MORNINGTON

A REPORT BY THE
FEDERAL RACE DISCRIMINATION
COMMISSIONER
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ACKNOWLEDGEMENT

This report relies heavily on the work of Chris Cunneen, a senior lecturer at the Sydney University Institute of Criminology. On account of his particular expertise in Aboriginal legal and social justice issues, he was requested by the Federal Race Discrimination Commissioner to assist her in the investigation of issues brought to her attention by the Aboriginal community of Mornington Island. Commissioner Moss wishes to thank Chris Cunneen as, without his efforts, this report would not have been possible.

The Race Discrimination Commissioner (with some members of her staff) and Mr Cunneen visited Morning Island in November 1991; an earlier trip had been undertaken by Mr Cunneen and HREOC’s Aboriginal Policy Adviser, Ms Nerida Blair, in March 1991. A follow-up visit was made by Mr Cunneen and Ms Blair in October 1992.

The conclusions reached in this Report and the recommendations following therefrom are the result of careful investigation of the situation on Mornington Island made during these field trips, coupled with an analysis of existing documentation.

The Race Discrimination Commissioner acknowledges the support given by the Mt Isa Aboriginal Legal Service during the course of the investigations; and would further commend the considerable assistance of the following staff of the Human Rights and Equal Opportunity Commission and the Queensland Anti-Discrimination Commission: Nerida Blair, Jim Brooks, Cec Fisher, David Norrie, Helen Twohill, Dany Celermajer, Michelle Hollywood, Douglas Booth and Sue Zelinka.

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INTRODUCTION

In November 1990 the Federal Race Discrimination Commissioner received a petition signed by 163 Aboriginal residents on Mornington Island requesting an investigation of an incident, which is described in section 2.1 below. The Commissioner also received letters from other individuals on the Island requesting her intervention. All these requests had been forwarded through legal representatives of the West Queensland Aboriginal and Torres Strait Islander Corporation for Legal Aid.\(^1\)

In March 1991, Ms N Blair and Mr C Cunneen visited Mornington Island and interviewed many Aboriginal and non-Aboriginal people, both as representatives of various organisations and in their personal capacities. A Preliminary Report was prepared for the Race Discrimination Commissioner. The Preliminary Report recommended, inter alia, that she, with members of her staff, personally visit Mornington Island to consult with residents. Commissioner Moss visited Mornington Island in November 1991. In October 1992, HREOC officers again visited Mornington Island on the Commissioner's behalf to discuss the proposed recommendations with residents and others on the Island, and to get an updated picture of the situation. This report is the outcome of these visits.

During the course of the preparation of this Report, the assistance of the West Queensland Aboriginal and Torres Strait Islander Corporation for Legal Aid is acknowledged. The Queensland Police Service has also been helpful in providing access to personnel and information.

It will be apparent from the information contained in this Report that the issues to be confronted on Mornington Island are wide-ranging. Although the issue which sparked the Commissioner's investigation centred around the criminal justice system and in particular relations with police, there are broader concerns which are of importance to the community. Indeed, these broader issues impact on and to some extent structure relations with the criminal justice system.

It is also noteworthy that there have been some positive changes during the eighteen months between the first and third visit by HREOC staff. It must be noted that there was considerable improvement in the quality of policing services to the Island. The Race Discrimination Commissioner is keen to acknowledge and support any positive changes in the delivery of services to Aboriginal communities. For example, it seems from most recent reports that improvements are being made as regards birthing practices. In addition, Northern Project Management is no longer involved in the administration of the Community Development Employment Program as was the situation at the time of the visits.

There are, however, fundamental problems of an ongoing nature. In many respects the people of Mornington Island live in a social, economic and political situation which would never be acceptable to non-Aboriginal people living in most parts of Australia. There is a degree of surveillance and control of aspects of day-to-day life which seem extraordinary by the standards of citizenship and social participation which most Australians enjoy. Surveillance

\(^1\) Hereafter referred to the Aboriginal and Islander Legal Service.
in this context includes the collation of data about Aboriginal drinkers; the collection of monies by the Council etc.

In many respects the people of Mornington Island live under a system which is neo-colonial.\textsuperscript{2} Ostensibly there is local control through the election of councillors to a shire local government. However the political system has been imposed from the outside. It is a model of government introduced without consultation, let alone negotiation. Furthermore it is based on a model over which local people have little direct control and which reproduces the effective power of largely non-Aboriginal administrators. All key positions of power, decision-making and administration are held in non-Aboriginal hands; including health, education, justice, shire administration, civil engineering and trades employment and most other service delivery positions. Many of the people in these positions exhibit what could be called a paternalistic attitude. Moreover the rapid turnover of non-Aboriginal staff in key positions means that there are often few opportunities for such paternalism to be challenged. During the course of developing this Report on Mornington Island all key non-Aboriginal personnel changed at least once.

This Report is critical of many aspects of the way in which affairs are conducted on Mornington Island. Such criticisms are made with the view to effect positive social and political change which will benefit all people on the Island. The view developed in this Report is that circumstances on Mornington Island would not be tolerated elsewhere in non-Aboriginal Australia.

\textsuperscript{2} The term 'neo-colonial' has been used, although another concept often used to describe such a situation is 'welfare colonialism'. For instance, Rowse writes that the change from colonialism to welfare colonialism 'involves a further stage of tutelage in which Aboriginal people nominally enjoy the right to run their own affairs, but actually find themselves having to learn to do so according to the forms of land tenure and administrative process created for them by the state.' (Rowse, 1992, p.19)
1. BACKGROUND ON MORNINGTON ISLAND

The Mornington Shire is made up of twenty-two islands of the Wellesley group, situated in the south-eastern corner of the Gulf of Carpentaria within the Queensland State boundary. The largest of these islands is called Mornington Island; it is home to over 900 Aboriginal people and between 60 and 70 non-Aboriginal people. The centre of the population is the township called Gununa.

Mornington Island is an isolated community. The nearest city is Mount Isa which is situated on the mainland some 500 kms to the south. Daily commercial flights link Mornington Island with Mount Isa via Doomadgee, and with Cairns via Karumba and Normanton. Return airfares from Mornington to Mount Isa are $426; to Cairns, $636. A barge service delivers freight from Karumba.

1.1 Early Historical Background

As was often the case in relations between Aboriginal Australia and the West, the Lardil people of Mornington Island had some knowledge of Europeans prior to actual contact. The Lardils traded with the Yungarl people on the northern coast of the mainland and during the mid-19th century were aware of Europeans stealing Aboriginal women and killing Aboriginal men. The Kaiadilt people of nearby Bentinck Island were also subjected to raids by Europeans during the 1860s. Men and children were kidnapped from the Island.

In 1901 the Northern Protector of Aborigines visited Mornington Island; another visit followed in 1905. Apparently the early view of the Northern Protectors was to keep Europeans away from the area. However, a Presbyterian Missionary visited the Island in 1912 and some two years later, a mission with a school was established. The missionary, Mr Hall, was killed by a local man in 1917. His wife and two other assistant missionaries were kept under siege for nine days before escaping.

In 1918 another missionary, Mr Wilson, and his family arrived on the Island. Four years later, Wilson established a dormitory system for the children attending school. Children were locked in the dormitories overnight: the girls were completely isolated from their families, while the boys were permitted to hunt with their families twice weekly. The Wilsons left the Island in 1939.

During this early period, Aboriginal peoples from Queensland's Gulf country were moved onto the Island. Trigger (1992, p39) noted that official records indicated that sixty individuals (including 44 children) were sent to Mornington Island from the Burketown area and surrounding stations between 1912 and 1936. Official reasons for the removal to Mornington primarily related to 'destitution', 'protection' and 'immoral associations'. Interviews with Aboriginal people and white officials indicated that many other individuals were sent to Mornington via Burketown from the time of the first

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3 The early historical account is based on the Aboriginal Studies education kit prepared by the Aboriginal Studies Unit of the South Australian Department of Education.
missionary (Trigger, 1992, p.49). Paul Wilson (1981, p.111) noted that as a result of scarce food resources during the Second World War, some of the mainland people moved again to Doomadgee or Aumkun. There continues to be familial ties with Aboriginal people from Doomadgee, Aurukun and the Burketown areas.

Another missionary, Mr McCarthy, arrived in 1944. He imposed a strict regime on the people including prohibition of traditional songs and dances, forced marriages among incompatible clan groups, and other measures which undermined the authority of the elders and traditional forms of social control. He departed in 1948.

Mr Belcher was in charge of the mission between 1953 and 1960. He had a more positive attitude towards the Lardil’s culture and encouraged ceremonies. The dormitories for children were closed. Although there has been no specific analysis of the impact of the dormitory system on the social and cultural life of Aboriginal people on Mornington Island, other studies of nearby areas have argued that the dormitory system eroded kinship ties, undermined Aboriginal forms of social control and had a destructive effect on establishing parenting skills (Carter, 1992).

1.2 Recent History

During the late 1970s Mornington Island, along with Aurukun, became the centre of controversy between the Queensland government and the Federal government over the control of Queensland Aboriginal communities. The reason for Aurukun's involvement in the controversy is clearly related to the mining of bauxite deposits in the area. The Australian Financial Review (18 Sept 1978) stated that the battle 'is about bauxite, dollars and cents' and the Canberra Times (6 April 1978) that it 'is really a dispute about mining royalties'. In describing the legal manoeuvring over royalties between 1975 and 1978, Nettheim (1981, p.10) was clearly of the opinion that the State government was attempting to avoid the mining royalties going to the Aboriginal community. Aurukun people took action to try to stop the mining but failed in the Privy Council (McRae, Nettheim and Beacroft, 1991, p.154).

While the Queensland government’s desire to control Aurukun may be explained in terms of mining royalties, it could not be applied to Mornington Island where mining was not an issue. Tatz (1979, p.67) suggested that the State may have bound the two communities together to give the appearance that it was not simply focussing on a reserve area rich in mineral resources (Aurukun). In addition both Aurukun and Mornington Island were being administered by the Uniting Church. The inclusion of Mornington Island may have occurred primarily as a move against the Church’s support for Aboriginal opposition to the State government. Alternatively, Tatz suggests that Mornington Island may have been selected because of its possible development as a port. Whatever the explanation, both communities became bound up in the dispute.

According to Tatz (1979, pp.66-81), in March 1978 the Queensland Minister for Aboriginal and Torres Strait Islander Affairs announced to the Uniting Church that he would assume responsibility for the Aurukun and Mornington Islander communities. He gave the Church a fortnight's notice of the impending takeover. Reasons given for the takeover included poor Church management, anti-mining hostility, problems with law and order and, in the case of Mornington Island, inadequate management of the
$7 million post-cyclone reconstruction fund. According to Tatz, in the months which followed 'the Aurukun and Mornington Island Councils were bull-dozed, ignored, excluded from the real negotiations of their future.' (1979, p.14.)

Opposition to the takeover from Aboriginal community groups and the Uniting Church was supported by the Federal government. The Federal Minister for Aboriginal Affairs announced that he would legislate to 'free' the communities from the Queensland Aborigines Act and subsequently introduced such legislation.4 However, the State government pre-empted the Federal legislation by degazetting the reserve land on Mornington and Aurukun so that they were no longer subject to the provisions of the Federal Act. The State government then proceeded to introduce legislation, despite local and national opposition, which created Mornington Island and Aurukun as local government authorities with elected councils.5 The legislation introduced a 50 year lease and gave the Minister power to dismiss the council.6

The Chairmen of the two community councils, Donald Peinkinna (Aurukun) and Larry Lanley (Mornington Island), expressed their people's anger at the legislation. In August 1978 the then Premier Bjelke-Petersen accompanied by his Ministers Porter and Hinze visited the two communities but at Mornington Island, the community council refused to meet with them (Nettheim, 1981, p.12). The Premier alleged that the people had been subjected to 'a reign of terror'; that they had been 'stood over' and 'brainwashed'. The two community councils announced that they would cut ties with the State government. The Ministers announced that there had been a 'break-down in law and order' and Mr Hinze then unilaterally dismissed the two councils, appointed an administrator and ordered police to each community. After this sequence of events, Tatz wrote:

One wonders how the communities will sustain the fight for their view of self-management. They are subjected to an administrator, to police, to police enforcement of school attendance as one of several tactics to destroy the outstation movement, to government control over who will be appointed to the various shire clerk jobs... The shire administration will bring with it a host of bureaucrats and technologies, a major intrusion into the traditional life they are struggling to retain and reclaim. (1979, p.79)

In March 1979, local government elections were held in Queensland. In Aurukun and Mornington Island almost all the former councillors were re-elected, including the two previous chairmen (Nettheim, 1981, p.15). While this was a confirmation of the former leadership, changes had inevitably occurred during the intervening nine months during which time government officials and police had settled into the communities.

4 The Federal legislation was the Aboriginal and Torres Strait Islands (Queensland Reserves and Communities Self-Management) Act 1978.


6 Mr Hinze, the Minister for Local Government, stated that he hoped 'that the people at Aurukun and Mornington Island understand that there is no intention to remove the councils.' (cited in Tat; 1979, p.75).
1.3 The *Local Government (Aboriginal Lands) Act 1978.*

This was the Act under which the Mornington Shire Council was established. A number of legal and political commentators at the time of the Act's introduction opined that it was ill-conceived (indeed, it had to be amended later in the same year). In terms of its application to the administration of Mornington Island, a number of sections of the legislation are important.

Section 33 of the legislation relates to 'Law and Order in the Shires'. Section 33(2) provides that the function of maintaining law and order in the shire shall be that of the Aboriginal police. The Aboriginal police are to be appointed by the Council, subject to the approval of the Minister for Police.

Section 34 provides that shire clerks cannot be appointed by Council without prior approval by the Minister. Nettheim notes that such a provision seems 'to have been designed as a restraint on Council initiative in such an appointment.' (1981, p.68) Hence 'the position of shire clerk is probably of great significance... If the appointee is a strong administrator acceptable to the State government he may well tend to function in much the same fashion as DAIA [Department of Aboriginal and Islander Affairs] managers in relation to reserves, namely in effective control of the community. (1981, p.69) Appointments could be made to the position of shire clerk even though the appointee did not have the qualifications required by the Local Government Act.

Nettheim noted further, after examining the 1978 legislation, that 'despite adoption of the forms of local government, substantial powers of control remain with the State government and its officials.' (1981, p.69) In summarising the aftermath of the Mornington Island and Aurukun affairs, and the legislation which gave form to the Queensland government's intervention, Nettheim concluded that

> The Queensland government still seems to see its role in respect of reserves, their resources and their inhabitants as one of management, control, even proprietorship. Legislative provisions governing discipline, offences, courts and court proceedings simply reflect this fact. (1981, p.116)

A number of questions relating to the issue of control and self-determination were raised by the Reverend Dr Noel Preston in the year following the introduction of the Local Government (Aboriginal Lands) Act in 1978. Such questions included whether the public works were planned and operated in conjunction with the Aboriginal community; why there was a tendency to use outside non-Aboriginal labour when local labour was accessible; whether the newly resident State police had taken on the roles of 'protectors' and were inhibiting community discipline; and whether the white shire clerk was functioning like a manager on an Aboriginal reserve. (Cited in Nettheim, 1981, p.69)

While the legislation did provide for Aboriginal community police, there was no special provision for Aboriginal courts. As a consequence, Mornington Island became subject to the general provisions of the Magistrates Court Act (Old) and the Justices Act (Old). Thus the change in legislation spelt an end to the specifically constituted Aboriginal Court system as had existed on Mornington under the previous legislation.
However, the new legislation did allow two Aboriginal Justices of the Peace to exercise the normal jurisdiction of a magistrate's court (see Nettheim, 1981, p.105). These courts have operated intermittently, although little empirical research has been conducted on the nature of matters which are determined. (Australian Law Reform Commission, 1984, pp.59, 65, 150)

1.4 The Struggle for Recognition of Customary Law

Aboriginal people on Mornington Island have expressed an ongoing commitment to have their own laws recognised. During the Australian Law Reform Commission's reference on the recognition of Aboriginal customary law during the early 1980s, the Mornington Island community developed a submission which would have given power to the community to deal with a broad range of customary law matters, as well as matters relating to law and order.

The submission dealt with the establishment of an Aboriginal court which would have jurisdiction over a range of matters (see Australian Law Reform Commission, 1984, pp.148-150). It was envisaged that Elders would punish people for the following categories of crimes:

- Children's crimes (vandalism, etc.)
- Violent crimes (assault, etc.)
- Otherwise causing harm to people (insulting behaviour, etc.)
- Crimes to do with people's property and public property (breaking and entering, etc.)
- Crimes to do with keeping the peace (swearing, fighting, etc.)
- Crimes to do with magic and pooripoori business

The Elders would enforce law relating to:

- Land laws (use of land and sea for acquiring foods, etc.)
- Laws to do with food taboos
- Laws to do with looraka ceremonies
- Family laws (marriage, responsibility for children, etc.)

The punishments proposed by the Elders were:

- Fines
- Restrictions on the use of the canteen
- Council work
- Community work on an outstation
- Periods of exile to Forsyth Island or the mainland
- Young men defending themselves with fighting sticks against an elder (but without blows to the body)
- Use of gifts, payment or work for the victims of offences
- Imprisonment in Mornington Island watchhouse
- Imprisonment in gaol on the mainland.

At the time, the Australian Law Reform Commission noted that the Mornington Island proposal was a major innovation in incorporating aspects of local customary
laws into existing by-laws. The issue of customary law and community justice mechanisms will be discussed further in this report. Suffice to say at present that no further advances have been made on the original proposal from the Mornington Island community. The recognition of customary law is no closer to being realised.

1.5 Prior Complaints to the Human Rights and Equal Opportunity Commission

In November 1987, members of Yuenmanda, the Elder Clan Women's Organisation on Mornington Island, contacted the Human Rights and Equal Opportunity Commission in relation to conditions in the watchhouse (see below section 3.4 for details). Members of the group also stated that problems extended beyond the conditions in the watchhouse and included the abuse of people's rights.

Discussions were also held between the Commission and a member of the Uniting Church. There were a number of general allegations made including that power was not within Aboriginal control, that there was extreme exploitation, and that alcohol was playing a destructive role. The question of the use of outside contract labour in preference to local labour was raised by the church member: indeed, the issue had already surfaced in academic literature. The Church member further alleged that there was systematic racism with an assimilationist/welfare approach being adopted by the non-Aboriginal people on the Island.

1.6 World Council of Churches' Report

Mornington Island has been the subject of a World Council of Churches (WCC) investigation. Prior to the Seventh Assembly of the World Council of Churches in Canberra in February 1991, a team of prominent ecumenical persons visited the Island. In part, the report stated that the people were

demoralized by exclusion and the lack of participation in decision-making processes in virtually every area that determines their lives. The symptoms of this demoralization are seen in the loss of language and culture, the problems of alcohol, high rates of detention by police, physical abuse of Aboriginal women and children, high drop out rates and absenteeism in schools, inadequate employment and training opportunities. The impact of racism by Australians on the Aboriginal people in this nation is not just horrific, but genocidal, and must be addressed. (World Council of Churches, 1991, p.14)

As can be seen by the above extract, the report was particularly critical of the level of racism and the failure to facilitate self-determination. However the WCC Report over-emphasises the extent to which Mornington Island people are 'demoralized'. Despite the very real systems of external control, many Aboriginal people on the Island have continued to forge community organisations and solutions to their own

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1 'On Mornington Island, housing construction was completed without the use of local people despite a massive unemployment level in the Shire.' (Wilson, 1981, p.95)
problems. Relevant examples are the Yuenmanda Women’s group and the establishment of the women’s refuge, and the more recent return to establishing outstations.⁸

1.7 The Historical Legacy

The processes of colonialism have left the people of Mornington Island with a legacy that in many ways militates against the exercise of self-determination. The extreme levels of control exercised at various times by missionaries, including the use of such mechanisms as dormitories, have not been conducive to the development of indigenous social and political control. Indeed the more recent use of a political model based on the local shire was introduced in an effort to stem Aboriginal resistance to State government interference.

The effects of colonialism on indigenous communities are extensive and complex. Aboriginal and Torres Strait Islander peoples have often been forced to function within imposed parameters and structures and the fact that people can and do function within those imposed political structures should not be misread as a sign of acceptance. Hence what might appear as superficial support for the shire model at Mornington Island needs to be placed in the context of a general lack of education about political options or alternative methods of government.

Furthermore, the specific history of a particular community can have important effects on the way in which current models for self-determination may be approached. In relation to Mornington Island, it may be argued that:

- adequate attention needs to be paid to the fact that the shire model was one imposed on Mornington Island people from outside;
- there has been little serious attempt by government to ascertain the desires of the Mornington Island people in relation to their preferred forms of political administration; and
- there is evidence of an ongoing concern among people on Mornington Island that there be adequate recognition of Aboriginal customary law.

Recommendations to Section 1

- In recognition of the fundamental right of self-determination for indigenous people, that the principles of self-determination be applied in future dealings between State and Federal bodies and the people of Mornington Island.

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⁸ ‘Outstations’ or the ‘outstation movement’ refers to the relatively recent movement of Aboriginal peoples from centres and towns back to traditional living areas. The movement can be considered in both geographic and political terms.
• That adequate attention be paid by State and Federal bodies to the distinct history of Mornington Island, and in particular the imposition and impact of the shire council model on Mornington Island.

• That recognition be given by State and Federal bodies to the fact that Mornington Island people have not been given the opportunity to express their preferred options in relation to the form of political administration.

• That legislative recognition be given by State and Federal bodies to the desire by Mornington Island people for adequate recognition of customary law.
2. THE INCIDENT

It was noted in the Introduction to this report that the Federal Race Discrimination Commissioner focused on Mornington Island as the result of a petition received in late 1990. That petition related to a specific incident on the Island involving police and local people. The account of the incident in 2.1 below is based primarily on statements made by witnesses to the event. The police account of the incident is referred to in section 2.4 of this Report. The Race Discrimination Commissioner acknowledges that, on the balance of evidence, the original investigation was inadequate. However, the incident graphically illustrates some broader problems, particularly those associated with policing in Aboriginal communities and with the Criminal Justice Commission.

2.1 The Incident on 22 September 1990

At approximately 9am on Saturday morning, 22 September 1990, Lyndon Jack and Terence Burke were fighting in the roadway of Lardil Street, Gununa (Mornington Island). A police vehicle allegedly driven by Constable Peter Hornsby travelled down the road and collided with both persons, knocking them to either side of the vehicle. Witnesses indicated that the two persons were not in the centre of the road at the time they were hit, but situated towards the left side of the road. According to some witnesses, the police car was travelling rapidly (one witness estimated a speed of 60 miles per hour) prior to the collision. The driver braked heavily and skidded some distance before colliding with the victims. The length of the skid marks confirm the eyewitness accounts. According to the statements of ten witnesses, the driver did not alight from the police vehicle, but drove off.

Witnesses present rushed to the aid of the two victims, both of whom lost consciousness as a result of the collision and were taken to hospital by ambulance. Burke was found to have received injuries to the right thigh and left arm; Jack to the hip and arm. In his interview, Burke stated that he regained consciousness at the hospital, and returned home on release from the hospital.

The two victims of the incident acknowledge that they had been drinking prior to being hit by the vehicle. In his statement Lyndon Jack noted that he had consumed one can of beer and had gone to a relative's house to get another two cans. Whilst returning he was approached by Terence Burke, who asked him for one of the cans of beer; a quarrel ensued between the two. Burke also stated that he had consumed some alcohol during the morning and that the fight with Jack was in relation to the beer. The police constable driving the vehicle was breathalysed at the sergeant's residence after the incident.

According to the recorded interview with a witness shortly after the incident, the police sergeant visited the collision site after the ambulance had taken away the two victims. When several people approached him to get out of the vehicle see what had happened, he drove back to the police station. Witnesses insisted to HREOC staff that there had been no attempt to pull him out of the vehicle. There was an estimate of some 40 to 50 people at the roadside by this stage and their mood was interpreted as being very angry. The skid marks from the police vehicle involved in the collision were evident on the road and were measured by an Aboriginal and Islander Legal Service field officer.
A number of witnesses to the incident, and their friends and families, were upset and angered by the police officers' actions and walked to the police station to protest. It appears that somewhere between 120 and 200 people were present at the station and most of them were outside the fence. According to some reports, the police sergeant and constable went into and stayed at the sergeant's residence behind the station. Apparently a number of Aboriginal community police prevented people from entering the home and acted to diffuse the situation.

According to an eyewitness statement, about 50 people - later increasing to around 100 people - were inside the police yard. As a result of the actions of some who were present at the police station, there was damage to a police vehicle and the watch-house. Sand was thrown on the bonnet of a police wagon, the tyres were let down on a police vehicle and there was damage to a windshield. A T-shirt and a walkie-talkie were removed from a vehicle. Two persons who were being held in the watchhouse were released by members of the group.

As a result of these actions four people were charged with a number of offences including wilful destruction of property to the watchhouse door, two blankets in the watchhouse and the windshield of a police vehicle (S.469 Criminal Code of Queensland). The four were also charged with aiding the escape of a prisoner in custody (S.142(1) Police Act, Qld). Only one of the two prisoners who left the watchhouse was charged with escaping lawful custody. The prisoner was found not guilty in the Mornington Island Magistrates Court on 17 December 1990. The other cases were determined in 1991 and resulted in one sentence of five months imprisonment, two sentences of two hundred hours community service and one sentence of seventy-five hours community service.

Immediately following the confrontation at the station, police reinforcements were flown in. Ten officers from Mount Isa and a number from Burketown and Doomadgee were brought to the Island. It appears that at their time of departure from Mount Isa, the crowd at Mornington Island had already dispersed and there was no further trouble. Police sources confirm that the plane departed Mount Isa at 11.45 am, some five minutes after Mount Isa police had been notified that the crowd on Mornington had dispersed.

According to several reports received by the authors, police held a large party that night at the officer's quarters\(^9\). Aboriginal people interviewed by the Commissioner's staff perceived this party to be insensitive and provocative. This view can be understood in the context of the incident, the subsequent protest, the arrival of police reinforcements and the closure of the canteen that evening which prevented Aboriginal people from drinking alcohol.

\(^9\) Information that a party was held was tendered by both Aboriginal and non-Aboriginal persons.
2.2 Aboriginal Interpretations of the Event

A number of Aboriginal people were interviewed in relation to the motor vehicle incident and the alleged 'riot' which followed. It is clear that there were substantial numbers of people around the vicinity of the intersection where the collision occurred. There was a common view that because the road was straight and wide at the point of collision, there was room for the police vehicle to have travelled around the two victims. One witness stated that after the impact the police driver slowed down to the point where he was able to turn around to look at the two victims on the road. There was some difference between witnesses as to whether the vehicle actually stopped or not. It was noted that the two men (Jack or Burke) were known offenders, had spent time in gaol and were disliked by police. In an interview with Burke, he stated that he had been arrested previously by Constable Hornsby.

Aboriginal people interpreted the 'riot' as standing up for their rights. There was a sense of injustice about the incidents and the subsequent events. That sense of injustice was partially, but not exclusively, related to the treatment which Aboriginal people received at the hands of the police, a point made to the Commissioner's staff by a number of different people. (These included individuals who witnessed the event and others such as the members of the Uniting Church who saw the situation to be one of basic injustice). The incident involving Jack and Burke and the police vehicle needed to be placed in the context of a range of other incidents and factors which are discussed below. Similarly a non-Aboriginal education officer saw the incident as sparking an unrest which was more deep seated. He stated that 'it unleashed a lot of pent-up anger, frustration against police'.

2.3 Media Reporting of the Incident

The reporting of the Mornington Island incident in the Mount Isa newspaper, the North West Star, became the subject of a complaint by the Aboriginal and Islander Legal Service to the Press Council. The complaint centred around the failure of the reporter, Andrea Grant, to question the police account of the incident. The Legal Service is of the view that it is standard practice for local journalists to accept police reports without checking Aboriginal perspectives on the same events. The published media report indicated an interpretation favourable to police actions, and one different from the view received on Mornington Island by the Commissioner's staff investigating the incident.

