonable and did not involve an arbitrary principle of selection contrary to Article 9 of the ICCPR.

17. With completion of the inquiries by the Northern Territory and Commonwealth Ombudsmen, the Commission reviewed the situation and decided, in consultation with the two of the three representative complainants with which it had been able to maintain contact, that it should convene a conference of all those involved in the issue on the basis that there were matters still outstanding that required the attention of the Commission. On 5 September 1986 it invited the Special Minister of State, the Attorney-General, the Commissioner of the AFP and the Northern Territory Commissioner of Police or their representatives to attend a conference with the complainants on 18 September 1986. A copy of the letters to the Special Minister of State and the Commissioner of the Northern Territory Police are attached as Appendix 7.

18. In the event, the complainants and the AFP attended. Those representing the former group included two of the three representative complainants, two other complainants and three other persons who were involved with the Pine Gap protest and whose presence was requested by the complainants (the AFP indicated it had no objections to a conference including this larger group). An attempt was made to inform the other thirty-five complainants that a conference was to be held and this resulted in eight of them being contacted. The Special Minister of State was represented by the AFP, and a representative of the Commonwealth Ombudsman also attended to assist. As Commissioner Marcus Einfeld was detained in Sydney because of a court case, the Deputy Chairman, Mr Peter Bailey, conducted the conference under authority conferred by the Commission under s.13 of the Act. There was discussion lasting for eight hours between those present and this report represents the outcome of those discussions. Broadly, it is that the Commission has agreed to identify, in a report to you as Attorney-General, and by reference to the specific incidents complained of, the human rights principles which should apply in situations such as developed at the Pine Gap protest. The Commission welcomes this outcome. It involves finalisation of the Commission's inquiries into the complaints

on the basis that the Commission reports with recommendations designed to guide police actions in the future.

19. The Commission emphasises that, consistent with its statutory role to inquire and endeavour to effect settlement, its report does not contain findings of guilt or innocence. Rather, it represents an analysis of the implications of human rights standards for the way in which police forces and others should act when protests are being made that involve the presence of substantial groups of protesters at a location which, for security or other reasons, needs to be protected by police. It contains findings against neither the Northern Territory Police Force nor the AFP. To the extent that the Northern Territory Ombudsman and the Commonwealth Ombudsman drew attention to particular aspects of the conduct of members of the police forces that they considered was below a desirable standard, the Commission expresses the hope that similar conduct will not occur in the future.³ If this hope is realised, this report on the complaints arising from the Pine Gap protest may help to ensure that, in the future, those who have broken the law in the course of protesting are treated in accordance with the standards of human rights to which Australia is bound.

CHAPTER I ENDNOTES

1. The Commission notes that it is about to publish a Discussion Paper containing a report of a seminar it conducted in July 1986 on 'The Right of Peaceful Protest'.
2. Northern Territory. Ombudsman. Report of the Ombudsman on the investigation of complaints against Police arising from protest demonstrations at Pine Gap, Northern Territory, 13 & 15 November, 1983, Darwin, 1984. (Ordered to be printed, 22 August 1984, Legislative Assembly of the Northern Territory.)
3. The Commission notes that the Chief Minister of the Northern Territory did not support some aspects of the Northern Territory Ombudsman's report - see Debates of the Northern Territory House of Assembly, 22 August 1984, p. 881.

CHAPTER II. LEGAL ISSUES

20. As indicated in Chapter I, the Commission was concerned very early in the course of its inquiry as to whether it had jurisdiction to inquire into complaints made against members of the Northern Territory Police Force. It received advice from the Attorney-General's Department, which confirmed advice it had received from its own legal advisers, to the effect that it had jurisdiction. It emphasises that it has jurisdiction when members of the Northern Territory Police Force are acting pursuant to s.68 of the Judiciary Act. In that sense, the complaints are not against the Northern Territory Government as such, but against those members of the Northern Territory Police Force who were acting as agents for the Commonwealth in retaining the complainants in custody and in preparing for their trial.

21. The Federal Commissioner of Police does not accept responsibility for anything that might have taken place while the complainants were in the custody of the Northern Territory Police and does not consider they are the agents for the Commonwealth because, in his view, he cannot direct or control their activities on occasions like this. Human rights law, however, looks to the substance of the matter, rather than to theoretical distinctions of this kind¹. The substance of the matter is that the complainants were arrested for alleged breaches of Commonwealth law and the acts of the Northern Territory Police Force were done on behalf of the Commonwealth whether or not in practice the AFP were able to supervise them. If any breaches of human rights took place, they occurred in a situation where the ultimate responsibility was that of the Commonwealth. If in practice the Commonwealth had no effective control over what was done, then this is a matter for concern.

22. In other words, at all stages of its inquiry and reporting the Commission has been exclusively concerned with

Commonwealth activity, and whether that activity is consistent with the Commonwealth's human rights obligations. In any inquiry as to whether an act or practice is inconsistent with or contrary to any human rights the Commission is mindful of the definition of 'act or practice' in s.3(1) of the Human Rights Commission Act. In paragraph (a) this phrase is defined as:

an act done or practice engaged in-

- (i) by or on behalf of the Commonwealth or an authority of the Commonwealth; or
- (ii) under an enactment; ...

23. The acts or practices complained of were all done by or on behalf of the Commonwealth, though the Commonwealth's agents were various, principally consisting of the AFP and the Northern Territory Police Force. Furthermore, insofar as the Northern Territory agents of the Commonwealth are concerned, the acts and practices complained of in relation to them were performed under an enactment, namely s.68 of the Judiciary Act, which sets out the proper law respecting the arrest and custody of offenders and persons charged with offences under Commonwealth law, prescribing that the laws of each State or Territory should be applicable (s.68 is quoted at paragraph 9 above). Accordingly, the acts of the Northern Territory officers complained of were all done pursuant to a Commonwealth statute, and thus under an enactment for the purposes of the definition of act or practice in s.3(1).

24. The Commission notes that there are difficulties in interpreting s.68 of the Judiciary Act because it refers to the custody of 'offenders' or persons charged with offences. It agrees with the advice it received from the Attorney-General's Department that 'offenders' may be taken to include persons reasonably suspected of having committed offences and that the reference to charging may be taken to include a situation where a person is called before a Magistrate and the charge is stated in his or her hearing. Accordingly, it considers that s.68 covers adequately the

actions of the Northern Territory Police. It follows that the various actions complained of come within the ambit of the human rights defined in the ICCPR.

25. On the basis that under s.68 State and Territory Police Forces may follow their own laws when dealing with persons charged with Commonwealth offences, a further problem arises. It is, as will be noted in Chapter III, not necessary that those State or Territory laws will be consistent with Australia's human rights obligations as set out in the ICCPR, or require action that is so consistent. On the other hand, the Commission has not identified any provisions in the relevant State laws that actually require acts or practices inconsistent with such human rights.

26. The Commonwealth Parliament has already given an indication that Commonwealth agencies should conform with Australia's human rights obligations by providing, through the Commission, a means of complaint where alleged failures to observe human rights occur. It has also, in the Law Reform Commission Act 1974 (Cwlth), required that Commission to prepare recommendations that are as far as practicable consistent with the ICCPR. Recently, in amendments of the Passports Act 1938 (Cwlth), it has provided that where the Minister considers a person may engage in conduct that might interfere with the rights and freedoms of another person as set out in the ICCPR, whether in Australia or elsewhere, he may refuse the issue of a passport.

27. The Commission recommends an amendment to the Judiciary Act. It would be to the effect that where a suspected offender is charged with a Commonwealth offence by a person who is operating in accordance with State laws under s.68(1), that person should observe the rights and freedoms of the suspected offender as they are contained in the ICCPR. The Commission notes that this would merely reinforce the statement made by Australia when ratifying the ICCPR - and when revising the basis of accession in 1984 - that its implementation throughout Australia 'will be effected by the

Commonwealth, State and Territory authorities having regard to their respective constitutional powers and arrangements concerning their exercise'.

28. The Commission accepts that neither the Commonwealth Attorney-General nor the Special Minister of State are directly involved in the actions complained of. However, it does express regret that, although the Special Minister arranged for the AFP to represent him at the Conference on 18 September 1986, the Attorney-General did not make an officer available to support the legal opinion previously given to the Commission (see paragraphs 9, 20 and 24 above). As the Ministers responsible respectively for the administration of the Judiciary Act and of the Australian Federal Police Act, they will have carriage of any matters which require the intervention of the responsible Minister, and the Attorney-General will have the responsibility of conveying the Commission's recommendations to the relevant persons or agencies. Equally, the Commission notes that the Northern Territory Government and relevant Ministers are not in any way responsible so far as the Commission is concerned, but that the Commissioner of the Northern Territory Police, as the officer ultimately in charge of the police officers involved in the Pine Gap incident, has responsibility for their conduct in carrying out their duties pursuant to the Judiciary Act. The Commission records its appreciation of the co-operative and helpful attitude taken by the Northern Territory Commissioner of Police, Mr R. (Peter) McAulay.

