

# PART II

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## Aboriginal Peoples in Western Australia

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# Aboriginal Peoples in Western Australia

## A Brief History

### The Impact of Colonisation

Western Australia was founded as a British colony in 1829, some 40 years after the east coast of Australia was first colonised. Despite evidence that the colonial governing authority was instructed by the British monarch only to 'grant unoccupied lands',<sup>1</sup> the Aboriginal people of Western Australia were gradually dispossessed of their traditional tribal lands as more and more land was granted to pastoralists and graziers. These dispossessed peoples were sometimes taken into service (often unpaid) by European 'settlers'; many others, forced to kill cattle for survival, were taken into custody by police and removed to the nearest major settlement for trial.<sup>2</sup> Various legislative and administrative measures for the protection of Aboriginal people,<sup>3</sup> the segregation of Aboriginal people into missions away from town sites,<sup>4</sup> and the removal of 'half-caste' children,<sup>5</sup> were in place from the early days of colonisation.

In 1904 a Royal Commission was called to inquire into the 'condition of the natives' in Western Australia.<sup>6</sup> The Commissioner found that most Aboriginals lived in poor conditions, that Aboriginal prisoners were ill-treated<sup>7</sup> and that there were 'grave irregularities in the distribution of [government] rations'<sup>8</sup> to Aboriginal people. The Commissioner's primary recommendation was for the establishment of large hunting reserves 'for the exclusive use of the natives'.<sup>9</sup> He warned that

dire consequences would follow if the existing system of 'land-grabbing' were to remain.

If the natives continue to be dispossessed of the country upon which they are dependant for their food and water supplies, by their lands being rented for grazing rights at a nominal figure—lands from which the lessees naturally desire to drive them—bloodshed and retribution will be certain to ensue, and the Executive, in its efforts to restore law and order, and in the cost of rations to make up deficiencies in the natural food supplies, will be ultimately put to an expenditure considerably in excess of the total rents received. Carrying the present practice of Might against Right to a logical conclusion, it would simply mean that, were all the land in the northern areas of this State to be thus leased, all the blacks would be hunted into the sea. The poor wretches must be allowed the wherewithal to live – their main hunting grounds and water supplies. They dare not voluntarily migrate elsewhere, as such action, according to tribal law, would constitute a trespass, punishable by death.<sup>10</sup>

### Protection and Assimilation

The 1904 Royal Commission resulted in the enactment of the *Aborigines Protection Act 1905* (colloquially referred to as 'the 1905 Act'). This Act prohibited Aboriginal people who were not in lawful employment from entering town sites; provided for the establishment of new reserves and missions; allowed the Minister of Aboriginal Affairs to 'remove' Aboriginals from one reserve or district to another; and required the permission of the Chief Protector of Aborigines for a

1. Australians for Reconciliation (WA), *Western Australia's Other History: A short guide* (undated).

2. Royal Commission on the Condition of the Natives (Western Australia), Report (1905) 13–17.

3. 'Protectors' were appointed by executive order in Western Australia from the early days of settlement to protect Aboriginals against abuse; however, protectors were often powerless or without legal status. At various times during the state's history, the idea of Aboriginal protectors was abandoned or otherwise the office was vested ex officio in regional police constables (whose position as officers of the law often contradicted their responsibilities of protection when dealing with Aboriginal suspects). See ALRC, *The Recognition of Aboriginal Customary Laws*, Report No 31 (1986) [25]; Royal Commission on the Condition of the Natives, *ibid* 5.

4. According to the Royal Commission into Aboriginal Deaths in Custody (RCIADIC), certain government directives dating from the 1840s forbade any Aboriginal to reside near town sites. By the 1920s it is reported that Aboriginals were forbidden to enter towns. RCIADIC, *Regional Report of Inquiry into Underlying Issues in Western Australia* (Vol. 1, 1991) Ch 2.

5. *Ibid*. During the early to mid-1800s few European women resided in the Swan River colony and miscegenetic progeny were often the result of the sexual exploitation of Aboriginal women by European men.

6. The Royal Commission was headed by Dr WE Roth, an ethnographer and Chief Protector of Aboriginals in Queensland.

7. Royal Commission on the Condition of the Natives (Western Australia), Report (1905) 15–17.

8. *Ibid* 23.

9. *Ibid* 28.

10. *Ibid*.

marriage between an Aboriginal woman and a non-Aboriginal man.<sup>11</sup> Section 8 of the 1905 Act gave the Chief Protector of Aborigines legal guardianship of all Aboriginal and 'half-caste' children under 16 years of age and the authority to remove them from their natural parents.

In 1937, the Western Australian Chief Protector of Aborigines, AO Neville made a speech to the Conference of Commonwealth and State Protectors of Aborigines in Perth explaining the rationale behind the practice of removing Aboriginal children from their families to be brought up in state institutions in non-Aboriginal communities. He believed that full-blooded Aboriginals would soon be extinct and that 'half-caste' children could usefully be employed in domestic service and thereby 'absorbed into the general community'.<sup>12</sup> This policy of assimilation was formalised and practised in Western Australia and other states over the following three decades; the children taken from their parents pursuant to the policy ultimately became known as the 'stolen generation'. A 1995 national inquiry into the separation of Aboriginal and Torres Strait Islander children from their families (the 'Bringing Them Home Inquiry') concluded that 'the forcible removal of Indigenous children was an act of genocide contrary to the Convention on Genocide, ratified by Australia in 1949'.<sup>13</sup>

## The Impact of Past State Government Policy

The impact of the official integration and protection policies followed in Western Australia since colonisation has been profound. The unsanitary and cramped living conditions on Aboriginal reserves have had an ongoing negative effect on the health of Western Australia's Indigenous population.<sup>14</sup> Today, Aboriginal people have a life expectancy that is 15–20 years less than non-Aboriginal Australians and the mortality rate of Aboriginal

infants in Western Australia is more than 2.5 times higher than that of non-Aboriginal infants.<sup>15</sup> The effects of removal on the social and emotional wellbeing of members of the stolen generation and their families are still being revealed today. In his *Regional Report of Inquiry into Underlying Issues in Western Australia*, undertaken for the Royal Commission into Aboriginal Deaths in Custody (RCIADIC), Commissioner Patrick Dodson remarked:

[The 1905 Act], and the particularly oppressive measures it invoked, caused profound anguish, and the policies it introduced are still remembered with bitterness and repugnance by many Aboriginal people today.<sup>16</sup>

In its 1986 report on *The Recognition of Aboriginal Customary Laws* the ALRC also noted the continuing impact of historical government policy:

Changes in policy, even when addressed to problems created by the past, do not erase the past. The history of forced resettlement on reserves, the placing of many thousands of children in institutions, and the loss of land and culture are evident in the disadvantages still experienced by many Aboriginal people today.<sup>17</sup>

The challenge of overcoming the legacies of Australia's past treatment of its Indigenous population is substantial. It is hoped that the present inquiry will assist future governments to significantly reduce Aboriginal disadvantage in this state and assist Indigenous Western Australians to reclaim some of the culture and identity they have lost.

## Demographic Profile

Today, Western Australia has the third largest Indigenous population in Australia.<sup>18</sup> Of the estimated 1.9 million people resident in Western Australia, almost 66,000 are Indigenous.<sup>19</sup> The highest number of

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11. Human Rights and Equal Opportunity Commission (HREOC), *Bringing Them Home*, Report (1997) Appendix 5 'Western Australia'.  
12. Neville AO, as cited in McRae H, Nettheim G & Beacroft L, *Indigenous Legal Issues* (LBC Information Services: Sydney, 2nd ed., 1997) 412.  
13. Gardiner-Garden J, 'From Dispossession to Reconciliation', Parliament of Australia Research Paper No 27 (1999) 16, referencing HREOC's *Bringing Them Home* report.  
14. Australians for Reconciliation (WA), *Western Australia's Other History: A short guide* (undated) 50–51.  
15. Thomson N & Briscoe N, *Overview of Aboriginal Health Status in Western Australia* (Canberra: Australian Institute of Health, 1991) [5].  
16. Royal Commission into Aboriginal Deaths in Custody (RCIADIC), *Regional Report of Inquiry into Underlying Issues in Western Australia* (Vol. 1, 1991) Ch 2. Commissioner Dodson's concluding observation in this extract was echoed by participants in the Commission's community consultations.  
17. ALRC, *The Recognition of Aboriginal Customary Laws*, Report No 31 (1986) [29].  
18. Following the Northern Territory with 28.8 per cent of total population and Tasmania with 3.7 per cent of total population. Queensland has the same percentage of Indigenous residents as Western Australia at 3.5 per cent. See 'Geographic distribution of Indigenous Australians' in Australian Bureau of Statistics (ABS), *2004 Year Book Australia*, No 86 (2004) 89.  
19. *Ibid.* It is interesting to note that the number of Indigenous people in Western Australia almost doubled in the 15 years between 1986 and 2001. The increase cannot be accounted for by birth rate alone. According to HREOC, the ABS attributes the increase to the growing willingness of people to identify themselves as Aboriginal or Torres Strait Islander. See HREOC, 'A Statistical Overview of Aboriginal and Torres Strait Islander Peoples in Australia' <[http://www.hreoc.gov.au/social\\_justice/statistics/](http://www.hreoc.gov.au/social_justice/statistics/)>.

## The challenge of overcoming the legacies of Australia's past treatment of its Indigenous population is substantial.

Aboriginal people in the state resides in the Perth metropolitan area.<sup>20</sup> In respect of the state's regions, the DIA has noted that:

The Kimberley has the highest proportion of Aboriginal people of any of the state's regions, making up one-third of the total regional population. Outside the major towns, Broome, Kununurra and Derby, Aboriginal people in the Kimberley make up the overwhelming majority of the population. There is a similar picture in the Pilbara, where 5,736 Aboriginal people were counted [in the 2001 Census] out of a total population of 42,411, a proportion of 13.5 per cent. Outside the Pilbara towns of Port and South Hedland, Karratha, Newman and Tom Price, the majority of the population is Aboriginal.