Correspondence from the Press Council indicated that the editor of the North West Star rejected the complaints made by the Legal Service. The Legal Service did not pursue the matter. However, serious concern has been expressed in other forums at the way the media report incidents relating to Aboriginal and Torres Strait Islander people, and both the National Inquiry into Racist Violence and the Royal Commission

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10 Five persons were interviewed who witnessed the collision and/or the riot. In addition there were ten signed statements from individuals who witnessed the collision. The statements were taken by members of the Aboriginal and Islander Legal Service.

11 See Appendix A for a copy of the newspaper article.
into Aboriginal Deaths in Custody made specific recommendations about the media. If adopted, these recommendations would ensure a more balanced and less sensationalist view of Aboriginal and Torres Strait Islander people.

2.4 Police Investigations and the Response of the Criminal Justice Commission

On 1 October 1990 two solicitors acting for the Aboriginal and Islander Legal Service in Mount Isa met with the District Officer responsible for Mornington Island, Inspector D J McKean. The solicitors noted that their clients were concerned with three main issues:

- the inaccurate newspaper reporting apparently based on police information;
- the failure to charge the police officer involved in the motor vehicle incident; and
- general issues relating to the placement of police in Aboriginal and Torres Strait Islander communities.

According to a file note prepared by one of the solicitors, Inspector McKean undertook to investigate why the police officer involved in the incident had not been charged and would appraise the solicitors of the outcome of his inquiries.

On 15 November 1990 solicitors acting for the Aboriginal and Islander Legal Service wrote to Mr Peter Beattie, the Chairman of the Parliamentary Criminal Justice Committee to lodge a complaint concerning a number of related instances of official misconduct. The five related incidents of alleged misconduct noted in the correspondence were:

The driving of a police vehicle leading to a collision and subsequent failure to stop and render necessary assistance to injured parties,

- The failure of the District Officer to properly investigate and/or advise this firm of the results of any investigation performed,

- The providing of inaccurate and misleading information by police to the local media, which was subsequently published,

- The failure to lay charges against the officer, and

- The fact that police reinforcements were flown in the police plane to Gununa, given that at the time the plane left Mount Isa, the crowd had dispersed.

The correspondence from the solicitors noted a number of documents on file, including statements from witnesses. The Parliamentary Criminal Justice Committee acknowledged receipt of the complaint on 3 December 1990, noting that the Parliamentary Chairman had sought from the Criminal Justice Commission a report into the incident. The letter also noted that the solicitors would be advised of the Commiss-
The Aboriginal and Islander Legal Service received no further information regarding the complaint from either the District Officer in Mount Isa, the Criminal Justice Commission or the Parliamentary Criminal Justice Committee.

Further information regarding the results of the investigation was obtained as a result of inquiries made by the Race Discrimination Commissioner. The Queensland Police Minister indicated on 21 May 1991 that the results of the investigation had been referred to the Criminal Justice Commission for review, and that 'the Commission has now determined there was no evidence of misconduct or breach of discipline on the part of the officer involved'. As a result of further inquiries, the Police Minister replied on 13 January 1992 that nineteen witnesses at or near the scene of the accident were interviewed during the ensuing investigation, while Jack and Burke were also interviewed and written statements obtained.

The Criminal Justice Commission was also contacted by the Race Commissioner in relation to its role in the investigation of the incident on Mornington Island. The Criminal Justice Commission stated that the Mount Isa Aboriginal and Islander Legal Service did not lodge a complaint regarding the incident, and that the Criminal Justice Commission reviewed the police investigation after it was referred to the Commission by the Professional Standards Unit of the Queensland Police Service. As a result of the Criminal Justice Commission not investigating the complaint as it had been submitted by the Legal Service, a number of issues remain unresolved. The second, third and final complaints (as listed in point form above) put by the Aboriginal Legal Service to Mr Beattie were not investigated.

In relation to what was investigated, the Criminal Justice Commission stated that:

Upon assessment of all the evidence the Commission concluded that the police investigation was satisfactory and that there was no evidence that the police officer concerned drove in a manner dangerous or without due care and attention. The Commission was satisfied that the driver did stop and attempt to render assistance to the injured parties, however he was driven off by on-lookers who threatened him and physically abused him. The officer then drove straight to the hospital and advised of the accident and then attended at the police station to make an official report. The injuries sustained by Messrs Jack and Burke were minor, and the medical practitioner who attended at the scene and examined and treated both men confirmed that the injuries sustained 'were not classical of a motor vehicle accident'. She observed that as the patients had been fighting on the roadway just prior to the accident, the injuries could have been sustained in the fight. The Commission concluded further that there was no other evidence of official misconduct or other breach of discipline on the part of the driver or on the part of any other police officer in failing to charge Constable Hornsby with an offence in connection with the incident.

There are many serious issues which arise from the incident at Mornington Island and its aftermath. It is clear that the Aboriginal and Islander Legal Service did make a complaint, albeit through the Parliamentary Criminal Justice Committee. Furthermore the complaint was acknowledged as a complaint in relation to official misconduct. It is also clear that there were assurances that the Legal Service would receive information
regarding the outcome of investigations. There may well have been some failure to communicate the complaint between the Parliamentary Committee and the Criminal Justice Commission. However, the fact that no further response was received by the Legal Service from either the police or the Criminal Justice Commission in relation to the complaint is cause for concern. Such concern is particularly apparent when the incident on Mornington Island was known to have caused strong feelings within the community.

The only attempt made to explain the failure to appraise the Aboriginal and Islander Legal Service of the outcome of the investigation was made by the Police Minister on 21 May 1991. The correspondence stated that Inspector McKean was justified in not making the results of the investigation known to the Aboriginal Legal Service because the Criminal Justice Commission was still reviewing the police investigation. However, when the review was completed, there was still no notification to the Legal Service of the outcome. Given the sensitivity and widespread community concern relating to the incident it would seem reasonable that the District Officer provide regular updates on the progress of the investigation.

There are also questions relating to the police investigative procedures which are cause for some concern. The investigation was conducted by the police sergeant on the Island. In an isolated community with four police officers (including the sergeant) there may be some legitimate concern as to the impartiality of an investigation conducted by a local officer. It appears that none of the witnesses were required to make written statements. Presumably the only record of the interviews are the notes taken by the sergeant. Burke, (one of the victims of the collision) in his interview with the Race Discrimination Commissioner's representatives, stated that he had been questioned by the local sergeant after the collision, but that no written statement had been taken. His recollection is contrary to advice from the Police Minister (13 January 1992) which stated that 'written statements were obtained' from Burke and Jack.

In any event there is conflict of evidence relating to the facts, in particular over the crucial question of whether Constable Hornsby stopped the vehicle and attempted to render assistance.

2.5 Should There be a Re-Investigation?

It is now more than two years since the incident under discussion took place. Even if a re-investigation commenced immediately, the length of time since the original incident occurred may reduce the likelihood of reaching reliable conclusions. At this stage, it seems that the most that can be achieved is to utilise the lessons learnt in the course of the various inquiries, to identify inequitable practices and to ensure equal access to justice for the Aboriginal people in future.

However, it can also be argued that the individual rights of Lyndon Jack and Terry Burke should be seen to be addressed. There is a widespread perception in the community on Mornington Island that if the police investigation at the time of the incident had been thorough, then there may well have been charges laid against the police for specific offences.
So even if there is no re-investigation, there should be an acknowledgement by the Queensland Police Service that the original investigation fell short of desired standards. In addition, the Criminal Justice Commission should acknowledge that their reliance on the police investigation may have perpetuated an injustice against Mr Burke and Mr Jack. Such acknowledgements should be personally conveyed to Mr Burke and Mr Jack.

2.6 Improving the Procedures

The incident on Mornington Island raises a number of critical questions concerning how police and the Criminal Justice Commission conduct investigations in Aboriginal and Torres Strait Islander communities. For most people in the Mornington Island community who were immediately involved in the incident, the only indication they had that an investigation had occurred was the fact that the local sergeant had asked a number of questions and a short time later the officer involved was transferred from the Island.

In short, the investigation appeared partial and inadequate. There was never any explanation as to the process involved, the decisions which were reached or how those decisions were made. The solicitors acting for the Aboriginal and Islander Legal Service who were in a position to be able to explain the process and the outcome of the investigation were left in the dark. Without the intervention of the Race Discrimination Commissioner, it is questionable whether the results of the inquiry would be known today.

There is evidence to show that this incident is not isolated. In relation to an incident which occurred at Mornington Island watchhouse on 14 December 1990, the Criminal Justice Commission found that there was prima facie evidence of an 'assault occasioning bodily harm' carried out by Constable Butcher on Basil Hills. Mr Hills had been detained in the watchhouse for public drunkenness. The Aboriginal and Island Legal Service acted for Mr Hills and filed a complaint with the Criminal Justice Commission concerning the matter. Although the Criminal Justice Commission advised that there was prima facie evidence of an offence, they elected to have the matter dealt with by way of disciplinary action under the Police Service Administration Act. By December 1992 neither the Criminal Justice Commission nor the Queensland Police Service had notified the Aboriginal and Islander Legal Service nor their client of what disciplinary action had been taken.

The Criminal Justice Commission has noted prominently in its Annual Report 1990-91 that the number of complaints by Aborigines and Torres Strait Islanders against police constitute a 'problem area'. The importance of these complaints were noted in the following terms:

> Of particular relevance are the complaints made by aboriginal (sic) persons against police officers. These complaints are disproportionately high in incidence and often occur in remote areas thus requiring the expense of investigation by circuit. (Criminal Justice Commission, 1991a, p.26).

Given the recognition of the incidence and importance of these complaints, it is perhaps surprising that greater interest was not shown by the Criminal Justice Commission in relation to the events on Mornington Island. Given the subsequent
events at the police station following the motor vehicle incident, it was clear that substantial community concern had been generated by police behaviour.

In the report on the incident at Inala (Criminal Justice Commission, 1991b) the Criminal Justice Commission recommended that the Queensland Police Service expand and improve its liaison capabilities with Aboriginal and Tones Strait Islander people. Ironically this is an area where the Criminal Justice Commission could well lead by example. Contrary to recommendation 20 of the National Inquiry into Racist Violence, the Criminal Justice Commission has not created designated Aboriginal and Islander positions for either investigators or educators to follow-up complaints from Aboriginal and Tones Strait Islander people; or for education and information officers to provide accessible information on the complaints mechanism.

The creation of such positions would considerably improve the Criminal Justice Commission's effectiveness in Aboriginal and Tones Strait Islander communities. The Commission has already noted in its one major report on Aboriginal and Tones Strait Islander issues that there are problems in gaining the support of Aboriginal and Tones Strait Islander people for investigations. In relation to the Inala investigation it was noted that the 'investigation proved more difficult as time progressed due to the reluctance on the part of many members of the Aboriginal community to co-operate with the Commission.' (Criminal Justice Commission, 1991b, p.vi). In addition it was perceived that

Very few (Aboriginal persons) volunteered to come forward with information... Difficulty was experienced in enlisting the services of field officers to assist in locating witnesses and due to lack of assistance from within the Aboriginal community itself, it was necessary for Commission investigators to locate and convey witnesses to the Community Centre for interviews. A hostile reception by Aboriginal persons was received on several occasions, with some Aboriginal witnesses refusing to be interviewed. Commission officers were abused by some Aborigines when attempting to locate witnesses and generally encountered an admixture of apathy and active non-cooperation. (Criminal Justice Commission, 1991b, p.12).

It is apparent that the Criminal Justice Commission has failed to address the problems which it has itself identified. The failure to concentrate resources in this area will undermine the credibility of the Criminal Justice Commission and serve to confirm Aboriginal and Tones Strait Islander perceptions of the ineffectiveness of investigations relating to allegations of police misbehaviour.
**Recommendations to Section: Media Reporting and the Criminal Justice Commission**

That the management of the Mount Isa newspaper, the *North West Star*, implement recommendation 46 of the National Inquiry into Racist Violence which requires that the media strive for more balance in the reporting of race related issues and avoid sensationalist coverage of these issues.

- That the management of the Mount Isa newspaper, the *North West Star*, should follow recommendation 208 of the Royal Commission into Aboriginal Deaths in Custody and implement a process which encourages formal and informal contact with Aboriginal and Torres Strait Islander organisations to create a better understanding of issues.

- That the Queensland Police Service and the Criminal Justice Commission acknowledge by way of letters to Lyndon Jack and Terry Burke that the police investigation of the incident was inadequate and that reliance by the Criminal Justice Commission on the police version of the incident may have perpetuated an injustice against them.

- The Criminal Justice Commission implement recommendation 20 of the National Inquiry into Racist Violence which requires:
  
  (i) the establishment of designated Aboriginal and Torres Strait Islander investigatory positions with the function of following up complaints from Aboriginal and Islander people;
  
  (ii) the establishment of designated Aboriginal and Torres Strait Islander education and information officers with the function of providing accessible information to Aboriginal and Torres Strait Islander communities in relation to police complaints mechanisms.

- That the Queensland Police Service establish protocols for informing complainants (or their legal representatives) of the progress of a complaint at regular intervals.
3. CRIMINAL JUSTICE ISSUES

Issues of criminal justice were central to the discussions which were held on Mornington Island. Concerns about offending rates; the relationship between alcohol and committing offences; the nature of police intervention or, in some cases, non-intervention; and the policing of specific offences such as domestic violence, were all matters which emerged during the consultations.

3.1 The Nature of Offences and Court Appearances.

Magistrate's courts are held monthly on Mornington Island to deal with summary matters. There are no routinely available statistical collections on either court outcomes, reported offences or police charges specifically in relation to Mornington Island. The Race Discrimination Commissioner's staff who visited Mornington Island collected some data on offences from police records. An analysis of that information is presented below.

3.1.1 Public Drunkenness

A major area of criminalisation relates to charges of drunkenness.\(^\text{12}\) According to interviews conducted with the police constables during the first HREOC visit in March 1991, there had been 162 charges of drunkenness between January 1 and March 13 1991. Later information supplied by the Minister for Police on 13 January 1992 indicated that between 1 January 1991 and 11 November 1991 there had been 310 drunkenness charges. The Minister also indicated that there had been a change in policy in relation to arresting persons with drunkenness as a result of the death in custody of Craig Gable Sandy. These changes have resulted in a reduction in the number of people being charged. The police sergeant on Mornington Island also provided information in relation to arrests for the calendar year 1990. His recollection of the figures for the twelve month period were 1000 arrests of which 750 were for drunkenness (the remaining 250 relating to other criminal matters).

Drunkenness offences are not dealt with in the magistrate's courts, but are heard by Justices on the Island and are usually dispensed with through forfeiture of a $5 bail.\(^\text{13}\) Police claimed that they often put in the bail money themselves, money which was then collected by community police from offenders on pay day at Council

\(^\text{12}\) Under s81 of the *Queensland Liquor Act 1912* a police officer may arrest any person found drunk or creating a disturbance on the premises of any licensee or in any public place.

\(^\text{13}\) In relation to dispensing with drunkenness charges through the forfeiture of bail money, a significant difference exists between Mornington Island and the other designated Aboriginal communities. Under the *Community Services Act 1984*, drunkenness charges can be dealt with by the legally constituted community courts. As a result the money stays within the community. On Mornington Island (and presumably Aurukun) the bail money is forwarded to the Justice Department.
Chambers. Records of these cases are held in the (so-called) 'Drunks Book' at the police station.

Charges of drunkenness have constituted the major reason for the criminalisation of Aboriginal people on Mornington Island. While changes in police practices have reduced the number of charges for drunkenness (perhaps momentarily), such changes can be reversed and are no substitute for the decriminalisation of public drunkenness and the provision of adequately funded sobering-up centres. Decriminalisation of the offence of drunkenness, coupled with the provision of sobering-up centres, would fundamentally shift the nature of police work and their contact with Aboriginal people on the Island.

Recommendations relating to precisely these issues are in Justice Muirhead's Interim Report of the Royal Commission into Aboriginal Deaths in Custody and that Commission's subsequent National Report. The Queensland Government is on record as supporting the implementation of recommendation 79 that the offence of public drunkenness be abolished (Aboriginal Deaths in Custody, Response of Governments to the Royal Commission, Vol 1, p.279). In addition it was recommended by the Coroner investigating the death of Craig Sandy on Mornington Island on 17 October 1990 that the Queensland Government 'consider, as a matter of urgency, implementation of legislation to decriminalise public drunkenness'.

The Queensland government has publicly committed itself to decriminalisation in its response to the recommendations from the Royal Commission into Aboriginal Deaths in Custody. Despite the more recent coronial recommendations, the government has been very slow in making the necessary changes to legislation.

3.1.2 Other Offences

According to the information supplied by the State police to HREOC staff during their visit in March 1991, there were 90 arrests for offences other than public drunkenness during the first ten weeks of that year. Most offences related to break and enter, stealing, unlawful use of motor vehicle, assaults and firearm offences. Of those 90 arrests it was estimated that approximately 20 were of juveniles, mainly in relation to offences of stealing, break and enter, wilful damage and unlawful use of motor vehicle. In addition there were 40 juvenile cautions issued during the same period.

More detailed information of offences was recorded during the visit of the Race Discrimination Commissioner and her staff in November 1991. An investigation of police charge books was conducted for the four month period of January-February and June-July 1991. During this period some 88 offenders were charged with 131 offences (including 11 warrants). Six of the offenders were women and 25 of the 88 (or 28%) were juveniles. The nature of the charges is shown on the next page in Table 1.

If the above figures were to remain roughly constant over a twelve month period, there would be up to 400 charges for offences other than drunkenness. These figures indicate an extraordinary level of criminalisation for a community of 1000 people.
To understand the situation more clearly, there needs to be close scrutiny of the nature of offences for which people are charged. There are surprisingly few charges relating to interpersonal violence despite the reportedly high levels of domestic violence and interpersonal assaults in northern Queensland communities (Aboriginal Coordinating Council, 1988a and 1990). It would appear that this form of behaviour is not necessarily being criminalised. It is possible that drunkenness charges have, in the past, been laid in place of assault, etc. However, this option would apparently be on the decline with the reduction in the use of drunkenness offences. One might legitimately question whether police discretion is being used to tolerate a level of interpersonal violence which would not be acceptable in communities elsewhere in Australia.

Charges relating to public order or so-called 'street offences' made up some 16% of the total number of charges laid during the period. The use of such charges, in particular obscene language, has been adversely commented upon by the Royal Commission into Aboriginal Deaths in Custody. The use of such charges has also been questioned by Aboriginal and Islander Legal Service solicitors (Pine, 1992).

Some 60% of charges were property-related. A closer investigation was made of the charges which were laid during January and February 1991 to ascertain the targets of property crime. During this period there were 18 charges of stealing; 17 charges of break, enter and steal; and 7 charges of break and enter with intent to steal. All except one of the stealing offences during this period related to the theft of alcohol from the Mornington Shire Council. In addition the majority of the charges related to attempts at stealing rather than actual theft. Of the break, enter and steal charges, the targets comprised the Shire Council shed, the Council canteen and the store. In the vast majority of cases
### Table 1

The Nature of Charges on Mornington Island
Jan/Feb/June/July 1991

**Property related**

- Steal : 26
- Break, enter and steal : 18
- Break, enter with intent : 28
- Steal, unlawful use of motor vehicle : 7

Subtotal : 79

**Public Order**

- Resist Arrest : 9
- Assault Police : 7
- Obscene Language : 5

Subtotal : 21

**Against the Person**

- Unlawful Wounding : 2
- Assault : 1
- Attempted Rape : 1

Subtotal

**Other**

- Warrants : 11
- Firearm Offences : 7
- Malicious Damage : 4
- Traffic/Vehicle Related : 2
- Drive Under the Influence : 2
- Other : 1

Subtotal : 27

**TOTAL** : 131
the target was the canteen. Of those charges relating to break and enter with intent to
steal the major targets were dwellings.

The fact that property-related crime is a major source of criminal charges and that in
the majority of cases the Council is the victim gives rise to a number of issues. Many
of these offences are related to the acquisition of alcohol. Any broader policy relating
to the supply of alcohol on the Island needs to consider the positive or negative
impact it might have on such offences. Furthermore, the fact that the Council is the
target for offences also suggests something about the relationship between the Council
and people on the Island. A more positive relationship, where people feel they have
some input and control over Council matters, could well have a significant impact on
the extent to which the Council is victimised. The fact that much property crime is
directly related to the Council also has implications for the development of effective
crime prevention strategies. It appears that much of the Council's response to crime
has been to develop an escalating 'fortress mentality'. It may well be that greater
participation in Council affairs and decision-making could also have spin-offs in terms
of crime prevention.

Community members have expressed some concern at the extent to which juveniles
are involved in offending on Mornington Island. The percentage of those charged with
committing offences who were also juveniles was 28%. While juvenile offending may
pose problems, it should be placed within a broader perspective. Other figures
indicate that generally in Queensland, juveniles constitute 29% of offenders, while
across Australia they constitute 26% of offenders (Potas, Vining and Wilson, 1990,
p.21). In other words, there is no significant proportional difference in juvenile
offending compared to adult offending on Mornington Island. This of course is not to
say that there are no problems in relation to young people and crime; nor is it to say
that the situation should be ignored. However a sense of proportion in relation to the
extent and seriousness of juvenile offending does need to be maintained. The issue
will be explored more fully later in this report.

3.2 State Police

Until the late 1970s there appears to have been no permanent police presence at
Mornington Island. A police presence was permanently established as a result of the
decision by the State government to take control of the administration of the Island
away from the Uniting Church (see previous section 1.1 on the Island's history). Part
of the political rationale for this intervention was a breakdown in law and order. It
would appear however that the initial police presence was designed by the State
government to counteract Aboriginal political opposition to the take-over. Thus
policing had a direct political function in the undermining of Aboriginal autonomy and
self-determination.
3.2.1 Selection and Training

At March 1991 there were four State police officers and six community police officers to oversee a population of 1000. Such a commitment is considerably higher than one would expect in a non-Aboriginal community of the same size (Human Rights and Equal Opportunity Commission, 1991, pp. 92-94). The Queensland Police Service justify the number of police stationed on Mornington Island by reference to the high number of offences committed on the Island.

Police on Mornington Island are under the command of the District Officer stationed at Mount Isa. As noted above, there has been a permanent police presence on Mornington Island from 1978. Originally there was a sergeant and a constable stationed at Gununa; over the next thirteen years, this number had doubled to three constables and a sergeant.

At present it appears that there is no formal mechanism for Aboriginal and Torres Strait Islander people to have input into the selection of police officers to serve in Aboriginal and Torres Strait Islander communities. There have been occasions in the past where Aboriginal people from communities such as Yarrabah and Lockhart River have travelled to Cairns to sit on selection panels. More recently, informal arrangements have been used: for instance, where the Chairman of Doomadgee Council interviewed by phone applicants seeking work in the community. There has also been some involvement of a similar nature by the Aboriginal Coordinating Council. However it would appear that the level of involvement of Aboriginal and Torres Strait Islander people on selection panels has been haphazard, informal, of an advisory capacity and only applicable to appointments at the level of sergeant. The selection of constables is made by the sergeant in each community.

According to Tyler (1992, p.5), police policy 'already specifies the inclusion of Aboriginal and Torres Strait Islander community representatives on selection panels for police officers promoted to Aboriginal or Torres Strait Islander communities'. It would appear that this policy has yet to be implemented.

In terms of developing such a policy, the Queensland Police Service is using $45,000 of money allocated by ATSIC for implementation of Royal Commission recommendations to develop a training package to enhance the skills of members (both non-Aboriginal and Aboriginal and Torres Strait Islander) of selection teams for police to serve in Aboriginal and Torres Strait Islander communities. The project looks at the selection process of police going onto Deed of Grant in Trust (DOGIT) community lands and will consider at which stage in the selection process the community should become involved. There have been some community consultations in relation to developing involvement in the selection process. However, to date this has not included Mornington Island. As neither Mornington Island or Aurukun are constituted as Deed of Grant in Trust communities, it is important that these communities participate in the development of selection processes.

At the time of the first visit by HREOC officers to Mornington Island, the three police constables had been stationed on the Island for five months, three months and one and a half months respectively. They had requested the posting. All were single males. There was a policy of not posting married constables, ostensibly because of a lack of accommodation. In addition there was a policy of a six-month rotation,
although constables could extend their stay for up to 12 months. In a later interview the sergeant acknowledged that, as a result of the policy of stationing single police on the Island, the police tended to be young and inexperienced. It is also worth considering that the short term, rotational nature of the constable positions meant an element of constant instability in terms of the quality of police work offered to the community. The Minister for Police stated on 13 January 1992 that lack of accommodation was the reason for not posting married constables to the Island, and that 'experience has shown' that the six month rotational duties were desirable.

Police rosters on the Island covered the period 8am to 12 midnight Monday to Thursday, and 8am to 2am Friday and Saturday. Officers were subject to call-out at other times. During some periods when the police were not on duty, Aboriginal community police were rostered to work alone overnight. This practice was criticised by the Coroner during the inquest into the death of Craig Sandy. The Coroner recommended that the practice of leaving an Aboriginal community police officer in charge of the watchhouse was improper and should cease immediately and, further, that Aboriginal community police should not be left unsupervised except in emergency situations.

When the Race Discrimination Commissioner's staff first visited Mornington Island, none of the constables had received specific training for their posting to the Island, although they had 'some discussions' with sergeants who were associated with the Aboriginal, Torres Strait Islander and Ethnic Liaison Unit in Mount Isa concerning community policing. Most of the information they had received came from other officers who had previously been posted to Aboriginal communities. There appeared to be a patronising attitude towards the possible benefits which a specific training package related to Aboriginal and Torres Strait Islander communities might offer.

A number of Aboriginal and non-Aboriginal people interviewed for this Report were particularly critical of the fact that the State police received no courses, training or assessment before beginning their employment on the Island. The Minister for Police has noted (13 January 1992) that a training package has been developed for the Northern Police region by the regional coordinator for training and the Ethnic/Aboriginal and Islander Liaison Officer. The training package covers specific issues relating to Aboriginal and Torres Strait Islander communities such as cultural awareness, by-laws and Aboriginal community police functions as well as motor-boat operation, four-wheel drive operation, clerk of the court functions and other administrative matters. It is unknown to what extent the training package has been implemented.

Presumably, the current training package will be supplemented or replaced by a new induction training package, funded by ATSIC from money targeted for implementing Royal Commission recommendations. The package is designed for officers prior to their taking up duty in Aboriginal and Torres Strait Islander communities and is currently in preparation at the Police Academy. In addition to that $45,000, a further $100,000 has been allocated for the development of a training package for trainees and serving police on the issue Aboriginal and Tones Strait Islander cultural/social awareness.
3.2.2 Police Liaison Functions

The Aboriginal, Torres Strait Islander and Ethnic Liaison Unit has been the administrative centre for the development of liaison officers within the Queensland Police Service. The Unit has recently been changed to the Cross Cultural Support Services Section within the Community Policing Support Branch in Brisbane. Although it only has a staff of two (Tyler, 1992, p.1), the Section has an extensive list of duties and functions (Queensland Police Service, pp.11-12). In addition there are twenty police officers throughout the eight police regions of Queensland who are designated as Cross Cultural Liaison Officers. Some of these positions are part-time, others are full-time.

Responsibilities of these officers include 'making links with community organisations and individuals, working with the community to identify and solve policing problems, and facilitating communication between police and the communities.' (Tyler, 1992, p.1) The Liaison Officers also have responsibility in conducting negotiations in incidents involving potential large scale disturbances. Instruction 9.21 specifies that consideration should be given to the involvement of Liaison Officers where 'police action and racial unrest are imminent'. It is also noted that 'in dealing with such a situation police must take all reasonable steps to avoid allegations of racist behaviour or unnecessary violence'.