29. The Commissioner of the Northern Territory Police advised the Deputy Chairman of the Commission that his Force would not be represented at the conference arranged by the Commission for 18 September. This advice had been preceded by an application to the Federal Court on 16 September by the Northern Territory seeking to prevent the Commission inquiring into the Pine Gap matters in such a way as to require the Crown in right of the Northern Territory to produce documents or give evidence. On 17 September the Commission received

written advice that the Chief Judge of the Federal Court had on 16 September made the following orders:

- (1) Fixed Monday 22 September, 1986 at 10.15 am for return of application and for Directions Hearing.
- (2) Directed that the application and Affidavit in Support be served on the respondent not later than 5 pm, 17 September, 1986.
- (3) Directed that service may be effected upon the respondent at 7th Floor, AMP Building, Hobart Place, Canberra City, ACT in accordance with order 7, rule 2.
- (4) Directed that notice of these orders be given by letter from applicant's solicitors to the respondent not later than 5 pm on 17 September, 1986.
- (5) Abridgement of time in respect of the above.

30. The Commission had not intended, as indicated in its letter of 5 September (Appendix 7), to require any of those involved in the Pine Gap incident to appear before it by compulsory process. It expresses regret that the invitation was not able to be accepted by the Northern Territory Police and notes the satisfactory discussions that took place between those who did attend the 18 September conference, including in particular representatives of the AFP and a number of complainants. The case did not proceed to a Directions Hearing on either 22 September or the adjourned date of 23 September because the Commission gave undertakings in accordance with its basic intention to the effect that it would allow the Northern Territory Attorney-General and Commissioner of Police to see and comment on its draft report and that it would not make such a report without giving them fair notice.

31. The solicitors for the Northern Territory Government advised the Commission on 10 October that it was intended to withdraw the proceedings. The Commission also received, on 13 October, a letter from the Northern Territory Police Commissioner, and on 14 October a video tape supplied to the Northern Territory Police at the time by the media. Both of

these have been reviewed by the Commission and taken into account. The Commission believes that, had representatives of the Northern Territory Police attended the conference on 18 September, their presence could have contributed positively to the outcome. However, their absence has not prevented the preparation of a report that it hopes will make a useful contribution to an understanding and observance by both demonstrators and police of the human rights principles that should apply to peaceful protest.

CHAPTER II ENDNOTES

1. As in the analysis of Article 6 of the European Convention on Human Rights in Konig v. Germany (1978) 2 E.H.R.R. 170 para. 89, and Ozturk Series A, No. 73 pp. 17-18, paras. 47-50.

CHAPTER III. THE RELEVANT HUMAN RIGHTS PRINCIPLES

32. As indicated earlier, it was agreed at the conference on 18 September 1986 that the Commission should report on the issues raised by the incidents complained of and draw out the human rights principles involved. It was felt that, if these principles were accepted by Police Ministers and the relevant police forces, they would serve as reference and guidelines for police actions on future occasions.

33. The events complained of occurred as a result of a protest planned and executed by the Women for Survival group. The complainants indicated that they were aware that they might be charged with offences, and that they were prepared for that. What they were not prepared for was the exercise of as much force as was involved in some instances, particularly in the process of obtaining fingerprints and strip searching.

34. The alternatives available to the police were to charge the women with offences under one of three Commonwealth Acts - the Defence (Special Undertaking) Act 1952-1973 or the Crimes Act 1914 or the Public Order (Protection of Persons and Property) Act 1971 - or possibly under common law or Northern Territory Police provisions relating, for example, to arrest for such matters as resistance to arrest or refusal to comply with lawful orders. In the event, no charges were made under Northern Territory legislation and all the charges were laid under the Commonwealth's Crimes Act. Section 89 of the Crimes Act provides that a person who, without lawful excuse, trespasses or goes upon any prohibited Commonwealth land shall be guilty of an offence, the penalty being a fine of \$100 and/or three months gaol.

35. With this background, the Commission reviews briefly the nine groups of issues into which the complaints fall, identifies the relevant human rights and makes suggestions for future operations. The Commission recognises that the descriptions below of some of the situations which developed

in the course of the protest will not appear adequate to either the complainants or the respondents. Because the Commission has not had the opportunity to make a detailed investigation and to hear all parties, it is unable to confirm details of complaints or responses as conveyed to it by the parties. Thus the complainants have felt that the Commission's account fails to record the anxiety and sometimes the violence experienced by some of the protesters during either the process of arrest or while detained. For its part the Commission records that, throughout their discussions with it, the complainants have displayed consistency and a spirit of helpfulness which it has appreciated. In relation to the respondents, the Northern Territory Police in particular feel that the report does not adequately record the provocation which members of the Force involved claim they experienced. Mention is made of, for example, the breach of barricades and actions such as the use of provocative language, spitting in the faces of police officers, assaults on police officers, or resisting arrest. Mention is also made of what the police saw as actions taken by the protesters to frustrate the system, especially during their detention in the watchhouse. The Commission is also unable to determine whether (as both sides appear to some degree to have considered) the provocations on both sides were committed by a few individuals with most on both sides behaving in ways that were respectful of human rights, although it is inclined to accept this.

36. One issue emerges that is of specific concern. It relates to identification of the protest as 'peaceful'. The complainants regard the protest as having been peaceful, and it is in this context that the Commission has enunciated the applicable principles of human rights. All the relevant principles contain restrictions on the rights where public order (ordre public) or national security are involved and, in the case of Article 22, refer expressly to 'peaceful assembly'. On the other hand, both police forces have questioned whether the protest was peaceful and have suggested that some of the actions, whatever the intentions of the demonstrators, may have amounted to riotous behaviour. It is

important that the definition of peaceful protest be made as clear as possible. In the view of the Commission, where the overall protest is peaceful, i.e. there is no resort to arms and instrumental violence by the protesters, then both sides must refrain from violence. In such cases, the human rights of all involved (both protesters and police) must be fully observed. Violence on either side only complicates the situation, and may have the effect of reducing the full operation of the relevant rights because the permissible restrictions may come into play to allow their curtailment in, for example, the interests of maintaining public order or national security. The Commission, having seen videos and photographs of the protest, as well as having read all available material, concludes that the protest was peaceful, though it recognises that there are allegations on both sides that in particular instances unnecessary violence and force were involved. These instances do not, in the view of the Commission, change the nature of the Pine Gap protest from being peaceful and non-violent.

Use of helicopter

37. Complaint. One complaint is of harassment by the AFP in the use of a helicopter on three separate occasions. On the night of Friday 11 November it was apparently used to block communication between protesters as they held their meeting. Later that night, it was used to sweep light across the camp site, and on Sunday 13 November as a method of crowd control (see Appendix 3). In essence, it was felt that the helicopter had been used to generate fear and to create extremely unpleasant conditions because of its low-flying, and that it was an unnecessary form of control over the freedoms of assembly and movement of the protesters.

38. Comment. This complaint was against the AFP and was investigated by the Commonwealth Ombudsman. As a result, the AFP has now revised its instructions for the deployment of helicopters with the result that they are extremely unlikely to be used in circumstances similar to those prevailing at

Pine Gap. By Administrative Circular No. 246 of 20 March 1986 (Appendix 8) low-flying helicopters can be used only when they are the only remaining method for control and then only with the authorisation of a commissioned officer of, or above, the rank of Assistant Commissioner. The AFP also stated that it no longer has a property guarding role.

39. Relevant Human Rights. ICCPR Article 21 allows freedom of peaceful assembly subject only to restrictions imposed in conformity with the law and which are necessary in a democratic society in the interest of national security, public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. Article 22 provides that everyone is to have the right to freedom of association with others.

40. Suggestions. The Commission endorses as a suitable rule for the Pine Gap type situation the revised AFP instruction referred to above, namely that helicopters be used only as a last resort and after authorisation by a very senior officer. In those cases, the protesters should, wherever practicable, be advised of the situations in which it may be used.

Selective arrest

41. Complaint. A sample complaint relating to selective arrest is referred to in the letter from the Chairman of the Commission to the Special Minister of State of 8 July 1985 (see Appendix 3). In essence, the complaint is that it was not clear how particular individuals were chosen for arrest and that the arrests began while the women were sitting listening to a police officer reading instructions as to how the protesters should behave.

42. Comment. The Commission was advised that each constable must make his or her own decision as to arrest, but that guidelines are normally issued on special occasions such as Pine Gap to supplement the ordinary police rules and instructions. It was recognised by the complainants that when police officers are confronted with large numbers of people,

it may not be easy to determine who should be arrested. However, it is the Commission's view that it is not appropriate to arrest people while they are listening to a police officer reading instructions. The Commonwealth Ombudsman indicated that where substantial numbers are involved, it is difficult to avoid some form of selection and that if prominent women among the protesters had been selected, that would be a reasonable and not an arbitrary principle of selection. (The Commission assumes that by referring to 'prominent women' the Ombudsman had in mind those playing a leading role in the protest.)

43. Relevant Human Rights. Under Article 9 of the ICCPR everyone has the right to liberty and security of person and not to be subjected to arbitrary arrest or detention. The purpose of the Article is to prevent persons being arrested without legal warrant or where there can be little suggestion of commission of an offence.