Significant populations of Aboriginal people live in all other regions of Western Australia, in particular Central (9.2%), South Eastern (9.2%), Upper Great Southern (4.8%), and Midlands (4%). It is significant that while Aboriginal people throughout the state have moved increasingly to the major population centres, they continue to make up high proportions of the populations of rural and regional areas.<sup>21</sup>

As these statistics suggest, there are a significant number of Aboriginal communities in Western Australia with a high concentration of communities in the north of the state in the Kimberley and Pilbara regions.<sup>22</sup> A large number of traditional Aboriginal people—for whom Aboriginal customary law is a daily reality—reside in the East and West Kimberley, East Pilbara, and Western Desert regions. It has been noted elsewhere that some language groups in those regions only experienced their first substantial contact with non-Aboriginals in the mid-twentieth century.<sup>23</sup> Even after contact, some groups of Aboriginal people in Western Australia continued their

nomadic lifestyles for a significant period of time, remaining 'outside the orbit of European influence'.<sup>24</sup>

### Appreciating Diversity

It is important to note from the outset that, like the general Western Australian population, the Aboriginal population of the state is diverse in its makeup, culture, customs and beliefs. Norman Tindale's anthropological studies during the 1950s and 1960s indicate that over 120 language groups or tribes existed in Western Australia at that time.<sup>25</sup> Each of these tribes had their own languages, culture and customs. Due to the fact of colonisation, as well as past government practices of assimilation, removal of Aboriginal children from their families and segregation of Aboriginal people on designated reserves, some of these tribes have died out or their lands, languages and cultural practices have been lost. In addition, new communities of Aboriginal people have been established in and around former mission centres and reserves. These communities (often made up of Aboriginal people forcibly removed from other areas) contain individuals who descend from different language groups<sup>26</sup> and who may have integrated their traditional cultural practices over a period of many years.

Because of these facts, the DIA warns against the use of singular expressions such as 'the Aboriginal community' to describe the general Aboriginal population of Western Australia.<sup>27</sup> The Aboriginal population of Western Australia is made up of many different communities, indeed many different individuals, the diversity of which is apparent in many ways: geographic, demographic, cultural, linguistic, political and economic.<sup>28</sup>

20. According to the 2001 Census, just over 20,000 Aboriginal people were recorded as residing in Perth. This figure represents 1.5 per cent of the total metropolitan population of 1,325,392. See ABS, *2001 Census of Population and Housing* (2002).

21. Department of Indigenous Affairs (DIA), *Consulting Citizens: Engaging with Aboriginal Western Australians* (April 2004) 9.

22. A series of maps showing the distribution and location of Aboriginal communities across the state may be found in Appendix D to this Discussion Paper.

23. Such as the Northern Ngatjatjarra, Mangala, Mantjiltjarra and Walmatjarri peoples: see ALRC, *The Recognition of Aboriginal Customary Laws*, Report No 31 (1986) [34].

24. For example, the ALRC has noted that '[a] group of nine members of the Pintubi language group, remade contact with their relations at an outstation in Western Australia in October 1984 after living for more than twenty years in complete isolation near Lake Mackay': ALRC, *ibid* 27–28.

25. See the map 'Tindale Tribal Boundaries – Western Australia' at Appendix E to this Discussion Paper. It should be noted that the tribal boundaries of a number of language groups cross the arbitrarily drawn boundaries that designate the different states and territories of Australia.

26. DIA, *Consulting Citizens: Engaging with Aboriginal Western Australians* (April 2004) 8.

27. *Ibid*. Whilst the Commission has done its best to observe this standard in its Discussion Paper there are some instances of quotes cited from other sources which refer to 'the Aboriginal community' in general terms. There are also instances where generic reference to 'Aboriginal people' is considered necessary to meaningfully furthering the discussion and cause of recognition of Aboriginal customary laws. Nonetheless, particular attention has been paid throughout this paper to the divergence of laws and customs as well as the differences in experiences, opinions and ideas of Aboriginal peoples and Aboriginal communities across the state.

28. *Ibid*.

# Consultation Findings

As described in Part I, the Commission conducted public consultations with Aboriginal communities across the state. These consultations took a variety of forms from large public hearings to small group discussions and meetings with individuals and community representatives. General discussion yielded a bounty of information relating to the existence and practise of customary laws by Aboriginal people in Western Australia; however, the consultations also revealed a great number of issues generally affecting Aboriginal communities. While these issues may have obvious links to the *customs* of Aboriginal communities, they sometimes have far less clear connections with Aboriginal *law*. Nonetheless, the Commission accepts that these issues do fall within its mandate as matters relevant to 'the views, aspirations and welfare of Aboriginal persons in Western Australia'<sup>1</sup> and are otherwise crucial to the proper execution of the reference. These issues were very real factors in the lives of those people that the Commission consulted for this reference and merit discussion in the context of this paper.

## Issues Affecting Aboriginal Communities in Western Australia

Issues of particular concern to Aboriginal communities consulted for this reference included children and youth; health and wellbeing; aboriginality and identity; racism and reconciliation; education, training and employment; housing and living conditions; and substance abuse. These will be discussed under separate headings below. Other significant issues of concern to Aboriginal communities included Elders and cultural authority (discussed in Part X 'Aboriginal Community Governance in Western Australia' and Part V 'Aboriginal Customary Law and the Criminal Justice System'); family violence

and the welfare of children (discussed in Part VII 'Aboriginal Customary Law and the Family'); and the release of Aboriginal prisoners for attendance at funerals and the over-representation of Indigenous people in Western Australia's prison population (discussed in Part V 'Aboriginal Customary Law and the Criminal Justice System').

Unless otherwise noted, the information discussed below is taken directly from the thematic summaries of consultations which record the opinions and concerns of Aboriginal communities consulted for the Aboriginal customary law reference. The thematic summaries are publicly available on the Commission's website.<sup>2</sup>

## Children and Youth

A principal concern raised by Aboriginal communities consulted across the state was the lack of respect shown for adults (particularly Elders) by Aboriginal youth.<sup>3</sup> Many communities saw this as a direct consequence of the decline of traditional law; others saw it as a consequence of the lack of suitable role models or mentors. The consensus in Aboriginal communities across Western Australia was that their young people need more discipline. However, it was noted that it was becoming increasingly difficult for Aboriginal families to administer traditional discipline because of the tendency of children to threaten families with 'white man's law'.<sup>4</sup> It was said that the white man's law thereby undermined traditional Aboriginal family structures.

Metropolitan communities stressed the need for parenting skills programs to assist parents to deal with their children. It was noted that the stolen generation had significant repercussions in this regard – that parents had not been taught Aboriginal law and

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1. As expressed in the final bullet point of the Commission's Terms of Reference: see above p v.  
2. See <<http://www.lrc.justice.wa.gov.au>>. The thematic summaries are also published separately on a CD-ROM, available from the Commission.  
3. See generally the Commission's Thematic Summaries of Consultations. See also the comments of community members in Roebourne recorded in Kathy Trees' case study: Trees K, *Contemporary Issues Facing Customary Law and the General Legal System: Roebourne – A Case Study*, Law Reform Commission of Western Australia (LRCWA), Project No 94, Background Paper No 6 (November 2003).  
4. Aboriginal concerns about discipline of children and the constraints of Australian law in this regard are discussed further in Part V 'Aboriginal Customary Law and the Criminal Justice System', below pp 187–88.

*In Carnarvon [it was said that] there had been youth 'suicide epidemics' in town, that prison had become a 'rite of passage' for boys and that pregnancy had become a 'rite of passage' for girls.*

Aboriginal ways and didn't learn how to be good parents.<sup>5</sup> This view was shared by many of the experts consulted for the *Bringing Them Home Inquiry* who noted that members of the stolen generation often had no history of nurturing or socialisation and had 'difficulty in sustaining and developing good constructive family relationships with their own children'.<sup>6</sup> It has also been suggested that the abuse and neglect experienced by some of the stolen generation whilst in care, accompanied by alienation from family and resulting confusion about cultural identity has contributed to problems of child abuse in contemporary Indigenous communities.<sup>7</sup>

Members of Aboriginal communities in the Kimberley, Pilbara, Gascoyne and metropolitan areas noted that their youth have low self-esteem, leading to problems of confused cultural identity, substance abuse and delinquency. It was argued that there was a need for specialised programs and activities to 'keep kids off the streets', build their confidence and assist them to acquire job-related skills such as improved communication skills. Communities in the mid-west suggested that many children have too much confidence: they think they are in control and have no respect for the white legal system.

Some disturbing issues were raised by communities in Carnarvon. It was said that there had been youth 'suicide epidemics' in town,<sup>8</sup> that prison had become a 'rite of passage' for boys<sup>9</sup> and that pregnancy had become a 'rite of passage' for girls. Alarming, the opinion was expressed that, because of alcoholism and



violence, many young people would be safer on the street or in an institution than they are at home.<sup>10</sup>

Overwhelmingly, Aboriginal communities in Western Australia expressed regret at the loss of traditional Aboriginal ways in respect of their dealings with children and youth.<sup>11</sup> It was understood that Aboriginal children were very much caught between two cultures, two

5. A participant at the Armadale consultation said: 'Responsibility is throughout families, not just parents but grandparents, aunts, uncles – all can discipline now. [Because of the stolen generation] no-one knows the correct way to parent ... because we don't live in the way that traditional people live ... we must find new ways ... if you are not a responsible parent you can't blame society for what your kids are doing'. See LRCWA, Project No 94, *Thematic Summaries of Consultations – Armadale*, 2 December 2002, 18.
6. HREOC, *Bringing Them Home*, Report (1997) 222.
7. Westerman T & Hillman S, *Caring Well – Protecting Well: Strategies to prevent child abuse in Indigenous communities* (Perth: Indigenous Psychological Services, 2003) 2. The subject of child abuse is addressed in more detail below in Part VII.
8. The WA Youth Suicide Advisory Committee has reported that the 'rate of suicide among Aboriginal youth is double that of their non-Aboriginal counterparts': Youth Suicide Advisory Committee, *Report to the Minister for Health on Recommended Policy and Programs for Preventing Suicide and Suicidal Behaviour Among Aboriginal Youth in Western Australia* (August 1998) 4. See LRCWA, Project No 94, *Thematic Summaries of Consultations – Carnarvon*, 30–31 July 2003, 2 & 6.
9. The view that crime is a 'rite of passage' for youth was also expressed in Geraldton. See LRCWA, Project No 94, *Thematic Summaries of Consultations – Geraldton*, 26–27 May 2003, 12.
10. Mention was also made of some young girls being prostituted by parents or guardians for financial gain – apparently to maintain drug or alcohol habits. Similar exploitation of young girls (by older men, not necessarily related) was reported in the Perth metropolitan area.
11. They also expressed sadness at their children's loss of culture and spirituality.

laws. Many participants believed that a return to traditional cultural practices would solve the problems perceived in Aboriginal youth. Others felt that things could be done within the current system to assist families and children to overcome these problems, including the establishment of parenting programs; early intervention strategies to deal with youth offending; improved after-school and weekend activity programs; drop-in centres or 'safe places' for Aboriginal children; cultural awareness programs and training in traditional ways (including Indigenous languages) for Aboriginal children; and programs to build self-esteem and equip youth with the skills and knowledge necessary for successful navigation through life.