Discussions during the course of this Report with police working as Liaison Officers have raised a number of problems. At a regional level the officer may be required to cover an enormous geographical area: for instance, the officer responsible for Mornington Island is based in Mount Isa and also covers the region to Birdsville in the south-west and Cloncurry in the east. This particular officer is full-time, although some officers in other areas of the State are part-time. The duties of the Liaison Officer are not adequately addressed, as it would appear that there are no police General Instructions relating to the role of Liaison Officers other than Instruction 9.21 referred to above. The position itself is not gazetted and there is no specific budget allocated for conducting the duties associated with the position. As a result, specific funding has to be sought for individual projects. In addition, in the Mount Isa District, the basic resource consisted of one vehicle which had to be shared on a needs basis.

Effective cross-cultural liaison work is a specialised field of employment, but such specialisation is not adequately recognised in the rank of the officers appointed as liaison officers. The salary may well turn out to be less than those of general duties police because there are no allowances (weekend, night, etc) available. The specialist nature of the work should be recognised by appointing officers of rank who can have some input into the development of policy.
3.2.3 Policing Domestic Violence

During their first visit to the Island, the Race Discrimination Commissioner’s staff conducted a number of interviews with police constables. Police officers expressed a number of attitudes in relation to Aboriginal women and domestic violence that gave cause for alarm. The constables recognised that there was a problem with domestic violence, but rationalised its occurrence in essentially racist terms as 'that's the Aboriginal way'. Meanwhile there was a rejection of the need or desirability of either female State police or female community police.

Furthermore, there was a rejection of the use of the Queensland domestic violence legislation which provides for the use of domestic violence protection orders.” One officer stated: 'If we were to use DV orders, we would not do anything else'. It was admitted that during the five month period of the longest serving constable, no domestic violence protection orders had been issued; the sergeant at Mornington Island also confirmed that domestic violence orders were not used. It was stated that there was no permanent magistrate on the Island to issue the orders, although it was recognised that interim protection orders could be obtained through a magistrate. There are provisions under the legislation to allow for the problems faced by isolated communities where a magistrate visits only monthly: under section 20 of the Act, an Interim protection order is returnable before a Magistrates Court within 30 days following the day on which it was made. Amendments to the legislation, Domestic Violence (Family Protection) Amendment Act 1992, will increase this time period under certain circumstances. Section 20(3) will allow for an interim order to be returnable to the court on the first suitable hearing date available after a 30 day period, if a court is not sitting in an the area within 30 days following the day on which the interim order was made, or if there is not a suitable hearing day within the 30 day period.

The police constables also raised the familiar explanation that there was an unwillingness to make complaints by women who were victims of domestic violence. The usual method of dealing with domestic violence situations was to charge the male with drunkenness or assault and/or take the affected woman to the women’s shelter.

The Race Discrimination Commissioner’s concerns in relation to police responses to domestic violence were raised with the Police Minister. Such concerns included the failure to post women police officers to Mornington Island. In his reply, the Minister (13 January 1992) stated that it was not 'practicable at this point in time to have

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14 This is despite the fact that Aboriginal and Islander women were recognised as being particularly disadvantaged in relation to access to services and the extent of domestic violence by the Queensland Domestic Violence Task Force (1988). The Task Force specifically rejected explanations that domestic violence reflected 'tribal norms'.

15 Specified as ‘protection orders’ and ‘interim protection orders’ in the Domestic Violence (Family Protection) Act 1989, Queensland.

16 Section 7 deals with interim protection orders. Section 7(c) specifies the requirements to be met for a stipendiary magistrate to make an interim order by application under s.17. Section 17 'Special Facility for Police Application for Interim Protection Order' makes provision for police application of interim orders through the use of telephone, radio, telex, fax, etc to a magistrate.
female State police officers stationed on these communities. It is a very harsh environment where from time to time respect for the female gender, whether in authority or otherwise, is extremely low. The safety of female State police officers working alone at night is also a matter of concern. Accommodation is a governing factor. Such reasoning for the non-employment of women in particular areas could well lead to a complaint under the *Queensland Anti-Discrimination Act 1991*.

The Minister also noted that there were a number of limitations on the application of the domestic violence legislation including the distance and infrequent visits of the magistrate; the confined area of the community; a failure to understand the legal obligations by community members; and the reluctance of women to take action against their spouses. The views expressed by the Minister were similar to those expressed by the police on Mornington Island.

The Minister for Police also raised the issue that in the designated Aboriginal communities, the *Community Services (Aborigines) Act 1984* gives authority for the establishment of community courts. The Minister suggests that 'it would be far more practical to have the [Mornington] Council given authority to constitute a Community Court and deal with these matters on a daily basis in their customary way'. However under the current legislation covering Mornington Island (and Aurukun) such powers are not available. It could also be argued that police have a responsibility to enforce the law as it exists, rather than engage in discretionary decisions as to which laws should be enforced.

In addition, customary law may be inappropriate or unable to deal with domestic violence, as this appears to be a relatively new social phenomenon. There may be no self-evident customary way of dealing with the situation, as it does not seem to have been described in Aboriginal traditions. However, the issue of the development of community justice mechanisms for supporting and expanding Aboriginal ways of dealing with domestic violence is important. The Aboriginal Co-ordinating Council has stressed the role of developing such community justice mechanisms (see Queensland Domestic Violence Task Force, 1988, pp.265-266). The Queensland Domestic Violence Task Force noted the difficulties in finding an adequate and effective approach to domestic violence on Aboriginal and Torres Strait Islander communities.

The question of how domestic violence on Aboriginal communities can be best managed and curtailed is a highly complex one to which Aboriginal and Islander people have themselves brought a variety of perspectives (Queensland Domestic Violence Task Force, 1988, p.264).

The Task force recognised that in small closed communities women may well have few options, and that they may be reluctant to use legal, police and welfare programs which are or have been non-Aboriginal dominated. However the Task Force also noted that 'Aboriginal women with whom we spoke were almost unanimous in their clear desire to seek the law enforced against men, either black or white, who abuse Aboriginal women.' (Queensland Domestic Violence Task Force, 1988, p.265)

The enforcement of criminal law covering domestic violence is not necessarily contradictory to the development of community justice mechanisms in relation to domestic violence. Clearly protocols or procedures can be developed which give guidance to the applicability of either forms of intervention. The two approaches are
not necessarily mutually exclusive, but can be used to support each other. More importantly though, such debates are somewhat academic when the reality is that neither approaches are being utilised. On Mornington Island there are no community courts dealing with such issues, nor could there be under the current legislation. At the same time, there has been no application of the relevant criminal law in such matters. Until recently police have not been enforcing the law in relation to domestic violence at all.

There are a range of domestic violence-related programs occurring both within the Police Service and within the Department of Family Services and Aboriginal and Torres Strait Islander Affairs. Within the Police Service there is the Domestic Violence Prevention Unit which is responsible for pre-service and in-service training; domestic violence education officers at district and regional level; and domestic violence liaison officers. The Department of Family Services has a Domestic Violence Unit which has also been involved in activities directly related to Aboriginal and Torres Strait Islander communities. The Unit is currently studying the effectiveness of Domestic Violence legislation for Aboriginal and Torres Strait Islander communities generally. It has also funded the Aboriginal and Islander Women's Corporation to publish a culturally appropriate resource package on domestic violence.

The Aboriginal Co-ordinating Council in Cairns has also devoted some of its limited resources to the area of domestic violence with the appointment of a temporary domestic violence worker. The ACC organised a three-day workshop for men from various communities both to receive information and to learn how to establish support groups for men with violent tendencies. The ACC is attempting to develop these support groups, and providing information about suitable referral organisations if the problem cannot be appropriately handled at that level. The self-help groups could well provide one option in terms of developing a community justice response; it is a response which focusses on the offender rather than the victim.

While all these initiatives are to be applauded, it is apparent that considerable work needs to be done at the local community level, particularly in relation to police attitudes, for the legislation to have an impact on the incidence of domestic violence. There had been considerable improvements in this area by the time of the third visit to Mornington Island in October 1992. Police had moved to establish a local committee to look at responses to domestic violence and protection orders were being used at the rate of about five per month. The continued use of protection orders needs to be closely monitored as they were apparently initiated by a female police officer temporarily posted to the Island. She made the issue a priority while she was stationed there, but future officers may have different priorities.

3.2.4 Community Attitudes to State Police

During their first two visits, the Race Discrimination Commissioner and her staff received a range of complaints concerning State police on Mornington Island. Aboriginal people alleged that State police had used violence on occasions;\(^{17}\) that

\(^{17}\) These allegations were made by a number of individuals; some community police who wished to remain anonymous; a group of people interviewed at the Uniting Church; and a non-Aboriginal person.
there was rough handling by the State police; that individuals had been assaulted in
the watchhouse; that State police did little work except on Friday and Saturday nights;
and that they were sometimes drunk/drinking on duty. During the third visit, attitudes
among the community were far more positive towards the police and it seemed to the
Commissioner's staff that the police were taking a more professional attitude towards
their duties on the Island.

There were a number of specific allegations made by individuals concerning alleged
assaults by State police constables on persons held in the watchhouse during the later
part of 1990. Other Aboriginal people also alleged that the State police did not like
black people; and there were allegations that State police entered houses without
knocking, without permission and without warrants. A non-Aboriginal person on the
Island also stated that he was aware of allegations of violence and brutality by State
police officers, and that one community police officer with whom he was friendly had
resigned as result of such violence.

As noted earlier, there was a widespread view that the State police were dependent
on the community police to conduct the day-to-day work of policing. Such a view
needs to be seen in the context of the fact that State police receive a remote areas
allowance of $135.50 for a single person per fortnight in addition to their regular
wages.\textsuperscript{18}

The perception that State police did not like Aboriginal people came not only from a
diverse group of Aboriginal people themselves, but also from some non-Aboriginal
people on the Island who alleged that the police had no interest in Aboriginal people
or in understanding their culture. One non-Aboriginal person interviewed by the
Commissioner's staff was aware of racist comments that were made by police and
other non-Aboriginals at social gatherings. He saw the police and the hospital as being
particularly poor in their relationships with Aboriginal people.

There were serious issues raised by a number of people on the Island concerning the
State police. While it has not been the purpose of this report to investigate specific
allegations against police, it should be noted that there is clearly a problem of some
magnitude in the relationship between the police and the community. The situation
raises questions about the way in which a commitment to community policing might
be realised in a setting such as Mornington Island. There have been some positive
changes during 1992 in relation to police practices on the Island. Part of these changes
reflect the adoption of a more professional attitude by police.

3.25 Police Attitudes to the Community

During their first two visits to Mornington, the Commissioner and her staff became
aware of a 'siege mentality' which was exhibited in the interviews with police consta-
bles on the Island. This view of being under siege was coupled with a clear separation
between 'us' and 'them'. The constables said that there was a feeling of isolation
which was referred to in relation to the possible need for reinforcements in the event
of 'community tensions'. There is a range of general literature which identifies various

\textsuperscript{18} This allowance is referred to as an ECL (Extra Cost of Living) Allowance. The amount payable was at
aspects of police social isolation which is reinforced by a police culture stressing conformity. It would seem that these aspects of police culture are exacerbated in communities where the majority of the 'policed' are Aboriginal peoples with clear cultural differences to the State police, and the location of the policing is in a setting of extreme physical isolation from the centres of non-Aboriginal Australian power.

Generally there was a simplistic and patronising attitude to Aboriginal people on the Island, with alcohol seen as the cause of bad relations between police and the community. However, other stereotypes were close to the surface. During our interview with the constables, Aboriginal people were referred to as having 'no respect for property' and as being responsible for smashing-up houses. One constable expressed a view that the 'poor Abo' was responsible for their own situation, and that 'outsiders' were responsible for 'soliciting complaints' from Aboriginal people.

Despite improvements seen during the third HREOC visit, there remain many unresolved issues. However, there can be ongoing improvement in relations through the implementation of recommendations outlined in this report, as well as the implementation of the recommendations from the National Inquiry into Racist Violence and the Royal Commission into Aboriginal Deaths in Custody.

3.3 Aboriginal Community Police

The system of community police used in Aboriginal and Torres Strait communities in Queensland has been the subject of concern for a number of years. Most recently the death in custody of Craig Sandy in October 1990 and the subsequent coronial inquiry conducted by Mr Irvine Killen and concluded in November 1991 again raised specific inadequacies within the system as it operated on Mornington Island.

In brief, Craig Sandy was picked-up by community police and transported to the watchhouse after he was found lying unconscious on the side of a dirt road leading from the canteen. Community police officers had previously arrested Sandy for drunkenness and believed him to be drunk on this occasion. Sandy was detained in the watchhouse overnight during which time the watchhouse was under the supervision of another community police officer. Medical attention was sought the next morning after Sandy was unable to be roused. He was transported to Townsville Hospital where he died some time later as a result of brain damage.

3.3.1 Powers of Arrest

The powers of arrest of community police have been a constant source of confusion and abuse. Evidence put before the coronial inquiry into the death of Craig Sandy argued that the powers of arrest of community police were not general and were regulated by the by-laws covering the Island. Thus community police do not have the power of arrest in relation to drunkenness offences, unless it is constituted as an offence under local government by-laws. The Coroner found that pursuant to Chapter 3 of the by-laws, 'an Aboriginal policeman may without any warrant arrest any person if that policeman has reasonable grounds to believe that the person has committed an offence against the by-laws'. The Coroner went on to state that 'apart from the powers of arrest as an ordinary citizen, an Aboriginal policeman has no authority to arrest any person for any statutory criminal or other offence'. The Coroner found that there
was no authority under the Council by-laws for an Aboriginal policeman to arrest any person for being drunk in a public place or elsewhere.

The Coroner also found that it was common and accepted practice for Aboriginal community police to arrest and detain persons in the watchhouse for drunkenness although it was without statutory authority and was therefore unlawful. The Coroner noted that the practice operated with the full knowledge of the police at Mornington Island and their superiors in the Police Service: indeed, the recording of particulars in the 'Drunk' charge book were later completed by State police who signed the charge book as the arresting officer. In some cases the place and time of arrest were invented if not known when the official records were being completed. The Coroner found these practices to be casual and improper.

The issue of developing adequate by-laws has been recognised as something of a problem for Aboriginal and Torres Strait Islander communities in Queensland, and the Aboriginal Co-ordinating Council has been concerned about this for some time. The Legislation Review Committee dealt quite recently with the issue in some detail and this will be discussed below. On Mornington Island the local sergeant told HREOC officers that he encouraged the use of the community by-laws. A form had been developed which was similar to a summons and designed for use by the community police in relation to community by-laws. The form had been designed specifically for communities designated under the Community Services (Aborigines) Act 1984, but it was planned that it also be used on Mornington Island. This procedure is in line with recommendations of the Royal Commission into Aboriginal Deaths in Custody as it would have the effect of encouraging the use of summons rather than arrest.

3.3.2 Duties of Community Police

The establishment of Aboriginal community police on Mornington Island and Aurukun is authorised under section 33 (2) of the Local Government (Aboriginal Lands) Act 1978 where it states that:

the function of maintaining peace and good order in the shire of Mornington Island shall be that of the Aboriginal police, and further that they exercise within their jurisdiction, such powers as conferred upon them by by-laws of the Shire Council and shall perform that function and exercise their powers subject to the direction and control of the member of the State police present.

In practice, the selection of community police is based on approval by the sergeant and the local Council. The community police are accountable to the State police and the Council, and take direction from the State police.

Correspondence from the Police Minister to the Race Discrimination Commissioner (21 May 1991) indicated that community police were used for a variety of functions including 'supervision of prisoners at the watchhouse, patrols and the manning of the station'. Some practices were criticised by the Coroner in his investigation of the death of Craig Sandy when he found that the practice of appointing an Aboriginal policeman in charge of the watchhouse to supervise persons in custody was improper. He also recommended that community police should not be left unsupervised and that the
separation of functions and operations between community police and State police should cease, and that Aboriginal police should work alongside State police.

At the time of the first HREOC visit to Mornington Island, there were six community police, although eight was the more usual number. Later correspondence from the Police Minister indicated there were two community police officers. The number of community police fluctuates partly as a result of the high turnover rate: according to the State police, community police officers tended to work for about three months each. The Coroner found that there had been nineteen community police within a period of slightly less than two years. The Coroner saw the position as 'an onerous and thankless occupation... In my view this constant turnover of policemen had a profound and detrimental effect upon the proper training of those policemen.'

3.3.3 Remuneration for Community Police

Aboriginal community police are employees of the Mornington Shire Council. The community police are paid out of CDEP (Community Development Employment Program) funding which was supplemented through Council payments for overtime because community policing was defined as a special project. The actual extent to which community police receive 'overtime' or simply payments above the CDEP base level is ambiguous. According to the Coroner's investigations, 'Aboriginal policemen receive no additional monetary or other benefit than other Council employees or persons on the CDEP scheme'.

Aboriginal community police are covered by a State award. The current award took effect on 1 May 1988 and replaced an earlier Interim Award. The current award sets out conditions relating to the minimum wage, ordinary working hours, payment of wages, weekend penalty rates, overtime, holidays, sick leave, etc. The award sets out minimum wages for Community Policeman in Charge, Community Policeman Grade 1 and Community Policeman. It appears that there is considerable confusion over the entitlement to award payments by Aboriginal community police. (The decision by Mornington Council at its meeting on 27 May 1992 that community police be paid the Australian Services Union award wage implies that prior to this decision, community police were not being paid the award rates).

The Coronial report recommended that monetary or other benefits to community police should be increased by the Council as an incentive and inducement to maintain greater staff commitment. It was also suggested that the Police Service could contribute to their employment. A concern not addressed was the issue of the ad hoc nature of the employment of Aboriginal community police which must undercut the importance of the work which is being carried out.

3.3.4 Attitudes Towards Community Police

Interviews with Aboriginal people on the Island indicated a mixed reaction to the functions and conduct of community police. They were generally supported because they were 'countrymen' although some allegations of mistreatment and alcohol

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19 See Community Police (Aboriginal and Island Communities and Local Authorities) Award - State, Queensland Government Industrial Gazette, 14th May 1988, No 4, folios 187-91.
consumption on duty were noted. The issue of violence by community police needs further examination, although it is clearly a sensitive issue. Some evidence from nearby Doomadgee, supplied by the Aboriginal and Islander Legal Service, indicated that violence by community police had at times been a problem in that community. Importantly, the statements which the Legal Service received indicated that specific acts of violence had been condoned, and indeed encouraged, by the State police. Violence by community police as an issue of concern needs to be placed in context within the generally subservient role they occupy, their lack of training and professional status, and their relationship with the State police.

During their first visit in March 1991, the HREOC staff observed that police patrols were conducted by Aboriginal community police rather than State police. Whilst this may be construed as the deliberate deployment of a 'low profile' policing strategy by the State police, it was interpreted by Aboriginal people interviewed by HREOC staff as indicative of the fact that community police 'did all the work'. Certainly there was resentment that State police did not appear to do a comparative amount of work.

According to State police there are problems with community attitudes to the work of the community police, with references being made to 'white man crawlers' as a way of depicting the function of the community police. According to the State police, these attitudes ensure a high turnover rate amongst the community police.

The community police themselves, in confidential discussions with the Race Commissioner's staff, expressed their concern about allegations of assaults by State police on Aboriginal detainees at the watchhouse - indeed, some community police had witnessed assaults but stated that they were not in a position to intervene. Perhaps the tenuousness of their employment contract militated against making any complaints, or perhaps they were unsure of the complaint-handling mechanism. A number of other issues were raised by the community police including the need for adequate training and responsibility.

The HREOC staff members noted that the attitude of the State police sergeant towards community police was one of encouraging training and responsibility. However, in the long run, community police have no real responsibility, not just on Mornington Island, but in many Aboriginal communities around the country. The community police on Mornington Island felt themselves capable of taking a greater level of responsibility for police duties.

The Yuenmanda organisation raised the issue of the suitability of employing women as community police officers in November 1987. The police sergeant when interviewed in March 1991 considered the suggestion of women community police as being useful. All the (male) Aboriginal community police who were interviewed also supported the idea of using Aboriginal women as community police officers.

There has now been a concerted effort to appoint women as community police officers. At the time of the third HREOC visit, three of the five community police were female including the sergeant. It is important that this effort be retained.

3.3.5 Training Aboriginal Community Police
At the time of HREOC staffs first visit to Mornington Island, discussions were underway for a training program for community police in Mount Isa in March 1991. A training schedule had been drawn up.

The Race Discrimination Commissioner received four sections of the training course for Aboriginal community police which had been developed by the Queensland Police. These sections covered Watchhouse Procedures, the Use of Force, Enforcement Procedures, and Active Patrol Procedures. Some community police had received some instruction in these briefly documented procedures. Some of the community police officers who were interviewed stated that they had received no training, although they knew as a result of Craig Sandy’s death to take injured persons to the hospital. In addition the State police constables maintained that they provided on-the-job training in relation to use of force, etc.

Two major problems in training Aboriginal community police are the rate at which community police resign, thus requiring the training of new recruits; and the costs involved in bringing community police into a major centre for training. The police sergeant at Mornington Island was aware of community police training conducted in Townsville, but was not aware of the work done by the Aboriginal Co-ordinating Council in pressing for a similar course in Mt Isa.

However, the proposed course for Mornington Island community police which was to be held in Mount Isa never eventuated. During the HREOC staffs second visit to Mornington Island it was discovered that the training was dependent on the provision of funding from the Department of Education, Employment and Training (DEET) and that this funding had not been forthcoming. Applications for the funding of training programs for community police had also been made to the Queensland Department of Family Services and Aboriginal and Torres Strait Islander Affairs, as well as ATSIC.

Some training programs for Aboriginal and Torres Strait Islander community police have been available since 1988, although the training which community police actually received has been haphazard given the turnover rate, the isolation and the few police officers involved in training. Cross Cultural Liaison officers (formerly referred to as Aboriginal, Torres Strait and Ethnic Liaison officers) can also be involved in training community police at the regional level. The Race Discrimination Commissioner’s staff interviewed the Liaison Officer from Mount Isa District which has responsibility for Mornington Island. The failure to provide any overall budgetary allocation for training community police meant that each training session had to be approved on an individual basis. As a result any forward training program covering, for example, a projected twelve-month period was impossible.

As a result of the Royal Commission into Aboriginal Deaths in Custody recommendations, some $150,000 has been made available to the Queensland Police Service to develop community police training. More broadly though, the principle of who should have financial responsibility for the training of Aboriginal and Torres Strait Islander community police has yet to be resolved and whilst the question of responsibility remains unresolved, the commitment to training is likely to be haphazard. The Queensland Police Service’s acceptance of the Royal Commission money at least implies that it has accepted responsibility for training.
Indeed, this appears to be the case for it has been reported (Tyler 1992, p3) that community police training did commence in the Far North Region in June 1992, utilising the afore-mentioned $150,000 for curriculum upgrading and course implementation. A new training book involving ten modules was completed by the end of August 1992. The Queensland Police Service has also developed and released a document on *Cross-Cultural Policing in Queensland*. The document deals with a range of liaison issues in relation to Aborigines, Torres Strait Islanders and people from non-English speaking backgrounds.

The section on Aboriginal community police is relevant to discussion here. The document sets out eleven characteristics which should be contained in the training and development of Aboriginal community police. It should be noted that the document assumes that the Queensland Police will accept responsibility for the employment, recruitment and training of community police. The training is conceived of as a form of apprenticeship over a three year period which would result in a qualification at the completion of the training. The qualification would also guarantee entry into the mainstream police recruitment program if desired by the community police officer. The proposal attempts to overcome some of the problems associated with the current system in terms of responsibilities for employment and training and also provides a clear career path which may overcome the high turnover rate. In addition it raises the issue as to whether community police should be trained in a way which would enable their transfer between communities. The essential difficulty with the proposal will be to develop mechanisms which ensure that communities retain and indeed develop their ownership and control of community police and policing.

When the Race Discrimination Commissioner's staff first went to Mornington Island in March 1991, it seemed that the training course for Aboriginal community police on watchhouse procedures was inadequate. In at least one area, it appeared to contradict recommendations from the Royal Commission: for example, it allowed community police to engage in their own form of diagnostic assessment of medical conditions, rather than seeking professional assessment and treatment. Under the heading 'Sick or Injured Prisoners', the training manual stated:

> You must always make sure that you check persons who appear drunk, to make sure that they are not just ill or injured. Many people such as diabetics and epileptics wear or carry discs or bracelets which let you know of their illness. These people may have sudden attacks which may make them appear drunk or violent. Some illnesses or injuries which may cause the person to appear drunk or violent are: concussion, injury to the brain, fractured skull, shock...

The Coroner noted that community police on duty at the time of Sandy's death had no training to enable them to distinguish intoxication from more life-threatening conditions. As a result of the recommendations from the Royal Commission into Aboriginal Deaths in Custody, some $185,000 of Federal money has been made available to the Queensland Police Service to develop and implement a training program for State police in relation to the responsibilities and duty of care owed towards persons in custody. It is important that community police receive similar in-service programs.

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20 See Appendix B for a full description.
A number of recommendations relating to the improvement of inadequate training of community police have been formulated for some time. Commissioner Wyvil (1989, pp.34-35) in his report on the death of Alistair Riversleigh at Doomadgee noted seven shortcomings in the system of community police. These included the fact that community police are not members of the Queensland Police Force; have no career structure; need no formal qualifications (including literacy or numeracy) for appointment; need to meet no requirement to be of good character; have received no formal police training; and are appointed and paid by the Aboriginal Council, but are subject to the control and direction of any member of Queensland police in discharge of their duties. This position leads to confusion and uncertainty at community level as to who has responsibility for the administration and supervision of community police; there are also difficulties in policing as a result of kinship networks. The issues raised by Commissioner Wyvil are important in relation to the quality of the policing service which Aboriginal and Torres Strait Islander people receive, although there may be divergence from some of his conclusions and recommendations.21

The Aboriginal Coordinating Council has put considerable time, effort and resources into the issues of developing and implementing community justice mechanisms, including the training of community police. In 1988 the ACC developed a training manual with video for Aboriginal and Torres Strait Islander police. It appears that it is has not been utilised by the Police Service (see Aboriginal Coordinating Council, 1988a; and Aboriginal Coordinating Council, 1988b).

The National Report of the Royal Commission into Aboriginal Deaths in Custody and the Coroner inquiring into the death of Craig Sandy also made recommendations relating to the training of community police: in short, it is inarguable that there has been adequate documentation and specific recommendations relating to this problem for some time. It is imperative that effective changes occur.

The death of Craig Sandy in the Mornington Island watchhouse could well have been avoided had community police training been improved; indeed the Royal Commission into Aboriginal Deaths in Custody had previously completed its inquiry into the death of Alistair Riversleigh at nearby Doomadgee and had noted that the death was 'man indictment on the system which allows uneducated, untrained and unsupervised Aboriginal police to perform police duties... Had the Aboriginal police at Doomadgee been properly trained and supervised, the death of Alistair Riversleigh should not have occurred.' (Wyvil, 1989, p32)

In addition to the training of Aboriginal and Torres Strait Islander community police, a heavy emphasis needs to be placed on the provision of adequate supervision of community police by the State police.

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21 For instance, in the development of community-based policing mechanisms, the issue of 'formal qualifications' would need to be decided by the community; and literacy might be interpreted to refer to knowledge of tribal languages used in the community.
3.4 The Watchhouse

The conditions at the watchhouse on Mornington Island are completely unacceptable. Furthermore the watchhouse conditions have been a source of concern for some considerable period of time. While discussions concerning a replacement have been mooted since before 1990, by November 1992 no work had started on a new watchhouse. It is also imperative that the State works department responsible for designing and building the new watchhouse should consult with the Aboriginal and Islander Legal Service and the community concerning the most appropriate designs for Aboriginal prisoners.

3.4.1 Early Complaints

A delegation from the Yuenmanda Women's Group inspected the police watchhouse on 27 November 1987 as a result of requests from women on the Island. In their report the members state that they were appalled at the conditions in the watchhouse and raised a number of issues as follows:

- A woman was held for eight days during which time she had to wash fully-clothed in the exercise yard, in view of male prisoners. She was left unattended in the company of male prisoners.
- The watchhouse was regularly left unattended.
- The watchhouse had only one toilet, wash-basin and shower which were in the male section of the building.
- There were no mattresses in the women's section and prisoners were required to sleep on the concrete floor.
- The cells were only hosed once a week without the use of disinfectant, the blankets were filthy and the smell in the watchhouse was offensive.