44. Suggestions. It needs to be recalled by police officers, in the admittedly difficult situations that arise when protests by substantial numbers of people are involved, that their actions in making arrests must not be arbitrary and must be set against the right to liberty and security of person. Where contacts between police and protesters have been established, the arrest of those involved in liaison on behalf of the protesters should certainly not be among the first.

Delay in stating charges

45. Complaint. It was alleged by some of the complainants that there were substantial delays between apprehension and their being charged - in the case of one complainant, a delay of some fifteen hours was mentioned. This matter is referred to in the letter from the Chairman of the Commission to the Northern Territory Commissioner of Police of 8 July 1985. (Appendix 4.)

46. Comment. This matter, although originally addressed to the Northern Territory Police, appears to be more a matter

falling within the responsibility of the AFP. There were undoubtedly difficulties in the confusion arising from the handling of a large number of people, that apparently resulted in some at least of them not being informed for some time of the charges against them. The AFP says that its members advise a detained person of the reasons for arrest, but that the requirement need not be satisfied where the person being apprehended makes it impossible to communicate the reasons, or the offence is still being committed. It also indicates that giving reasons at time of arrest should not be confused with procedures associated with the formal laying of charges, while agreeing that every effort should be made to give those arrested or detained prompt advice on at least the main charges likely to be made against them. The Commission recognises the difficulties, but notes that the wording of Article 9 of the ICCPR is unequivocal.

47. Relevant Human Rights. Article 9.2 of the ICCPR provides that 'Anyone who is arrested shall be informed, at the time of arrest, of the reasons of his arrest and shall be promptly informed of any charges against him'.

48. Suggestions. It is necessary that arresting officers make clear to the protesters when arrested the nature of the charges against them. This is particularly important where there are options for the offences under which protesters may be charged, as there were in this case. If communication is by loud hailer or similar means, special care needs to be taken that the communications are effectively conveyed.

Fingerprinting

49. Complaint. A typical complaint about fingerprinting is contained in the Chairman's letter to the Northern Territory Police Commissioner of 8 July 1985 (Appendix 4). This alleged both the use of excessive force and a possible misinterpretation of the Magistrate's direction at the hearing on 15 November (p. 27 of the Northern Territory Ombudsman's report).

50. Comment. The matter of fingerprinting was extensively investigated by the Northern Territory Ombudsman (pp. 23-37 of his report). He found that five persons had been subjected to some degree of force and that others may have complied with the requirements for fingerprinting because of their apprehension that force might be applied. The Northern Territory Ombudsman notes that the Northern Territory Police were under greater than usual difficulties in identifying the persons in custody because most gave the name Karen Silkwood, although with an identifying sequential number. The Northern Territory Ombudsman notes also that the Northern Territory Police Administration Act provides that, subject to any general order or directions issued, a police officer is to take fingerprints or photographs and may use such force as may be necessary. By contrast, the AFP General Instruction 27 Re: Fingerprint Information Form (paragraph 28) provides that 'under no circumstances is force to be used to take fingerprints or photographs of persons in lawful custody'. The provisions in the States are analysed in the Ombudsman's report and show that there is a wide range of requirements, with the New South Wales provision being the nearest to that of the AFP. Under Act No. 40 of 1900 (N.S.W.) a New South Wales police officer may take particulars deemed necessary to identify a charged person, including by photograph or fingerprinting. It appears that force is used only in extreme circumstances, with the court being asked to impose the taking of fingerprints as a condition of bail, or to remand the person in custody until the requirements are fulfilled.

51. Relevant Human Rights. Article 7 of the ICCPR provides that no-one is to be subjected to inhuman or degrading treatment or punishment and Article 10 provides that all persons deprived of their liberty are to be treated 'with humanity and with respect for the inherent dignity of the human person'. It follows from these provisions that the methods used to identify a person in custody - and there is no question that persons must be identified as soon as possible - should be as reasonable as the circumstances allow and in no cases should amount to cruel or inhuman treatment.

52. Suggestions. The Commission strongly supports the AFP instructions that force is not to be used to take fingerprints or photographs of persons in lawful custody. The alternatives adopted by the New South Wales Force when a person refuses to be photographed or to provide fingerprints are supported by the Commission as indicating a desirable and proper element of due process involving a court. The Commission considers that provisions allowing force in the ascertaining of the identity of a person are not appropriate and, where they are in existence, the law should be changed.

Strip searching

53. Complaint. The complaint summarised in the Chairman's letter of 8 July 1985 to the Northern Territory Police Commissioner (Appendix 4) suggests that, after a metal detector had been used on all detained persons, a strip searching procedure was used because of fears that razor blades had been sewn into the pockets and seams of jeans and that some of the women could have half razor blades attached to their hair.

54. Comment. The Northern Territory Ombudsman notes in his report that, under the Northern Territory Police Force general orders (p. 23), a Watchhouse duty member is to 'ensure that each prisoner is thoroughly searched before being placed in the cells', and that all the searches were conducted by women police officers (p. 23). Strip searching is an intrusive process. Intrinsically, the use of strip searching in relation to detainees involved in a peaceful protest appears to lack proportionality. In the Commission's view, it is important that arbitrary action is avoided and that strip searching is only used when the police have sound reasons for believing that it is necessary. This would involve checking the intelligence sources and proper questioning of protesters. When necessary, strip searching should be done by persons of the same sex in appropriately private conditions and having respect for the inherent dignity of the person.

55. Relevant Human Rights. Under Article 10 of the ICCPR, persons deprived of their liberty are to be treated 'with humanity and with respect for the inherent dignity of the human person'. Under Article 7, persons are not to be subjected to cruel, inhuman or degrading treatment and under Article 17 no one is to be subjected to arbitrary or unlawful interference with his or her privacy.

56. Suggestions. Where general police orders allow strip searching of people involved in peaceful protest, the searches should be restricted to proved need. If there is some suggestion that demonstrators may be armed in some way, then searches should cease once it has been established that the rumour is not well founded.

Access to legal advice

57. Complaint. The Northern Territory Ombudsman deals at some length with the question of access to legal advice (pp. 37-42 of his report) and one of the complaints to the Commission is described in the Chairman's letter to the Northern Territory Police Commissioner of 8 July 1985 (Appendix 4). In essence, it seems that the complainants experienced difficulty in seeing a lawyer; that although lawyers were available at the Watchhouse, unacceptable delays occurred before they were able to speak to potential clients; and that many women had still not seen a lawyer privately by the time they went to court.

58. Comment. When a large number of persons is taken into custody, it is inevitable that there will be difficulties in providing prompt legal assistance and advice to all who want it. On the other hand, given that there was notice of the protest and the likelihood of mass arrests, it should be possible to make provision for sufficient interviewing by legal advisers. Essential elements in the process are the provision of a private interviewing room or at least facilities where there can be some privacy of exchange between client and adviser; a requirement on those detaining the protesters that ready access to legal advice should be

allowed; and avoidance of interruptions to persons discussing matters with legal advisers.

59. Relevant Human Rights. Article 14(3) (b) provides that in the determination of any criminal charge everyone is to have adequate time and facilities to communicate with counsel of his or her own choosing. Even in the circumstances of mass arrest, it is important that the provisions of this Article be observed, if necessary by delays of a few hours in the process of bringing people before a court.

60. Suggestions. Particularly where peaceful protest is involved, it is important that procedures be so ordered that there is proper opportunity for those detained to consult their lawyers about the charges against them. Discussions with legal advisers should be given the maximum feasible privacy, should be regarded as essential by those detaining the protesters and should be allowed to continue without interruption.

Access to medical attention

61. Complaint. Both the Northern Territory Ombudsman (pp. 42-46 of his report) and the Chairman, in her letter to the Northern Territory Police Commissioner of 8 July 1985 (Appendix 4), draw attention to the difficulty experienced by one particular woman in obtaining medical attention, although the doctor who finally attended her had apparently been available at the time.

62. Comment. Whether or not a person needs medical attention is essentially a matter on which a doctor should be asked to pronounce. It is important that, where any need for medical attention is reasonably suspected, every facility should be given to medical advisers to attend the person in question promptly. The report of the Northern Territory Ombudsman suggests that there may have been avoidable delays in the provision of medical attention (pp. 44-45).

63. Relevant Human Rights. The relevant human rights are Article 10 of the ICCPR, which requires all persons deprived of their liberty to be treated with humanity, and Article 7 which requires that no one is to be subjected to cruel or inhuman treatment. Withholding medical attention, or refusing to obtain it, could in certain circumstances be regarded as infringing either or both of these Articles.

64. Suggestions. There is likely to be a need for medical attention where there are mass protests followed by mass arrests. Although it is not incumbent upon police to ensure that a medical adviser is in attendance, protesters should be allowed to ensure that such a person is brought to the place of detention when there are mass arrests, particularly if climatic conditions are severe, and prompt access should be permitted to individuals in need of attention.