Overall there was a consensus that it was necessary to develop Aboriginal-owned family healing programs and initiatives, designed to give Aboriginal people responsibility and authority to work on these issues with a long-term perspective. The importance of mediation and conferencing was stressed, as well as the need to incorporate a stronger community and cultural dimension in programs to ensure success.

## Health and Wellbeing

On average Aboriginal people in Australia can expect to live up to 20 years less than their non-Aboriginal neighbours. Comparisons of life expectancy for Indigenous peoples in Australia, Canada, New Zealand and the United States suggest that Australia has the worst record in improving the life expectancy of its Aboriginal peoples.<sup>12</sup> Infant mortality rates for Indigenous peoples in each of these countries were similarly high 30 years ago, but now Indigenous Australians have the highest rate of infant mortality – a rate that is 2.5 times higher than that of non-

Indigenous Australians.<sup>13</sup> Infant health is also a significant problem, with the rates of low birth-weight babies being worse in Indigenous Australia than in developing countries such as Ethiopia, Tanzania, Mexico and Indonesia.<sup>14</sup>

Studies undertaken by the Australian Bureau of Statistics show that the six main causes of death for Aboriginal people in the period 1999 to 2001 were: diseases of the circulatory system (including heart disease); external causes (including accidents, suicides, etc); neoplasms (including cancers); diseases of the respiratory system; endocrine, nutritional and metabolic diseases (including diabetes); and diseases of the digestive system.<sup>15</sup> Major health risk factors for Indigenous people are obesity (causing diabetes and heart problems), smoking (causing respiratory disease, coronary heart disease, stroke and cancers) and excess alcohol consumption.<sup>16</sup>

These studies are borne out by what the Commission observed during its consultations. Many communities reported problems with drug and alcohol-related illnesses, including mental illness and behavioural disorders. In Wiluna, obesity, diabetes and heart problems were said to be rife. In Meekatharra, Aboriginal people reported a high incidence of cancers. While in the Pilbara region concern was expressed about a significant increase in diabetes in the Indigenous

12. HREOC, 'A Statistical Overview of Aboriginal and Torres Strait Islander Peoples in Australia', <[http://www.hreoc.gov.au/social\\_justice/statistics](http://www.hreoc.gov.au/social_justice/statistics)> 5. A related issue, expressed by communities in the south-west region, was the need for early availability of superannuation for Aboriginal people. It was argued that, because of lower life expectancy, Aboriginal people did not often reach the age of retirement and therefore did not have the benefit of access to their superannuation before death. After death, it became a problem for families who often did not know how to access the funds.

13. Ibid 8.

14. Ibid 7.

15. Ibid 9.

16. Ibid.

population. It is noted that, while some of the illnesses reported by Aboriginal communities may be related to what might be called 'lifestyle choices' (ie, drug and alcohol-related illnesses), many health problems flow from the poor availability of fresh food in remote areas, as well as poor infrastructure<sup>17</sup> to allow for the healthy preparation of food. Studies have shown that many community stores eschew stocking perishable, fresh foods (such as fruits and vegetables) in favour of high profit 'convenience' foods that are typically high in fat and salt content and low in nutritional value.<sup>18</sup> Consumers who base their diets on these foods (for reason of lack of choice, ease of preparation and storage or otherwise) place themselves at high risk of obesity, diabetes and heart disease.

### Health services

Many of the regions reported poor or ill-adapted community health services.<sup>19</sup> In some cases there was a lack of staff (or indeed any local health services) and in others there were cultural barriers to appropriate treatment. The Australian Institute of Health and Welfare (AIHW) has found that 'the willingness of Indigenous people to access health services may be affected by such factors as community control of the service, the gender of health service staff, and the degree of proficiency [of the client] in spoken and written English'.<sup>20</sup> Adding to these problems is the distance (particularly in remote areas) that people must travel to access health services.<sup>21</sup> The lack of community transport to health facilities in the Pilbara emerged as a significant problem. It was also reported that the ambulance service had refused to travel to certain Pilbara communities, even in emergencies.

In the larger regional centres some concern was expressed about lack of cultural training of hospital staff and health authorities. For example, Indigenous people in Hedland and Geraldton complained that 'avoidance laws' (traditional laws that dictate interactions between

certain kin) were not understood and that this resulted in people sharing wards or rooms inappropriately. It was reported that, in one instance, this caused a man to forego treatment and ultimately perish to avoid being placed near his mother-in-law in hospital. The AIHW has stated that the availability of Indigenous staff is an important factor in whether or not Indigenous people are able to effectively access health services.<sup>22</sup> It was suggested at one of the consultation meetings that the Health Department should employ an Indigenous person on its interview panel to ensure that the selection criteria adequately address relevant cultural awareness skills and training. It was said that this may also result in more Aboriginal people applying for positions in hospitals, particularly regional hospitals.<sup>23</sup>

An emphasis on an outcome-based approach to cultural awareness training in the health sector (that is, an approach that assists health workers to not just recognise cultural difference but to translate such recognition into culturally appropriate action) is required to address the issues raised by Aboriginal people in the Commission's consultations. An example of an outcome-based approach in action was provided by Aboriginal communities in Geraldton who applauded the efforts of Geraldton Hospital, which had reportedly adapted a lounge to accommodate an entire Aboriginal family who were obliged to remain with their dying relative.

A recent background paper published by the Department of Health in Western Australia recognises that current cultural awareness programs do not adequately deliver real cultural respect outcomes for Aboriginal people. It recommends the adoption of a new approach – that of 'cultural security'.

*Cultural Security* is focused directly on practice, skills and behaviours. It is about efficacy ... doing not talking. It is about building the competence of practitioners and administrators to know, understand and incorporate Aboriginal cultural values in the design, delivery and evaluation of health services.<sup>24</sup>

17. For example, gas, electricity, refrigeration and water supply.

18. See George KL, *Community Stores and the Promotion of Health: An assessment of community stores and their functions in the promotion of health in Aboriginal communities* (Perth: Department of Health, 1996); Stewart I, *Research into the Cost, Availability and Preferences for Fresh Food Compared with Convenience Items in Remote Area Aboriginal Communities* (Australian Medical Association and Pharmaceutical Manufacturers Association, 1997).

19. There are signs of imminent improvement of health care services for Aboriginal people in Western Australia. In April 2004 the Commonwealth and Western Australian governments signed a memorandum of understanding to work together to upgrade health facilities and programs for Western Australian Aboriginal communities. The Commonwealth government has committed significant funding to realise new health care initiatives in this state.

20. Australian Institute of Health and Welfare (AIHW): see <<http://www.aihw.gov.au/indigenous/health/access.html>>.

21. In some areas doctors can only reach remote communities on a monthly basis; sometimes less frequently in the rainy season. For diseases such as meningitis the delay in diagnosis and treatment can be fatal. The risk of community-wide epidemics of infectious diseases is also magnified.

22. AIHW, <<http://www.aihw.gov.au/indigenous/health/access.html>>.

23. The Commission notes that the Office of Aboriginal Health (WA) has instituted an Aboriginal health scholarship program to encourage the enrollment of Aboriginal people in health related courses. See <<http://www.aboriginal.health.wa.gov.au>>.

24. Department of Health (WA), *Aboriginal Cultural Security*, Background Paper (undated) 13.



In view of comments made to the Commission during its consultations, the success of such a program would appear to hinge upon its flexibility to allow programs to be appropriately adapted to take account of regional differences and concerns of local Aboriginal communities. This would require non-centralised delivery and the significant involvement of Aboriginal people in each health service's client base. The monitoring of service delivery and accountability, particularly in respect of protection of cultural information, will be crucial to meaningful change in this area.

## Mental health

The 1989 National Aboriginal Health Strategy suggests that Aboriginal people perceive their health in terms of the emotional, social and cultural wellbeing of their communities as well as the physical health of individuals.<sup>25</sup> Although the issue of mental health was not specifically raised by the Commission in its consultations, communities in the Gascoyne, south-west and Kimberley regions identified problems with mental illness in their communities and a need for improved mental health services.

According to AIHW there are 'large discrepancies in the mental health and emotional wellbeing of Indigenous peoples compared with non-Indigenous people'.<sup>26</sup> Unfortunately data-collection in the Indigenous health area has been insufficient to provide adequate information about the incidence of mental disorder among Aboriginal people.<sup>27</sup> It is expected that

this position will be remedied by the forthcoming 2004–2005 Indigenous Health Survey.<sup>28</sup> It is also expected that mental health service delivery will be improved by the development and adoption of a national strategic framework for Aboriginal and Torres Strait Islander mental health and emotional wellbeing;<sup>29</sup> however, for present purposes it is instructive to note the concerns and comments of Aboriginal communities consulted for this reference.

Communities in the Kimberley region linked problems with Indigenous mental health to neglect of traditional ways. Suggestions were made that mental health problems (and resultant suicides or self-harming) increased where traditional punishment for wrongdoings was delayed or interfered with by the justice system. It was suggested that Aboriginal healers could be more involved with the treatment of Indigenous people with mental illness – this would assist mental health workers to understand the cultural aspects of Indigenous peoples' wellbeing. Mental health services in Broome were also criticised. It was said that communication with those in mental health facilities and their families was particularly difficult.

Communities in Carnarvon said that the need for mental health services in that area was unmet. In this region problems with mental illness were often linked to substance abuse. It was suggested that funding was needed to provide mental health counselling, particularly for adolescents. In view of the high rate of youth suicides reported in this area, the provision of culturally appropriate, community-based mental health counselling should be viewed as a priority.

Communities in Albany also pointed to a need for more culturally appropriate counselling services in that region. It was considered that the current practice of one-on-one counselling was not appropriate to Aboriginal people and that more focus should be given to family and group counselling.

The Commission accepts that there are many factors that affect the social and emotional wellbeing of Aboriginal people in Western Australia and which, in some cases, can contribute to the development of significant mental disorders. Such factors include inadequate housing and poor living conditions; alcohol

25. AIHW, <<http://www.aihw.gov.au/indigenous/health/access.html>>.

26. *Ibid.*

27. *Ibid.*

28. *Ibid.*

29. This framework was in the consultation phase at the time of writing.

## Aboriginal people perceive their health in terms of the emotional, social and cultural wellbeing of their communities as well as the physical health of individuals.

and drug abuse; family violence and physical or sexual abuse; racism and lack of cultural identity; cultural issues such as payback;<sup>30</sup> and socio-economic disadvantage. The Commission therefore acknowledges that improvements to the delivery of mental health services (or the promotion of relevant programs) alone will not necessarily provide solutions to the problems outlined by Aboriginal communities in the consultations. Clearly a more holistic approach to the health care of Indigenous people is required.