At the time of the delegation, police responded to complaints by stating that there was no allocation of funds to repair or maintain the watchhouse, nor were there funds provided for cleaning materials for the watchhouse.

The issue of availability of water to the watchhouse was raised again by the Yuenmanda Group and the Aboriginal and Islander Legal Service in September-October 1990. It was proposed that the watchhouse be connected to town water mains, and that this water be supplemented by drinking water. It would appear that this had occurred by the time of the first visit by the Race Discrimination Commissioner's staff. The Legal Service file note also made reference to the proposed commencement of a new watchhouse in November-December 1990. It was noted in later correspondence that a new watchhouse was listed for the 1992-93 capital works program. However it is understood that there are currently no funds available for the replacement of the watchhouse.
3.4.2 Inspection of the Watchhouse by the RDC’s staff

During their first visit to the Island, staff visited the watchhouse on two occasions. The watchhouse consisted of three small (approximately 2.3 x 3 metres) cells, each with a toilet, a foam mattress and some very old blankets. One cell was designated a female cell. There was non-drinking water available in only two cells, although buckets of drinking water were available in each cell. There were two showers.

The building was old, dilapidated and smelt offensively. The total size of the structure was 7.6 x 5.2 metres. There were many possible suicide points including exposed beams and open meshing. The structure was surrounded by a small exercise yard which measured 15 x 12 metres. The poor condition of the watchhouse was recognised by the local sergeant.

Some changes were made to the watchhouse prior to the second HREOC staff visit in November 1991. During this period some of the exposed points within the structure were covered with wire meshing to reduce the number of possible hanging points. The conditions of the watchhouse were brought to the attention of the Minister for Police by the Race Discrimination Commissioner following that visit. In reply (13 January 1992) the Minister accepted the description of the watchhouse, but noted that no funds were available for its replacement.

It would appear from the submission by the Aboriginal Coordinating Council to the Royal Commission into Aboriginal Deaths in Custody that, with the exception of new watchhouses in Doomadgee and Yarrabah, similar conditions exist in other watchhouses in the Cape York communities (Aboriginal Coordinating Council, 1990, pp.61-63).

3.4.3 Who Goes into the Watchhouse?

During the first visit to Mornington Island, the RDC’s staff asked police for details concerning the use of the watchhouse. At that time the State police estimated that on average ten people were held in the watchhouse on a Friday night. However, on occasions, there were up to 25 persons held in the watchhouse. In the Preliminary Report prepared by the Race Discrimination Commissioner, it was noted that the size, the number of cells and the condition of the building would render even ten detainees unacceptable. In one interview with an Aboriginal person who had spent time in the watchhouse, it was alleged that detainees were kept in until nine or ten o’clock in the morning after being locked up all night. It was also alleged that prisoners were not given breakfast and that prisoners had to sleep on the cement overnight when the watchhouse was crowded. The major reason for being held in the watchhouse is in relation to drunkenness.

An examination the watchhouse books for the months of January-February and June-July 1991 show the number of people being held there. The figures for the four month period are shown below in Table 2.
Table 2
Watchhouse Occupancy
Jan-Feb and June-July 1991

<table>
<thead>
<tr>
<th>Month</th>
<th>Men No</th>
<th>Women No</th>
<th>Total No</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>31</td>
<td>9</td>
<td>40 100</td>
</tr>
<tr>
<td>February</td>
<td>75</td>
<td>20</td>
<td>95 100</td>
</tr>
<tr>
<td>June</td>
<td>21</td>
<td>11</td>
<td>32 100</td>
</tr>
<tr>
<td>July</td>
<td>16</td>
<td>13</td>
<td>29 100</td>
</tr>
<tr>
<td>Total</td>
<td>143</td>
<td>53</td>
<td>196 100</td>
</tr>
</tbody>
</table>

Occupancy of the watchhouse varied from time to time. In fact of the 120 days in the four month period, the watchhouse was used on 58 days, which is on average around 50% of the time. When the watchhouse was used, there were on average three to four occupants. In January and June the maximum at any one time, according to the records, was six persons. However it should be noted that on some occasions there were many more individuals in the three-cell watchhouse. On 27 February 1991 there were 22 individuals recorded, and on 24 February and 1 February 1991 there were 13 persons recorded on both occasions. The age range of those detained was from 15 to 49 years. Over one quarter of those detained were women.

New procedures were introduced in May 1991 in relation to arrests for drunkenness which reduced the number of individuals detained overnight in the watchhouse. Regional instructions were issued which required State police only to arrest for drunkenness and instructed that those detained were to be released at the end of the evening shift. Special permission was to be sought to further detain those too intoxicated to be released. The figures shown in Table 2 show some reduction in the number of persons detained. A survey of the watchhouse book also showed a reduction in the length of time people were spending in the watchhouse - indicating a decline the numbers held overnight. The Police Minister's letter (21 May 1992) also refers to assurances by the Assistant Commissioner in charge of the Northern Police Region that watchhouse procedures have been improved.22

The Coroner in his report on the death of Craig Sandy was also critical of watchhouse procedures, noting that a number of police instructions were not properly complied with and that the inspection of prisoners by State police 'was improper and inadequate and not in accordance with the General Instructions'. The Coroner recommended that strict adherence to watchhouse procedures be ensured by officers-in-charge. He also noted the absence of means whereby a person in custody could raise an alarm or

22 'Attention is given to timely release of prisoners and the encouragement of family and friends to attend the watchhouse to provide support'.
contact police. There is apparently still no system of communication between the watchhouse and the custodial officer. These conditions relating to checks and an alarm system are contrary to recommendations 137, 140 and 141 of the Royal Commission into Aboriginal Deaths and Custody. Commonwealth money was provided to the Queensland Police Service in late 1990 to install surveillance equipment in a number of watchhouses and $240,000 was allocated to centres in Woorabinda, Yarrabah, Cairns, Townsville and Rockhampton.

The Coroner stated that the 'police watchhouse does not provide a safe custodial environment... The State Government should consider the immediate replacement of this watchhouse'. The evidence presented in this report supports the view of the coroner. It should also be noted that twelve months have elapsed since the coroner's findings and recommendations were handed down and yet nothing has been done to replace the watchhouse. Such a position is totally unacceptable.

3.5 The Need for a Sobering-Up Centre

The Coroner inquiring into the death of Craig Sandy recommended that 'a diversionary facility be established on Mornington Island to accommodate, care and treat persons affected by excessive alcohol'. During the first HREOC visit the sergeant of police expressed support for the provision of a sobering-up centre.

The Royal Commission into Aboriginal Deaths in Custody made a number of recommendations dealing with the provision of sobering-up facilities. Recommendation 80 stated that the abolition of the offence of drunkenness 'should be accompanied by adequately funded programs to establish and maintain non-custodial facilities for the care and treatment of intoxicated persons'. The Queensland Government has supported this recommendation. Recommendation 81 stated that there should be a statutory duty placed on police to consider and utilise alternatives (such as sobering-up centres) to the detention of intoxicated persons in police cells. This recommendation has also been supported by the Queensland Government. The Government response notes support for diversion, the piloting of diversionary facilities in Brisbane, Townsville and Mount Isa, and the joint consideration of other options by the Police Service and Health.

The empirical information provided in the analysis of the watchhouse records gives some indication of the resources necessary for a place for holding and caring for intoxicated persons. It would appear that a facility capable of holding up to 20 people would be necessary. There is also a need to consider any special requirements for women in need of assistance.

3.6 Racism, Sexism and the Administration of Justice

Members of the Aboriginal community on Mornington Island related numerous incidents concerning what they perceived to be racism to the Race Discrimination Commissioner and her staff on all their visits. Such incidents often involved alleged assaults on Aboriginal people by non-Aboriginal people which failed to result in any
police intervention, while others involved the sexual exploitation of young Aboriginal females by non-Aboriginal males in exchange for alcohol.

A non-Aboriginal man was charged with three counts of indecent dealings with three Aboriginal girls. One charge was dropped because the girl was intimidated by the court process; another of the girls became pregnant and subsequently had the child. The male was found guilty of two charges and placed on a six-month good behaviour bond. The Aboriginal Legal Service wrote to the Attorney-General and the matter was appealed on leniency of sentence to the Queensland Court of Criminal Appeal. The Court of Criminal Appeal upheld the magistrate's order. Thomas J (with whom Ambrose J and Moynihan J agreed) found that the 'sexual favours' were 'freely offered'. His Honour made the comment that the girls were sexually experienced and this fact was well known on the Island. The Aboriginal Legal Service is of the view that the effect of Judge Thomas' decision was to place all the responsibility onto the Aboriginal girls rather than the non-Aboriginal adult male.

There was also considerable concern over the failure to take action in relation to the rape of Aboriginal women. It was alleged by community members that at least one rape of an Aboriginal woman occurred monthly, but that the police or others took no action. Interviews with the doctor on the Island also confirmed the prevalence of sexual assault. He estimated that the frequency of rapes was likely to be one a week. He was aware of a recent case where a grandmother had been raped by her grandchild, and of two pack rapes that had occurred in the month prior to the interview in November 1991.

Details of one incident will serve to illustrate some of the problems. An Aboriginal woman was raped in 1990 in the yard of the preschool. The school principal's house was next door. According to the victim's statement, the principal heard the woman screaming at night, asking for help and telling the attacker to stop. The principal heard the cries for help and told the victim and offender to go away. The principal went back to bed and did not alert the authorities. In evidence he stated that he had become conditioned to aggression between people on Mornington Island and went back to bed so that he could 'function as a normal person the next day'. The victim was of the view that help would have been forthcoming if she had been a non-Aboriginal woman rather than Aboriginal.

There should be serious concern about the apparent lack of intervention in relation to situations of sexual and/or physical violence against Aboriginal women. The Race Discrimination Commissioner acknowledges that this is a particularly difficult problem as, in many cases, the victims of rape do not report the assault. This may be compounded in the case of Aboriginal women who may feel that they will not receive much assistance from the police and thus are even less inclined to report rape. Specialised training has been developed within the police force to help officers assist victims of sexual assault; this should be assessed for use in Aboriginal communities.
Recommendations to Section 3: Criminal Justice Issues

- That the Queensland Government, as a matter of urgency, implement the necessary legislation to decriminalise public drunkenness.

- That the Queensland Government, as a matter of urgency, investigate the feasibility of establishing a sobering-up centre on Mornington Island.

- That the Mornington Shire Council implement the recommendation from the coronial inquiry into the death of Craig Sandy, and authorise Aboriginal community police to apprehend persons for drunkenness with the condition that such persons be taken to a sobering-up centre.

- That police on Mornington Island follow the recommendations from the Royal Commission into Aboriginal Deaths in Custody in relation to the use of charges of obscene language, and that where such charges are preferred that the offender be proceeded against by way of summons rather than arrest.

- That the Mornington Shire Council acknowledge that it can play a leading role in crime prevention strategies, and that such strategies should involve maximum community direction and participation.

- That the Queensland Government liaise with the Aboriginal Coordinating Council to assist the Mornington Shire Council in the development of crime prevention strategies along the lines already suggested by the Aboriginal Coordinating Council and the Australian Institute of Criminology.

- That the Queensland Police Service, on completion of its consultant's report, implement a selection process which assures formal community input over which police officers will be stationed at Mornington Island.

That the Queensland Police Service review their policy of sending unmarried male police constables on six-month rotations to Mornington Island with the view to facilitating the use of married police officers and female police officers who may wish to serve extended periods in the community.

- In line with the above recommendation, that the Queensland Police Service develop selection processes for police serving in Aboriginal communities which are complementary to the stated commitment to community policing, and which facilitate the integration of police into the community.

- That the Queensland Police Service recognise that it is unacceptable that police serving in Aboriginal communities should have no specialist training, and that therefore the development and introduction of induction training occur as expeditiously as possible. In addition to such
training, new police should be formally introduced to elders in the community.

- That the Queensland Police Service review the status and functions of Cross Cultural Liaison officers with a view to establishing gazetted positions with specified duties and appointment at a level which recognises the importance of the task.

- That the Queensland Police Service review their training programs in relation to the use of domestic violence legislation in Aboriginal and Torres Strait Islander communities; and that the Service monitor the use of protection orders to ensure that there is equity in the availability of protection orders for women irrespective of their racial or ethnic background.

- That the Queensland Police Service consider the recommendations from the report being prepared for the Queensland Department of Family Services and Aboriginal and Torres Strait Islander Affairs on the effectiveness of the domestic violence legislation in Aboriginal and Torres Strait Islander communities.

That the police and the Mornington Council continue to convene and support a committee (which includes other interested parties such as the Yuenmanda Women's Group) to develop appropriate responses to domestic violence at the community level.

- That Mornington Shire Council and the Queensland Police Service implement the recommendations from the coronial inquiry into the death of Craig Sandy which relate to the employment, training and workpractices of community police.

- That the Queensland Government follow-up on the implementation of the recommendations from the coronial inquiry into the death of Craig Gable Sandy.

- That Royal Commission-funded training currently being given to Queensland State Police on the responsibilities and duty of care owed towards persons in custody, also be available to community police.

- That when Aboriginal and Torres Strait Islander community police are being employed, there should be particular attention paid to recruiting Aboriginal and Torres Strait Islander women. It may be necessary to implement a necessary minimum requirement that a certain number of community police are women.

- That Community Councils must pay award wages and that they should take responsibility to ensure that they do not discriminate and contravene State and Federal legislation. The Race Discrimination Commissioner is concerned that the situation on Mornington Island is being replicated in other areas.
• That the Queensland Police Service accept responsibility for the training of Aboriginal and Torres Strait Islander community police and accordingly make the necessary budgetary allocations; and that there be ongoing evaluation of the effectiveness of Aboriginal and Torres Strait Islander community police training in Queensland communities.

That the Mornington Island watchhouse be replaced immediately with a new structure, as the current one is not a safe custodial environment. When replacing the watchhouse, the State works department should ensure adequate consultation with the Aboriginal and Islander Legal Service (as a representative Aboriginal body) and the Mornington Island community concerning special design requirements.

• That police on Mornington Island strictly adhere to the recommendations of the Royal Commission into Aboriginal Deaths in Custody in relation to checks and supervision of people in custody.

• That a register of conditions in watchhouses in Aboriginal and Torres Strait Islander communities in Queensland be kept by a group of independent observers comprising representatives from the Aboriginal and Torres Strait Islander communities, the State Government, Queensland Anti-Discrimination Commission and the Queensland Council for Civil Liberties.

• That offences against Aboriginal and Torres Strait Islander women, particularly those involving sexual assault, be investigated fully by police and treated seriously by judicial officers.
4. YOUNG PEOPLE, JUVENILE OFFENDING AND JUVENILE JUSTICE

It has been recognised that Aboriginal children are at 'the cutting edge of the conflict between the two systems' (O'Connor, 1990, p.10). There are many conflicting expectations placed on young people in Aboriginal and Torres Strait Islander communities and often inadequate support in terms of education, training and employment.

4.1 Aboriginal Young People

Young people face distinctive problems on the Island. Such problems relate to their over-representation in criminal charges, their under-employment and the nature of their relationship to traditional Aboriginal values. Women from the Yuenmanda group stated that young people engaged in break and enters because there was 'nothing to do', because of the need for attention, and in some cases the need for food.

During a HREOC interview with non-Aboriginal representatives from Northern Project Management who manage the Community Development Employment Program (CDEP), it was acknowledged that there were specific problems with gaining young people's involvement in work projects, particularly with the 15-18 year old group. This same age group appear to be those that are held most responsible for break and enters on the Island.

In the interview between Mornington Shire Council and the delegation from the World Council of Churches, the issue of young people was raised as an area of particular concern. The issue was in the context of family separation and an apparent lack of discipline among youth. (World Council of Churches, 1991, p.34). Many of the problems associated with Mornington Island are common to other Aboriginal and Torres Strait Islander communities. For some years the Aboriginal Coordinating Council (ACC) has expressed concern about the extent of juvenile offending which it argued was far higher in Aboriginal communities than comparable rates throughout Queensland (Aboriginal Co-ordinating Council, 1990, p.40). The ACC has also noted the destruction and distress caused among the Aboriginal community by juvenile offending. (Aboriginal Co-ordinating Council, 1988, p.51). Some idea of the extent of criminalisation of Aboriginal juveniles can be gained by a report by Martin to the Royal Commission into Aboriginal Deaths in Custody concerning Aurukun, which argued that approximately 45% of males aged between 15-19 years of age were arrested at least once in 1987 (O'Conno, 1990, p.51).

It is important that there is adequate acknowledgement of the way in which current systems of control on the Island may promote a lack of discipline among young people. The control by non-Aboriginal decision-makers reinforces a process of dependency. Such a dependency robs people of autonomy and self-determination, and actively undermines culturally appropriate forms of social control. The system itself can be seen as generating a lack of self and community discipline among the young by enforcing dependency in adults. In many respects the movement to outstations is a way of overcoming dependency and the lack of control over day-to-day life. Outstations also provide the opportunity for Aboriginal adults and elders to exercise their own forms of social control over young people.
4.2 Aboriginal and Torres Strait Islander Youth and Juvenile Justice in Queensland

There are a number of general characteristics of the relationship between Aboriginal and Torres Strait Islander youth and the juvenile justice system in Queensland which should be considered. It was reported earlier in section 1.1 that a dormitory system was used on Mornington Island to separate Aboriginal youth from those of the opposite sex, and to a great extent, from the community at large. It has been noted that within many reserves in Queensland 'children were separated from their families and forced to live in dormitories... [which] sought to resocialise the children into 'European' norms and served as places of punishment'. (Criminal Justice Commission, 1992, p.2). The long term impact of child-removal has adversely affected parenting skills and also developed a more punitive notion of punishment for young offenders.

There is little data available which would indicate the specific impact of the juvenile justice system on Aboriginal and Torres Strait Islander youth in Queensland. It is not known what impact Aboriginality, geographic location or family structure might have on police discretionary decisions such as the decision to caution. Information collected by the Race Discrimination Commissioner's staff shows that police on Mornington Island do caution young people; however, how this compares with cautioning Aboriginal and Torres Strait Islander youth generally in Queensland cannot be gauged. Nor is it known what effect cautioning by police might have on recidivism rates in small communities such as Mornington Island. There are also more fundamental questions which need to be considered including whether police cautioning is a culturally appropriate form of dealing with Aboriginal and Torres Strait Islander youth (Criminal Justice Commission, 1992, p.23).

Children's Court statistics in Queensland do not generally record the Aboriginality of defendants. However it has been noted that in some Aboriginal communities the rate of appearances and charges is higher than in other parts of the State (Aboriginal Coordinating Council, 1990, p.44). It has also been noted that 'there are indications that children from Aboriginal communities are less leniently dealt with by Children's Courts. This means that they move through the juvenile justice system into institutional care at an accelerated pace.' (Criminal Justice Commission, 1992, p.56). This finding has been more recently supported by evidence from Aurukun (Carter, 1992, p.8).

In broad terms, Aboriginal and Torres Strait Islander youth are over-represented at the more intrusive end of the juvenile justice system, constituting some 30% to 40% of those incarcerated during the period 1987-1990. They also serve significantly greater periods of time in detention than non-Aboriginal youth. (Criminal Justice Commission, 1992, pp.39-40, 57). The fact that Aboriginal and Torres Strait Islander juveniles are already grossly over-represented in the most punitive stages of criminal justice intervention and that they are already serving longer periods in incarceration than non-Aboriginal youth has implications for Mornington Island, as any development of community-based sentencing options on the Island should keep this evidence in mind.

Analysis by the RDC's staff of the use of the watchhouse on Mornington Island confirmed that on a number of occasions, children of the ages of 15 and 16 were held in the watchhouse for varying periods of time. In addition, the Race Discrimiantion
Commissioner has been supplied with photos showing male and female Aboriginal juveniles being held with adults in the watchhouse in May 1990. It has been noted that a new policy was implemented on 23 December 1991 which requires formal notification of arrangements between police and the of Family Services when children are held in custody. (Criminal Justice Commission, 1992, p.24).

It can be acknowledged that in certain circumstances such as arrest and charges for serious indictable matters, or when juveniles have been sentenced to detention, it may be necessary to hold young people in custody for short periods of time. Notwithstanding such exceptions, there are no facilities currently on Mornington Island which are suitable custodial environments for young people. Indeed, the Mornington Island watchhouse is not a safe custodial environment for adults and has the further disadvantage that adults cannot be properly separated from juveniles. These conditions breach the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).

In short, the detention of Aboriginal and Torres Strait Islander children in police cells is inappropriate, and it should be noted that this has been raised as an area of concern in other forums. (Criminal Justice Commission, 1992, pp.23-24; and the Royal Commission into Aboriginal Deaths in Custody). The detention of juveniles becomes more problematic in remote areas.

43 The New Juvenile Crime Strategy in Queensland

The Queensland strategy has two components, one of which is legislative reform, the other is a Juvenile Justice Crime Prevention Program (JJCP).

The JJCP has been allocated $1,271,000 for 1992-93 and these funds will be allocated on a regional basis according to need. Local projects will be expected to implement strategies which encourage broad participation and develop strategies to respond to the problem of juvenile offending at the local level. The projects will incorporate a whole-of-government approach by combining the resources of all relevant government departments. The objective of the scheme is to concentrate on crime prevention by targeting non-offending children in areas with high rates of juvenile offending. (Tansky, 1992, O'Connor, 1992).

On 4 August 1992 the Juvenile Justice Act and the Children's Court Act were passed by the Queensland Parliament but have yet to be proclaimed. The legislation will impact on Aboriginal and Torres Strait Islander youth in a number of ways. It has been claimed that the legislation provides a new approach in relation to sentencing by offering new and expanded sentencing options. However, the extent to which this is the case in practice has been challenged. (O'Connor, 1992, p.8). There have also been claims that the Juvenile Justice Act provides few protections for young people in regard to legal rights. (O'Connor, 1992, p.5)

There are some important provisions in the new legislation which could be used to advantage in Mornington Island. The legislation provides a statutory basis for the cautioning of young people by police officers (s.11, Juvenile Justice Act 1992). Section 14 of the Act provides that cautions can be administered by an elder of an Aboriginal or Torres Strait Islander community instead of a police officer. The procedure also
may include the participation of the victim under certain circumstances (s.16). The utilisation of such a provision could provide an important mechanism for the exercise of community control over young offenders who have committed minor or first offences. It is recommended that the current diversionary system on Mornington Island which utilises elders after an initial court appearance be expanded to include such a cautioning mechanism prior to the use of court.

The legislation also provides for police to proceed by way of attendance notice (ss.23-31) as an alternative to arrest and bail. If utilised properly this process should reduce the number of Aboriginal and Torres Strait Islander young people going into police custody. The use of attendance notices instead of arrest is particularly appropriate on Mornington Island given the relatively closed community and likelihood of attendance at court.

A major area of change as a result of the legislation is that the Family Services will receive resources to develop the necessary programs for community-based corrections for juvenile offenders. They should ensure that remote communities like Mornington Island are adequately serviced.

4.4 Developing Community-Based Options for Aboriginal Young People on Mornington Island

The Aboriginal Coordinating Council has discussed many of the specific issues relating to young people on communities in northern Queensland. (Aboriginal Coordinating Council, 1990, pp.39-41). Of particular importance is the failure of Western legal sanctions to operate effectively in relation to Aboriginal and Torres Strait Islander young people. This failure had led to a greater need for the development of community justice mechanisms. The present system of court sanctioning only appears to further entrap Aboriginal and Torres Strait Islander people in the criminal justice system and further alienate Aboriginal and Torres Strait Islander young people from their kin.

The Criminal Justice Commission (1992) has noted in its issues paper that there is a lack of community-based options in remote areas. Similarly the Royal Commission into Aboriginal Deaths in Custody has strongly emphasised the need to develop community-based sanctions. The current lack of options particularly impacts on Aboriginal and Torres Strait Islander youth. In addition, because of the lack of resources in isolated areas, a supervision order by the court may be meaningless if there is no infrastructure to implement such an order (Criminal Justice Commission, 1992, p.59). The CJC issues paper suggests that the implementation of new juvenile justice legislation in Queensland 'must ensure that (i) Aboriginal and Torres Strait Islander youth are afforded the benefits of diversion and (ii) culturally appropriate community-based corrections programs are developed.' (Criminal Justice Commission, 1992, p.58).

The Criminal Justice Commission (1992) has also noted in its issues paper that 'there is a need for an extensive primary crime prevention program which addresses the local

23 The Walgut Kuba Laga scheme is discussed below.
causes of crime.' (Criminal Justice Commission, 1992, p.58). The report noted that in some communities successful crime prevention initiatives have included the employment of local recreation workers and the development of sporting or other recreational programs. It is therefore noteworthy that Mornington Shire Council has not allocated resources to the employment of a youth/recreation officer.

There are some lessons from Aurukun in relation to juvenile offending which may be helpful to Mornington Island. Carter has noted that after a spate of juvenile offending in Aurukun, the Council requested that the Department of Family Services and Aboriginal and Islander Affairs meet with the Council in relation to issues of juvenile justice and community development. Carter reported that

the meeting proved beneficial as better ideas of the needs of the community were gained. Issues raised at that meeting included the diverse role of the Council, the lack of recreational activities for the young, gaps in knowledge regarding legal rights, the use of outstations and funding. This contact was to prove beneficial once regular visits by a juvenile justice worker occurred in February 1992. (Carter, 1992, p.2)

During 1992 other initiatives were tried in Aurukun with juvenile offenders. The Department of Family Services and Aboriginal and Islander Affairs organised a workskills program conducted near Tully on at least one occasion, while the community itself has utilised community service within the township as well as taking young offenders onto outstations. It has been noted that:

Experience at Aurukun would suggest that outstations should not be seen as the only response but one in a range of responses. It can be successful when parents or a direct care giver is present. Although the concept of punishment may not be removed entirely the emphasis should be placed more upon the benefits of being with their family and the opportunity to gain a greater knowledge of their culture. Care needs to be taken to ensure that all people at the outstations are in support. It is important to remember that many on the outstations [are there] to avoid the fighting and alcoholic situations. (Carter, 1992, p.6).

A final point that must be considered in developing community-based responses is that re-integration back into the community is a major concern because, as Carter has noted in relation to Aurukun, 'the difficult task occurs when the young people return to a setting where access to employment, education and support is missing.' (Carter, 1992, p.6).

The new Queensland legislation opens up the possibility of greater community involvement in diversion (cautioning) or after sentencing (through community service orders). However community involvement is also dependent on knowledge about how the system operates and the availability of resources. The Race Discrimination Commissioner understands that members of the Aboriginal Childcare Agency (Cairns) and the Department of Family Services and Aboriginal and Islander Affairs (Townsville) will be undertaking visits to northern Queensland communities to explain the new legislation.
4.5 Services Provided by the Department of Family Services and Aboriginal and Islander Affairs

The has four programs being supported on Mornington Island including the women's shelter and a neighbourhood centre. Of particular reference to young people are the Remote Area Aboriginal and Islander Child Care Program and the Alternative Care and Intervention Program.

Both of the later programs employ a full time Aboriginal person as a permanent worker. The Child Care Program focusses on younger children and particular issues such as schooling. The Alternative Care Program is concerned with children up to the age of eighteen years. The worker is involved in child protection and care issues and also has some involvement in juvenile justice issues. In particular the departmental worker has been important in offering administrative support to the Walgut Kuba Laga scheme which is outlined below.

4.6 Diversion Through the Use of Elders

An important change which occurred between the second and third visit of the RDC's staff was the establishment of an elders' scheme for dealing with juvenile offending. This is referred to as the Walgut Kuba Laga scheme. After a young person appears in the court and the charge has been proven, the magistrate adjourns the matter for sentencing until after the young person has had the opportunity of appearing before an elders' group. The group of elders brought together is particular to the kinship ties of each individual young person. The requirements placed by the elders on the young person also varies.