The detention atmosphere and attitudes

65. Complaint. A number of the complainants expressed the view that they were treated differently, because they were women, than they may have been had they been men. Complaints of this type came under four main categories. First there were complaints of offensive sexist and sexual comments. These are recorded in the letter from the Chairman to the Northern Territory Police Commissioner (Appendix 4) and in some parts of the report of the Northern Territory Ombudsman, e.g. p. 14 and the reference to interruptions while complaints were being recorded. The second kind of treatment under this heading relates to the frequency of male police passing by the cells where the toilets were close to the bars. A further complaint concerned arousing, at least by implication, apprehension that internal body searches would be conducted, e.g. 'the wearing of rubber gloves combined with a rumour that women were to be given body searches. The fourth area concerns the actions of police who drove vehicles containing the arrested women to the watch house in an allegedly dangerous manner. Other matters mentioned as adding to the sense of insecurity and harassment included the conditions in

the cells and particularly the difficulty in obtaining drinking water (Northern Territory Ombudsman's report, p. 58) and the lack of identification of police (*ibid.*, pp. 51-2).

66. Comment. The apprehension and detention of large numbers of women by largely male police forces inevitably gives rise to difficulties. Whatever the circumstances, it is incumbent upon police officers to avoid applying sexual stereotypes and to avoid making sexist comments or accusations. The prevalence of these complaints among those lodging complaints with the Commission suggests that there were real difficulties associated with the occasion and the tensions it created, notwithstanding that the offences in question were not serious and that the occasion of the arrest was a civil protest of a peaceful kind.

67. Relevant Human Rights. Article 3 of the ICCPR requires States Parties to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant. In this particular case, the relevant rights are contained in Article 7 - subjection to inhuman or degrading treatment, Article 10 - treating all persons deprived of their liberty with humanity and with respect for their inherent dignity, and Article 14(3) (a) - informing a person promptly of the nature and cause of the charge and giving him or her adequate time to prepare a defence. Article 26 provides that all persons are equal before the law and are entitled to equal protection of it. Protesters on grounds of religion or political or other opinion should not be treated with derision, because Article 26 proscribes any discrimination in the administration of the law.

68. Suggestions. The preparation of police forces for dealing with persons arrested as a result of a peaceful protest is complex, and should include references to the relevant human rights and exposition of the implications of the fact that the individuals arrested are being made in effect prisoners of conscience. The Commission notes that the AFP disagrees with the description 'prisoners of conscience' because it considers

it contains an insinuation that the protesters were arrested for holding political views, when in fact they were arrested for offences against the Crimes Act. The Commission recognises the problems experienced by members of police forces in such situations, and makes no such insinuations. But it must equally be recognised that police actions related to the control of peaceful protests must be regulated on grounds somewhat different to those applying to normal law enforcement, or enforcement in riot or like situations, and that is one main reason for the preparation of this report. For these reasons, more comprehensive training of police personnel in a number of these areas is desirable. Closer supervision by senior police in areas of potential infringement of rights would be an advantage and there should be blanket condemnation of any derogatory remarks or discrimination in treatment on grounds of race, colour, sex, language, religion or social origin. Measures need to be adopted to ensure that such infringements of human rights do not occur.

IV. RECOMMENDATIONS

69. For reasons set out above, the Commission has not attempted to find whether or not the particular complaints it received were in all respects substantiated. Rather, it has regarded them as illustrative of situations which can arise when people are arrested as a result of a peaceful protest that leads to some kind of illegal action. In paragraphs 37 to 68 above, the Commission has identified a number of these situations and the human rights involved, and has made suggestions as to how police may approach their sensitive and important task of controlling the protest and dealing appropriately with those who, in the course of it, offend against the law.

70. The Commission recommends that:

- (a) the Special Minister of State be asked to draw this report to the attention of Commonwealth and State Ministers at the Australian Police Ministers' Council with the object of having them endorse the principles;
- (b) the Police Ministers be asked to require the police forces answerable to them to review their operational instructions and preparations where peaceful protests are involved and have in mind the importance of ensuring that human rights principles, including those identified in this report, are observed; and
- (c) the Judiciary Act be amended so that s.68 requires State police forces and others acting in pursuance of subsection (1) to ensure observance of the human rights and fundamental freedoms contained in the ICCPR, by insertion of a provision analogous to that contained in s.7E(1) (a) (iii) of the Passports Act 1938.

**HUMAN
RIGHTS HUMAN RIGHTS COMMISSION
COMMISSION**

REPORT ON MATTERS REFERRED TO COMMISSION
ON BEHALF OF WOMEN FOR SURVIVAL

A report prepared by officers of the Human Rights Commission following complaints on behalf of Women for Survival that certain of their human rights were infringed. Two officers visited Alice Springs and Pine Gap in response to the complaints and for the purposes of the Commission.

CANBERRA. A.C.T.

NOVEMBER 1983

HUMAN RIGHTS COMMISSION
REPORT ON MATTERS REFERRED TO COMMISSION
ON BEHALF OF WOMEN FOR SURVIVAL

INTRODUCTION

A person acting on behalf of Women for Survival telegraphed to the Human Rights Commission an allegation that the rights of women held in custody in Alice Springs were being and had been infringed. She asked the Human Rights Commission to send an observer to Alice Springs, since she asserted that the matter related to Commonwealth law and practice and was therefore within the responsibility of the Commission under the Human Rights Commission Act 1981.

COMMISSION'S RESPONSE

After due consideration the Human Rights Commission decided to send officers to Alice Springs with a view to clarifying its responsibility in the matter. When making this decision, the Commission recognised that there was some doubt about jurisdiction but considered this doubt should not impede it in acting to meet the concerns of people who held that their rights had been infringed in a manner which invoked Commission's responsibilities under its legislation.

OFFICERS' VISIT TO ALICE SPRINGS

Two officers went to Alice Springs to be available to persons who might wish to raise matters with them as officers of the Commission. They were to receive information and to relate to

authorities and members of the community in an endeavour to clarify the issues which existed and to do what they could within the functions of the Commission. In addition, they were to respond to the concerns of individuals in a manner which would assist them to pursue appropriate courses of action.

Officers arrived at Alice Springs at 11.40 am on Wednesday, 16 November 1983. One officer left Alice Springs at 12.15 pm on Friday 18 November, and the other officer left the following day, Saturday 19 November.

While in Alice Springs the officers moved among various groups within the community, including representatives of local concerned women, of Women for Survival, of the Northern Territory Police and of the Australian Federal Police. Most of their time was occupied on activities in Alice Springs itself, but on Thursday evening, 17 November, they visited women at Pine Gap by invitation.

The work culminated in a meeting convened by a group of local concerned women with three representatives of the Women for Survival from Pine Gap, the three senior officers from the Northern Territory Police Force and the Australian Federal Police Force, six local concerned women and an officer of the Commission. Common interests were canvassed and understanding was developed on many.

The women established a Human Rights Committee which will continue to develop and to work towards better relations with the community and Police. The Committee will act on its own initiative and authority and is independent of the Human Rights Commission.

By invitation, an officer and the convenor of the newly founded Human Rights Committee visited the cells where women arrested had been detained.

COMPLAINTS OF INFRINGEMENTS OF RIGHTS

The officers received 35 written complaints and three tapes of recorded material.

In essence, the complaints are against unidentified members of the Northern Territory Police Force and relate principally to those rights inherent in Article 7 of the International Covenant on Civil and Political Rights upon which the Human Rights Commission Act 1981 is based, i.e. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

In addition to complaining against Northern Territory Police three persons have complained against members of the Australian Federal Police Force.

Allegations are that persons were:

- required to provide finger prints;
- forcibly required to submit to finger printing against their wishes;
- photographed and in some instances, forcibly so;
- strip searched;
- sexually harassed;
- orally harassed and intimidated;
- subjected to invasions of privacy;

- not permitted to consult with lawyers;
- not provided with medical treatment;
- not provided with drinking water;
- overcrowded in cells; 115 women held in accommodation able to hold 76; other cell accommodation available was not used;
 - provided with inadequate toilet facilities;
 - not properly informed by arresting Police;
 - harassed by use of helicopters at Pine Gap.

It was also complained that Police were not wearing Police identification numbers.

JURISDICTION

The Human Rights Commission Act 1981 is expressed to apply to Commonwealth law and practice only. The treatment complained about was alleged against members of the Northern Territory Police Force. However, all persons who complained were charged with offences under Commonwealth law, namely the Commonwealth Crimes Act

Officers were advised that 115 women were arrested by members of the Australian Federal Police Force, were placed in the custody of the Northern Territory Police Force at Pine Gap and were transported to Alice Springs. Once placed in the custody of the Northern Territory Police Force, persons were dealt with under the Northern Territory Police Administration Act.

Since the women were arrested by Federal Police and charged under Commonwealth law and placed in the custody of Northern Territory Police acting for the Commonwealth, it would appear that they ultimately come within Commonwealth responsibility.

ADVICE FROM NORTHERN TERRITORY POLICE

The Northern Territory Police advised that its members are required by law, the Police Administration Act, to take finger prints and at times photographs and to use such force and such assistance as necessary. It advised also that medical and legal services were available, called upon and used. The number of detainees prevented ready access to the few lawyers available.

A plumbing problem existed but was overcome and some overcrowding occurred. Persons were charged and bailed with as little delay as possible in the prevailing circumstances of the numbers of persons arrested and the use of false names by the majority.

Police reported that women had deliberately blocked the toilet system, defaced cell walls with graffiti, created a variety of disturbances from inside the cells and had alarmed others by their shouting and falsely claiming brutality and harassment against detainees.