The consultation draft of the *National Strategic Framework for Aboriginal and Torres Strait Islander Mental Health and Social and Emotional Wellbeing 2004–2009* suggests that strategic improvements in promotion of programs and service delivery in key portfolio areas across government (including housing, family and community services, education, income support, culture, as well as health) will have the potential to enhance social and emotional wellbeing, improve Indigenous mental health and assist in the prevention of youth suicide.<sup>31</sup> The Commission supports this approach.

### Substance Abuse

Substance abuse was reported to be a significant problem by most of the communities consulted for this reference. The majority of communities reported considerable difficulty in dealing with alcohol and inhalant abuse; these concerns are discussed in detail below. Amphetamines, marijuana and opiates were also among the substances reportedly abused.

### Alcohol

Alcohol abuse (and its associated health and social consequences) has long been an issue for Australia's Indigenous population. This problem dates back to the introduction of alcohol by Australia's first European 'settlers'. Today, the proportion of Indigenous people in Australia consuming alcohol at the low-risk level is similar to that of non-Indigenous people.<sup>32</sup> However, there is a slightly greater proportion of Indigenous people consuming alcohol at a high-risk (excessive or harmful) level compared with non-Indigenous people.<sup>33</sup> Disturbingly, approximately 70 per cent of Indigenous people aged 14 to 24 years who consume alcohol do so at a harmful level (that is, over six standard drinks). This figure drops to 67.1 per cent for Indigenous drinkers over the age of 25.<sup>34</sup> According to a recent government report, apart from serious harm to physical and mental health (including disability, depression, liver cirrhosis, cancers, pancreatitis, dependence syndrome and foetal-alcohol syndrome),

excessive alcohol consumption at the family and community levels contributes to interpersonal/domestic violence, financial problems, child abuse and neglect and family breakdown. It also contributes to acute hospitalisation from alcohol related injuries such as falls, traffic accidents, assaults, and suicides.<sup>35</sup>

Alcohol-related crime is also an issue for Aboriginal communities; in particular, alcohol is a significant factor in Indigenous homicides.<sup>36</sup> For example, in 2001 just less than three-quarters of Indigenous homicides involved both the victim and the offender under the

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30. According to Tracey Westerman and Sharon Hillman, 'many mental health and well-being issues are directly related to cultural issues' such as payback for doing something wrong 'culturally'. They believe that this position reveals 'an obvious need for practitioners and services to be able to incorporate cultural factors into interventions'. Westerman T & Hillman S, *Caring Well – Protecting Well: Strategies to prevent child abuse in Indigenous communities* (Perth: Indigenous Psychological Services, 2003) 11–12.
  31. Social Health Reference Group, Commonwealth Department of Health and Aging, *Consultation Paper for the Development of a National Strategic Framework for Aboriginal and Torres Strait Islander Mental Health and Social and Emotional Wellbeing 2004–2009* (2003) 17–18.
  32. Steering Committee for the Review of Government Service Provision (SCRGSP), *Overcoming Indigenous Disadvantage: Key Indicators 2003* (November 2003) 8.3. These statistics are taken from the Australian Bureau of Statistics studies undertaken in 2001.
  33. Ibid. Indigenous people consuming alcohol at the high risk level were found to be more likely to be living in remote areas.
  34. Hennessy S & Williams P, 'Alcohol-Related Social Disorder and Indigenous Australians: Recent, past and future directions' in Williams P (ed.), *Alcohol, Young Persons and Violence* (Canberra: Australian Institute of Criminology, 2001) 149–50. The figures taken from this paper are from the 1994 National Drug Strategy Household Survey.
  35. SCRGSP, *Overcoming Indigenous Disadvantage: Key Indicators 2003* (November 2003) 8.2.
  36. Almost 30 per cent of Indigenous homicides involve alcohol compared to 10.5 per cent of non-Indigenous homicides. Ibid 8.8.

influence of alcohol at the time of the offence.<sup>37</sup> The Office of the Status of Women also reports that 70 to 90 per cent of domestic assaults in Indigenous communities are committed whilst under the influence of alcohol (and other drugs).<sup>38</sup>

In Western Australia and elsewhere, a number of communities have sought to address these problems by the enactment of by-laws<sup>39</sup> prohibiting the sale and consumption of alcohol on community lands.<sup>40</sup> Such measures have been most successful in remote communities, such as Warburton, where access to alcohol outside the community is limited. Other 'dry' communities that are less remote (in that they have large towns in close proximity) report that they have been less successful in the prohibition of alcohol by enforcement of community by-laws.<sup>41</sup>

### Inhalants

From the 1970s the incidence of inhalant use (or 'sniffing') among Indigenous people has increased. Sniffers tend to be aged in their teens; however, there are an alarming number of children (sometimes as young as eight years' old) consuming inhalant substances.<sup>42</sup> Frequent abuse of inhalants can lead to permanent physical disability, brain damage or death.<sup>43</sup> Problems with inhalant use were consistently reported by Aboriginal communities across the state in both the metropolitan<sup>44</sup> and regional areas. In Kalgoorlie, it was reported that the problem of inhalant sniffing was endemic but that the causes were not being addressed. It was said that sniffing was a costless way of escaping poverty, abuse, hunger and family dysfunction.

The inhalation of legal volatile substances (such as petrol, paint, solvents and glue) is currently not a criminal offence. Many of the communities consulted for this reference stressed the need for power to deal with inhalant use, particularly in youth. It was said that sniffing should be prohibited and that police should have the power to take substances away from inhalant users.<sup>45</sup> The opinion was also expressed that if sniffing was recognised as a crime then users would get more support.

Recognising limitations on prohibiting the 'use' of legal everyday substances such as petrol<sup>46</sup> and glue, it is necessary to think more laterally about ways of assisting Aboriginal communities to overcome this problem. Given the key recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) regarding the need to divert Aboriginal people (particularly Aboriginal youth) away from the criminal justice system, the desirability of criminalising inhalant use must also be questioned.

One of the ways that Aboriginal communities can limit and control inhalant use is by the enactment of by-laws under the *Aboriginal Communities Act 1979* (WA); however, this avenue has not been widely used to date. Of the 25 Aboriginal corporations in Western Australia that have enacted community by-laws only 11 have enacted provisions prohibiting the possession, sale or supply of deleterious substances<sup>47</sup> for the purposes of inhalation.<sup>48</sup> The community at Cosmo Newbery has further enacted a provision authorising police officers to confiscate and dispose of any deleterious substance 'that he or she reasonably

37. Ibid. That is almost four times the rate for non-Indigenous homicides.

38. Ibid 8.11.

39. In Western Australia, these by-laws are enacted under the *Aboriginal Communities Act 1979* (WA).

40. See for instance, the *Wongatha Wonganarra Aboriginal Community By-laws 2003* (WA) s 11. Wongatha Wonganarra is an Aboriginal community in the Laverton (Goldfields) area.

41. Cosmo Newbery (a Goldfields Aboriginal community) reported that although their community has by-laws banning the consumption of alcohol, these have not been particularly effective because of the community's proximity to Laverton where alcohol is freely available.

42. SCRGSP, *Overcoming Indigenous Disadvantage: Key Indicators 2003* (November 2003) 8.11.

43. Ibid.

44. In particular in the Midland area where Indigenous respondents urged immediate action by government to this problem. The problem was also confirmed by the findings of the Gordon Inquiry and was the subject of recommendation 140 of that inquiry. See: Gordon S, Hallahan K & Henry D, *Putting the Picture Together: Inquiry into Responses by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities* (July 2002).

45. Police are empowered to seize intoxicants from children in public places under the *Protective Custody Act 2000* (WA). See below and Part V for further discussion.

46. In November 2004, petroleum manufacturer BP announced the release of 'Opal', a new unleaded fuel with reduced aromatics which considerably lessens its psychotropic effect on sniffers making it very difficult to achieve a 'high'. The federal government intends to subsidise the introduction of the new fuel for 14 remote Aboriginal communities in Western Australia. There have been criticisms of the limited application of the fuel-subsidy program and calls for it to be extended to regional centres to stop trafficking of petrol to affected communities. See 'New Petrol Provides No High for Sniffers', ABC Online, 10 November 2004: <<http://www.abc.net.au/central/news/200411/s1240473.htm>>; 'Abbott Rejects Calls for Wider Non-sniff Fuel Distribution', ABC News Online, 29 June 2005 <<http://www.abc.net.au/news/newsitems/200506/s1402755.htm>>.

47. Deleterious substances are generally defined as 'glue or any volatile liquid containing hydrocarbons and including marijuana, cocaine, speed, methylated spirits, crack, petrol and boot polish'.

48. These are the Cosmo Newbery Aboriginal Corporation, Jigalong Community Inc., Junjuwa Community Inc., Mugarinya Community Association Inc., Ngaanyatjarra Council (Aboriginal Corporation), Upurl-Urpurlila Ngurratja Inc., Yungngora Association Inc., Wongatha Wonganarra Aboriginal Community, and, most recently, Kundat Djaru Community, Irrungadji Community and Mowanjum Community.



suspects is to be used or has been used for the purpose of inhalation and any container that contains or has contained such deleterious substance'.<sup>49</sup>

A number of communities that have current and continuing problems with inhalant abuse have not enacted new by-laws or amended current by-laws to prohibit the possession and use of deleterious substances on community lands. These include the Balgo Hills Aboriginal community, where recent reports indicate that petrol sniffing may have been a contributing factor in three deaths over the past two years.<sup>50</sup> In 1982 when the Balgo Hills Aboriginal community enacted by-laws under the *Aboriginal Communities Act 1979* (WA) inhalant use was probably not prevalent. However, changed circumstances indicate the need for communities like Balgo to reassess the effectiveness of current by-laws and institute change where necessary.

In considering the effectiveness of offences under the *Aboriginal Communities Act* it should be noted that penalties for infringement of by-laws were significantly altered by the passage of the *Sentencing Act 1995* (WA) which removed the option to impose sentences of three months or less.<sup>51</sup> Prior to the passage of this legislation infringement of community by-laws was generally met with a fine of \$100 or a term of

imprisonment for three months or less, or both. Presently, the penalty for infringement of by-laws is the imposition of a fine not exceeding \$5,000.<sup>52</sup> During the Commission's consultations, communities in Cosmo Newbery and Warburton reported that the control of alcohol and deleterious substances in their communities had been rendered less effective since the removal

of the option of imprisonment.