Initially there have been seven young people, recognised as being difficult offenders, brought before the elders. There has been use made of the outstations where young people are required to go with relations for a period of time. Comments made earlier by Carter in relation to Aurukun may be useful: the use of outstations should only be one of a number of community-based strategies which are utilised. After completing the requirements of the elders' group the young person goes back before the court for sentencing. The magistrate then takes into account whether the young person completed the tasks required of them. In six of the seven cases the magistrate admonished and discharged the young person, although restitution of between $70 and $90 was also ordered in some cases. One youth was sentenced to an institution. The magistrate for Mornington Island appeared to be quite enthusiastic about the scheme.

The Walgut Kuba Laga scheme should be supported providing it does not lead to a situation where young offenders are doubly punished by the community and by the juvenile justice system. Further community control over the scheme and less of a role for the courts should also be supported. Such an outcome could be achieved when the new juvenile justice legislation is proclaimed.
Recommendations of Section 4: Young People

- That Mornington Shire Council consider specific initiatives in CDEP programs which will involve young people who have left school. Involving young people in CDEP could be considered as part of a crime prevention program by Council.

- That any review of sentencing options for young offenders or any development of community-based sentencing options on Mornington Island should proceed with the knowledge that Aboriginal and Torres Strait Islander juveniles are already grossly over-represented in the most punitive stages of juvenile justice intervention and that they are already serving longer periods in incarceration than non-Aboriginal youth.

That the holding of Aboriginal juveniles in the watchhouse at Mornington Island is contrary to recommendation 242 of the Royal Commission into Aboriginal Deaths in Custody and should cease immediately. The Department of Family Services and Aboriginal and Islander Affairs and the Police Service should liaise to establish suitable forms of custody in those cases where it is absolutely necessary.

- That police on Mornington Island ensure that young people are proceeded with by way of attendance notice as an alternative to arrest and bail.

- The establishment of the Walgut Kuba Laga scheme is strongly supported. It is recommended that it should be extended to include cautioning prior to court appearance, and that it should receive adequate support from the Department of Family Services and Aboriginal and Islander Affairs and the Mornington Shire Council.

- That Mornington Shire Council consider the employment of a recreation officer as part of developing a crime prevention program.
5. DEVELOPING CRIME PREVENTION AND COMMUNITY JUSTICE MECHANISMS

It is important that adequate attention be paid to developing community justice mechanisms and a crime prevention strategy which is suitable for the people of Mornington Island.

5.1 Crime Prevention

It is apparent that Mornington Shire Council could access existing resources to develop a crime prevention strategy. It should be noted that some initiatives are already underway, in particular the use of security patrols. Some seven or eight people have been employed under CDEP to conduct special patrols on a regular basis with two to three individuals on patrol at any one time; such patrols are under direction from council.

However crime prevention also requires a perspective which includes social and economic factors. In the previous section of this report, the necessity of involving young people in CDEP employment and the need for a council-employed recreation officer have been mentioned, both of which could be considered under a crime prevention program. The Race Discrimination Commissioner has also noted the State Government's Juvenile Justice Crime Prevention Program. It is recommended that the Mornington Shire Council approach the Department of Family Services and Aboriginal and Islander Affairs with a view to developing a local juvenile crime prevention strategy.

The council could also approach the Australian Institute of Criminology for a copy of the booklet *Crime Prevention for Aboriginal Communities* and the accompanying video, *Primary Prevention for Community Well-Being: An Interview With Jean*. The booklet is a practical guide to developing crime prevention strategies in an Aboriginal and Torres Strait Islander community, whilst the video is an interview with Jean Jans discussing 'primary prevention'. An underlying point of both booklet and video is the importance of having community involvement in identifying the issues and having community ownership of any programs which are developed. This point is urged upon council: that if is to make an indent into solving the sometimes serious behavioural problems in the community, then it is essential that the community be involved to the maximum extent in developing solutions.

Effective crime prevention is also about developing the ability of communities to be engaged in determining what the key issues are and how they should be resolved. Crime prevention implies self-determination: self-determination is itself dependent on the development and control over community justice mechanisms.

5.2 Community Courts

The extent to which community courts can be developed on Mornington Island under existing legislation is not clear. As stated previously, the particular legislation which establishes Mornington and Aurukun Shires does not provide for community courts as
does the Community Services Act covering the other designated communities in Queensland. In this sense there are no community courts on Mornington Island, and the community is disadvantaged by the legislation under which it is managed.

However, there have also been recommendations that the system of community courts be reviewed as they are not functioning adequately in the other Aboriginal communities. (see Wyvil, 1989; Aboriginal Coordinating Council, 1990; and Legislation Review Committee, 1991). The Aboriginal Coordinating Council (1990, p.49) noted that problems included:

- Complete lack of training for Justices of the Peace and councillors;
- Infrequent court hearings;
- A white system of justice administered by Aboriginal people;
- The difficulty for community court paralegal personnel in remaining aloof from community conflicts or in dealing with relatives;
- The lack of support staff and facilities;
- The lack of clear definition of the role of community courts.

The Aboriginal Coordinating Council has also documented various proposals for reforming the community court system. The ACC (1990, p.49) has noted the following:

- Aboriginal people should deal with most juvenile offenders;
  Where this has not already occurred, a community group should be established to advise the court on juvenile offenders (and child abuse and neglect);
- Drunkenness should be decriminalised;
- Mediation or dispute resolution mechanisms need to be incorporated;
- The procedures and informality of small debts and small claims court and tribunals in Queensland should have application within the community court system.

The development of community justice mechanisms needs to take into account some of the problems in areas like Mornington Island where the process of colonialism has created new issues. Colonialism undermined the traditional forms of social control within clan groups in a variety of ways, some of which - the segregation of children in dormitories, and the forced marriages of Aborigines of incompatible clan groups - have been mentioned previously in this report. The consequent break down of traditional social control mechanisms and the continued active undermining of adult Aboriginal responsibilities (including parental responsibilities) has seen a dramatic rise in modern phenomena such as juvenile problems and substance abuse. In other words, the Race Discrimination Commissioner is of the view that while it is important to promote community justice mechanisms, it is also unrealistic to expect communities to
be able to simply solve problems which themselves may arise from the impact of colonial domination.

The present legislative review in relation to self-government on Aboriginal and Torres Strait Islander communities has raised the issue of establishing Complaints Tribunals along the lines suggested by the ACC (Legislation Review Committee, 1991, p.5). According to the Review's Discussion Paper,

The purpose of the complaints tribunal is to resolve disputes between Aboriginal and Torres Strait Islander residents and the governing bodies, using customary law if it is appropriate. If a community decides to have a complaints tribunal, the community constitution will have to say how it works - for instance, maybe the members could be nominated by disputing parties each time there's a dispute (Legislation Review Committee, 1991, p.5).

Mornington Island is at a disadvantage in terms of the legal limitations imposed by the shire model, in that there is already less flexibility in establishing community courts. The inappropriateness of the shire model will be discussed in a following section of this report; however, it is noteworthy that the Legislation Review Committee's report envisages Aboriginal and Torres Strait Islander communities developing their own constitutions which give them greater control over the establishment of legal mechanisms such as courts. If the main thrust of the Legislation Review Committee's report is supported by the Queensland government, then the people of Mornington Island would be in a position to significantly alter the availability of effective community justice mechanisms including local community courts and tribunals.

There are many issues which would need to be resolved in a move towards introducing community justice mechanisms including how they would involve customary law, what their relationship might be to the Queensland criminal justice system, and how they would deal with specific offences. Certainly people on Mornington Island have expressed an ongoing desire for the recognition of customary law.

Some other issues relating to the use of mediation might be resolved through the use of Community Justice Program which is discussed below.

**5.3 The Role of Mediation and the Community Justice Program (CJP)**

Mediation has been identified as an important component in developing community justice mechanisms and supporting the use of customary law. It has been argued that mediation is more suited to Aboriginal and Torres Strait Islander communities than western systems of justice. Barbara Miller has noted that Aboriginal and Torres Strait Islander communities in northern Queensland 'want mediation centres with trained local Aboriginal people as mediators. Aboriginal JPs, community police and women's groups have all expressed interest in mediation training to improve their personal and work skills.' (Miller, 1991, p.11). Mediation is non-coercive and non-punitive; the mediator is not an arbitrator but rather facilitates the process of getting disputants to reach a solution.

The Community Justice Program (CJP) has been established within the Queensland Department of the Attorney-General to promote the use of mediation. The CJP has
one particular focus in relation to providing resources, services and ideas to Aboriginal and Torres Strait Islander people (particularly in communities) for the management and resolution of disputes. The CJP is mindful of not undermining existing functional dispute resolution mechanisms where they exist in communities.

The CJP has trained a number of Aboriginal and Torres Strait Islander people as accredited mediators. These mediators have undertaken and passed a 72-hour skills development training course. The CJP has also been involved in community mediation at Doomadgee. The CJP became involved in Doomadgee as a result of concerns about alcohol management and unacceptable levels of violence. Three mediators met with various individuals and groups in the community to identify major concerns and establish priorities. (O'Donnell, 1992)

The CJP was also involved in liaising with the Legislation Review Committee in formulating recommendations for alternative dispute resolution mechanisms. There are common issues of concern in many communities relating to issues of violence, children, etc where community mediation may be useful. The CJP also hopes that land disputes which may arise out of the Queensland Aboriginal Land Act 1991 might be resolved through community mediation, inasmuch as mediation could assist the different clans to delineate their land claims.

The CJP has trained Aboriginal and Torres Strait Islander mediators who are able to provide a ‘visiting’ expert dispute resolution service when required. In the long term, the CJP can train Aboriginal and Torres Strait Islander people generally in dispute resolution skills. It can also assist communities in establishing local structures and arrangements to facilitate alternative dispute resolution.

It is recommended that Mornington Shire Council and other interested groups approach the Community Justice Program with the view to utilising its services in developing community-based dispute resolution programs through the use of mediation.
Recommendations to Section 5 Crime Prevention and Community Justice

- That Mornington Shire Council develop a crime prevention strategy. The Aboriginal Coordinating Council and the Australian Institute of Criminology may assist in this regard.

- That Mornington Shire Council and other interested groups approach the Community Justice Program with the view to utilising its services in developing community-based dispute resolution programs through the use of mediation. It is important that information about the Community Justice Program should be disseminated in the community.

- That the Queensland Government clarify its response to the development of community justice mechanisms, particularly in light of the limitations of the legislation affecting Mornington Island and Aurukun.
6. THE PROVISION OF GOODS AND SERVICES

There were many complaints made to the Race Discrimination Commissioner and her staff during their visits to Mornington Island concerning the availability and provision of services. Such complaints related to issues of discrimination and racism in the way services were provided, to the limited availability of some services and to the inappropriateness of some services.

6.1 Health

During the course of the formulation of this report changes have occurred both at State and Federal level in relation to the provision of health services to Aboriginal and Torres Strait Islander communities. A regionalised structure for health services in Queensland commenced in July 1991. At the Federal level there has been the implementation of the National Aboriginal and Torres Strait Islander Health Strategy. It should be noted that the National Strategy places a strong emphasis on primary health care as the most effective way of improving Aboriginal and Torres Strait Islander health.

6.1.1 Staffing and Facilities

Mornington Island is equipped with a 10 bed in-patient hospital. The hospital is funded by the Queensland Health Department. There is also a Aboriginal Health Centre with a registered nurse and two health workers (all of whom are Aboriginal).

The hospital is normally staffed with a resident medical officer, a director of nursing, seven nurses and two assistant nurses. Neither the doctor nor the nurses received training in Aboriginal and Torres Strait Islander issues prior to their placement on Mornington. The major staff positions are filled by non-Aboriginal people (indeed, there are no Aboriginal doctors anywhere in Australia) while one of the two assistant nurses was Aboriginal. The assistant nurses were employed as casuals. In addition there is a domestic supervisor on permanent staff, one cook, six casual domestic staff and an orderly/wardsman, all of whom are Aboriginal.

The view was expressed to the Race Discrimination Commissioner and her staff by the director of nursing that the Aboriginal assistant nurses were not always reliable and usually held their positions for only three to four months. The question of reliability was seen to be negatively influenced by spouses, family and culture. There was also some concern as to the effect of CDEP where the amount of time the husband was permitted to work on CDEP was limited by the number of hours the wife might work at the hospital.

Aboriginal people expressed the view that there was little encouragement of the Aboriginal assistant nurses in terms of training. Registered nurses at the hospital play an important role in training Aboriginal assistant nurses and in maintaining an atmosphere where the assistants feel that they are learning and contributing to patient care. Negative attitudes by registered nurses have the effect of discouraging Aboriginal assistant nurses. It is strongly recommended that registered nurses have adequate training in Aboriginal and Torres Strait Islander culture so that they can understand issues relevant to Aboriginal people who might be either patients or workers in the
hospital. It is also of concern that there is an apparent lack of incentives for the training of Aboriginal assistant nurses in courses outside the hospital.

The turnover of non-Aboriginal staff at the hospital is also a problem. At the time of the third HREOC visit to Mornington there was no permanent doctor. The resident medical officer had resigned at the beginning of 1992, and by October 1992 had not been replaced. The director of nursing had also changed between the second and third HREOC visits, and there had been similar changes with the registered nurses. It is of concern that there is a lack of incentive for nursing staff to practice in remote areas, due in part to the fact that nurses are not entitled to conditions similar to those of other State government employees in comparable circumstances, such as a number of return airfares, remote area allowance, etc. The Queensland Nurses Union is seeking improved living and industrial conditions and appropriate higher training and educational opportunities for nurses posted to remote areas. The Union made a submission to the Human Rights and Equal Opportunity Commission along these lines during the Cooktown Inquiry into the provision of medical services to Aboriginal communities. (Human Rights and Equal Opportunity Commission, 1991a).

There were a number of visiting specialists to the Island at varying intervals. A Child Health worker visited every two weeks, while a dentist, obstetrician/gynaecologist and paediatrician visited every two to three months. An eye specialist visited every two to three years but no ear specialists visited the Island. Persons with suspected ear or hearing problems were required to go to Brisbane.

Concern was expressed with the inadequacy of services relating to eye and ear specialists. There was also the problem of travel for elderly Aboriginal people. During one HREOC visit, two Aboriginal people over seventy years of age were required to go to Townsville hospital for cataract removals. The trip necessitated a morning flight to Mount Isa; a wait of about seven hours for a bus; then an overnight bus trip to Townsville. The treatment in Townsville was to be spread out over two weeks. In the end neither of the two were successfully operated on as they left Townsville after a couple of days because of lack of support and homesickness.

One possible solution to the problem is for the Queensland Health to fly its patients to Townsville. The Department of Corrective Services has established a precedent by flying prisoners to the mainland when necessary.

6.1.2 Childbirth

During discussions with the Aboriginal women over the three visits, the manner of childbirth on the Island emerged as a major issue. It had also been raised previously during the visit of the WCC delegation to Mornington Island. (World Council of Churches, 1991, p.33). The fact that Aboriginal women had to go to Mount Isa to have their children was of serious concern; a member of the Yuenmanda Women Elders’ Group expressed it this way:

The government had laws to take our children away, they had laws to sterilise us after we had a certain number of children and now they take us away from our land, our families, and our communities to have babies.
The Human Rights and Equal Opportunity Commission Inquiry into health services for Aboriginal and Torres Strait Islander communities at Cooktown and surrounding areas had been made aware of the difficulties associated with the removal of expectant mothers in other parts of north Queensland (Human Rights and Equal Opportunity Commission, 1991a).

Aboriginal women who were interviewed on Mornington Island felt that their birth rights and land rights had been removed because the child had been born at Mount Isa rather than on the Island. The place of birth was recorded on the birth certificate as Mount Isa. There was also hardship involved through the separation from family for extensive periods of time during a period when family/kin support was required. For a husband to visit his wife involved considerable travelling costs, and as most men were employed on CDEP, they were not eligible for any money should they leave to go to Mount Isa. In addition, it was unlikely they would be eligible for benefits during the time of their stay in Mount Isa because of the waiting period involved for social security benefits.

It was also strongly felt that the removal further undermined the traditional functions of the older Aboriginal women in the community who had specific tasks in relation to birthing. Rather than encouraging self-determination, this policy of transferring expectant mothers to the mainland undermined Aboriginal control over a central feature of their social and cultural life.

Ironically, the hospital on Mornington Island is equipped with a labour ward. Policy in previous years had been for women to have their children on the Island, except in instances where it was a first child or the woman had experienced difficulties with previous births. In practice, the policy of removing women who were having their first delivery and/or had a poor obstetric history came to mean that virtually all women were sent to Mount Isa. The director of nursing on the Island was aware of three deliveries in the previous three years which had occurred on Mornington.

It is the current policy in the North West Health region that all women (irrespective of Aboriginality) in the region are sent to Mount Isa, Cloncurry or Julia Creek for childbirth. The issue was discussed with the regional director for Obstetrics and Gynaecology at Mount Isa Hospital. It was acknowledged that the policy impacts more heavily on Aboriginal women because of their greater proportion in more isolated areas. It was also acknowledged that removal from the community caused some 'disruption'.

Figures supplied for this Report indicate that between January 1990 and June 1991 some 37 Mornington Island women gave birth. In 70% of cases there were complications requiring specialised care. Such complications included, or arose from, serious infections, labours needing augmentation, post partum haemorrhaging requiring transfusion, caesarian section and diabetes. Such a rate of serious complications is roughly comparable with other surrounding communities, although there are variations over the years because of the relatively small numbers involved. In terms of explaining the high rate of complications, there are a number of points which are important. There is a high rate of antenatal problems and it can be difficult in

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24 Doomadgee had a serious complication rate of 73% over 60 births during the same period.
isolated areas to provide good antenatal care. Antenatal problems are themselves related to high rates of diabetes and anaemia prior to pregnancy which in turn relates to poor nutrition and general poor health. The high infection rate is also related to poor nutrition, poor conditions and high rates of diabetes.

From the perspective of the Regional Director of Obstetrics and Gynaecology, there were a number of concerns raised at the prospect of allowing women to remain on Mornington Island for childbirth. Firstly it is difficult to accurately predict who might need to be transferred. This could have the effect of placing women at significant risk. Secondly the labour ward would need equipment for operating, particularly because during the wet season transfer may not be possible. One alternative option is to develop a 'trouble-shooting' team who are available to attend emergencies at short notice.

Aboriginal people have expressed many concerns including the style, environment, staffing and cultural deficiencies associated with the childbirth practices of western medicine. A central Australian report noted that 'hospital birth..., is often regarded with great trepidation, and is usually a highly traumatic one' (cited Human Rights and Equal Opportunity Commission, 1991a, p.27). Barbara Miller noted in relation to the Cape York communities that 'the problem is with women having to come to Cairns...about two months before the baby is due, which means they leave children and other family members behind... That is a burden on the family, plus it also makes the woman lonely... Sometimes family relationships can break up' (cited Human Rights and Equal Opportunity Commission, 1991a, p.27). In relation to the Cooktown Inquiry, the Human Rights and Equal Opportunity Commission found that 'the rights of Aboriginal women to choose where and how they give birth have been disregarded' (cited Human Rights and Equal Opportunity Commission, 1991a, p.56). The evidence from Mornington Island leads directly to the same finding.

There can be no doubt that there has been, and continues to be, a disregard for the choices of Aboriginal women in relation to childbirth. However the Commission is also concerned with the medical reasons behind the current policies. It is important to understand the complexities of the situation from both a medical/legal perspective and a cultural perspective. It is true that there is a high rate of complications, yet it is equally true that Aboriginal women and men desire that their children are born on Mornington.

There are surely grounds for discussion between the Aboriginal community and the medical service about developing a birthing centre on the Island, especially given the existence of a labour ward. It is clear that safeguards need to be considered, starting with a better antenatal care program to reduce birthing risks and including the possibility of a mobile team of skilled staff from the mainland coming to the Island, rather than the women being taken from the Island. Indeed, HREOC staff were informed by the previous doctor on Mornington that there had been such discussions concerning the establishment of a pilot scheme for birthing on the Island. Hence it is recommended that prompt consideration should be given to the establishment of a birthing centre on Mornington Island which is supported by a fly-in team of specialists if necessary.

In considering these issues, there is no desire to place Aboriginal women at greater risk during pregnancy and birth. However, the Race Discrimination Commissioner is
concerned that the blanket definition of 'at risk' in Aboriginal communities - while based partly on medical reasoning - has become administratively more easy to operate than a selective model which differentiates to a greater degree between women. Indeed, the Commissioner believes that a blanket policy is offensive and that cases must be assessed individually. Aboriginal women who discussed the issue with HREOC staff found it difficult to understand why medical professionals could not offer a greater prediction among women as to who would be at risk, thus enabling at least some women to have their babies born on the Island.

It is also of concern that technical solutions to perceived health problems in Aboriginal and Torres Strait Islander communities are based on assumptions that Aboriginal and Torres Strait Islander requirements would lead to increased ill health. There are broad and complex issues surrounding the desire by Aboriginal women (and men) to have their children on their land. The prioritising of technical solutions to the neglect of cultural issues may in fact be promoting ill health in other spheres through cultural distress. These particular issues were discussed at length in the Cooktown Report mentioned above and the recommendations in that Report are relevant to the situation on Mornington Island.

The evidence in this Report raises a serious concern about the lack of understanding of Aboriginal cultural issues shown by some in the medical/nursing profession. In particular the categorisation of birth as simply a medical problem underplays the cultural significance of the event for Aboriginal people. It would appear that there is little opportunity to reach a compromise between medical and cultural issues, if one side dominates decision-making and fails to understand the depth of concern which arise from such issues. A compromise position should be able to be developed, but it will need to begin from a position which recognises the validity of concerns on both sides.

6.1.3 Sending Children Off the Island

There is a program of 'fattening' babies and children under two years of age by sending them to Mount Isa for a few months. Babies are sent at the recommendation of the doctor and kept at Mount Isa hospital. Sometimes the mother accompanies the baby, but not always. Approximately twelve had been sent away in the previous six months according to the Aboriginal community health worker.

There was also concern that children were being fostered to non-Aboriginal families off the Island. Recently there has been the establishment of a committee of Aboriginal and non-Aboriginal people to access suitable foster families on the Island as a way of lessening the likelihood of such removals.

6.1.4 Alcohol-related Medical Problems

Discussions between the Race Discrimination Commissioner and her staff and the doctor and director of nursing on the Island indicated a real problem with alcohol-related illness. Alcohol abuse, which was manifested in a range of health problems, was seen as the major health issue on Mornington Island by those involved in the Aboriginal Health program.
Figures cited for a six month period in 1991 indicated that 40% of consultations were related to alcohol. Some 50% of people who leave the Island for treatment do so for alcohol-related illness or injury; while 50% of medical certificates issued by the doctor were for alcohol-related illness or injury.

It should be noted that the doctor did not see the banning of alcohol as a simple solution because of the likelihood that alcohol would be displaced with the use of other substances. One incident of substance abuse involving petrol-sniffing had been referred to the hospital; the individual involved was non-Aboriginal.

6.1.5 Taking Health Services to the Community

There are a number of issues involved in the provision of health care at the community level. One of the doctors interviewed on Mornington saw problems of lack of compliance with medication and a lack of health education as being essential issues. However the approach to health care was apparently strongly hospital-centred. With the exception of the Aboriginal Health Centre and the Aboriginal health workers, there appeared to have been little attempt to take services to the people.

Over the course of researching this Report, there was a perceptible change in approach to community health and preventative strategies. The new director of nursing showed both cultural awareness of Aboriginal issues and a willingness to take services to the people. The director of nursing had made contact with community health teams in Mount Isa including drug and alcohol, Sexually transmitted diseases and mental health teams and the community health nurse. The general response of the community health teams indicated some unwillingness to visit a remote area such as Mornington Island, although one team did respond favourably with the request for further information. However it is unacceptable that remote Aboriginal and Torres Strait Islander communities, and Mornington Island in particular, do not have the availability of community health services which are enjoyed by other Australians.

A major issue facing the provision of health services on Mornington is the number of people moving to outstations for extended periods of time. One approach to providing some services for people on outstations is to have a registered nurse and an Aboriginal health worker make regular visits. To achieve this it would be necessary for the employment of an additional nurse at the hospital and an additional health worker at the Aboriginal Health Centre. Both the Aboriginal Health Team and the director of nursing were in favour of visits to outstations. It is strongly recommended that resources be made available so that regular visits to outstations by a nurse and health worker can be undertaken.

6.2 Alcohol On Mornington

Alcohol is both a social and an economic issue on the Island. It generates the only profit-making activity while at the same time generating a substantial amount of social, medical and justice problems. The Island's economy could be referred to as alcohol-driven. This fundamental contradiction within the economic and social system is recognised by many on the Island. Certainly the chairperson of the Council saw the problems associated with Council being dependent on alcohol-based income to provide certain services. He was at the same time aware of the social and justice problems which were being generated.
6.2.1 The Canteen

Evidence of the level of alcohol consumption and income-generation for Council can be gauged through the sales and profit made by the canteen. The Council made $864,906 profit from the sale of alcohol in the canteen in 1990-91. Sales for the year were $1,857,839.

However, there is considerable debate among people on the Island concerning the extent to which profit from the canteen goes back into community projects. Projects which are prioritised for spending do not necessarily relate to problems engendered by alcohol consumption. For instance, there are no drug and alcohol workers or recreation officers paid for out of Council funding separate from CDEP. The establishment of the Women’s Shelter only occurred after a long struggle with Council and is funded by the Queensland Department of Family Services and Aboriginal and Islander Affairs, with some additional funding through ATSIC. Indeed, members of the Yuenmanda group have complained that the Council has received $30,000 to refurbish the women’s shelter but would not supply the shelter's committee with an itemised account.

The only drug and alcohol rehabilitation program in operation on the Island is organised through the Uniting Church. A number of Aboriginal people from the Island have been trained in Brisbane in alcohol counselling and these counsellors are supported financially through CDEP. The rehabilitation program rents a house from Council which has no facilities (beds, utensils, etc) and is therefore inoperative as a potential hostel or shelter. It was expressed to HREOC that there was a lack of support for alcohol rehabilitation by the Council. By the time of the third HREOC visit, Alcoholics Anonymous meetings were being held every Monday.

The Mornington Shire Council financial statement for 1990-91 indicates that of the $864,000 profit from the canteen, the major expenditure consisted of a direct transfer of $285,000 into Council funds. The next largest expenditure was $223,000 spent by the Council buying a barge, the MV Tasma, which capsized in January 1991. Other expenditure was $3,999 on child care, just under $24,000 on cultural activities, and almost $93,000 on the Aged Persons Hostel, which is the major welfare project undertaken out of profits from the canteen fund. Specific welfare funding from the account is relatively minor compared to other allocations. It should also be noted that the Aboriginal Health Centre refuses to accept any money from the canteen fund because it regards profits derived from the sale of alcohol as ‘blood money’.

It certainly raises the question about the spending priorities of the Mornington Island Council. The Race Discrimination Commissioner was made well aware of the serious concerns that many members of the community feel about the way that the Council establishes priorities.

It was suggested by some on Mornington Island that Council used the canteen as a leverage against the community. Putting the price of beer up was a way of punishing the community in addition to individuals who may have been responsible for break-ins

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25 This then involved a range of salvage and repair costs; the barge has since been sold.
at the canteen. It was reported that such individuals were required to sign deductions from their pay to cover some of the costs of theft. This last allegation is of concern, because the deduction of salaries from community members would constitute an extra-legal strategy on the part of the Council.

6.2.2 How Much Alcohol is Available?

Various policies have been trialled concerning alcohol sales at the canteen. During the mid-1980s the canteen was open from 4pm to 8pm with unrestricted access to alcohol. It has been argued that during this period there was less gambling for beer and people were more likely to disperse away from the canteen area.

When HREOC staff first visited Mornington Island in early 1991, beer was sold at $2.50 per can with a limit of ten cans per person. After a series of break-ins, the price rose to $3.20 and a six-can limit was introduced. At the time of the third visit in October 1992 the price had been reduced to $2.50 and the number of cans available increased to ten per person. Individuals are also permitted to bring in two cartons of beer on the barge. The limitations on the consumption of alcohol at the canteen are enforced by checking off all alcohol bought against a computer-generated list of names of all residents and visitors on the Island. These lists of names, notated with the amount of alcohol consumed, are kept at the point of sale at the canteen.