INQUIRY UNDER THE HUMAN RIGHTS COMMISSION ACT 1981

The Human Rights Commission has accepted the material presented to it as complaints under the Human Rights Commission Act 1981 and has commenced inquiries. As a first step, it has referred the complaints to the relevant Commonwealth authorities having control over Commonwealth prisoners and having responsibility for Commonwealth/Territorial custodial arrangements.

The complaints against Australian Federal Police will be pursued consistently with Commonwealth legislation on complaints against Police.

In due course, when it has completed its inquiries, the Commission will report to the Attorney-General. It shall keep all complainants and respondents informed.

APPENDIX 2

TEXT OF THE PRESS STATEMENT BY THE ATTORNEY-GENERAL

16 November 1983

Statement by the Attorney-General, Senator Gareth Evans

Pine Gap Protest: Human Rights Commission intervention not ordered by Federal Government

It has been widely asserted that the decision by the Human Rights Commission to send observers to Alice Springs resulted from a request or direction by me as Attorney-General. This is entirely false. The Human Rights Commission is an independent statutory body, with its own charter under the Human Rights Commission Act. The decision to send observers to Alice Springs was made entirely of the Commission's own volition, without request or direction of any kind from me.

In order to avoid any further misunderstanding, I set out below the full text of a question I received in the Senate yesterday (15 November) and of my answer to the question. This answer represents the only public statement I have made on this subject until now.

'Senator Crowley - I have received a number of submissions from women and men in Alice Springs regarding the brutality in the treatment of women arrested at Pine Gap and of other possible breaches of human rights in the course of their arrest and detention. I understand that the Attorney-General has been involved in similar discussions. I ask: What action has he taken and has he any further proposals? In particular, is any consideration being given to the possibility of the Human Rights Commission sending an observer to Alice Springs?

Senator Gareth Evans: I was first made aware of these complaints on Sunday evening around midnight when I received a telephone call from Mrs Joan Coxsedge, MLC. I have subsequently received several direct representations from or on behalf of women who have been arrested and I have, of course, seen the allegations that have been made in press reports. The action I have taken is as follows: In response to Mrs Coxsedge's call, I telephoned shortly afterwards the officer in charge of the Alice Springs Police Station. I put to him a series of specific questions and received responses along the following lines: that the women were being charged with trespass under the Commonwealth Crimes Act and not under the legislation specifically relating to defence installations such as Pine Gap, in other words with a

comparatively minor offence, that bail processing was proceeding as fast as possible with the exception that it was not possible to process either those who did not want bail or those who refused to give a correct name, that there was no question of denying the women access to lawyers and that lawyers were being allowed in to talk to anyone who requested a lawyer, and that there were no particular crowding problems as the cells were built for more than 100 people. There had been some difficulties with plumbing and matters of that kind but by that stage those had been resolved. That is where the matter rested on Sunday night.

Requests were subsequently made to me and also to the Human Rights Commission that a human rights observer be sent to Alice Springs to monitor the proper observance of human rights standards in police and legal dealings with the women. I have now been advised, just a short time ago, that the Human Rights Commission not in fact acting at my request but of its own volition at a meeting convened this morning in Melbourne decided to send one of its officers to Alice Springs to inquire into the complaints and to identify any breaches of human rights that may have occurred. In the light of that, I have asked the Commission to provide me with a report as soon as possible.

As to the behaviour of the police, I emphasise that the arrests and detention have been carried out by Northern Territory Police, as I understand it, and not by Federal Police, although the Northern Territory Police have been acting under Commonwealth law. Questions of police behaviour and allegations of brutality - in respect of which I hasten to add that I have received no hard evidence of any inappropriate or excessive use of police power although such claims have been made - are, of course, primarily matters for the responsible Northern Territory Minister, in this case the Chief Minister, Mr Everingham. I note from this morning's Age report that a Northern Territory Police spokesman said that there would be an investigation if there were any indication that injuries had been suffered by anyone in custody. I welcome that assurance and I hope that it also extends to an investigation of complaints that are made by people in custody.

I mention that concern has been expressed about the availability of legal aid and I advise the Senate that in anticipation of difficulties such as have arisen the Australian Legal Aid Office in Darwin again not acting with any Government direction but of its own initiative did make special arrangements for a legal aid officer in Alice Springs to be available full time as a duty solicitor to provide urgent legal advice and representation. For those who pleaded not guilty and whose cases have, therefore, been adjourned, applications for legal aid will be processed in the usual way, with due attention being given to the merits of individual cases and the ability of applicants to pay. It is usually possible for applicants who are approved for legal aid to have the lawyer of their choice, but this may not, of course, be very practicable in a remote spot like Alice Springs.

In conclusion, the action that I, the Government and various Government agencies have taken should not be taken as implying,

in turn, any support for the tactics employed by the demonstrators in question and, in particular, for the tactic of forcible entry. What our action does do is, I think, demonstrate very clearly our concern that basic human rights should be enjoyed by all members of the community, however popular or unpopular may be the particular causes they are espousing'.

41C HUMAN RIGHTS COMMISSION
COMMISSION

6th Floor. AM P Building Hobart Place Canberra City

APPENDIX 3

NOW

Our Ref.

G.P.O. Box 629,
CANBERRA A.C.T. 2601
Telephone 434122
Telegrams • Rightscom Canberra
Telex AA 62090

28 JUL 1985

The Hon. M.J. Young, M.P.,
Special Minister of State,
Parliament House,
CANBERRA. A.C.T. 2600

8 July 1986

Dear Minister,

This letter is to bring to your notice complaints the Commission has received from women who were arrested while protesting at Pine Gap in November 1983, and charged with trespassing on prohibited Commonwealth land under the Crimes Act 2914 (Commonwealth).

In December 1983, the Commission wrote to the Secretary of your Department, the Commissioner of the Australian Federal Police and a number of other departments, seeking a response to the allegations made and assistance in resolving the complaints. Enclosed with the letters were copies of the interim report it had prepared for the Attorney-General concerning the complaints and a schedule detailing the complaints. No substantive replies were received to this correspondence and the Commission subsequently spent some time in determining who were the most appropriate respondents to the complaint. It concluded that these were the Commissioner for the Northern Territory Police, the Commonwealth Attorney-General and you as the Minister primarily responsible for the operation of the Australian federal Police Act 1979.

The Commission is consequently now writing to you, the Attorney-General and the Northern Territory Commissioner of Police in pursuance of its functions under section 9(1) (b) (i) of the Human Rights Commission Act to inquire into and attempt to settle the human rights matters raised in the complaint.

The purpose of writing to you is to bring to your notice the alleged breach of human rights by members of the Australian Federal Police, and to seek your views on the matters raised.

In dealing with this issue, the Commission is pursuing the inquiry/conciliation processes it has developed under the Human Rights Commission Act as consistent with the conciliation emphasis of the Act. During the inquiry phase an effort is made, through contact with the parties, to define the matters important to each of the parties. After this, the conciliation process, which usually involves a meeting between the parties, begins. During conciliation, the parties address matters on which they agree and disagree in an attempt to further their understanding of their respective views on relevant issues. The aim of the process is to achieve a settlement of the matters at issue in a manner satisfactory to both parties and on terms arrived at by them.

Returning to the complaints in this matter, although 40 complaints were received, the Commission is focusing its attention at this time on three of the complaints, which are representative of the other complaints received, except as regards one issue in respect of which supplementary material from other complainants has been drawn upon. Most of the human rights issues raised are detailed in my letter to the Commissioner of the Northern Territory Police (copy enclosed). Summarised, the issues raised with the Commissioner of Police relate to:

strip searching
finger printing
force
intimidation
conditions in the cells
charging
access to lawyers
discrimination in application of the law
access to medical attention.

As noted in the letter to the Commissioner of the Northern Territory Police, however, there are two other issues which relate to the alleged acts of the Australian Federal Police, and it is these to which I am drawing your attention.

Harassment by the Australian Federal Police

The first is a complaint of harassment by the Australian Federal Police in their use of a helicopter, contrary to Article 7 of the Covenant. On this issue, when discussing events on the morning of Sunday 13 November 1983, complainant Ms Beauchamp says:

"Once we were out of sight of those at the gate, a large Police helicopter came down on us, hovering just above our heads and creating what reminded me of a mild nuclear holocaust; a lateral blasting of hot, hot wind against which we turned, in order to avoid the red dirt it carried from being lashed into our eyes. We linked arms and lent each other support so as not to fall over ... It (i.e. the helicopter) had been used the Friday before to sweep light across our campsite, and the roar it made had blocked our communication. Now it was brought in every 10 minutes or so to deter us, although it did not do this."

Selective Arrests by the Australian Federal Police

There was also a complaint that there were selective arrests by the Australian Federal Police on 13 November 1983 of the perceived leaders of the protest contrary to Article 9.1 of the Covenant. On this Ms Beauchamp writes:

"Despite Police positioned in the scrub either side of the road, it was easy for women to go up the road. The Police were selective in their arresting. Much earlier they had arrested Sylvia Gleeson whilst she was standing at the back of our group. There were no Police at the back and they walked the length of the group to arrest her. This was at a time when some of the women accused the Police of not being even handed, since they were arresting some but not others. Early on they had taken the police liaison woman, who was a doctor, and Noel Ridgway who was an obviously influential woman. (She had earlier addressed the people outside the gates.)