In a 2002 submission to the Attorney-General the Ngaanyatjarra community at Warburton reported that '[s]ince 1995, a widely held community perception has developed that the justice system is not addressing public order and community safety offences adequately'.<sup>53</sup> It was argued that prior to 1995 the Ngaanyatjarra community had reported a marked reduction in the morbidity and mortality rates of volatile substance abusers subjected to short terms of imprisonment.<sup>54</sup> They requested that 'the full range of sentencing options be restored for offences under the *Aboriginal Communities Act 1979* (WA)' to aid in the effective deterrence of widespread substance abuse.<sup>55</sup> The Commission believes that, in view of the recommendations of the RCIADIC stressing the need to divert Aboriginal youth from the criminal justice system, the restoration of penalties such as imprisonment would be counterproductive. In particular, the application of serious criminal sanctions to inhalant abuse is unlikely to address the underlying social factors that cause Aboriginal youth to abuse solvents.<sup>56</sup> Part V 'Aboriginal Customary Law and the Criminal Justice System' of this Discussion Paper will investigate other options for responding to community safety and public order offences (including alcohol and substance abuse) in Aboriginal communities.<sup>57</sup>

49. *Cosmo Newbery Aboriginal Corporation By-Laws 1993* (WA) s 13(2)(f).

50. 'Government Agencies Promise Schemes to Fight Petrol Sniffing', ABC Online, 30 September 2003: <[http://www.abc.net.au/message/news/stories/ms\\_news\\_956496](http://www.abc.net.au/message/news/stories/ms_news_956496)>.

51. *Sentencing Act 1995* (WA) s 86. In March 2004 sentences of six months' imprisonment or less were abolished under the *Sentencing Legislation Amendment Repeal Act 2003* (WA).

52. *Aboriginal Communities Act 1979* (WA) s 7(2)(d). Although communities have been slow to amend their by-laws to reflect this change.

53. Ngaanyatjarra Community, 'Law and Justice Submission to the Attorney-General of Western Australia' (April 2002) 7.

54. *Ibid.*

55. *Ibid.* 21.

56. Cleary S, 'Chroming: Child Protection before Law Enforcement' (2003) 39 *Indigenous Law Bulletin* 16.

57. See below pp 107-41.

## Alcohol and other drug intervention projects

According to a 2000 survey undertaken by the Australian National Council on Drugs (ANCD), Western Australia has a total of 74 alcohol and other drug intervention projects which operate to specifically address the needs of Indigenous users.<sup>58</sup> Of these projects, 71 per cent are conducted by community-controlled Indigenous organisations.<sup>59</sup> Intervention projects in Western Australia include treatment programs (such as residential rehabilitation<sup>60</sup> and therapeutic counselling), acute intervention programs (such as night patrols and sobering-up facilities) and prevention programs (such as education and youth activities to provide alternatives to drug use).<sup>61</sup>

The ANCD 2000 survey indicated that the majority of the available intervention programs in Western Australia target alcohol abuse (the preponderance being acute intervention programs).<sup>62</sup> Programs specifically targeting inhalant abuse were found in the Perth metropolitan area (2), the Western Desert region (1) and the east Kimberley (1); of these four programs only one was Indigenous-controlled and two had a focus on research rather than prevention. At the time of the 2000 survey, intervention programs with a multi-drug focus appear to have been concentrated in the Western Desert region and were overwhelmingly Indigenous-controlled.<sup>63</sup>

The preference for Indigenous-controlled intervention programs was highlighted by many communities during the Commission's consultation process. In Carnarvon the strong desire for an Aboriginal-run sobering-up



shelter was expressed, although there is currently a non-Indigenous church-run facility operating in town. While non-Indigenous controlled facilities certainly have an important role to play, it is crucial that these initiatives work through cultural protocols and liaise with local Aboriginal-controlled programs (such as night patrols) and the local community.<sup>64</sup> The case of the Marrala Patrol (Fitzroy Crossing), discussed in Part V,<sup>65</sup> demonstrates the need for greater communication between service providers and for non-Indigenous organisations (including police) to receive regular local cultural awareness training to gain understanding of the limitations and obligations of Aboriginal-controlled services under Aboriginal customary law.<sup>66</sup>

Generally the Commission found that the work of Indigenous night patrols throughout the state was applauded; however, some concern was expressed that where sobering-up shelters are unavailable the only place for night patrols to take their clients was to their homes. The high incidence of alcohol-related family violence in Indigenous communities highlights the need for suitable sobering-up facilities in affected areas. Many

58. Australian National Council on Drugs (ANCD), *Indigenous Drug and Alcohol Projects 1999–2000*, Research Paper No 4 (2002) 22.

59. *Ibid* 20.

60. An excellent example of an Indigenous-specific residential rehabilitation program is provided by Milliya Rumurra Alcohol and Drug Rehabilitation Centre in Broome. Established in 1978, at the behest of the local community, Milliya Rumurra takes a harm-minimisation (rather than complete abstinence) approach to alcohol abuse and seeks to strengthen social and family relationships by providing education and counselling and by accommodating the immediate family of clients. Whilst in the centre, clients have their health needs assessed and addressed and also voluntarily attend relevant programs run by other service providers, such as anger-management programs provided by the Department of Justice. Milliya Rumurra also runs a successful sobering-up shelter in the town centre which was established in 1999 in response to the recommendations of the RCIADIC. See ANCD, *Indigenous Drug and Alcohol Projects: Elements of best practice*, Research Paper No 8 (2003) 43–48.

61. A full list of Western Australian programs as at 2000 is appended to ANCD, *Indigenous Drug and Alcohol Projects 1999–2000*, Research Paper No 4 (2002) Appendix 2.

62. *Ibid* 41.

63. *Ibid* Appendix 2.

64. Harry Blagg and Giulietta Valuri have found that '[p]atrols operate best when they remain culturally embedded in Indigenous communities, respect local cultural protocols and operate from within Aboriginal terms of reference': Blagg H & Valuri G, 'Self-Policing and Community Safety: The work of Aboriginal community patrols in Australia' (2004) 15(3) *Current Issues in Criminal Justice* 2, 6.

65. See Part V 'Aboriginal Community Justice Mechanisms', below pp 107–41.

66. In particular the issue of avoidance relationships and the strict liability applicable to Indigenous workers for harm of a client while in their care at a shelter or other facility (particularly in a case where the person does not consent to being taken to the facility).

## *The preference for Indigenous-controlled [drug] intervention programs was highlighted by many communities during the Commission's consultation process.*

communities also expressed the need for 'half-way houses' to assist those who have undergone rehabilitation for drug and alcohol addiction to successfully return to the community.<sup>67</sup> The Commission believes that for sobering-up facilities to avoid becoming 'revolving doors' to further alcohol or substance abuse, adequate pathways must be provided into relevant treatment programs. The Commission saw an excellent example in the South Hedland Ngooda-Gardy Patrol which provides a night patrol service, a sobering-up facility, and family violence intervention and itinerancy programs for Indigenous clients. The Yamatji Patrol in Geraldton has also expanded its services to include a family violence prevention unit which provides crisis prevention, counselling and advocacy services for victims of family violence. According to Harry Blagg, this type of 'value-adding' to embedded successful Indigenous-controlled initiatives (such as night patrols) is proving to be more successful than imposing new non-Indigenous controlled structures on communities.<sup>68</sup> Of course, these expanded initiatives will require supportive strategic partnerships with relevant government agencies and adequate government funding to guarantee the success of their operations.

Studies of government expenditure on intervention programs show that funding for programs in the southern and western regions of Western Australia is 'considerably below the national average'.<sup>69</sup> This prompted the ANCD to recommend investigation into whether these regions are adequately serviced.<sup>70</sup> The lack of services in some of these regions was drawn to the Commission's attention during its consultations, with Bunbury communities complaining of the lack of a sobering-up facility and drug and alcohol centre, and metropolitan communities pointing to the need for

suitable detoxification and rehabilitation programs in Perth.<sup>71</sup>

In August 2003 the Commonwealth's Ministerial Council on Drug Strategy released its *National Drug Strategy Aboriginal and Torres Strait Islander Peoples Complementary Action Plan 2003–2006* (the Action Plan). The Action Plan was developed following extensive consultation with Indigenous communities and emphasises the need for realistic strategies to prevent and reduce Indigenous substance abuse. The Action Plan is structured around six key action areas: empowering Indigenous communities to address issues in the use of alcohol and other drugs in their communities; adopting a whole-of-government approach to collaborative service provision; improving access to health services; implementing a range of holistic approaches from prevention through to treatment and continuing care; instituting workforce initiatives to enhance the ability of community-controlled organisations to deliver quality services; and establishing sustainable partnerships among Indigenous communities, government and non-government agencies to develop and manage research, monitoring, evaluation and dissemination of information.<sup>72</sup> Implementation of the Action Plan will be targeted over the next five years. Successful implementation will depend upon collaborative partnerships between the Commonwealth, state, territory and local governments and communities.

The Commission notes that the Department of Health (WA) has committed to the development of a state Aboriginal alcohol and drug strategy based on the Action Plan.<sup>73</sup> The Commission supports Health Department initiatives to address the problem of alcohol

67. Half-way houses were also suggested by a large number of communities and organisations consulted as a necessary measure for returning and recently paroled prisoners.

68. Blagg H, *A New Way of Doing Justice Business? Community Governance Mechanisms and Sustainable Governance in Western Australia*, LRCWA, Project No 94, Background Paper No 8 (January 2005) 13–14.

69. ANCD, *Indigenous Drug and Alcohol Projects 1999–2000*, Research Paper No 4 (2002) 43.

70. *Ibid.*

71. A respondent at the Commission's consultations with Aboriginal women in Bandyup Prison (17 July 2003) said: '*The Ngoongar Alcohol and Substance Abuse Service needs to go out bush. It's no use where it is. It should go out and talk, take some kangaroo tails and go bush.*'

72. Ministerial Council on Drug Strategy (Cth), *National Drug Strategy Aboriginal and Torres Strait Islander Peoples Complementary Action Plan 2003–2006* (August 2003) 7.

73. Department of Health (WA), *Putting People First: Agency Drug and Alcohol Action Plan 2003–2005* (June 2003).

and drug abuse in Western Australian Indigenous communities, particularly the establishment of early intervention, prevention and diversion strategies. The Commission notes, however, that substance abuse is often a consequence of personal trauma, family violence or external factors such as poor living conditions, lack of meaningful activity or lack of opportunity. The Commission therefore endorses an integrated whole-of-government approach to dealing with Indigenous disadvantage and the underlying causes of substance abuse.