There are serious privacy implications involved in the collection of personal records which detail alcohol consumption. Such information could be potentially damaging to individuals in a range of possible situations. Issues which the Council needs to consider are access and disclosure of personal information, and the storage, security and disposal of information. There is also the more general question of whether the collection of such information is appropriate at all. While Council is concerned to limit the purchase of alcohol by individuals, it may be necessary to review the current procedures which have been adopted. It is difficult to imagine predominantly non-Aboriginal communities tolerating such an intrusion into their personal lives.

It is also apparent that Aboriginal people flying to Mornington Island, particularly from Mount Isa, are questioned about whether they are carrying alcohol. There have been occasions when their luggage has been searched and alcohol prohibited from being taken to the Island. It appears that similar behaviour does not occur with non-Aboriginal people.

Birri Fishing Lodge, which is established on a lease from Council, is situated about 30 kms from Gununa. It has alcohol available on a restricted basis. Birri Fishing Lodge was directed by Council on the 13 August 1991 not to serve alcohol to permanent residents on the Island. These licence conditions appear to be discriminatory and possibly unlawful under the Racial Discrimination Act. The definition of permanent resident includes Aboriginal people on the Island as well as a very small number of non-Aboriginal people who are married to Aboriginal people. The definition excludes the many non-Aboriginal people who may spend considerable time on Mornington Island such as nurses, police officers, shire personnel and their spouses, but who are not classified as permanent residents. In effect the Council directive is limited to Aboriginal people.
6.2.3 The Alcohol Referendum

The Coroner's report of November 1991 into the death of Craig Sandy recommended that the Queensland Licensing Commission cancel the license permitting the Mornington Island Council to sell alcohol and that no other permit be granted in the near future. Partly as a response to this recommendation, the Council organised a referendum on alcohol which took place on Mornington Island on 21 March 1992.

Four questions were formulated as follows:

- Should the community be alcohol free?
- Should the canteen be closed?
- Should the canteen hours be Monday to Friday?
- Do you want a hotel operating 10am to 10pm?

Some 219 persons voted which represented less than half of the 477 voters on the electoral roll. The results of the referendum showed that 42% thought that the community should be alcohol-free compared to 47% who thought that it should not (informal votes were 11%). On the second question, 23% thought the canteen should be closed compared to 63% who thought it should remain open (informal votes 14%). The results were fairly even as to whether the canteen hours should be Monday to Friday (40% 'yes' compared to 43% 'no', with 17% informal). As to the question of a hotel operating 10am to 10pm, 39% were opposed compared to 46% in favour, with 15% informal.

While there was a clear majority in favour of keeping the canteen open, the answers to other questions relating to alcohol availability showed a much more even division among those who voted. Indeed there was only 5% difference over the fundamental question of whether the community should be alcohol free.

6.2.4 A New Hotel for Mornington Island?

Council gave approval for the building of a new hotel on Mornington Island at a meeting held on 11 June 1992. Projected budget for the hotel is $600,000. According to Councillors, funding for the hotel would come from Council funds and from an ATSIC enterprise loan. If an ATSIC enterprise loan is requested, then the Council must ensure that the level of training to enable Aborigines to work in the construction and operation of the venture can adequately satisfy ATSIC requirements. It is worth noting that the project engineer from Northern Project Management (NPM) was in attendance at the Council meeting at which building approval was given. This has generated concern in relation to a conflict of interest with NPM being privy to Council's decisions relating to the building and financing of the hotel and any possible later tender by NPM for involvement in the project.

The location suggested for the hotel has cultural significance, and there is some dispute in the community about whether the site is suitable. The proposed operating hours of the hotel would be from 10am to 10pm.

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26 It has been estimated that some 550 people are eligible to vote.
6.2.5 Responses

There are conflicting views on the sale of alcohol on Mornington Island: the extent of polarisation was shown in the closeness of the referendum results. Views extend across a broad spectrum from those who would prefer a dry community to those who would like to see the operation of normal trading conditions which exist across most of Australia. Similarly there are diverse opinions as to whether Council should control the sale of alcohol or whether the alcohol licence be made available through normal tendering processes.

Clearly, the best policy on the sale and consumption of alcohol on Mornington Island would be one that recognises the various points of view within the community. However, as some of the views are diametrically opposed ('dry' vs. alcohol available), this seems an impossible achievement. To achieve a consensus view, the Council should initiate a process where the community comes together to identify the various issues associated with alcohol consumption. A range of issues need to be reviewed including the impact of excessive alcohol consumption on the community, methods and extent of alcohol distribution, the need for a sobering-up centre, drug and alcohol rehabilitation, and the implementation of education programs. As a way of instituting the process of community involvement in identifying issues it is recommended that the mediation services of the Community Justice Program be approached.

6.3 The Post Office and Commonwealth Bank

At the time of the first two visits to Mornington Island by the Race Discrimination Commissioner and her staff, the services of the Post Office and bank were conducted from the same office through a window next to the general store. A non-Aboriginal person was responsible for providing both services.

Issues relating to the service provided by the Post Office/Commonwealth Bank were raised as an area of concern on numerous occasions. It was alleged at a Yuenmanda Women's Group meeting (attended by HREOC staff) that the non-Aboriginal person working in the post office/bank position engaged in a number of directly discriminatory practices. These practices included interfering with withdrawals by limiting the amount which could be withdrawn; refusing to give mail to people; giving personal loans through the bank window; and refusing to ring Mount Isa to check on account balances. Similar complaints were raised by other women during community consultations on the second visit to Mornington. It was stated that there was a lack of courteous service and that the practices referred to above caused a loss of dignity: Aboriginal people were made to feel obliged for what should have been the simple provision of a service.

HREOC officers witnessed some differential treatment first hand. For instance, on one occasion, non-Aboriginal people were served prior to Aboriginal people who had been standing in a queue waiting for some time at the Post Office/Bank window.

The agent for the Post Office/Bank denied opening people's mail, except for mail of people residing in the aged persons' hostel. The agent stated that allegations had been investigated on three occasions by Australian Post and were found to be unsubstantiated. The agent also denied that limits were placed on the amount which could be
withdrawn from bank accounts, again with the exception of persons residing in the aged hostel where a maximum of $15 withdrawal per day was in place. Some complaints were made to HREOC staff that money had been taken from bank withdrawals on the demand of Council. The agent stated that the only deductions from accounts which were made were those authorised by Council. The Area Manager for Australia Post advised that as a result of investigations that the agent's contract would not be renewed.

Since the first two HREOC visits, the location and administration of the Post Office and Commonwealth Bank have been separated. The new postal staff have received some training from an Australian Post officer.

In relation to the Commonwealth Bank, it may appropriate for the community to approach other banking corporations with the view to establishing a second agency on the Island. This would provide the people with a choice of banking services. It is important to note that the Council has both investment accounts and loans with two other banking corporations. If there are continuing problems with the existing service an approach to the banking ombudsman may be appropriate.

6.4 Housing and Associated Charges

At the end of 1991, Council had 151 houses on Mornington Island. These were the majority of houses except for special housing owned by various government departments.

There was a flat rate rental policy of $46 per week for all Council houses, except for pensioners who had a flat rate rent of $25 per week. There was also a flat rate boarder's levy of $20 per week for each additional adult in receipt of an income (including social security/CDEP). Until recently there was also a flat rate electricity charge of $14 per week, but since the supply of electricity has been taken over by the far North Queensland Electricity Board, individual household bills are now issued.

There were many complaints to HREOC officers concerning these charges because they were perceived to be inequitable. Families were paying the same flat rate for rent irrespective of the condition of the house. Some houses on Mornington Island were in very poor condition - without doors, windows and sometimes walls - and yet the rental was the same as those which were modern and in good condition.

Similarly, until 1992, electricity charges had been the same rate for all dwellings irrespective of individual consumption. Clearly this policy favoured non-Aboriginal people on the Island who tend to have higher incomes, better housing, more electrical appliances and higher levels of consumption. Council had apparently claimed that it was administratively too difficult to read individual meters, so chose instead to average out costs.

The so-called boarder's levy or maintenance levy appeared to cause considerable resentment. The system works in such a manner as to discriminate against large or extended families. Each additional person in the house who is receiving an income (including CDEP) has to contribute an extra $20 rent to Council. Thus two spouses would be eligible to pay the basic $46 per week, while every extra adult son, daughter
and relative in receipt of income would add $20 per person to the rent. This calculation is independent of the condition of the house. Such a rental method discourages traditional forms of kin living arrangements. It also means that the largest households, living in the most over-crowded conditions and often in the poorest quality housing, pay the most rent, while implicitly non-Aboriginal nuclear family households pay the least rent.

In addition, the boarder's levy could be regarded as a rent increase imposed by Council. Under section 9 of the *Residential Tenancies Act (1975) Qld*, tenants without a lease are entitled to one month's written notice of any change in rent. Several complaints were made to HREOC staff that in fact deductions were being taken from individual's pay for the boarder's levy without the signing of any deduction forms or authorities.

The boarder's levy is meant to go towards repairs and maintenance for houses. However there were many complaints to HREOC staff concerning problems in getting repairs made to houses. It was perceived that non-Aboriginal people had preferential treatment in relation to obtaining maintenance and repairs. There was also concern expressed that individuals could not purchase houses on the Island but were forced to rent. It was suggested that if people were able to own their own homes then they would be kept in better condition.

It was suggested to HREOC staff that there had been a lack of consultation with Aboriginal people over housing design. Women at the Yuenmanda group thought that the design based around a three-bedroom house was not suitable when two or three families were living in one home, sometimes comprising twelve or eighteen people. The Council had switched to cement brick houses for maintenance reasons, but again, these were not appropriately designed.

Much of the concern about getting repairs carried out to houses stemmed from the fact that people were unaware of how priorities for repairs were set. In addition there was resentment that repairs were refused if individuals were behind in their rent. The Race Discrimination Commissioner received a written statement from one resident on the Island who had been refused repairs over a number of years because the person was several hundred dollars behind in rent. These repairs included fixing window and door locks. The person received a letter from 'Council' stating that repairs would not be completed until arrears in rent were paid. The letter was signed not by Council but by a non-Aboriginal employee of Northern Project Management (NPM). When the issue of house repairs was raised with Council, councillors advised the Race Discrimination Commissioner that such repairs came under Northern Project Management's administration. (NPM are hired by Council to administer the CDEP).

It is surely Council's responsibility as owner of the houses to ensure that repairs are carried out in a fair and equitable manner. In one discussion between HREOC staff and the acting Shire Clerk, it was stated that the priorities in house repairs were set by NPM on the basis that repairs relating to safety and sanitation were given the highest priority. However, the situation is not as clear-cut as this advice would suggest, as rental arrears are also taken into account when determining repair priorities.

Given the precariousness of employment and the fact that most people are working for the equivalent of unemployment benefits on the Island, it is easy to understand
how families could fall behind in rent. More important however is the fact that Council has obligations as a landlord to ensure that premises are fit to live in and are in a reasonable state of repair. In addition landlords have an obligation to make premises reasonably secure. Under section 7(a) of the *Residential Tenancies Act (1975)* Qld, landlords are obliged to provide and maintain the premises, the fixtures and fittings. The withholding of repairs to houses because of rental arrears to Council is a failure to abide by Council's obligations to its tenants. It is recommended that Council ensure that it complies with its obligations as a landlord. Many of the houses on Mornington Island are substandard and would not be classified as fit to live or in a reasonable state of repair if they were anywhere else in Australia other than an Aboriginal and Torres Strait Islander community.

Policies such as flat rate charges seem to be conducted out of convenience rather than ensuring equitable application to residents. Housing supply on Mornington is essentially a monopoly controlled by the Council. There are no alternatives in terms of private ownership or renting from other landlords. In housing, as in other areas, people have little chance to determine the type and nature of services they might desire. Many of the basic choices taken for granted by people in other parts of Australia are simply not available to people on Mornington Island.

There is a need for legal clarification and possible law reform in relation to private house ownership titles for the Aboriginal community on Mornington Island. In the interim, there is a need to explore more equitable rental arrangements. It is recommended that written tenancy agreements be introduced between Council and its tenants, with such agreements outlining the basic rights and responsibilities of both tenant and landlord. It is imperative that both parties are aware of their rights and obligations in regard to renting houses. In addition Council could set out its policies in terms of collection of rental arrears, how requests for repairs are prioritised, etc. It is also recommended that there be a review of Council practices which are conducted out of administrative convenience, such as the flat rate rental policies. Council policies should be guided by the need to ensure equitable outcomes.

### 6.5 The Store

There were complaints concerning the excessive cost of food at the shop. It is understood that the policy on marking-up goods is as follows: essentials 41%; canned goods 61%; hardware 81%; and non-essentials 91%. These mark-ups in price are inclusive of a 20% freight charge. There were many in the community (both Aboriginal and non-Aboriginal) who thought the prices charged in the store were too high. Indeed Councillors acknowledged community concern over pricing in a meeting with the Race Discrimination Commissioner in November 1991. One Councillor had suggested that in previous times there had been a freight subsidy provided by the State Government.

The possible availability of subsidies should be followed up by Council, including the past practice of freight subsidies to reduce the transportation costs of goods to the Island. However, there also needs to be a review of pricing strategies and the overheads involved in running the store. It may be appropriate to considering opening a second store to introduce more competitive pricing of goods. At the moment there is restricted availability of goods through a single food shopping facility on the Island.
It may also be appropriate that the pricing structure of goods be referred to the Prices Surveillance Tribunal.

6.6 Education

During the eighteen-month period between the first and third visits to Mornington Island by the Race Discrimination Commissioner and her staff, there were changes to both the deputy principal and the principal at the school. The estimated turnover of the teachers was every two years. The participation rate at the high school was 70% in 1990 and 65% in 1991. More recent information suggests that this may have declined to 30% by October 1992.

When the Race Discrimination Commissioner interviewed the deputy principal of the school in November 1991, his view was that the school was well resourced. There was a high ratio of teachers to students and teachers were given in-service training in cultural awareness. However, the Commissioner was disturbed by some of the attitudes displayed by a senior staff member. He viewed people in the community as having 'no respect for the white style of life' and still being a 'hand-out community'. He stated that 'white workers were sick of getting abused', adding 'you don't feel comfortable here., you don't feel part of the community'.

A number of people including women from the Yuenmanda group expressed concern about the lack of provision of education to children who were on the outstations. The issue was raised with a senior officer at the school, whose response was that he 'had not thought about it'. His attitude to the homelands movement was negative, suggesting that the people simply wanted duplication of resources. He did not know how many children were on Bentnick Island outstation.

Since these interviews were conducted, the outstation movement has grown considerably. There is a need to develop an educational policy which can respond to these developments. It has been noted that on Aurukun there were two teachers appointed as outstation teachers and that the Education had been 'reasonably sympathetic to the aims of self-determination'. (Aurukun Support Group, 1991, p.22). However, by the mid-1980s, the department had withdrawn support for the outstation movement. Since then there has been a continuing decline in participation rates and the subsequent withdrawal of resources. The Aurukun Support Group (1991, p.22) estimated the rate to be as low as 6% in August 1991.

Teaching staff on Mornington Island need to take seriously the issue of providing education services to the outstations, given the decline in participation even in the main school on Mornington Island over the last couple of years. Unless education is developed to meet the aspirations of Aboriginal people, then the decline will continue. It is clear from discussions on Mornington Island that the community regard education as being critical for Aboriginal development. However, the provision of education needs to recognise Aboriginal aspirations in terms of curriculum and the delivery of service. The structure and processes of schooling need to be culturally appropriate. Decline in participation rates should not be seen as a rejection of education per se, but a rejection of the way education is being offered.
Recommendations for Section 6: Provision of Goods and Services

Health

- That the Regional Health Authorities establish consultative mechanisms which will facilitate input from Aboriginal and Torres Strait Islander people in remote areas such as Mornington Island.

That the Regional Health consultative mechanisms facilitate Aboriginal and Torres Strait Islander women to identify their concerns and needs and to participate in the development of strategies to meet these needs.

- That the Regional Health Authority establish a birthing centre on Mornington Island. Such a centre might be considered within the development of a Women's Health Unit.

- That the State Department of Health, in conjunction with other appropriate bodies, implement the recommendations from the Human Rights and Equal Opportunity Commission Report on the Provision of Health and Medical Services for Aboriginal Communities of Cooptown, Hopevale and Wujal Wujal; in particular those recommendations relating to the development and implementation of anti-racist strategies; the development of incentives for remote area nursing; the development of training programmes in Aboriginal and Torres Strait Islander culture; and the training of Aboriginal and Torres Strait Islander people in health care and nursing.

- That specialist community health teams situated in Mount Isa arrange for regular visits to Mornington Island.

- That the Mornington Island hospital and the Aboriginal Health Centre visit Aboriginal people on outstations and that they receive the extra staffing to enable such visits to occur.

- That the Queensland of Health reassess its provision of services and its service delivery in remote Aboriginal and Torres Strait Islander communities; and that such reassessment particularly consider common medical problems which require specialist service delivery.

Alcohol

- That the Council initiate a process of community consultation in relation to the consumption and sale of alcohol, and that the Council consider the use of the mediation services of the Community Justice Program in such a process.

- That the licensing conditions applying to Birri Lodge appear to be discriminatory and need to be reviewed.
• That Council review its policy of collecting information on individual alcohol consumption so as to comply with guidelines and principles relating to information privacy.

Housing

• That Council review its border and maintenance levies with a view to eliminating inequitable outcomes.

• That Council negotiate with Aboriginal people in regard to housing design and renovations.

• That Aboriginal people be involved in the building and repair of houses on Mornington Island.

That Council develop written tenancy agreements in plain English which specify rights and obligations in relation to repairs and maintenance, etc; and that there be some educative process introduced so that people understand their rights and obligations.

• That Council recognise that it has obligations as a landlord to ensure that premises are fit to live in and are in a reasonable state of repair, and Council abide by its obligations as a landlord under the Residential Tenancies Act (1975) Qld.

Banking

• That consideration be given to the opening of a second bank agency on the Island to provide a freedom of choice for residents.

• That Council investigate the possible advantages of conducting their own business through another bank.

The Store

• That the pricing strategies and overheads involved in running the store be reviewed.

• That Council should explore the possibility of opening a second store on the Island to stimulate more competitive pricing.

• That Council consider some form of subsidy for the store, including a freight subsidy on goods transported to Mornington Island.

Education

• That the Education Department re-evaluate its current strategies on Mornington Island to arrest the decline in participation rates.
That the Education Department consider, in conjunction with the community, the most appropriate way of providing services to the outstations.
7. EMPLOYMENT

The lack of employment opportunities for Aboriginal people on Mornington Island are cause for serious concern. There has been little progress in this area over the last decade. Indeed, some Aboriginal people on the Island were of the view that more responsible positions were available for local people in the 1970s than are currently available.

7.1 Council Employment

During the eighteen month period over which the Race Discrimination Commissioner and her staff visited Mornington Island, the key decision-making positions have been held by non-Aboriginal people including the shire clerk, the deputy shire clerk and the accountant. Between 1990 and 1992 there have been three shire clerks and two deputy shire clerks, all non-Aboriginal. There are approximately forty Council positions including workshop foreman, overseer, assistant overseer for plant operators, truck drivers, mechanics and labourers. There is also a water officer, an electrician, an essential services officer and administrative staff including administrative officers, pay clerks and receptionist employed by the Shire. It appeared that very few of these positions - particularly those with greater responsibility - were held by Aboriginal people; and this fact was mentioned by a number of Aborigines.

Other positions administered through Council include the kiosk manager (non-Aboriginal), the canteen manager (Aboriginal), the airport manager (non-Aboriginal), the guest house Manager (non-Aboriginal), the training officer (non-Aboriginal), and the Aged Persons Hostel manager (Aboriginal). The above positions which have been filled by non-Aboriginal people have also seen many change-overs in staff during the last eighteen months. So while the specific situation may vary, it can be stated that there is a consistent overall bias against the employment of Aboriginal people.

The various services administered or supported by Council, and referred to above, do employ Aboriginal people. However this is invariably on a casual basis and as CDEP labour. In other words, Aboriginal people in these positions are essentially working for the equivalent of unemployment benefits. They are not receiving adequate skills training, nor are there positive incentives for taking up more responsible positions. Council needs to develop strategies and targets for greater participation of Aboriginal people in Council employment.

There are also other limited employment opportunities on Mornington for Aboriginal people. These positions are primarily welfare or community service-oriented and are generally the responsibility of State government. Such positions include the Community Corrections Officer, a Department of Social Security officer, the Aboriginal Health workers and a number of people employed by the Department of Family Services and Aboriginal and Islander Affairs.

There was strong resentment against non-Aboriginal people taking the majority of paid positions on the Island. It was apparent that both spouses of non-Aboriginal
families were being employed in Shire Council positions. It was pointed out that the shire model had apparently been established to provide for self-determination, yet since its introduction, it had on the whole simply provided non-Aboriginal people with employment. In fact, it has prevented self-determination through the maintenance of a system where Aboriginal people remained unskilled and uneducated. Similar views were also expressed by Aboriginal people to the WCC delegation (World Council of Churches, 1991, p.30).

Council has the opportunity when contracting major projects to ensure a level of Aboriginal employment. There was serious concern on the Island that the $17 million dam construction undertaken by Leightons provided a minuscule level of Aboriginal employment. No one seemed to be-aware of any more than one or two Aboriginal people who were employed on the project, although there was a variety of unskilled, semi-skilled and skilled work available on the project. According to the acting shire clerk at the time the lack of employment with Leightons was because of the lack of training for Aboriginal people.

During discussions with the Yuenrnanda women's group, the issue of lack of training for Aboriginal people was again raised. An example of this was the fact that only two Aboriginal young women at the time were employed in Council administration. Similarly, the Mornington island CDEP Review Report also noted the need to increase Aboriginal representation among Council office staff. Clearly the lack of training and the lack of general encouragement given to the Aboriginal people on Mornington Island adversely affects their chances of gaining employment on merit. They are placed in an even more disadvantaged situation when many jobs appear to be reserved for the spouses of contract (non-Aboriginal) workers.

In reference to the preferential treatment given to the spouses of non-Aboriginal employees, it was alleged that only one member per Aboriginal family could be employed on CDEP. An Aboriginal spouse who was employed outside of CDEP affected the number of hours the other spouse might receive on CDEP. There was a strong feeling that preferential employment policies should be adopted for Aboriginal people, rather than the current policies which severely limited opportunities for Aboriginal employment. In the circumstances, preferential treatment for Aborigines would be acceptable under the Racial Discrimination Act.

Complaints were made to the Race Discrimination Commissioner and her staff concerning the lack of advertising of job vacancies at the Council. It was felt that all Council jobs should be advertised and should be filled, if at all possible, by Aboriginal people with appropriate training provided for them. The Race Discrimination Commissioner notes that the Australian Services Union, which covers employees of Mornington Shire Council, has a policy stating that where local people are available with the skills to perform the role then Council should employ them to perform the tasks. Where this is not able to occur, the union has a policy that local agreements can be made whereby a person brought in from the outside, with the necessary skills, agrees to train one or two local members of the community to perform the tasks. Under such circumstances, the employee's contract states that the position will be available for only two to three years.

As noted above, HREOC staff were informed that Council positions were not advertised. During the third visit by HREOC staff to the Island it was apparent that
this policy had changed. Advertisements for Council positions were posted on noticeboards at the store, the Council chambers and the canteen. It is recommended that this policy continue. In addition, it is important that selection committees should be convened when deciding on successful applicants for particular positions and that these selection committees should include strong representation from the community. It is recommended that bodies other than Council introduce similar selection processes for Aboriginal people on the Island, as it is important that the community have input and knowledge about employment on the Island. As part of training for the community it is also recommended that courses and workshops be provided on selection procedures and job applications.

The overall impression of employment on Mornington Island is that non-Aboriginal employees are paid in accordance with award (or above awards) provisions, while Aboriginal people are paid at CDEP rates. There are some exceptions, but generally Aboriginal people are working for the dole, while non-Aboriginal people are in paid positions. Such a situation is particularly apparent with Council-generated employment. There could be grounds for a complaint under the Racial Discrimination Act on the basis of less favourable treatment in employment because of race.

7.2 CDEP (Community Development Employment Program)

CDEP was introduced as a pilot scheme in one area in 1976 as an alternative to unemployment benefits and to provide additional work opportunities for Aboriginal people living in a remote community. By June 1990 there were 166 CDEP projects throughout Australia involving 15,000 participants (CDEP User Guide, 1991, pA).

In brief, CDEP provides the opportunity to participate in local employment schemes either at community level or for an organisation as an alternative to receiving unemployment benefits. In general individuals are employed on a part-time, casual or contract basis (CDEP User Guide, 1991, p.4). In remote communities, basically all individuals who would otherwise receive unemployment benefits must work on CDEP. A person can leave the CDEP scheme for full time employment; however, 'a participant who continues to live in a community where a CDEP operates can not merely withdraw from the CDEP without a compelling reason.' (CDEP User Guide, 1991, p.19). If this person applies for unemployment benefits, the Department of Social Security (DSS) would normally refuse payment. In addition, a person leaving a community without a valid reason (as defined by the DSS) may have to wait a minimum of six weeks before DSS grant unemployment benefits.

7.2.1 Organisation of CDEP on Mornington

CDEP was first introduced onto Mornington Island during the late 1970s. There was a steady decline in the project's performance during the 1980s to the point where consideration was given to terminating CDEP.

In an attempt to rejuvenate the project, Northern Project Management (NPM) was brought into Mornington Island to manage the CDEP on a two-year contract. NPM is a Townsville-based company and is involved in other Aboriginal communities including Woorabinda. Bob Kavanagh and Associates (BKA) were contracted to provide training.
A CDEP Review Team comprising personnel from DSS, DEET and ATSIC conducted a review of CDEP on Mornington in May 1991. Results of that review will be referred to below.

The initial contract between NPM and Mornington Shire Council was dated 13 March 1990. NPM agreed to re-establish and maintain the CDEP program through the provision of a project manager (20 hrs per week), 2 site supervisors (40 hrs per week), a project administrator (25 hrs per week) and secretarial assistance (40 hrs per week) for the cost of $6,450 per week. Other costs including travel, transportation of goods and supply of fuel and other consumables were also to be met by Council. Thus NPM were to initially receive $335,000 per year to manage CDEP.

CDEP is run as a substitute for receiving unemployment benefits, although some workers get additional money through Council contributions. Council contributions are dependent on the 'canteen fund' (that is, profit derived from the sale of alcohol). Approximately 250 individuals are working on CDEP at any one time, divided into 41 teams with 23 supervisors and 18 gangers. Of the 23 supervisors, four were Aboriginal as were all the gangers. Each team is made up of about 6-10 people; teams include carpentry, fencing, parks and gardens, workshop mechanics, cleaning, welfare (Aged Persons Hostel) and police. As in other areas of employment, there are very few Aboriginal people in supervisory positions.

At the time of the first HREOC visit there were only two apprentices: one in carpentry and the other in plumbing. There had been an attempt to increase the number of apprentices with the number rising to fourteen, but more recently was back down to six. The problem of apprenticeships has important ramifications for training and employment within the the Aboriginal community, and the lack of apprenticeships and understudies was noted by the CDEP Review Committee. The Committee further commented that participants in the CDEP were sometimes refused the opportunity to attend training courses by their supervisors. The Committee's Report noted that:

The attitude of some non-community [non-Aboriginal] staff and supervisors who see training as a waste of time or who prefer to bring in qualified personnel rather than give time to training CDEP staff also inhibits attendance at training as well as time devoted to on-the-job training (Mornington Island CDEP Review Report, 1991, p.20).

The issue of training will be dealt further below.

Not all CDEP participants work full-time; employment rates vary from two to five days per week. It is worth noting that other work on the Island required by various State departments (such as Education and Police) utilise outside non-Aboriginal contract labour. Even the new houses being built by the Council also used outside contract labour.