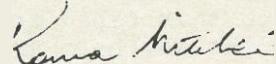
When Sylvia was arrested, I followed her and challenged one of the officers to arrest me, putting myself in his path, but he would not. Sylvia was about the thirteenth person to be arrested.

I was arrested at about 1.30 (I was not wearing a watch so the time is not exact). When we asked throughout the morning why we were not being arrested we were told that there were not the people available to arrest us."

As mentioned, we are seeking your view on these issues (as well as on any of the other human rights issues raised on which you may wish to comment). Should you wish to have clarification or elaboration of any of the issues before replying, we should be pleased to assist.

We look forward to hearing from you about this matter.

Yours sincerely,



Chairman

APPENDIX 4

**HUMAN
RIGHTS HUMAN RIGHTS COMMISSION**
COMMISSION

6th Floor AM P Buildrng Hobart Place Canberra City

G P.O Box 629
CANBERRA ACT. 2601

Our Ref

Telephone. 434122
Telegrams Rightscom Canberra
Telex AA 62090

8 JUL 198b

8 July 1985

Mr R. McAulay, QPM,
Commissioner of Police,
Northern Territory Police Force,
P.O. Box 63,
DARWIN. N.T. 5794

Dear Mr McAulay,

I refer to Mr Wyer's letter to you of 7 December 1983 which advised you of the Commission's receipt of a number of complaints from women who were arrested while demonstrating at Pine Gap in November 1983, and charged with trespassing under the Crimes Act 1914 (Commonwealth). In his letter, Mr Wyer noted the steps the Commission has taken in relation to the complaint and enclosed a copy of the Commission's interim report to the Commonwealth Attorney-General on the human rights issues raised by the complaints.

2. The Commission has spent some time considering the question of who were the appropriate respondents to the complaints. It has concluded that these are the Commonwealth Attorney-General (in his capacity as the Minister responsible for the administration of the Judiciary Act, which enables State and Territory police and courts to deal with Federal offenders), the Special Minister of State (in his capacity as the Minister responsible for the Australian Federal Police - the arresting police in this case) and finally you, in your capacity as the Head of the Northern Territory Police Force, members of which dealt with the women after their arrest and against whom most of the complaints are directed. It seems the acts complained about were done on behalf of the Commonwealth under a Commonwealth enactment in relation to matters of Commonwealth, rather than State or Territory, concern.

3. The Commission appreciates that the Northern Territory Ombudsman has already carried out an investigation of the actions of the Northern Territory Police in this matter at the request of a number of complainants, many of whom have also

complained to the Commission. The Commission nevertheless considers it necessary under its legislation (which gives it a mandate somewhat different from that of the Northern Territory Ombudsman) to pursue with you the human rights matters the complainants raise, in the hope that a satisfactory settlement may be achieved with your assistance and the assistance of the two Commonwealth Ministers.

4. The Commission has received a total of 40 complaints and has decided to proceed initially with issues raised in three of the complaints which cover most of the matters raised in the other complaints. These three complaints are from Ms Cynthia Shannon, Ms Ann Gleeson and Ms Kate Beauchamp and raise the human rights issues described hereunder. Except where otherwise indicated, complaints are against members of the Northern Territory Police Force.

.Strip Searching

5. There is a complaint that the strip searching of the women, who had previously been scanned by a metal detector, was unnecessary and therefore constituted an arbitrary (or unlawful) invasion of their privacy, contrary to Article 17 of the International Covenant on Civil and Political Rights (the Covenant) - one of the documents which defines human rights and fundamental freedoms for the Commission's purposes. (The text of Article 17 and the other Articles referred to in this letter appears at Appendix A to this letter.)

6. Ms Beauchamp says concerning the strip searching -

After being photographed we were searched with a metal detector and our personal belongings gone through by a female police officer. She asked me if I had any sharp objects, knives, etc. and I pointed out a small disposable razor, which she removed from my purse and put in a plastic bag.

I recalled this later when the police strip searched us in the Police Station. They told the media they had gotten a "tip-off" that the women had sewn fish-hooks into their clothes and were carrying razor blades, so that the police would cut themselves if they touched us. It was puzzling to see how we could have got past the metal detector if this had been the case and why the strip search would be necessary.

7. This complainant describes the psychological effect the strip searching had on one woman as follows:

She said that all her life she had made the decisions about who controlled her body and no body had touched her body without her permission. She was very upset about the prospect of the strip search and she wept for the dignity she feared she would lose. She was a very strong and naturally dignified woman and we had

felt for her at the time. When I next saw her she was, I thought, quite 'reduced' in stature - she had clearly suffered a good deal and was quite fearful.

Fingerprinting

8. The complaint about fingerprinting is that because it was "not something that was likely to assist the police in any way" (Ms Beauchamp) it was arbitrary and therefore contrary to Article 17 of the Covenant. There is also a suggestion that the fingerprinting of a number of women during a court adjournment on 15 November 1983 was unlawful and that it was arbitrary in that it was done either against the direction of the Magistrate or despite the Magistrate's expressed view that it was unnecessary. Ms Gleeson says -

[one of the women waiting with her to be fingerprinted] was excited, said that the Magistrate had stated that so long as they could give identification, then fingerprints were unnecessary. ... Phillip Toyne then came in to say the Police Prosecutor was appealing against this and the Magistrate was uncertain as to what to do. The court was adjourned until 6 pm.

Force

9. This complaint is that the police used excessive force both in physically taking the women to be fingerprinted and in the fingerprinting process, contrary to the provisions of Article 10.1 and 7 of the Covenant.

10. All three complainants record seeing women dragged away for fingerprinting and hearing cries and groans of pain, thumping and raised voices from the fingerprint room, and refer to accounts given to them by other women of their experiences of excessive force having been used on them in the fingerprinting process. Ms Gleeson and Ms Shannon also record their own experiences of having been subjected to excessive force. Ms Shannon says about this (after noting that she had not objected to being fingerprinted on the previous day but objected to being fingerprinted a second time without first having access to a lawyer) -

I was taken into the fingerprint room. Someone immediately grabbed me around the neck - it was a man's arm ... I was held very tightly so I could not breathe or scream out. I could feel no breath getting into my body. I had no chance to say whether I would give my fingerprints or not. I remember moving my legs up and down because that was the only part of me that could protest ... A flash passed through my mind 'was I going to die now?'

After some time (I have no idea how long) the pressure was taken off my neck and I was asked if I was going to give my fingerprints. I whispered 'yes' - I could

not use my voice initially. The voice from behind said to me 'not as brave as you are in front of crowds, eh?' ...

Then I was taken out to get my bag ... When they asked me to sign for my property I could not hold the pen between my fingers because my hand would not move. They put a thumb print where my signature should have been.

11. Ms Gleeson, using the third person singular to refer to herself, says about the fingerprinting process (after noting that she had wanted to wait for the Magistrate's view on fingerprinting to be clarified) -

Policeman on left hand side had handcuffs in hand. Put it around her left thumb and forced her thumb backwards. At the same time another officer jerked her left hand behind her back. Another officer put his arm around her neck and half throttled her.

Harassment and Intimidation

12. All three complainants record instances of police intimidation, taking the form either of excessive physical force used against them as referred to in paragraphs 10 and 11 or of threats, verbal or otherwise, contrary to Article 10.1 and 7 of the Covenant. Ms Beauchamp gives the following examples of the latter -

There were a number of police women walking around wearing rubber gloves and the rumour was put about - no doubt by the police - that women were to be strip searched and given internal examinations. This had quite an effect on some of them, as did news that force was being used on women resisting fingerprinting.

Every time the police appeared at the bars they would look more and more contemptuous of us and would make a point of taking us one at a time, whereas earlier they had called for six or four women at a time. They would point out certain women to each other and laugh or look menacing or contemptuous. It was very clear that they wanted us cowed. I have no doubt they wanted to use more force than they had, even until this point.

I was taken out for fingerprinting and led into the office, where the fingerprinting was being done and sat down beside another woman. She had refused fingerprinting and had been told to sit and wait. The officer in charge ... told her he'd break her fingers if he had to. He turned to me and said 'we are going to have your fingerprints'. I said I wanted to see a lawyer and he didn't answer. I sat on.

13. The complaints of Ms Shannon and Ms Beauchamp each report instances of harassment. The instances given were what they regarded as unnecessary strip searching and fingerprinting of the women; the removal of their property before they were charged; the delay in giving them access to lawyers and, when giving them access, the police remaining within earshot; the delay in charging the women; the misinformation given them; and the taunts directed at them. Ms Shannon also complains in the following terms about the actions of the policemen who drove the arrested women to the Watch House -

The police who drove us ... drove so dangerously through the dirt road at Pine Gap. They purposely threw up showers of red dirt into the paddy-wagon. They drove off the track, and fast across bumps and swerved very abruptly this way and that. I remember having to hold on extremely tightly to try to keep seated inside the paddy-wagon. They also slammed on their brakes hard several times. The two police drivers drove like madmen. We all got filthy because of the amount of dust being thrown up.