## Aboriginality and Identity

The overwhelming desire to 'reclaim' Aboriginal cultural identity featured in many of the discussions that the Commission had with Aboriginal people and communities. The lack of pride in (and knowledge of) traditional Aboriginal culture and the confused cultural identity that inevitably results have already been mentioned as significant problems in Aboriginal youth, particularly in rural and remote areas. Issues surrounding cultural identity are also substantial for the increasing population of urban Aboriginals. Bronwyn Fredericks has written:

Aboriginal people have had to work hard to build and sustain positive Aboriginal identities due to the influence of the dominant culture on our lives ... The constant exchanges, interaction and dialogue with non-Indigenous urban society can present challenges to our identity. It can be a struggle to live life within the dominant culture, while at the same time trying to honour and protect our own heritage, institutions and worldview.<sup>74</sup>

Fredericks also points out the difficulty of access to culture by many urban Aboriginal people. The geographical distance from country, language, law, and even from Elders, may reinforce a person's dislocation from Aboriginal culture and undermine his or her 'sense of Aboriginality'.<sup>75</sup> For many victims of the stolen generation, there is also the problem of establishing their genealogical identity as well as their cultural identity.

In addition to issues of cultural identity, Aboriginal people are required to prove their Aboriginality (or 'legal' identity) for the purposes of accessing government benefits and programs reserved for the exclusive benefit of Indigenous people. Proof of Aboriginality is also required for making claims to native title of land and for applications for protection of Indigenous cultural heritage.<sup>76</sup> However, as Loretta de Plevitz and Larry Croft write in their article *Aboriginality Under the Microscope*, there is no single legislative test defining Aboriginality for the purposes of access to these benefits; therefore, access is often dependent upon claimants satisfying certain criteria set down by the courts and government agencies.<sup>77</sup>

The test has three elements, all of which must be proved by the person claiming to be Aboriginal: the person must identify as Aboriginal, the Aboriginal community must recognise the person as Aboriginal, and the person [must be] Aboriginal by way of descent.<sup>78</sup>

The problem with this test according to de Plevitz and Croft is that, although the last element has been judicially interpreted to mean 'genealogical descent by quantum of Aboriginal genes', there is as yet no way of proving Aboriginality through genetic science.<sup>79</sup> The reason for this is that there is 'no such thing as a genetically differentiated "race", we are all one species'.<sup>80</sup> Moreover, the Aboriginal population of Australia is known to be significantly genetically diverse. The only thing that genetic science can reliably prove is relationship to a known person who also claims Aboriginality. This may prove difficult for those who have, as a result of past government policies, been removed from their Aboriginal families and have not yet been reconnected and for 'persons whose ancestral group has virtually been exterminated'.<sup>81</sup>

De Plevitz and Croft argue that the biological test of Aboriginality by proof of 'race' or descent should be abandoned and the question of Aboriginality should rest on cultural identification alone. This argument sits well with United Nations General Recommendations on

74. Fredericks B, 'Urban Identity' (2004) 12 *Eureka Street* 30, 30.

75. *Ibid* 31.

76. de Plevitz L & Croft L, 'Aboriginality Under the Microscope: The Biological Descent Test in Australian Law' (2003) 3(1) *Queensland University of Technology Law and Justice Journal* 1, 1.

77. *Ibid*.

78. *Ibid*. The threefold test is laid down by the High Court in *Commonwealth v Tasmania* (1983) 46 ALR 625, 817. The threefold definition was first proposed by the Department of Aboriginal Affairs, *Report on a Review of the Working Definition of Aboriginal and Torres Strait Islanders* (Canberra, 1981).

79. de Plevitz & Croft, *ibid* 2.

80. *Ibid* 13. See also Gardiner-Garden J, *Defining Aboriginality in Australia*, *Parliament of Australia*, Current Issues Brief No 10 (February 2003).

81. de Plevitz & Croft, *ibid* 17.

## The Commission endorses an integrated whole-of-government approach to dealing with Indigenous disadvantage and the underlying causes of substance abuse.

the subject which state that membership of a particular racial or ethnic group should be 'based upon self-identification by the individual concerned if no justification exists to the contrary'.<sup>82</sup> De Plevitz and Croft recognise the possibility of fraudulent claims to Aboriginality based on this means of identification but assert that the necessary 'recognition by an Aboriginal community will provide the requisite checks and balances'.<sup>83</sup>

However, whilst the Commission accepts the arguments against biological identification, a test that demands only cultural identification may still allow the possibility of some Aboriginal claimants slipping through the net. The Commission heard of one case where the child of a parent who had left a community and no longer had ties to that community could not sufficiently prove Aboriginality on cultural criteria in order to claim education benefits. In addition, members of the stolen generation (an example given above by de Plevitz and Croft in their arguments against genetic testing for Aboriginality) may also suffer under a test consisting of purely cultural criteria; particularly where they or their descendants have been unable to reconnect with their Aboriginal families.

Although the Commission heard stories of incidents that go to the heart of this issue, the Commission has insufficient evidence of the extent to which proof of Aboriginal identity represents a problem for Indigenous people in accessing government programs and benefits in Western Australia. The Commission therefore invites submissions from interested parties on this matter. The issue of proof of Aboriginality for administrative purposes

dovetails with the Commission's consideration of the need for a standard definition of 'Aboriginal person' for legislative purposes (such as adoption, succession and customary harvesting rights) which is explored in Part III below.<sup>84</sup>

### Invitation to Submit 1

The Commission invites submissions on the problems faced by Aboriginal people in Western Australia in proving their Aboriginality, particularly for the purposes of accessing programs and benefits offered by Western Australian government agencies for the exclusive benefit of Aboriginal people.

## Racism and Reconciliation

### Racism

It's different for black and white [people]; how they are treated.<sup>85</sup>

A disturbing trend in the Commission's consultations across the state was the complaints and examples of racism toward Aboriginal people.<sup>86</sup> Aboriginal communities, particularly those in large regional centres, reported entrenched racist attitudes, both in their everyday life and in dealing with government authorities.<sup>87</sup> Examples ranged from Aboriginal children being ejected from shopping centres for 'breach of dress code' whilst their similarly dressed white counterparts were permitted to remain, adults being refused entry to hotels and families being discriminated

82. Ibid 9. However, a significant decline in the rate of persons self-identifying as Indigenous has been noted in the last four Australian censuses (1986, 1991, 1996 and 2001). Gardiner-Garden observes that this rate far exceeds 'that expected from natural increase (indeed, over this period the fertility-rate of Indigenous women has actually been falling). These statistics have generated some debate'. See Gardiner-Garden J, *Defining Aboriginality in Australia*, Parliament of Australia, Current Issues Brief No 10 (February 2003) 8.

83. de Plevitz & Croft, *ibid*.

84. See 'Definitional Matters', below pp 47–52.

85. Participant at the Armadale consultation. See LRCWA, Project No 94, *Thematic Summaries of Consultations – Armadale*, 2 December 2002, 20.

86. The Human Rights and Equal Opportunity Commission's (HREOC) 1991 National Inquiry into Racist Violence found that racism and racial violence against Aboriginal people in Australia was 'endemic'. For further discussion of this inquiry, see McGlade H, 'The International Prohibition of Racist Organisations: An Australian Perspective' (2000) 7(1) *E-Law: Murdoch University Electronic Journal of Law* 1.

87. In regard to institutional racism, see the discussion by Harry Blagg in his background paper to this reference: Blagg H, *A New Way of Doing Justice Business? Community Governance Mechanisms and Sustainable Governance in Western Australia*, LRCWA, Project No 94, Background Paper No 8 (January 2005) 5–6.

against in the rental housing market<sup>88</sup> to quite serious allegations of police failure to investigate Aboriginal deaths and strong community perceptions of police targeting Aboriginal people.

In Derby it was said that there was a discernible racist culture in the local police force. One respondent told a story of being at a meeting with a new police officer who had just arrived from Perth:

I look sort of white: when I told him I was Aboriginal he said, 'You must be one of the good ones then'. I thought about it and wondered, 'Is he being racist'? He just said it so matter of fact, like it was just okay to talk to me like that; he couldn't see anything wrong.<sup>89</sup>

In Carnarvon there were reports of entrenched racism and name-calling:

There is still some entrenched racism. Resistance to establishing a sobering-up shelter is based on racism. The 'old guard' in town still call Aboriginal people 'natives', 'boongs' and 'niggers'. They can't come to terms with multi-culturalism, [they] think Aboriginal people are the 'criminals' and that the purpose of crime prevention is to have them arrested and moved out of town.<sup>90</sup>

Locals in Carnarvon also suggested that racist attitudes and 'racist policing' have played a role in recent 'epidemics' of youth suicide in the area. In Geraldton Aboriginal people complained that because of their Aboriginality they were immediately 'judged as criminals'. In Albany there was a consensus that stereotypes of Aboriginal people impacted negatively across the whole Aboriginal community. Aboriginal respondents in Bunbury implored white people to ignore these negative stereotypes and 'respect the individual person'. The stereotyping of Aboriginal people and the lack of positive news stories about Aboriginal people were also raised by respondents to the Commission's consultations in Casuarina Prison:

Whites just see Aboriginals as 'niggers' in high speed chases, arrested by police and hand-cuffed.<sup>91</sup>

Reports of discrimination against Aboriginal people in Western Australia were not solely confined to government authorities and non-Indigenous businesses

but also extended to mainstream institutions. In Perth an Aboriginal business woman reported an account of what appears to be systemic racial discrimination by her local bank. She said:

When you go for a loan or something like that unless you've got ID—the ATSI ID—they won't accept it. If they think that you are Aboriginal they will ask you if you have been to ATSI, the first thing. I went to the bank to get a business loan – have been with them since I was like 15 and I had a number of accounts. And basically they asked me 'Have you been to ATSI for the Aboriginal loan first?', and then I said 'No I don't want to do that'. Then they asked do I have an ATSI ID and I said 'I am just like any other customer of your bank'.<sup>92</sup>

Another Aboriginal woman reported an incident of mainstream health services segregating Aboriginal people:

You phone up about breast cancer and instead of giving you Cancer WA they will put you in touch with Aboriginal Health who don't specialise in that area. Over the years it has become entrenched that Aboriginal people go to the Aboriginal section or Aboriginal authority.<sup>93</sup>

The Commission notes that it is unlawful under the *Equal Opportunity Act 1984 (WA)* to discriminate in relation to the manner that goods and services are made available or in relation to the terms and conditions upon which those goods or services are provided. As will become clear below in the discussion on housing and living conditions, the Equal Opportunity Commission has found evidence of entrenched discrimination in relation to the provision of public housing to Indigenous peoples in Western Australia. The discussion also reveals that many Western Australian Aboriginal communities cannot rely on basic public infrastructure such as sewerage, waste disposal and clean water – services that many of us take for granted. Such significant divergence in service provision to different sectors of the community suggests that government must lead by example if the rhetoric of equality and non-discrimination is to be substantively embraced by the rest of society.

88. These examples may breach the provisions of the *Equal Opportunity Act 1984 (WA)* which makes it unlawful to discriminate on the grounds of race in respect of the provision of services and facilities and employment.