The CDEP Review Team identified important anomalies in the participant schedules prepared by Council. Some 313 participants were listed as CDEP workers, while the average pay-roll was for 250 workers. Included on the schedule were a number of persons who were in prison, and another person who was actually being funded by the Department of Social Security. This situation has led to considerable wage savings by Council. Wage savings for the 1990-91 were projected at $1,370,000.
Such a surplus (which constitutes about 30% of the total wages grant for the year) could have been used to employ people more quickly under CDEP, or to significantly increase the number of work hours available to participants.

7.2.2 The Nature of Work Under the CDEP

In an interview with the engineer and project officer from NPM, the view was expressed that CDEP was essential because there was no other work on the Island and CDEP provided a structured work environment. However, this point was interpreted differently by Aboriginal people. For instance, the chairperson of the Council noted the desirability of using such schemes to teach traditional ways. It did not appear that the CDEP was being used adequately in this area. Indeed, the Yuenmanda Women's Group felt that CDEP had a 'stranglehold' because it forced people to stay in Gununa (and therefore not visit homelands) and forced people to take their holidays together at Christmas. People were prevented from camping during the year on their homelands because if they left CDEP they would lose their income. This in itself meant a loss in time available to learn the traditional ways and maintain culture.

With the growth of the outstation movement, the response by CDEP has changed somewhat. However, in relation to the role of supporting traditional activities, the *CDEP User's Guide* notes that

> the Government is committed to a policy of supporting traditional activities under CDEP, in recognition that such activities are not only a unique feature of Aboriginal lifestyle and culture, but are a legitimate part of the economic and employment structure of such communities. (*CDEP User's Guide*, p.3).

Thus the guidelines to CDEP clearly state that traditional activities should be recognised within a CDEP structure. In addition ATSIC has noted that 'productive employment is that determined by the community.' (*CDEP User Guide*, 1991, p.3). It is of concern that these basic principles of CDEP have been forgotten on Mornington Island.

The CDEP Review Committee raised a similar point when it found that it was not clear to what extent CDEP projects reflected community interests. A number of projects which had been abandoned were seen as being important by the participants when interviewed. These were the fishing project which was a source of culturally important food, and the screen printing and sewing projects which were valued by women as an alternative to working on the cleaning team.

It is arguable that a proportion of CDEP monies are used to employ people in areas of service which would normally be provided by a Shire Council (such garbage collection and sanitation). Some Aboriginal people interviewed were of the view that CDEP was being used to 'plug the gaps' in Council administration. Some areas which were claimed by the Council as CDEP work, such as parks and gardens, arguably do not exist. The Review Team found that the Shire administration had expended $201,000 against CDEP administration but was unable to supply details as to what comprised this expenditure. It found that 'this sum is a simply a contribution to Council's costs, from CDEP funds, without any specific relationship with CDEP activities.' (*Mornington Island CDEP Review Report*, p.7).
CDEP guidelines are concerned that CDEP money should not be used to supply services which are properly the function of local or state government. It states that 'Communities should be able to provide normal local government services and have sufficient award positions funded for these, without needing to rely on CDEP funding: (CDEP User's Guide, p.63). However, CDEP might contribute to the provision of local government services through 'providing additional or extended services or employment beyond those normally funded as municipal services' or by 'providing training opportunities such as understudy positions.' (CDEP User's Guide, p.63).

The CDEP guidelines also make special reference to the employment of youth and women under CDEP. In relation to youth, it states that the needs of youth should be specifically considered. Such consideration may involve the use of special CDEP project activities which benefit young people. The Race Discrimination Commissioner is concerned that the current CDEP on Mornington is not adequately addressing the needs of young Aboriginal people.

In relation to women, the CDEP User's Guide notes that

Women and men have equal rights to work on CDEP. The formula used for calculating a community's wages entitlement treats married women as participants in their own right (CDEP User's Guide, p.22).

The guidelines state that there should be a range of activities which are of specific interest to women and that women should be given the opportunity to develop skills normally associated with the male workforce such as power-house operation, road and airstrip maintenance, house repairs and maintenance. The Review Team was concerned at the lack of participation by women in CDEP on Mornington Island. It found that the rate of participation was low, comprising only 10% of active participation in 1990. None of the four Aboriginal supervisors were female. Three of the eighteen gangers were female. The majority of women on CDEP were employed in the cleaning team with the others primarily employed in the guesthouse and old people's home. The majority of the women participants interviewed by the Review Team stated that they wanted more meaningful and varied employment and more training in a range of areas, (Mornington Island CDEP Review Report, p.15).

In relation to employment conditions generally, it is apparent that the Council should develop a clear set of written conditions covering the employment of CDEP workers. Such conditions should cover access to the scheme, holiday arrangements, sick leave, etc. These entitlements are fundamental to working conditions. The fact that the situation relates to Aboriginal workers on CDEP in a remote community is no reason for basic rights of employment to be ignored.

It is of serious concern that CDEP work is being used as a financial threat over some people. The Race Discrimination Commissioner received a signed statement from one individual outlining the following situation. The person has two dependents and was working two days a week on CDEP. He was having $30 per week deducted from his wage to repay a debt to Council for rent and electricity. In June 1991 his CDEP work was increased to five days per week. The shire clerk requested that his debt repayment be increased to $100 per week. The person agreed to an increase to $50 per week, and argued that a repayment of $100 per week would have left only $210 as take-home pay to support his family. The shire clerk told the person that if he did not
agreed to having $100 taken out of his wage, then he would only be permitted to work
two days per week. The person then received a note signed by the NPM engineer
stating that he would be required to revert to two days per week immediately until he
was able to 'satisfy Council that he has made adequate provision to pay off existing
debts'. The individual approached several Councilors about the decision, none of
whom were aware of what had occurred.

There are many issues raised by the above incident. Firstly, the legal basis for Council
to garnish individual's pay (whether under CDEP or not) must be questioned.
Secondly, it is clear that decisions about who works and for how long are not being
based on skills or need, but rather on extraneous factors and as a form of discipline
and punishment. Thirdly, decisions are being made in the name of 'Council' when in
reality it appears that it is the shire clerk determining such matters.

Others who were interviewed were of the view that CDEP should be set-up separately
from Council in administrative terms, and either have some form of responsibility to
Council or simply report directly back to ATSIC.

7.2.3 CDEP and the Outstations

It is apparent that there has been a dwindling participation in CDEP employment in
the town because of people moving to the outstations. Council and the co-ordinator of
the Outstation Movement stated that, at the time of the last HREOC visit to
Mornington in October 1992, some 40% of CDEP workers were on outstations with
the remaining 60% working on CDEP projects in the town. These percentages
indicate the strength of the outstation movement and the growing participation rate in
it.

In recognition of this trend, HREOC staff visited a number of outstations during their
third visit to Mornington Island in October 1992. The positive attitude of the
Aboriginal people there was noted, as were the number of initiatives being undertaken
with very little outside support. There was, however, clearly a need for such
support, in particular with assistance in utilising and developing appropriate
technology for a range of basic needs. It would be advantageous if organisations such
as the Centre for Appropriate Technology in Alice Springs were approached in
relation to advice on engineering services.

There has been debate over the level of support being offered to the outstations. Late
in 1991 some $180,000 of ATSIC money was allocated through Council for outstations.
However, costs such as the use of Council's plant and equipment were being charged
from that money. At one outstation, a well for drinking water was dug by hand
because of the inability to meet Council's request for $50 per hour to hire a back-hoe.

Those on CDEP who have moved to the outstations are receiving CDEP salaries but
only for two days per week (which is the basic unemployment benefit). Under the
guidelines mentioned above, their work could be assessed at equivalent to more days
per week, as community priorities and traditional skills criteria are clearly being met.
However, it was claimed that the additional CDEP support money (the difference
between the two days and the greater number they may have worked in Gununa) was
not going to the outstations. In other words, people on the outstations are receiving
the dole equivalent on CDEP, while the additional support money is not being
allocated to the outstations but is being retained by Council. It may be appropriate that a separately administered CDEP program be established for the outstations.

There are a range of complex and interacting reasons for the move to the outstations. However, it should be recognised that at a fundamental level the move represents a reclaiming of autonomy over the basic decisions which affect people's lives. People on the outstations are away from the authoritarian and paternalistic conditions which permeate day-to-day life in Gununa; if current trends continue then the number of persons on outstations will grow at the expense of the town population. This movement has serious consequences for the organisation of CDEP and the role of NPM. In particular, the viability of NPM managing the CDEP in the town at the cost of over $400,000 per year for the supervision of around 100 workers needs to be questioned. It was suggested that such a commitment of resources for the supervision of so few workers was not justified.

Council has appointed an 'outstation consultant', Peter Gulliver, who works for CNC Consultancies. Mr Gulliver formerly worked for the Commonwealth Department of Aboriginal Affairs, but it is unknown what special expertise he might have in outstations. It is also apparent that Mr Gulliver is providing Council with advice in a range of areas which have nothing to do with outstations. For instance, at the Council meeting of 7 October 1992, Mr Gulliver presented Council with a report on Council's training strategies; at the same meeting, he also outlined a potential tourist development for the Island and is preparing a feasibility report on the subject. There clearly needs to be some clarification of Mr Gulliver's role, as he was engaged to undertake a range of activities relating to outstations but does not appear to have done much in the case of the oustation movement.

Z2.4 The Role of NPM

There is considerable controversy concerning the role of NPM in managing the CDEP project on Mornington Island, and NPM's further expansion into the role of Shire engineers. During the period in which the Race Discrimination Commissioner and her staff have been visiting Mornington, NPM have relocated their offices to Council chambers. This physical relocation is symptomatic of a decreasing division between the Shire and NPM, giving rise to the view of many in the community that NPM are in control of the Council rather than being its consultants.

There were a range of views expressed concerning NPM and the CDEP. The CDEP Review Team found that there had been significant improvements in the operation of CDEP since NPM took over as project managers. However there had also been costs, including the financial cost and the loss of community ownership of the scheme. Indeed the Review Committee noted that CDEP projects were task- rather than people/community-oriented; that the community felt that NPM controlled CDEP and that there was not the feeling of ownership of CDEP by either the community or the participants. The HREOC staff found similar sentiments expressed by a variety of people during visits to the Island. There is no doubt that there is a lack of community input into the running of CDEP and that this is felt to be of considerable concern in the community.

One view which was expressed was that if an earlier shire clerk had adequately fulfilled his responsibilities then there would have been no need to hire NPM. As a
result there has been a loss of money and resources which would have otherwise been available to the Council. The cost of NPM administering the CDEP project was estimated at $335,000 per year. The total payments to NPM for 1990-91 according to the Shire's financial statements was, in fact, $453,301. Nearly half a million dollars is a considerable outlay for a community with few resources.

There was a very strong view on the Island that NPM dominates community decision-making and acts in way far beyond its role as consultants to the Shire. There is concern that NPM appears to be taking such an active and inappropriate role in decision-making. For example, the NPM project engineer was present at all minuted Council meetings held during the first half of 1992. It is also of concern that there is a conflict of interest involved where a consultant is present and privy to Council decisions which may directly benefit that consultant.

Z2.5 Training

Training on the Island was provided by the Yeppoon-based training consultants Bob Kavanagh and Associates (BKA). The services of BKA were terminated on 9 October 1992.

BKA were contracted to provide training for the CDEP workforce, for Council staff and for the community generally. A Trade Training Centre was established. During the period of the HREOC staffs visits to Mornington, Mr Don Livingstone was the training officer. The quality of Mr Livingstone's work and his commitment to improving the skills of Aboriginal people are not in any way under question. It was projected that the training centre would be staffed by local people by July 1994.

The Mornington Island CDEP Review Team investigated training on Mornington and found that the level of trade and workshop skills had improved, but that there was a lack of training which was not directly job-related. The Review Team noted that training which was not job-related was limited and that the needs of non-technical workers were not adequately catered for. In addition most trainees were identified by NPM in relation to particular tasks. As a result there was limited opportunity for workers to acquire skills outside of their current CDEP position.

The courses offered for 1992 demonstrate an attempt to comply with the criticisms of the Review Team by broadening the courses available to CDEP workers and the community. The course information booklet lists 27 general courses and nine trade-related courses which would provide some important skills to people in the

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27 Small Business Development; Screen Printing; Book-keeping; Personal Development; Literacy and Numeracy; Car Maintenance; Poultry House Construction; Poultry and Egg Production; Chainsaw Safety and Maintenance; Sewing; Letter and Report Writing; Driver Education; Practical Driving Skills; Introduction to Word Processing and Computers; Conducting Meetings; First Aid; Painting with Acrylics; Taxation; Household Budgeting; Landscaping; Nursery Skills; Pre-Employment for Women; Women's Issues; Office Procedures; Community Development Skills; Basic Hairdressing; Cooking and Nutrition.

28 Welding and Fabrication; Plumbing; Carpentry; Diesel Fitting; Painting and Decorating; Small Diesel Motors; Advanced Welding; Basic Furniture Making; Aluminium Welding.
community. For instance, the course in filling in taxation forms meant that for the first many people were able to get the taxation returns to which they were legally entitled.

There were problems which were encountered in providing training: these included organising teachers and coping with a severe shortage of materials. However, the major problem was associated with getting CDEP people released from normal work duties so that they could undertake block courses. The opinion was expressed to the Race Discrimination Commissioner that this lack of cooperation was the result of NPM/Council not seeing training as important. The Mornington Island CDEP Review Team also found that participants were sometimes refused the opportunity to attend courses by their supervisors.

A training committee has been established. However it would appear that the committee was ignored by Council when it came to the critical issue of deciding to dispense with the services of Kavanagh and Associates. There needs to be open consultation through a community-based committee to determine the training needs and priorities on Mornington.

Z2.6 The Dismissal of BKA

As noted above, BKA was dismissed by Council as the training consultants on 9 October 1992. This dismissal raises a number of issues which are of serious concern.

The dismissal occurred in haste. BKA was given only two days' notice of the termination of its services. A special meeting of Council was called on 7 October 1992 with only six Councillors present, plus the shire clerk, the deputy shire clerk, the NPM engineer Alan Wilson and the CNC consultant Peter Gulliver.

The reason for the termination of services stated in the Council minutes was 'the Shire Clerk advised that in view of ATSIC not providing the budgeted $285,000 funds, Council has no option but to terminate the services of its training consultants Bob Kavanagh and Associates'. However the Council had $500,000 committed to it under the Community Infrastructure Training Program to cover trade and administrative training for 1992-93. It could have appropriately used this budget for the Trade Training Centre if it had desired. ATSIC had not approved the $285,000 because it was a duplication of the training services covered under the money from the Community Infrastructure Training Program. The move to exclude BKA from training had clearly been going on for some time. The Race Discrimination Commissioner has a letter signed by the shire clerk on 23 June 1992 stating that BKA would not be kept on past 30 June 1992. The termination of services was not proceeded with at this time. Apparently some Councillors were unaware of the contents of the letter.

The minutes from the Council meeting of 7 October 1992 confirm that money for training was available. At that meeting Mr Peter Gulliver presented a report on Council's training strategy with recommendations. The Council adopted Gulliver's recommendation that an employee of NPM, Mr Gascoigne, be appointed 'as Apprentice Master and Training Co-ordinator in a package deal contracting NPM to provide a vehicle and Mr Gascoigne for a period of three years.' (Council minutes, 7/10/1992). It appears that there was no consultation with the training committee concerning this course of events. The appropriateness of using NPM to provide
training is questionable given the earlier complaints concerning the lack of commitment shown in the area.

Not surprisingly, there is ill-will between the two consultant groups, NPM and BKA. In a paper summarising the achievements of the Trade Training Centre, Mr Livingstone claimed that the results achieved by the TTC staff and students 'were obtained in spite of a great deal of negative actions on the part of NPM management and the shire clerk during these last two years'.

Of serious concern is the quality of training which will now be provided to the people on Mornington Island. It is apparent that neither those who are currently making decisions about training nor those who will be involved in training, have expertise in the provision of specialised cross-cultural training. The dismissed training officer, Don Livingstone, had clearly been making some breakthroughs with training programs which recognised cultural difference in both the content and mode of teaching.

It is also of concern that the relationship between NPM and the Council is such that independent decision-making by Council is seriously impaired. As noted earlier, an NPM representative was at Council meetings throughout the first half of the year when decisions about training were being made. Indeed at the very meeting where Council was called upon to terminate the services of BKA as trainers and accept the recommendation that NPM provide training, the NPM engineer was present. Such circumstances reflect a clear of conflict of interests.

The issue of training is fundamentally related to issues of self-determination and self-sufficiency. If the best interests of the people of Mornington Island are to be served, then training should be put out to tender. Furthermore, decisions relating to the successful tenderer should be made by a community-based committee reporting to Council.

**Z2.7 The Future of CDEP**

It would appear from discussions between the RDC and the community, and from interviews conducted by the Mornington Island CDEP Review Team, that the majority of participants support the continuation of CDEP. However there are also a range of problems which have been identified. Councillors acknowledged in their meeting with HREOC staff that issues relating to accountability of NPM officers to Council, daily planning of activities and regular meetings between managers and the workforce were important issues.

It is clear that there needs to be increased community participation in establishing the goals of CDEP. There is at present a feeling that CDEP is under the control of NPM and not the community, and that the tasks of CDEP are determined by NPM rather than by the community. There is no mechanism for community input into the priorities which are set under CDEP.

CDEP should not serve simply as a cheap pool of labour for lowly-skilled municipal jobs. The focus of CDEP should be broadened to include community enterprises and traditional enterprises as well as public works. The organisation of CDEP must take account of the outstation movement. It may be more appropriate for the establishment of a separate outstation CDEP. Similarly, policies in relation to the allocation of
CDEP work to single and family people need to be negotiated with the Aboriginal community.

The relationship between Council and the CDEP scheme should be closely examined. The possibility of CDEP being completely separate from Council (as occurs in other communities) should be seriously considered.

The role of NPM needs to be closely monitored. NPM were employed to run CDEP, not to run the community. There has been no tendering process undertaken for the consultancy. It should be a priority that any future contracts be awarded on the basis of tendering. The role of NPM in Council meetings and management is completely inappropriate. There is a clear and documented opportunity for the promotion of self-interest by NPM in matters which should properly be considered by Council in an independent manner. It is hardly surprising that the community feel that NPM and the shire clerk run Council.

The Mornington Island CDEP Review Team had recommended that a further review take place in June 1992. As of November 1992 this review had not occurred. The Race Discrimination Commissioner notes that the ATSIC Regional Council has called for the review to be undertaken as a matter of urgency. The Regional Council had stated that, in their view, a community meeting should be called for all residents of Mornington, irrespective of whether they are CDEP workers or not, to discuss the administration of their CDEP. It is important that such a proposal goes ahead as soon as possible.

**7.3 Employment and Self-Determination**

The structure of employment throughout the Island means that non-Aboriginal people make the day-to-day decisions. In the school, the hospital, and the police station, the key decision-makers are non-Aboriginal while the ancillary staff are Aboriginal. All the basic decisions about what work is conducted under CDEP are made by non-Aboriginal technical staff. That work is then carried out by Aboriginal people under the supervision of non-Aboriginal people. The key administrative decisions at Council are made by non-Aboriginal people from the shire clerk down to the receptionist at the counter. Even at the Council guest house, the part-time manager is non-Aboriginal while the cleaning staff are Aboriginal women working for CDEP. Throughout the Island, Aboriginal people are in a subservient position to non-Aboriginal decision-makers.

Employment and training are key ingredients in the realisation of self-determination. It is apparent that in both areas the people of Mornington Island have not been given the opportunity to take control of their affairs. Mr Cec Fisher, an ATSIC Councillor, stated the problem succinctly after one of the HREOC visits to Mornington Island:

"We know that our children have to be educated in modern ways so as to be able to compete in the wider workforce. Positions like Council clerk, computer operators, police, doctors, nurses, storekeepers, foremen/women are specialist jobs. However, people on the dole or CDEP are not given any encouragement for the future... if our children are given a good education, at the end must be employment and job security."
Every organisation on Aboriginal and Torres Strait Islander communities should train Aboriginal and Torres Strait Islander people to be a part of their staff. Positions should be available and there should be encouragement and incentives for higher wages.

Mr Fisher implicitly recognises that currently, there may not be the level of skills amongst the Aboriginal and Islander communities for certain positions, but realistically wants to address this problem through training and in the long term, through the education of the Aboriginal and Torres Strait Islander children. The recent direction that training has taken on Mornington Island is a retrograde step. In addition there has been little positive improvement in the employment of Aboriginal people, who still have not been given either opportunities nor the skills to do basic work in their community.
Recommendations for Section 7: Employment

Council Employment

- That Council establish strategies and targets for the increased employment of Aboriginal people on Council staff.
- That vacant positions at Council be advertised locally, and that those advertisements be prominently displayed for a set period of time.
- That training workshops be conducted on how job application procedures and selection processes.
- That a selection committee process (including community representation) be instituted for filling vacant positions.
- That Council introduce traineeships to allow for the necessary skill acquisition for Council positions. The Race Discrimination Commissioner supports the policy of the Australian Services Union in this regard.
- That other bodies on the Island employing Aboriginal staff (such as health, education, police) consider similar processes of skills acquisition.
- That policies which limit the CDEP employment of one spouse because of the other spouse's employment be reconsidered.
- That Council reconsider its employment strategies with a view to eliminating possible breaches of the Racial Discrimination Act.

The Management of CDEP

- That mechanisms to achieve greater community involvement in the establishment of CDEP projects be introduced; and that CDEP projects reflect community interests.
- That CDEP not be used as a cheap pool of unskilled labour for functions which are properly those of local government.
- That work and skills falling within traditional cultural practices be considered within the ambit of CDEP employment.
- That individuals working under CDEP be eligible for normal working conditions relating to holidays, and that Council develop a set of written conditions in plain English covering various aspects of CDEP employment; and that workshops be conducted to explain those conditions.
- That the allocation of CDEP work to single and family people needs to be reviewed through negotiation with the community.
• That Council develop special CDEP projects aimed at benefiting young people.

• That Council review CDEP in relation to the participation of women, and negotiate the development of suitable projects with women on the Island.

• That the number of hours available on CDEP not be used as a form of discipline and punishment by Council over individuals on the Island.

• That the Outstation Movement and Council contact the Centre for Appropriate Technology in Alice Springs for information regarding housing and other resources suitable for outstations.

• That Council re-evaluate its contractual relations with NPM in the light of the significant movement of CDEP workers to outstations.

• That Council reconsider the presence of NPM at Council meetings given the potential conflict of interest.

• That Council follow the previous recommendations of DEBT and ATSIC and implement a process of tendering for training and administering the CDEP.

• That Council reconsider the current training plan given the inexperience of NPM in that role.

• That, in line with the demands of the ATSIC Regional Council, an urgent review of CDEP on Mornington Island be conducted. All residents must be involved in determining the future of their scheme. Such a review must provide the opportunity to discuss the range of options for CDEP including whether it should be totally separate from Council, whether an administratively separate CDEP for outstations should be introduced, etc. An outside facilitator might be usefully employed to assist in the review.
8. CHANGE FOR THE FUTURE

8.1 Consulting with the Community: Open Government

From the material already presented and discussed in this report it is clear that there are problems in the relationship between the Council and the community. Many people complained about the lack of consultation between Council and the community, others described a 'distance' between the Council and the community. It was often stated to HREOC officers that the community council which existed prior to the introduction of the *Local Government (Aboriginal Lands) Act 1978* and the state government takeover, was much more open to community participation. Again the question of the inappropriateness of the current shire model was raised as an issue.

Women from the Yuenmanda group complained that decisions were being made which affected everyone on the Island without adequate consultation. For example, it was alleged that the Birri Fishing Lodge was given a fifteen-year lease of land without adequate community consultation. More recently a proposal was put to Council for the establishment of a golf course to which it was agreed in principle, again without community consultation. The Aboriginal community as a whole is not likely to benefit from a golf course. Similarly one might wonder what the tourism proposal (referred to previously) currently being developed by the non-Aboriginal shire consultant will offer the community.

There was also perceived to be a lack of input into Council policy because there were too few public meetings to discuss issues. The two public meetings called in 1991 related to the rape of a non-Aboriginal nurse and a series of break and enters into the canteen. While both issues were important, members of the community wanted to be consulted about policies relating to housing, employment, etc. The two meetings which were called had a punitive edge to them: they were about collectively punishing the community rather than consulting with them.

There were also limitations on community input at Council meetings because they were held during work hours and there was a lack of transport for older people. In addition, the monthly meetings of Council, which were open to the public to attend, provided no opportunity for the community to address councillors. There was also a perception that because the meetings were held monthly there was little input by councillors themselves into the day-to-day operation of the shire administration.

The questioning of councillors about Council decisions has been positively discouraged. A memo ostensibly from Council to Council employees on 23 February 1990 read as follows:

That in future Council staff shall not under any circumstances, outside or during working hours, question any member [Councillor] on Council policy or decisions that are made at any meeting; to do so will result in instant dismissal on the grounds of disloyalty to the Council.
The memo added that any question relating to a Council decision should go to the shire clerk; the memo was also signed by the shire clerk. The contents of the memo show an extraordinary denial of basic conditions of employment and rights to participate in decision-making processes. It is an outrageous attempt to stifle community involvement in decision-making and breaches fundamental rights in relation to freedom of expression.

Ironically, when the Race Discrimination Commissioner and her staff spoke with councillors in November 1991, some of them suggested that a system should be introduced whereby people could approach councillors with their problems rather than going to the shire clerk. Councillors complained that they were receiving only 'one-sided stories'. Some councillors also stated that since the shire clerk had been taking the minutes of Council meetings, the records were not always an accurate reflection of what was actually said. Again the issue of the extraordinary power exercised by non-Aboriginal administrators to control the decision-making process was evident.

There is a need for the Council to become a greater agent for community development and change, with councillors adopting a policy of more open local government and decision-making. There needs to be greater public access to councillors, Council staff and a more regular use of public meetings. The move to a more open, participatory government needs to be actively promoted by councillors. Several committees of Council have been established for CDEP, Broadcasting for Remote Aboriginal Communities Service (BRACS) and training. However the extent to which the committees are actually involved in policy development and decision-making is questionable. Other committees for specific issues such as housing and alcohol distribution should be initiated. Such committees should include residents as well as councillors and should see their role as promoting community discussion in the development of specific policies. As indicated earlier in this report, the role of mediators from the Community Justice Program would be helpful in this respect.

It is of noticeable concern in the community that minutes of Council meetings should be more readily available. People in the community should have access to Council minutes without having to incur any costs. Such access could be achieved simply and with minimal cost to Council by including them in the weekly school newsletter and displaying minutes at various noticeboards such as in front of the shop, at Council chambers, at the neighbourhood centre and in the canteen. It should also be recognised that many people on Mornington lack literacy skills. One of the most imaginative propositions put to HREOC staff was that BRACS could televise Council meetings. Again there are not necessarily any substantial costs involved in such a proposal because the technology already exists on the Island. What needs to be developed is the will on the part of councillors to open up the decision-making processes to the people on Mornington. There is clearly a desire by people in the community to be more involved in the process of government.

It is apparent that councillors are constantly expected to make decisions covering a range of issues. It is important that councillors themselves are adequately trained so that they can fulfil their roles. It was recommended by Mr Cec Fisher that a training scheme should be made available to councillors after every Council election. According to Mr Fisher, this would 'give the Aboriginal community who elected them to office a more experienced and respected Council'. The Race Discrimination Commis-
sitioner endorses the recommendation. The Queensland Department of Housing and Local Government should ensure that there is sufficient training available for Council members to discharge their responsibilities. The need to introduce a management training program in relation to financial administration and community development.\textsuperscript{29}

It should be noted that the Queensland Parliamentary Committee of Public Accounts (1991) has also prepared a report on, inter alia, training for Aboriginal and Torres Strait Island Councils in financial administration. The Committee noted from its discussion with Aboriginal and Torres Strait Islander people that a consistent theme which emerged was 'the fundamental importance to them of acquiring the skills necessary to be able to manage the financial administration of their communities.' (Committee of Public Accounts, 1991, p.41). The Committee looked at the availability of financial and administrative training available to Councils through the Local Government Training Council (LGTC), the Queensland Department of Housing and Local Government and on-site trainers. The Committee noted that the LGTC provides the only specifically developed and structured training program for Aboriginal Councils and that overall it saw 'little indication of the high quality culturally-aware training which it believes is required to enable Aboriginal and Islander people to acquire the skills needed in financial management and administration.' (Committee of Public Accounts, 1991, p.44).