This felt like it was a direct attempt to intimidate us. It worked on me. Knowing what they could do in the cells after the first night I was terrified they might do us over out there in the bush. My thought was that they were so angry that we had the nerve to cross the fence a second time.

14. Ms Beauchamp also complains about harassment of the protesters at Pine Gap (including herself) by a police helicopter. However, because this helicopter appears to have been under the control of the Australian Federal Police, this aspect of the complaint will be raised instead with the Special Minister of State.

Conditions in the Cells

15. The complaint here, from both Ms Shannon and Ms Beauchamp, is that the cells, including the showers, were dirty and vermin infested, that the plumbing was inadequate, that there was no privacy provided around the toilet and that access to washing facilities and the washing wherewithal were inadequate. In summary, this complaint is that the cells were inadequate, unhygienic and offensive and that these conditions infringed their rights under Article 10.1 and 17 of the Covenant. Ms Beauchamp says -

The cells stank. The floor was crawling with bugs. They were banked up in the corners centimetres deep. One of the women in the morning picked up one of her shoes and tipped it up and bugs poured out of it. The loo was right near the bars and the police gave no warning of when they would walk by. We were not given use of the showers, so women took to washing their clothes in the basin and hanging them on the bars. One either had to walk about with no clothes on while one's clothes dried or else stay dirty. Or one had to sit on the loo in full view of the police if they happened to come by, or bust!

Charging

16. This complaint is made by Ms Beauchamp who states that she was charged with the Commonwealth offence some 15 hours after her arrest and was never formally charged with the offence under the Northern Territory Police Administration Act, ie the complaint is that there was undue delay in being charged and insufficient information provided concerning the nature of the charges contrary to the requirements of Article 14(3) (a) of the Covenant. On this point, her complaint reads -

When I finally went through for charging it was about 4.40 am. The charge was of trespass under the Crimes Act 1914. There was no mention of the other charge that women were presented with the next day when they came to court.

(Ms Beauchamp earlier noted that she was arrested at about 1.30 pm on 13 November.)

17. The information from Ms Gleeson on this point was that she was charged some two and a half hours after her arrest on 15 November.

Requests to See a Lawyer

18. All the complainants say that they asked many times to see a lawyer but that, contrary to the requirements of Article 14(3) (b) of the Covenant, this was either ignored for some time or elicited a response such as that Ms Gleeson says was made to her -

Too bad, you've had a lot of chances to see a lawyer, you're not going to see one now.

19. Ms Beauchamp notes that there were in fact lawyers available to see the arrested women. On this, she claims -

At some stage the police began making a list of women who were requesting lawyers or doctors. I don't know what time it was when we were first given access, one by one, to a lawyer. It was many hours after we asked for them.

After saying that she was given access to a lawyer for about an hour at about 3 am on 14 November, she says -

They refused the lawyer access to the rest of the police station and ordered me to return to the cell. When I got back, about 8 of the remaining 11 women had been 'processed', despite the police promising them access to a lawyer and despite the fact that while I had been dealing with one lawyer, there were at least two other lawyers, to my knowledge, standing outside the glass doors of the police station.

20. There is also a complaint that the access given to lawyers was inadequate in that on some occasions, the police stayed within earshot of the solicitor/client conversation, that access was, in most cases, limited to one woman per cell and the time granted was limited. Ms Beauchamp says that when she saw a lawyer for about an hour at 3 a.m. on 14 November (see paragraph 19 above) "a police officer sat outside the room, in view of me and the lawyer and within earshot. The lawyer objected to this but the police officer ignored him". She also notes -

That morning (i.e. of 14 November) we were given time to see a lawyer, one woman to go from each cell. I was asked to go for one cell. ... We got some advice and also talked about the other things that had happened, although it was very rushed because the police had said we could only have 15 minutes with the lawyer.

Application of the Law

21. This complaint concerns the differential treatment received in the Watch House by the women because of their gender. On this point, the three complaints are not representative of the Commission's other complaints. A number of the other complaints expressly note that the police made offensive sexist and sexual comments to the women arrested. Of our complainants, only Ms Beauchamp touches on this aspect of the complaint (which relates to Article 10.1 in conjunction with Article 3 and possibly also to Article 26 of the Covenant) e.g. when she refers to the wearing by policewomen of rubber gloves (see paragraph 12 above) and when she says that the insistence on fingerprinting the women is explicable if the police had adopted a sexist stereotype of the women demonstrators.

22. Complainants other than the three complainants referred to at paragraph 4 above put the matter more explicitly, for example -

There were about 4 other police officers (men) hanging around and they deliberately verbally harassed me, commenting on my physical appearance, saying what sort of a job could I possibly have etc.

During the time we were in the watch house we were constantly sexually harassed, verbally ridiculed ...
(In a list of itemised complaints) Sexual harassment with explicit comments about women.

Medical Attention

23. There is also a complaint that, contrary to Articles 7 and 10.1 of the Covenant, there was delay in obtaining medical attention for an injured person. This incident was referred to brieferly by Ms Shannon and in greater detail by Ms Beauchamp who summarises it as follows -

I was put in a cell and told to talk a woman out of resisting. She had resisted strip search and her clothes were very torn.

This woman was taken away for fingerprinting and we heard horrific screaming; she was gone about 20 minutes.

The woman was returned to our cell in agony; we tried to keep her conscious and immediately requested a doctor; I suspected she had internal damage. None came; she told me what they had done to her.

Still no doctor after 30-40 minutes.

I called out for a doctor and said I feared she was haemorrhaging. Doctor admitted after about 20 minutes. Doctor had been waiting outside continuously but said she had been refused entrance.

Doctor examined woman and requested she be admitted to hospital for x-rays as she suspected internal injury.

Arrests

24. There is finally a complaint that there was selective arrest of the 'leaders' of the demonstration, but as this complaint seems to be directed at the Australian Federal Police rather than the Northern Territory Police, it will be raised instead with the Special Minister of State.

The Commission's Complaint Procedure

25. As you would be aware, the Commission in writing to you in this matter is pursuing its functions under section 9(1)(b) (i) of the Human Rights Commission Act to inquire into and endeavour to settle complaints of breaches of human rights and fundamental freedoms. It may be useful for you to know how the Commission sees this process operating.

26. In the inquiry stage, the Commission first makes a preliminary assessment on the basis of the information supplied by the complainant as to whether the acts or practices complained of, if established, indicate a breach of the human rights and fundamental freedoms contained in the instruments scheduled to the Human Rights Commission Act. If so, it commences its inquiry, which generally begins with an exchange of letters between the parties through the Commission. This process is designed, as far as possible, to elucidate the facts and define the rights in issue with the aim of establishing the respective positions of the parties. The Commission's role in this is facilitative - to assist the parties to become more precise as to the facts and the rights involved. While the inquiry is undertaken in a spirit of conciliation, the Commission is empowered to request the production of documents or the attendance of an otherwise unwilling party to a conference to assist the inquiry.

27. Once the parties are clear about their areas of agreement and disagreement, the conciliation process, which seeks to make each of the parties more completely aware of the other's position, comes into effect. The aim of the conciliation is a settlement of the matters in issue in a manner satisfactory to both parties, on terms arrived at by them. The settlement can take many forms, such as an apology, a change in administrative or other guidelines, or the payment of damages. The conciliation process is guided by the Commission's conciliators and may involve a meeting or series of meetings between the parties.

28. You will appreciate that this letter is sent as part of the Commission's inquiry into matters complained of. At this stage, the Commission intends to proceed in the manner outlined and our next step will therefore be to await your reply on the matters raised in this letter, as well as the replies of the Attorney-General and Special Minister of State on the same issues. If however you can suggest a different but equally effective basis on which to proceed, the Commission will welcome your views.

29. We look forward to hearing from you about this matter.

Yours sincerely,



Chairman

APPENDIX A

Relevant Articles of the
International Covenant on Civil and Political Rights

ARTICLEa

The States Parties to the present Covenant undertake to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

ARTICLE 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

ARTICLE 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

• • •

ARTICLE 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

• • •

ARTICLE 14

• • •

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

• • •

ARTICLE 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

ARTICLE 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

RELEVANT ARTICLES IN THE INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS

ARTICLE 3

The States Parties to the present Covenant undertake to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

ARTICLE 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

ARTICLE 9

1. Everyone has the right to integrity and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons of his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

ARTICLE 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity or the human person.

• • • ARTICLE 14

• • •

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to determine himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- (e) To examine, or have examined, true witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (g) Not to be compelled to testify against himself or to confess guilt.

• • •

ARTICLE 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

ARTICLE 21

The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

ARTICLE 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

...

ARTICLE 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

APPENDIX 6(a)
COMMISSIONER'S OFFICE
BERRIMAH POLICE CENTRE
P.O. BOX 39764

WINNELLIE N.T. 5789
TELEPHONE (089) 22 3344

Chairman,
Dame Roma Mitchell,
Human Rights Commission,
G.P.O. Box 629,
CANBERRA, A.C.T. 2601.

17 JUL 19⁸⁵

Dear Dame Roma,

Thank you for your letter of 8 July, 1985 in which you seek my comments in regard to various points arising out of a complaint to the Commission by divers persons following a demonstration at Pine Gap in November, 1983.