89. LRCWA, Project No 94, *Thematic Summaries of Consultations – Derby*, 4 March 2003, 53.

90. LRCWA, Project No 94, *Thematic Summaries of Consultations – Carnarvon*, 30–31 July 2003, 6.

91. LRCWA, Project No 94, *Thematic Summaries of Consultations – Casuarina Prison*, 23 July 2003, 7.

92. LRCWA, Project No 94, anonymous submission.

93. LRCWA, Project No 94, anonymous submission.

“I look sort of white: when I told him I was Aboriginal he said, ‘You must be one of the good ones then’.”



## Addressing racism in Western Australia

During the Commission's consultations, communities in the metropolitan area turned their minds to ways of combating racism against Aboriginal people in Western Australia. Suggestions included community education programs; development of media traineeships for Aboriginal people to heighten community exposure to Aboriginal culture and to offer role models for Aboriginal youth; government support for films depicting a diversity of Aboriginal people with positive messages;<sup>94</sup> cultural awareness training for all government employees including school staff and court staff, as well as training for lawyers, university staff and the media; and long-term strategies to encourage more Aboriginal people to enter Parliament.

In November 2001, the state government made a commitment to addressing issues of racism in the Western Australian public sector by establishing an Anti-

Racism Steering Committee and anti-racism strategy. The express purpose of the government's anti-racism strategy is:

To eliminate racism in all its forms by raising consciousness of issues relating to racism by first understanding racism in all its manifestations and then taking action to address the social and structural issues.<sup>95</sup>

An important part of this anti-racism strategy is the implementation of a policy framework for substantive equality, directed by a dedicated Substantive Equality Unit of the Equal Opportunity Commission. This program recognises that there are substantive barriers to equal treatment by public sector agencies, in particular service providers, and to equal participation by all sectors of the community. Premier Geoff Gallop has commented:

Some of these barriers have been erected by systemic racism, a phenomenon that is more insidious than direct racial attacks because it is embedded in the processes, attitudes, policies and practices of institutions that have become routine operational practices but can unwittingly result in unequal outcomes for different people and groups. We should now make a concerted effort to ensure access to services to all Western Australians but also that the services being accessed do meet the needs of clients.<sup>96</sup>

One way that the government intends to achieve its anti-racism agenda is by '[e]ncouraging and acknowledging positive initiatives in the elimination of racism and the promotion of harmonious relations in the community'.<sup>97</sup> In this regard, the Commission commends the suggestions made by Aboriginal communities, listed above.

## Reconciliation

Reconciliation means different things to different people; however, the consensus of Aboriginal communities across Western Australia was that reconciliation was a crucial 'first step to healing' the

94. The Commission notes that Article 17 of the United Nations *Draft Declaration on the Rights of Indigenous Peoples* directs that 'states shall take effective measures to ensure that state-owned media duly reflect Indigenous cultural diversity'.

95. Public Sector Anti-Racism and Equality Program, *Draft Policy Framework for Substantive Equality* (August 2004) 4.

96. Equal Opportunity Commission, Substantive Equality Unit, *The Policy Framework for Substantive Equality* (undated) 3.

97. *Ibid* 4.

injustices of the past. For many, reconciliation meant more than simply saying 'sorry'; it required *recognition* of Aboriginal people as the original inhabitants of Australia and *respect* for Aboriginal culture, rights and laws. Most Aboriginal communities felt that such recognition and respect could only be achieved by constitutional change, a matter which will be discussed in Part III of this paper.

In regard to evidence of reconciliation in Western Australian communities, Kalgoorlie respondents indicated some local progress following a Reconciliation Forum organised by the City of Kalgoorlie-Boulder and visits to the region by former HREOC and Social Justice Commissioner Bill Jonas. It was said that mediators had been appointed to conduct consultation workshops with Indigenous and non-Indigenous community leaders with a view to developing an 'agreement for working together'. It was also reported that some former discriminatory policies of local businesses had been changed as a result of Kalgoorlie-Boulder's focus on local reconciliation. The establishment by the City of Kalgoorlie-Boulder Council of a Reconciliation Committee, which holds regular meetings and secures funding for the development of local initiatives such as the 'Living in Harmony Project' (which targets life skills and social needs of youth at risk in the Kalgoorlie-Boulder area) is to be applauded. In a not insignificant way, the example of Kalgoorlie-Boulder demonstrates the potential of local initiatives in achieving substantive reconciliation between Aboriginal and non-Aboriginal Western Australians.<sup>98</sup>

The state government's *Statement of Commitment to a New and Just Relationship between the Government of Western Australia and Aboriginal Western Australians* demonstrates that there is the political will to work to achieve reconciliation in this state. The Statement of Commitment appears to offer the recognition and respect that Aboriginal people in

this state have expressed as crucial to the reconciliation process. But while there is some evidence of the government of Western Australia putting these principles into practice, the Statement of Commitment remains a document with questionable legal standing. Further, it does not bind or educate the people of Western Australia and it is at this grass-roots level that the reconciliatory efforts of government will ultimately be judged. Therefore, whilst the Commission enthusiastically supports active promotion of reconciliation at the state level (particularly on a more binding basis than the current Statement of Commitment),<sup>99</sup> it encourages the ongoing funding and development of local and regional initiatives to advance the cause of reconciliation in the general community and to address the root-causes of racism.<sup>100</sup>

## Education, Training & Employment

### Education

Parents need to take responsibility and talk to teachers. It starts from the bottom – if we don't have a say in the schools then how are we going to have a say in Parliament?<sup>101</sup>

Amongst Aboriginal communities consulted for this reference there was universal concern about the education of youth and about education, training and employment opportunities available to Aboriginal people in Western Australia. The 2000 report of the national Taskforce on Indigenous Education found a vast educational inequality between Australia's Indigenous students and their non-Indigenous counterparts.<sup>102</sup> Key areas of concern were access to education, literacy, numeracy, retention of students and attendance.

Many communities reported high rates of school absenteeism with Aboriginal youth. Aboriginal people suggested numerous causes for this including that many children were not interested in school or found it

98. Encouraged by the Kalgoorlie-Boulder example, the Commission contacted 141 of the state's 143 shire councils (the only councils not contacted were the Shire of Christmas Island and the Shire of Cocos (Keeling) Islands) to ascertain whether they had specific programs or initiatives in place for Indigenous reconciliation in their local areas. The Commission's enquiries indicated an overwhelming lack of council-run or council-funded reconciliation initiatives in areas that might reasonably profit from dedicated programs to address issues of racism and reconciliation. However the metropolitan councils of Fremantle, Cockburn, South Perth, Joondalup, Melville and Armadale appeared to be quite active with some councils funding a dedicated Aboriginal liaison officer position with responsibilities to furthering reconciliation at the local level. Some regional councils had reconciliation initiatives or 'statements of understanding or commitment' but few (apart from Albany) had the breadth of the Kalgoorlie-Boulder model. Some councils reported that they had once had reconciliation initiatives (including dedicated council committees) in place but that these had lost momentum and had consequently been abandoned. Others, such as Wiluna, reported that they had no need for reconciliation initiatives because they were predominantly Aboriginal towns.

99. See discussion of reconciliatory constitutional change in Part III below.

100. The Commission notes that the state government currently provides small grants of up to \$5,000 for local reconciliation projects under the 'Make Reconciliation Happen' scheme: see <<http://www.dia.wa.gov.au/DIA/Funding/Reconciliation/>>.

101. Participant at the Midland consultation: see LRCWA, Project No 94, *Thematic Summaries of Consultations – Midland*, 16 December 2002, 39.

102. See discussion of relevant outcomes of the *Report of the Ministerial Council for Education, Employment, Training and Youth Affairs' Taskforce on Indigenous Education* (March 2000) in Department of Education, *Aboriginal Education Strategy, Creating the Vision 2001–2004* (2002) 4. See <[http://www.eddept.wa.edu.au/abled/Policies/Creatingthe\\_Vision.pdf](http://www.eddept.wa.edu.au/abled/Policies/Creatingthe_Vision.pdf)>.

*Aboriginal people felt that a greater focus on cultural learning would engage the children better, make them proud of their culture and heritage and help to keep them at school longer.*

irrelevant; that Aboriginal children were laughed at or subjected to racist remarks and attitudes; and that Aboriginal students were marked absent when they were undertaking community-based cultural learning during law time.

It was the consensus in these communities (and this was the case right across the state) that schooling of Aboriginal children should include significant cultural learning as well as a standard western education. It was reported that although Indigenous studies was a compulsory component of the primary school level curriculum, it was too often neglected or not sufficiently adapted to local circumstances.<sup>103</sup> It was suggested that there was a need for community involvement in cultural learning, particularly the involvement of local Elders.<sup>104</sup> It was said that this would give cultural education local relevance and provide role models for Aboriginal children. It was also suggested that teachers should employ traditional educational strategies for cultural learning such as 'yarning' or storytelling; dance, art and music; and teaching certain subjects 'in language'. Overwhelmingly, Aboriginal people consulted felt that a greater focus on cultural learning would engage the children better, make them proud of their culture and heritage and help to keep them at school longer.<sup>105</sup> The Commission also notes that such cultural learning in schools with less significant Aboriginal populations might enhance tolerance of racial minorities and deflect the development of racist attitudes.

In addressing problems of chronic truancy, communities in Carnarvon reported past success with a 'truancy patrol' (apparently now defunct) which picked up children and delivered them to school. Recent initiatives in the region include a breakfast program at schools which is run by the Community Development

Employment Project (CDEP) (work-for-the-dole) scheme. There is also a reportedly successful policy in Carnarvon of shops not serving school-age children during school hours. In Meekatharra it was reported that the high school had developed certain programs to address truancy including the development of 'on-the-job' training as part of the curriculum which made education more directly relevant for some young people. The Commission notes that school attendance is currently a 'key focus area' of the Department of Education's Aboriginal Education Strategy.<sup>106</sup>



103. A case study in a remote Indigenous community in the Northern Territory has found that 'for education to be successful and lead to sustainable outcomes, it must be integrated into the social and cultural framework of the community, and must include community goals and aspirations'. Kral I & Falk I, *What is All that Learning For? Indigenous Adult English Literacy Practices, Training, Community Capacity and Health* (Canberra: National Centre for Vocational Education Research, June 2004) 8.

104. Some reported that communities often felt remote from schools and that a greater effort should be made to involve communities, families and Elders in school activities, as guest speakers and as teachers' aides.

105. It is noted that the Department of Education has acknowledged that 'cultural alienation' is a significant factor in absenteeism and truancy of Aboriginal students and has developed strategies for schools to address this problem including the promotion and maintenance of a 'culturally inclusive curricula'. The success of these strategies is not known. See Department of Education, *Aboriginal Education Strategy, Creating the Vision 2001–2004* (2002) 20, 26.