8.2 Developing a Culturally Appropriate Model for Self Government

The issue of the suitability of the structure for local decision-making is fundamental to the question of developing self-determination. In the light of this it is important to consider the implications of the Legislation Review Committee.

The Legislation Review Committee was established in August 1990 by the Queensland government with the purpose of reviewing the Community Services (Aborigines) Act 1984, the Community Services (Torres Strait) Act 1984 and the Local Government (Aboriginal Lands) Act 1978.

The purpose of the Committee's review was to recommend 'a new legislative framework consistent with government policy for Aboriginal and Torres Strait Islander communities to control and manage their own destinies.' (Legislative Review Committee, 1991, p.1). In August 1991 the Committee issued a discussion paper entitled Towards Self-Government. This was followed shortly after with the Final Report of the Committee in November 1991. The State government has never formally responded to the report.

As the Committee was required to review the Local Government (Aboriginal Lands) Act 1978 which covers Mornington Island, its recommendations have a direct impact on the structure of local government on the Island.

\textsuperscript{29} It should be noted that similar recommendations have been made by the Aurukun Support Group in relation to Aurukun. (Aurukun Support Group, 1991, pp.53-54).
The Committee found that the relevant legislation including that covering Mornington Island 'does not provide Aboriginal and Torres Strait Islander residents with a culturally appropriate structure for government.' (Legislative Review Committee, 1991, p.1). The Committee found wide support for the view that Aboriginal and Torres Strait Islander communities should have more autonomy than was available under current legislation.

Such autonomy could be developed through the proposed Aboriginal and Torres Strait Islander Community Government legislation. Such legislation would allow Community government structures to have all local government powers and functions for an area. Briefly, governing structures would also have express functions and powers in the following areas: education, housing, health, employment, business and enterprise, recognition of custom, administration of justice, maintenance of peace, order and safety, management of natural resources, access and right of residency, alcohol and drug control, elections and referenda (Legislative Review Committee, 1991, p.9).

A full list of the proposed powers and functions can be found in recommendation 21 of the Committee's Report which is in Appendix C of this report. The Committee's Report advocates additional powers than those available to mainstream local authorities. Such additional powers would cover issues like the recognition of customary rights, laws and traditions, and the administration of justice, police and corrections.

The Committee's Report suggests that the exercise of such power by a community government would benefit from the development of 'community development plans'. Government departments who now exercise such functions should assist the community in developing community development plans prior to the hand-over of functions.

The Legislation Review Committee was firmly of the view that the process of change could only occur if the community was behind the initiatives. This Committee's view that no governing structure imposed upon Aboriginal and Torres Strait Islander communities will work, led us to the concept of a community government constitution. Communities must be able to tailor community government options to meet their concerns, needs, circumstances and aspirations as indigenous people. Community control of the process of developing, drafting and adopting the constitution is an important avenue by which community members can have meaningful input into the evolution of their community government, and 'ownership' of resulting community government structures (Legislative Review Committee, 1991, p.13).

The Review Committee recommends that a number of optional model constitutions be prepared which illustrate to a community the types of developments which might be possible. Three possible structures which are described include a single body similar to an existing association or Council which has primary responsibility for all the powers and functions under the new legislation; two bodies, one being a type of 'lower house' which looks after most administrative matters and a type of 'upper house' which considers matters relating to customary law; or thirdly, a type of
confederation where there is power sharing among a number of associations and other bodies.

If they choose to, communities could prepare a constitution which specifies the type of government structure most suitable to the community as well as the functions covering law, health, education and the other aspects of government mentioned above. The process which the Review Committee envisages a community going through is shown as in Appendix D.

8.3 Implementing Self-Determination

It is apparent that the *Local Government (Aboriginal Lands) Act 1978* which establishes the system of shire local government on Mornington Island is inappropriate legislation to meet the needs of Aboriginal people. The Queensland state government must meaningfully consider and respond to the recommendations from Legislation Review Committee. Furthermore the state government should introduce a process whereby Aboriginal people on Mornington Island can determine the nature of community government best suited to their needs.

As outlined in this report, the recent political history of Mornington Island shows that the system of local government which was introduced in 1978 was done so without consultation and against the wishes of the people on Mornington Island. This basic injustice has never been rectified. At the time commentators noted the level of power which the legislation invested in non-Aboriginal administrators. This report shows that nearly fifteen years later the problems have magnified. Meanwhile there has been little change in the structure of power. Non-Aboriginal people control decision-making processes throughout the Island, while Aboriginal people remain in unskilled positions, by and large receiving unemployment benefits for the work they do. Ostensibly there is an Aboriginal Council in charge; however, the evidence in this Report shows that it yields far less power than is appropriate for communities which desire a form of self-government. The structure of decision-making within the shire model inhibits Council from taking a more deliberative role. In addition there are a whole range of decisions effecting health, justice and education which do not fit within the jurisdiction of the local Council as it is presently constituted.

There are many recommendations in this report covering a variety of situations from childbirth to crime prevention, from services to the outstations to conditions at the watchhouse. However, there are two principles generally underlying the recommendations: firstly that Aboriginal and Torres Strait Islander people have a right to self-determination, and secondly that Aboriginal and Torres Strait Islander people are entitled to at least the same level of services as exist is other parts of Australia. The present situation on Mornington Island is totally unacceptable in terms of the implementation of those two principles.

The State government and in particular the Department of Family Services and Aboriginal and Islander Affairs must accept some responsibility for the situation on Mornington Island. It has failed to respond to the problem of introducing legislation which would enable Aboriginal and Torres Strait Islander people to take a greater control of their affairs. This problem is particularly acute on Mornington Island because of the shire-based legislation which was introduced in 1978. It is of concern
that both State and Federal bodies have tended to move away from any critical analysis of the decisions made by the Shire Council because it is ostensibly an Aboriginal-run Council. It is to hoped that the evidence presented in this report shows the naivety of such a position. Councillors are working in a situation where they do not control the day-to-day decisions. This is partly the result of the specific legislation, but also the result of being excluded from decisions through the lack of training and the lack of opportunities.

The mode or form of self-government on Mornington Island is totally inappropriate. It serves to exclude Aboriginal people and their community organisations from the decision-making process. As has been noted elsewhere, 'the means of political representation can be neither culturally nor politically neutral.' (Rowse, 1992, p.90). In this case, the form of local government denies the fundamental right of Aboriginal people to determine their own structures and parameters of government. Aboriginal people have been forced to fit into a model of government which lacks local legitimacy and popular support and which was imposed unilaterally as a means of state government control. Its method of introduction and political form is the antithesis of self-determination.
Recommendations for Section 8 Change for the Future

Open Government

- That the Council adopt a policy of open government and promote greater community involvement in decision-making processes.

- That Council implement specific measures for ensuring open government through the increased used of public meetings and widespread availability if the Minutes; and the possible use of BRACS to televise Council meetings.

- That the Department of Housing and Local Government, in conjunction with the Department of Family Services and Aboriginal and Islander Affairs, ensure that adequate training is available to Aboriginal councillors so that they can discharge their responsibilities.

Self Government

- That the Queensland State government respond formally to the Legislation Review Committee's recommendations to introduce self-government on Aboriginal and Torres Strait Islander communities.

- That the State government implement a process whereby people on Mornington Island are given the opportunity to consider, discuss and implement a community government best suited to their needs.
9. SUMMARY OF RECOMMENDATIONS

Recommendations to Section 1: General

1. In recognition of the fundamental right of self-determination for indigenous people, that the principles of self-determination be applied in future dealings between State and Federal bodies and the people of Mornington Island.

2. That adequate attention be paid by State and Federal bodies to the distinct history of Mornington Island, and in particular the imposition and impact of the shire council model on Mornington Island.

3. That recognition be given by State and Federal bodies to the fact that Mornington Island people have not been given the opportunity to express their preferred options in relation to the form of political administration.

4. That legislative recognition be given by State and Federal bodies to the desire by Mornington Island people for adequate recognition of customary law.

Recommendations to Section 2: Media and the Criminal Justice Commission

5. That the management of the Mount Isa newspaper, the *North West Star*, implement recommendation 46 of the National Inquiry into Racist Violence which requires that the media strive for more balance in the reporting of race related issues and avoid sensationalist coverage of these issues.

6. That the management of the Mount Isa newspaper, the *North West Star*, should follow recommendation 208 from the Royal Commission into Aboriginal Deaths in Custody and implement a process which encourages formal and informal contact with Aboriginal and Torres Strait Islander organisations to create a better understanding of issues.

7. That the Queensland Police Service and the Criminal Justice Commission acknowledge by way of letters to Lyndon Jack and Terry Burke that the police investigation of the incident was inadequate and that reliance by the Criminal Justice Commission on the police version of the incident may have perpetuated an injustice against them.

8. The Criminal Justice Commission implement recommendation 20 of the National Inquiry into Racist Violence which requires:

   (i) the establishment of designated Aboriginal and Torres Strait Islander investigatory positions with the function of following up complaints from Aboriginal and Islander people;

   (ii) the establishment of designated Aboriginal and Torres Strait Islander education and information officers with the function of providing accessible
information to Aboriginal and Torres Strait Islander communities in relation to police complaints mechanisms.

9. That the Queensland Police Service establish protocols for informing complainants (or their legal representatives) of the progress of a complaint at regular intervals.

Recommendations to Section 3: Criminal Justice Issues

10. That the Queensland Government, as a matter of urgency, implement the necessary legislation to decriminalise public drunkenness.

11. That the Queensland Government, as a matter of urgency, investigate the feasibility of establishing a sobering-up centre on Mornington Island.

12. That the Mornington Shire Council implement the recommendation from the coronial inquiry into the death of Craig Sandy, and authorise Aboriginal community police to apprehend persons for drunkenness with the condition that such persons be taken to a sobering-up centre.

13. That police on Mornington Island follow the recommendations from the Royal Commission into Aboriginal Deaths in Custody in relation to the use of charges of obscene language, and that where such charges are preferred that the offender be proceeded against by way of summons rather than arrest.

14. That the Mornington Shire Council acknowledge that it can play a leading role in crime prevention strategies, and that such strategies should involve maximum community direction and participation.

15. That the Queensland State Government liaise with the Aboriginal Coordinating Council to assist the Mornington Shire Council in the development of crime prevention strategies along the lines already suggested by the Aboriginal Coordinating Council and the Australian Institute of Criminology.

16. That the Queensland Police Service, on completion of its consultant's report, implement a selection process which assures formal community input over which police officers will be stationed at Mornington Island.

17. That the Queensland Police Service review their policy of sending unmarried male police constables on six month rotations to Mornington Island with the view to facilitating the use of married police officers and female police officers who may wish to serve extended periods in the community.

18. In line with the above recommendation, that the Queensland Police Service develop selection processes for police serving in Aboriginal communities which are complementary to the stated commitment to community policing, and which facilitate the integration of police into the community.

19. That the Queensland Police Service recognise that it is unacceptable that police serving in Aboriginal communities should have no specialist training, and that
therefore the development and introduction of induction training occur as expeditiously as possible. In addition to such training, new police should be formally introduced to elders in the community.

20. That the Queensland Police Service review the status and functions of Cross Cultural Liaison officers with a view to establishing gazetted positions with specified duties and appointment at a level which recognises the importance of the task.

21. That the Queensland Police Service review their training programs in relation to the use of domestic violence legislation in Aboriginal and Torres Strait Islander communities; and that the Service monitor the use of protection orders to ensure that there is equity in the availability of protection orders for women irrespective of their racial or ethnic background.

22. That the Queensland Police Service consider the recommendations from the report being prepared for the Queensland of Aboriginal and Torres Strait Islander Affairs on the effectiveness of the domestic violence legislation in Aboriginal and Torres Strait Islander communities.

23. That the police and the Mornington Council continue to convene and support a committee (which includes other interested parties such as the Yuenmanda Women’s Group) to develop appropriate responses to domestic violence at the community level.

24. That Mornington Shire Council and the Queensland Police Service implement the recommendations from the coronial inquiry into the death of Craig Sandy which relate to the employment, training and workpractices of community police.

25. That the Queensland government follow-up on the implementation of the recommendations from the coronial inquiry into the death of Craig Gable Sandy.

26. That Royal Commission-funded training currently being given to Queensland State Police on the responsibilities and duty of care owed towards persons in custody, also be available to community police.

27. That when Aboriginal and Torres Strait Islander community police are being employed, there should be particular attention paid to recruiting Aboriginal and Torres Strait Islander women. It may be necessary to implement a necessary minimum requirement that a certain number of community police are women.

28. That Community Councils must pay award wages and that they should take responsibility to ensure that they do not discriminate and contravene State and Federal legislation. The Race Discrimination Commissioner is concerned that the situation on Morning Island is being replicated in other areas.

29. That the Queensland Police Service accept responsibility for the training of Aboriginal and Torres Strait Islander community police and accordingly make the necessary budgetary allocations; and that there be ongoing evaluation of the effectiveness of Aboriginal and Torres Strait Islander community police training in Queensland communities.
30. That the Morning Island watchhouse be replaced immediately with a new structure, as the current one is not safe custodial environment. When replacing the watchhouse, State works department should ensure adequate consultation with the Aboriginal and Islander Legal Service (as a representative Aboriginal body) and the Mornington Island community concerning special design requirements.

31. That police on Mornington Island strictly adhere to the recommendations of the Royal Commission into Aboriginal Deaths in Custody in relation to checks and supervision of people in custody.

32. That a register of conditions in watchhouses in Aboriginal and Torres Strait Islander communities in Queensland be kept by a group of independent observers comprising representatives from the Aboriginal and Torres Strait Islander communities, the State Government, the Queensland Anti-Discrimination Commission and the Queensland Council for Civil Liberties.

33. That offences against Aboriginal and Torres Strait Islander women, particularly those involving sexual assault, be investigated fully by police and treated seriously by judicial officers.

**Recommendation to Section 4: Young People**

34. That Mornington Shire Council consider specific initiatives in CDEP programs which will involve young people who have left school. Involving young people in CDEP could be considered as part of a crime prevention program by Council.

35. That any review of sentencing options for young offenders or any development of community-based sentencing options on Mornington Island should be aware that Aboriginal and Torres Strait Islander juveniles are already grossly over-represented in the most punitive stages of juvenile justice intervention and that they are already serving longer periods in incarceration than non-Aboriginal youth.

36. That the holding of Aboriginal juveniles in the watchhouse at Mornington Island is contrary to recommendation 242 of the Royal Commission into Aboriginal Deaths in Custody and should cease immediately. The Department of Family Services and Aboriginal and Islander Affairs and the Police Service should liaise to establish suitable forms of custody in those cases where it is absolutely necessary.

37. That police on Mornington Island ensure that young people are proceeded with by way of attendance notice as an alternative to arrest and bail.

38. The establishment of the Walgut Kuba Laga scheme is strongly supported. It is recommended that it should be extended to include cautioning prior to court appearance, and that it should receive adequate support from the Department of Family Services and Aboriginal and Islander Affairs and the Mornington Shire Council.

39. That Mornington Shire Council consider the employment of a recreation officer as part of developing a crime prevention program.
Recommendations to Section 5: Crime Prevention and Community Justice

40. That Mornington Shire Council develop a crime prevention strategy. The Aboriginal Coordinating Council and the Australian Institute of Criminology may assist in this regard.

41. That Mornington Shire Council and other interested groups approach the Community Justice Program with the view to utilising its services in developing community-based dispute resolution programs through the use of mediation. It is important that information about the Community Justice Program should be disseminated in the community.

42. That the Queensland Government clarify its response to the development of community justice mechanisms, particularly in light of the limitations of the legislation affecting Mornington Island and Aurukun.

Recommendations for Section 6: Provision of Goods and Services

Health

43. That the Regional Health Authorities establish consultative mechanisms which will facilitate input from Aboriginal and Torres Strait Islander people in remote areas such as Mornington Island.

44. That the Regional Health consultative mechanisms facilitate Aboriginal and Torres Strait Islander women to identify their concerns and needs and to participate in the development of strategies to meet these needs.

45. That the Regional Health Authority establish a birthing centre on Mornington Island. Such a centre might be considered within the development of a Women's Health Unit.

46. That the State Department of Health, in conjunction with other appropriate bodies, implement the recommendations from the Human Rights and Equal Opportunity Commission Report on the Provision of Health and Medical Services for Aboriginal Communities of Cooktown, Hopevale and Wujal Wujal; in particular those recommendations relating to the development and implementation of anti-racist strategies; the development of incentives for remote area nursing; the development of training programmes in Aboriginal and Torres Strait Islander culture; and the training of Aboriginal and Torres Strait Islander people in health care and nursing.

47. That specialist community health teams situated in Mount Isa arrange for regular visits to Mornington Island.

48. That the Mornington Island hospital and the Aboriginal Health Centre visit Aboriginal people on outstations and that they receive the extra staffing to enable such visits to occur.
49. That the Queensland Department of Health reassess its provision of services and its service delivery in remote Aboriginal and Torres Strait Islander communities; and that such reassessment particularly consider common medical problems which require specialist service delivery.

**Alcohol**

50. That the Council initiate a process of community consultation in relation to the consumption and sale of alcohol, and that the Council consider the use of the mediation services of the Community Justice Program in such a process.

51. That the licensing conditions applying to Birri Lodge appear to be discriminatory and need to be reviewed.

52. That Council review its policy of collecting information on individual alcohol consumption so as to comply with guidelines and principles relating to information privacy.

**Housing**

53. That Council review its border/maintenance levy with a view to eliminating inequitable outcomes.

54. That Council negotiate with Aboriginal people in regard to housing design and renovations.

55. That Aboriginal people be involved in the building and repair of houses on Mornington Island.

56. That Council develop written tenancy agreements in plain English which specify rights and obligations in relation to repairs and maintenance, etc; and that there be some educative process introduced so that people understand their rights and obligations.

57. That Council recognise that it has obligations as a landlord to ensure that premises are fit to live in and are in a reasonable state of repair, and Council abide by its obligations as a landlord under the *Residential Tenancies Act (1975)* Qld.

**Banking**

58. That consideration be given to the opening of a second bank agency on the Island to provide a freedom of choice for residents.

59. That Council investigate the possible advantages of conducting their own business through another bank.
The Store

60. That the pricing strategies and overheads involved in running the store be reviewed.

61. That Council should explore the possibility of opening a second store on the Island to stimulate more competitive pricing.

62. That Council consider some form of subsidy for the store, including a freight subsidy on goods transported to Mornington Island.

Education

63. That the Education Department re-evaluate its current strategies on Mornington Island to arrest the decline in participation rates.

64. That the Education Department consider, in conjunction with the community, the most appropriate way of providing services to the outstations.

Recommendations for Section: 7 Employment

Council Employment

65. That Council establish strategies and targets for the increased employment of Aboriginal people on Council staff.

66. That vacant positions at Council be advertised locally, and that those advertisements be prominently displayed for a set period of time.

67. That training workshops be conducted on completing job applications and selection processes.

68. That a selection committee process (including community representation) be instituted for deciding on successful applicants to vacant positions.

69. That Council introduce traineeships to allow for the necessary skill acquisition for Council positions. The Race Discrimination Commissioner supports the policy of the Australian Services Union in this regard.

70. That other bodies on the Island employing Aboriginal staff (such as health, education, police) consider similar processes of skills acquisition.

71. That policies which limit the CDEP employment of one spouse because of the other spouse's employment be reconsidered.

72. That Council reconsider its employment strategies with a view to eliminating possible breaches of the Racial Discrimination Act.
The Management of CDEP

73. That mechanisms to achieve greater community involvement in the establishment of CDEP projects be introduced; and that CDEP projects reflect community interests.

74. That CDEP not be used as a cheap pool of unskilled labour for functions which are properly those of local government.

75. That work and skills falling within traditional culture being considered within the ambit of CDEP employment.

76. That individuals working under CDEP be eligible for normal working conditions relating to holidays, and that Council develop a set of written conditions in plain English covering various aspects of CDEP employment; and that workshops be conducted to explain those conditions.

77. That the allocation of CDEP work to single and family people needs to be reviewed through negotiation with the community.

78. That Council develop special CDEP projects aimed at benefiting young people.

79. That Council review CDEP in relation to the participation of women, an negotiate the development of suitable projects with women on the Island.

80. That the number of hours available on CDEP not be used as a form of discipline and punishment by Council over individuals on the Island.

81. That the Outstation Movement and Council contact the Centre for Appropriate Technology in Alice Springs for information regarding housing and other resources suitable for outstations.

82. That Council re-evaluate its contractual relations with NPM in the light of the significant movement of CDEP workers to outstations.

83. That Council reconsider the presence of NPM at Council meetings given the potential conflict of interest.

84. That Council follow the previous recommendations of DEET and ATSIC and implement a process of tendering for training and administering the CDEP.

85. That Council reconsider the current training plan given the inexperience of NPM in that role.

86. That, in line with the demands of the ATSIC Regional Council, an urgent review of CDEP on Mornington Island be conducted. All residents must be involved in determining the future of their scheme. Such a review must provide the opportunity to discuss the range of options for CDEP including whether it should be totally separate from Council, whether an administratively separate CDEP for outstations should be introduced, etc. An outside facilitator might be usefully employed to assist in the review.
Recommendations for Section 8: Change for the Future

Open Government

87. That the Council adopt a policy of open government and promote greater community involvement in decision-making processes.

88. That Council implement specific measures for ensuring open government through the increased use of public meetings and widespread availability if the Minutes; and the possible use of BRACS to televise Council meetings.

89. That the Department of Housing and Local Government, in conjunction with the Department of Family Services and Aboriginal and Islander Affairs, ensure that adequate training is available to Aboriginal councillors so that they can discharge their responsibilities.

Self-Government

90. That the Queensland State government respond formally to the Legislation Review Committee's recommendations to introduce self-government on Aboriginal and Torres Strait Islander communities.

91. That the State government implement a process whereby people on Mornington Island are given the opportunity to consider, discuss and implement a community government best suited to their needs.
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POLICE REINFORCEMENTS NEEDED TO QUELL ISLAND UNREST

Two hundred people were reported to have joined 'a riot' outside the Mornington Island Police Station on Saturday morning.

Senior Sergeant Jock Carlyle of Mount Isa Police said the riot erupted after a police constable had attended a brawl near the island's canteen.

He said the constable had seen the fight and drove up to investigate at about 9am. 'As he drove near the crowed he bumped two people with the police vehicle' he said. 'The people were taken to hospital by ambulance and immediately discharged with no injuries'.

Sergeant Carlyle said the crowd then turned on the constable. 'A short time later 200 of the island's residents surrounded the police station armed with spears and sticks'.

Sergeant Carlyle said the group released some of the prisoners who were in the Police watch house. 'They also damaged the police station and police vehicle' he said. 'The people spent about one hour outside the station. Ten police officers were flown from Mount Isa as well as some from Burketown and Doomadgee to assist Mornington Island Police.'

'Five people were arrested on a variety of charges including wilful damage, stealing, escaping from custody and assisting to escape from custody' Sergeant Carlyle said. He said investigatings [sic] were continuing. Sergeant Carlyle said the Mornington Island Council closed the island's canteen after the incident and would not open until today.
APPENDIX B

Extract from Cross-Cultural Policing in Queensland, Queensland Police Service.

Aboriginal Community Police

Development of a Community Police 'Apprenticeship' Scheme for Aboriginal and Torres Strait Islanders in Communities.

Any Community Constable Scheme should have the following characteristics:

- Community Police should be employed as members of the Queensland Police Service, with appropriate conditions of service and support.
- Recruitment be undertaken by the Police Service with the participation of the local Community Council.
- The Community Constable Scheme would resemble an apprenticeship, of perhaps three years.
- The Scheme would provide training in those areas of the law and police procedures which are most relevant to the functioning of Aboriginal Community Police. The program of training should also include Aboriginal law and customs, Aboriginal history, tracking knowledge and skills.
- The program of study should include research into local customs and history recording information that might otherwise be lost.
- Training should pay particular attention to dispute resolution strategies and crises intervention skills.
- A qualification should be offered at the successful completion of the study program.
- The Aboriginal Community Police qualification would guarantee entry to the Recruit Training Program at the Academy should the officer wish to pursue a wider policing career.
- Each Community Council to establish a Police Reference Group to work with the police to address community policing issues.
- An exploration should occur in each Community to identify and use appropriate alternative dispute resolution strategies.

Careful thought should be given as to whether Community constables are trained with a view to policing only one Community, or whether it would be desirable for part of least of their training to be undertaken in conjunction with Community Constables from a number of Communities.

Further Information

Further information about the introduction of these initiatives can be obtained from the Cross-Cultural Support Services Section within the Community Policing Support Support Branch. For information on local and regional initiatives please contact the appropriate regional office.
APPENDIX C


Powers and Functions of Aboriginal and Torres Strait Islander Community Government Structures.

That each Aboriginal and Torres Strait Islander community government structure have powers and functions as follows:

(a) Local Government matters, in the same terms as s30 Local Government Act and any other local government matters under any other Act, i.e. Building Act, Health Act, Water, Sewerage and Water Supply Act and Noise Abatement Act;

(b) Education of its community members;

(c) Housing, social and welfare services;

(d) Health services;

(e) Employment and training;

(f) Operation of businesses, professions and trades;

(g) Recognition of customary rights, laws and traditions not inconsistent with rights, functions, powers, responsibilities of landowners;

(h) Administration of justice, policing and correctional services;

(i) Maintenance of peace, order and safety;

(j) Conservation and management of land, sites of significance and of natural resources, not inconsistent with rights, functions, powers, responsibilities of landowners;

(k) Access to and right of residency, not inconsistent with rights, functions, powers and responsibilities of landowners;

(l) Prohibition of the sale, barter, supply, manufacture or possession of alcohol, drugs and other substances of abuse;

(n) The conduct of community elections and referenda;

(o) The creation of bodies and agencies to assist in the administration of affairs of the community, and delegation of powers to such bodies, allowed under the constitution for the area, and in the Act;

Power to make community laws for peace, order and good government of the area; and

All such powers are reasonably necessary or convenient to enable it to perform its function and to enable it to achieve its purposes and objectives, subject to this Act.
APPENDIX D

Process for community involvement as suggested by the Legislative Review Committee (LRC, 1991).

COMMUNITIES CURRENTLY UNDER COMMUNITY SERVICES LEGISLATION, ABORIGINAL SHIRES, AND OLD MAPOON.

1. Communities currently under community Services legislation, Aboriginal Shire and Old Mapoon.

2. Existing Council, or Association, establishes a committee to prepare community government constitution for the area. The Committee must be representative of all interest groups on the community.

3. Committee seeks expert advice on the preparation of the community government constitution for the area, conducts community education programs, consults with the community in area, and considers all matters relevant to the preparation of the constitution.

4. Referendum where 70% of those eligible voters who vote, being at least a majority of eligible voters for the area, approve of community government constitution for the area.


6. Aboriginal and Torres Strait Islander Community Government is local government for area and has all associated powers and functions, eg. planning and development, maintenance of peace, order and safety, etc.

7. Subject to the community government constitution for the area and the limits in the legislation, the powers and functions which are additional to local government powers and functions are as follows: Recognition of custom; Administration of justice; Community Policing; Aboriginal and Island courts; Management of land, sacred sites and natural Resources; Access and right of residency; Alcohol and drug control; Elections and referenda; Control of firearms.

Aboriginal or Torres Strait Islander Community Government structure prepares community development plans, and negotiates with local authorities, the State and Federal governments, in order to have more expanded powers and functions, in matters such as education, recognition of custom in the area, administration of justice in the area, planning and development for a region.