As a matter of routine, I will take advice from the Solicitor-General of the Northern Territory before proceeding to any detail submissions. However, in general terms, you can be assured of my voluntary and complete cooperation in this matter.

It is perhaps an unusual feature of the investigation of these allegations that they were conducted almost exclusively by the Ombudsman and his staff. This was at my request and for the reasons set down in my correspondence to him on 30 November, 1983, and reproduced at page 4 of the Ombudsman's final report.

On a very cursory examination of your letter and the relevant Departmental files, I have an impression that the allegations by Ms. ta-te Beauchatp have been investigated neither by the OmbudSt^{ali}K6i^t the Police.

I understand that you are in possession of the Ombudsman's final report. However, I presume that you have not received copies of various statements made by complainants. I must indicate to you that, apart from some preliminary statements obtained initially by police in Alice Springs, I am not in possession of the relevant complaints nor have I ever had the opportunity to examine them. Consequently, I have relied upon extracts provided by the Ombudsman as the basis for various communications between us.

In addition to the final report from the Ombudsman, I wish to advise you that there is an earlier draft which he referred to me for comment. I replied to him on 18 July, 1984 in an extensive report in which I challenged some of his findings. I suggest therefore that you ought not to consider the Ombudsman's final report in isolation from his initial draft report and a covering letter dated 20 June, 1984 or my reply to that letter dated 18 July, 1984.

Once I have received advice from the Solicitor-General I would be very happy to make all relevant files available to you. However, you ought to note that I previously supplied copies of all these documents to the Ombudsman of the Northern Territory who holds all the files related to the subsequent enquiries. Consequently he is in possession of the only complete records. I therefore suggest that your first point of enquiry should be with the Ombudsman.

Yours sincerely,

P. McAulay
R. (Peter) McAULAY,
COMMISSIONER OF POLICE

Your Ref: RM:PFC:sh
Our Ref: 89/7354



mCi al\ .11a1 APPENDIX 6(b)

Ex.:J.vt.E_10 Prl

COMMISSIONER'S OFFICE
BERRIMAH POLICE CENTRE
P.O. BOX 39764

WINNELLIE N.T. 5789
TELEPHONE (089) 22 3344

25 NOV¹⁹05

The Hon. Roma Mitchell, D.B.E.,
Chairman,
Human Rights Commission,
P.O. Box 629,
CANBERRA CITY, A.C.T. 2601

*HUMAN RIGHTS
COMMISSION*

Dear Dame Roma,

Thank you for your letter of 8 July 1985, concerning an investigation you propose to engage upon in respect of complaints as to the conduct of members of the Territory Police Force during the November 1983 demonstration at Pine Gap.

Advice given to me in this matter is that you may have no jurisdiction in respect of the Territory Police Force in these circumstances. I should also add that, in my opinion, while the arrests were made by Federal Police under Commonwealth law, subsequent detention by Territory Police was under Territory law.

Accordingly, at this stage, I consider I should take no part in your investigation.

I would be happy to consider any advice you may have which would suggest that you have jurisdiction in this matter.

Yours sincerely,

LAvArch

R. Mc ULAY
COMMISSIONER OF POLICE
NORTHERN TERRITORY POLICE FORCE

**YUMAN
RIGHTS HUMAN RIGHTS COMMISSION**
COMMISSION

61n Floor. AM P Bwichng Hobart Place. Canberra Cly

NOW

OurRef.

C.892

G.P.O. Box 629,
CANBERRA ACT. 2601

Telephone. 434122
Telegrams. Rightscom Canberra
Telex AA 62090

5 September 1986

The Hon. Mick Young, M.P.,
Special Minister of State,
Parliament House,
CANBERRA A.C.T. 2600

Dear Minister,

Re: Complaints of Infringements of Human Rights in the
Treatment by Police of Pine Gap Protestors

I refer to our letter dated 8 July 1985 and your subsequent letters in reply about the complaints received by the Commission under the Human Rights Commission Act arising from the Women for Survival protest at Pine Gap in November 1983.

The complaints were conveyed to yourself (in the capacity of Minister responsible for the Australian Federal Police), the Attorney-General (in the capacity of Minister responsible for the administration of the Judiciary Act, which enables State and Territory police and courts to deal with federal offenders), the Commissioner of the Australian Federal Police (the police who made the arrests), and the Commissioner of the Northern Territory Police (the police who dealt with the women after their arrest).

Having received responses from the above; having considered the results of the investigations made by the Northern Territory Ombudsman and the Commonwealth Ombudsman; and having consulted with representatives of the complainants, a number of issues raised in the complaints have not yet been resolved. These issues relate to Articles 3, 7, 10.1, 14.3(a) & (b), 17, 21, 22.1 and 26 of the International Covenant on Civil and Political Rights. In these circumstances, the Commission has reached the view that, in pursuance of its statutory duties it should now inquire further in an endeavour to effect a settlement. With

this aim, it has authorised under section 13 of the Act, Commissioner Marcus Einfeld Q.C., with myself as an alternate or additional member, to conduct an inquiry which will take the form of a conference between some of the complainants and the parties to whom the Commission wrote initially.

It is proposed that the inquiry commence at 10.00 a.m. on Thursday, 18 September 1986 in the Conference Room, office of the Human Rights Commission, 7th Floor, AMP Building, Hobart Place, Canberra City. The purpose of this letter is to inform you of the inquiry and to let you know that your attendance and/or that of your representative(s) at the conference would be appreciated.

If there is any aspect about which you would like further information, please telephone me on 434120 or Mr Philip Moss, Acting Assistant Secretary on 434149. We look forward to seeing you or your representative on 18 September.

Yours sincerely,

P.H. Bailey
Deputy Chairman

Adr:111& HUMAN RIGHTS COMMISSION HUMAN
COMMISSION
I I I I P F 6th Floor. AM P Built:hag Hobart Place. Canberra C.ty

On so C.892
Your ref: RM;PFD;sh

G.P.O Box 629.
CANBERRA A.C.T 2601
Telephone: 434122
Telegrams: Rightscom Canberra
Telex. AA 62090

5 September 1986

Mr R. McAulay QPM
Commissioner of Police
Police Force of the Northern Territory
Commissioner's Office
P.O. Box 39764
WINNELLIE N.T. 5789

Dear Commissioner,

Re: Complaints of Infringements of Human Rights in the
Treatment by Police of Pine Gap Protestors

I refer to our letter dated 8 July 1985 and your letter dated 15 November 1985 about the complaints received by the Commission under the Human Rights Commission Act arising from the Women for Survival protest at Pine Gap in November 1983.

The complaints were conveyed to you as Commissioner of the Northern Territory Police (the police who dealt with the women after their arrest), the Attorney-General (in the capacity of Minister responsible for the administration of the Judiciary Act, which enables State and Territory police and courts to deal with federal offenders), the Special Minister of State (in the capacity of Minister responsible for the Australian Federal Police) and the Commissioner of the Australian Federal Police (the police who made the arrests).

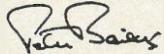
Having received responses from the above; having considered the results of the investigations made by the Northern Territory Ombudsman and the Commonwealth Ombudsman; and having consulted with representatives of the complainants, a number of issues raised in the complaints have not yet been resolved. These issues relate to Articles 3, 7, 10.1, 14.3(a) & (b), 17, 21, 22.1 and 26 of the International Covenant on Civil and Political Rights. In these circumstances, the Commission has reached the

view that, in pursuance of its statutory duties it should now inquire further in an endeavour to effect a settlement. With this aim, it has authorised under section 13 of the Act, Commissioner Marcus Einfeld Q.C., with myself as an alternate or additional member, to conduct an inquiry which will take the form of a conference between some of the complainants and the parties to whom the Commission wrote initially.

It is proposed that the inquiry commence at 10.00 a.m. on Thursday, 18 September 1986 in the Conference Room, office of the Human Rights Commission, 7th Floor, AMP Building, Hobart Place, Canberra City. The purpose of this letter is to inform you of the inquiry and to let you know that your attendance and/or that of your representative(s) at the conference would be appreciated.

If there is any aspect about which you would like further information, please telephone me on 434120 or Mr Philip Moss, Acting Assistant Secretary on 434149. We look forward to seeing you or your representative on 18 September.

Yours sincerely,



P.R. Bailey
Deputy Chairman

ADMINISTRATIVE CIRCULARS

AUSTRALIAN FEDERAL POLICE.

ADMINISTRATIVE CIRCULAR NO. 246

USE OF HELICOPTERS IN CROWD CONTROL OPERATIONS

Where, in the opinion of the Commander of a crowd control operation by the Australian Federal Police, the level of violence is such that the only method for the control of the crowd left open to the Commander is the use of a low flying helicopter, the Commander shall not take any action without referring the matter to the Assistant Commissioner responsible for the Command Region.

2. The use of a helicopter as a crowd control medium may only be sanctioned by a commissioned officer of or above the rank of Assistant Commissioner and shall be subject to any additional directions concerning a particular situation issued by the Commissioner of Police.

Dated this 4th day of March 1986

(J.C. JOHNSON)
Deputy Commissioner
ADMINISTRATION