106. *Ibid* 20.

Despite problems with Indigenous participation in primary and secondary schooling, Department of Education, Science and Training (DEST) statistics show that there has been a 58 per cent increase in Indigenous students in tertiary education over the past decade.<sup>107</sup> In Western Australia in 2002 there were 1,540 Indigenous students in Western Australian tertiary education institutions which represents approximately 2.4 per cent of the state's total Indigenous population.<sup>108</sup> Only Victoria (with approximately 3.1%) and the Australian Capital Territory (with approximately 5%) performed better than Western Australia in this respect. Nevertheless, there were some complaints about the lack of (opportunity for) Indigenous participation in higher education from some communities consulted.<sup>109</sup> In many instances, access to tertiary education is limited by remoteness and deficiency in formal education; however, there appear to be a growing number of programs in Western Australian universities which enhance access to degree courses for Indigenous students and are appropriately targeted to the regions. The Commission encourages the continuing development of alternative access strategies and culturally appropriate mentoring programs for Indigenous students in the full range of disciplines.

## Vocational Training

Vocational education and training (VET) is popular with Indigenous Australians (particularly young Indigenous Australians) with participation rates recorded at twice that of non-Indigenous students.<sup>110</sup> Participation rates of Indigenous students in rural and remote areas are considerably higher than those of non-Indigenous students; although they fall to half that of non-Indigenous students in metropolitan areas.<sup>111</sup> However, despite high participation rates, Indigenous students are more likely to fail or withdraw from courses than their non-Indigenous counterparts.<sup>112</sup>

The rate of failure and withdrawal, particularly in rural and remote communities, may well be linked to the relevance of VET courses to the employment opportunities (or lack thereof) offered in these areas. Some communities consulted for this reference spoke of the need for increased VET opportunities,<sup>113</sup> particularly in fields that have local relevance (such as the mining industry, engineering, mechanics, healthcare, etc).

A case study in a remote Indigenous community in the Northern Territory has found that the connection between mainstream 'education, vocational education and training and employment pathways is not linked to any future planning process that takes account of community aims and aspirations'.<sup>114</sup> The study suggests that the need for integration of VET into the social and cultural framework of individual communities is emphasised by the 'increasing pressure' upon Aboriginal communities 'to build sustainable communities with a social, cultural and economic capital base, and share responsibility [with government] for community wellbeing and capacity building'.<sup>115</sup> The authors of the study recommend that 'policy changes are needed that recognise the inherent differences between localities in Indigenous Australia and accept that education and training needs are not necessarily the same for all remote communities'.<sup>116</sup> At the same time, recognising that the majority of jobs available in remote communities are offered under the government-subsidised CDEP, there is a need to 'harness the training potential of the CDEP and capitalise on existing culturally appropriate labour market opportunities'.<sup>117</sup>

## Employment

There is a considerable difference in labour force participation rates between Indigenous (54%) and non-Indigenous (73%) Australians in the 15–64 age group.<sup>118</sup> In Western Australia, the 2001 Census recorded a total of 14,477 employed Indigenous

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107. ABS, 'Indigenous Education and Training, 2004 Year Book Australia (Canberra: ABS, 2004) 315, 319.

108. *Ibid.* The proportion of female Indigenous higher education students was higher than that of males (at 64%).

109. In the Pilbara, for instance, it was said that there was no known young person from an Aboriginal community in the region who had progressed to tertiary education.

110. Saunders J, Jones M, Bowman K, Loveder P & Brooks L, *Indigenous People in Vocational Education and Training: A statistical review of progress* (Canberra: National Centre for Vocational Education Research, September 2003) Executive Summary.

111. *Ibid.*, table 1.

112. *Ibid.*, Executive Summary.

113. Including VET opportunities offered in prison that are more relevant to employment opportunities offered in or near the participants' communities.

114. Kral I & Falk I, *What is All That Learning For? Indigenous Adult English Literacy Practices, Training, Community Capacity and Health* (Canberra: National Centre for Vocational Education Research, June 2004) 8.

115. *Ibid.*

116. *Ibid.*

117. *Ibid.*

118. ABS, 'Labour Force Statistics of Aboriginal and Torres Strait Islander Peoples', 2004 Year Book Australia (Canberra: ABS, 2004) 175, 176.

persons above the age of 15 years.<sup>119</sup> In comparison, the number of non-Indigenous employed Western Australians was 809,325.<sup>120</sup>

According to the 2001 Census, the majority of working Indigenous Western Australians<sup>121</sup> were employed in government administration or defence jobs (3,583). The next most popular field of employment was health (1,520) followed by 'personal and other services' (1,387) and education (1,266).<sup>122</sup> The Commission's community consultations indicated that Aboriginal people believed that there should be greater Aboriginal involvement and employment opportunities in the frontline delivery of health, education, justice, law enforcement and welfare services, particularly in the regions.<sup>123</sup>

Employment opportunities for Aboriginal people, especially in the regions, are commonly understood to be limited. Typical justifications for this are poor levels of education, remoteness of communities, discouragement of job-seekers, ease of access to welfare benefits and simple unavailability of jobs. Despite this, a recent analysis of Indigenous labour force statistics in Australia showed that Indigenous Australians are more motivated to work than other Australians and are typically not concerned that their welfare payments will be affected.<sup>124</sup> Studies have also found that for Indigenous Australians 'the social environment is a particularly important determinant of labour supply'.<sup>125</sup>

The presence of other employed adults in a household increases labour supply and reduces unemployment. Among males, if other people in the household are employed, the chance of unemployment falls by 14.7 percentage points. This is counterbalanced by a larger increase in the probability of employment ... In contrast, unemployment among adults in a household is associated with a lower probability of supplying labour, higher unemployment probabilities and lower employment probabilities, both in CDEP and non-CDEP employment.<sup>126</sup>

This analysis reinforces the need to address Indigenous disadvantage with an holistic focus, using a whole-of-



government approach to improve the social and cultural health of Indigenous communities.

## CDEP

Of the 14,477 employed Indigenous Western Australians reported above, some 4,545 are employed on CDEP (or subsidised employment schemes).<sup>127</sup> At just over one-third of employed Indigenous persons, the number employed on CDEP represents a significant proportion of the Western Australian Indigenous labour force.

The valuable role that the CDEP scheme plays, particularly in rural and remote communities, should not be underestimated. Apart from providing a diversity of employment and training, where such opportunities are otherwise considerably limited, the CDEP scheme

119. ABS, 'Indigenous Profile: Western Australia', 2001 Census of Population and Housing (2002) Table 16A.

120. Ibid, Table 16B.

121. Apart from those employed on the CDEP program.

122. ABS, 'Indigenous Profile: Western Australia', 2001 Census of Population and Housing (2002) Table 17.

123. The need for more people to be trained and employed as Aboriginal language interpreters was also mentioned.

124. Hunter B & Gray M, 'Family and Social Factors Underlying the Labour Force Status of Indigenous Australians' (2002) 62 *Family Matters* 18, 20–21.

125. Ibid 24.

126. Ibid.

127. ABS, 'Indigenous Profile: Western Australia', 2001 Census of Population and Housing (2002) Table 16A.

enables communities 'to access substantial blocks of funds and resources to customise activities and enterprises and thus improve the physical and social environments of local communities'.<sup>128</sup> The CDEP scheme also provides an alternative to welfare benefits that some Aboriginal leaders believe are too accessible for Aboriginal youth and inevitably lead to family and community breakdown.<sup>129</sup>

However, Aboriginal communities in the Great Southern region suggested that the CDEP scheme did not provide sufficient encouragement to work and that it simply 'distorted the unemployment figures'. There was concern expressed that the only requirement of the CDEP scheme was to 'turn up' and that there was little incentive to work hard and learn new skills. It was suggested that there should be the opportunity to work a number of hours per week with a private employer and the remaining on CDEP. Recent research on the scheme suggests that CDEP could 'assist by offering employers financial support to provide external employment for participants'.<sup>130</sup> However, it was also noted that 'the movement of participants into unsubsidised employment is difficult in rural and remote areas' and that the scheme was limited in the solutions it could offer for the high rates of unemployment in these areas.<sup>131</sup>

## Housing and Living Conditions

Aboriginal people represent a large proportion of the hidden homeless, in temporary accommodation or staying with relatives. Overcrowding in particular exacerbates health problems, increases the likelihood of damage to property leading to debt and eviction,



and creates social conditions conducive to family violence and child abuse.<sup>132</sup>

### Problems with public housing

A significant factor affecting the social and emotional wellbeing, and indeed the physical health and personal safety, of Aboriginal people in Western Australia is the lack of adequate public housing.<sup>133</sup> The 2001 Census of Population and Housing showed that there was an average of 3.7 persons in Indigenous households compared with 2.6 persons in other households.<sup>134</sup> This figure rose to 5.3 in remote areas of Australia.<sup>135</sup> These statistics, however, fail to adequately convey the reality of overcrowding in Indigenous households reported to the Commission during its consultations. Many respondents stressed the inadequacy of public housing to deal with the large number of people usually resident in each house. The obligations imposed on Aboriginal families by customary law to accommodate large numbers of their extended families means that overcrowding in homes is the norm rather than the

128. Ibid.

129. Koch T & Emerson S, 'Ban Black Kids' Dole: Pearson', *The Weekend Australian*, 11–12 September 2004, 2. The story features an interview with Queensland Aboriginal activist Noel Pearson.

130. Misko J, *The Role of Community Development Employment Projects in Remote and Regional Communities* (Canberra: National Centre for Vocational Education Research, August 2004) Executive Summary.

131. Ibid.

132. Gordon S, Hallahan K & Henry D, *Putting the Picture Together: Inquiry into Responses by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities* (July 2002) 186.

133. Patrick Dodson's Regional Report of Underlying Issues in Western Australia, prepared for the Royal Commission into Aboriginal Deaths in Custody, states that '[p]articipants were unanimous in nominating housing as the major issue for Aboriginal people' in Western Australia. That report also outlines the history of housing policies and Aboriginal people in Western Australia. See RCIADIC, *Regional Report of Inquiry into Underlying Issues in Western Australia* (Vol. 1, 1991) [13].

134. ABS, 'Indigenous Profile: Western Australia', 2001 Census of Population and Housing (2002) Table 29.

135. HREOC, 'A Statistical Overview of Aboriginal and Torres Strait Islander Peoples in Australia', <[http://www.hreoc.gov.au/social\\_justice/statistics](http://www.hreoc.gov.au/social_justice/statistics)> 14.

## Overcrowding exacerbates health problems, increases the likelihood of damage to property leading to debt and eviction, and creates social conditions conducive to family violence and child abuse.

exception.<sup>136</sup> This problem is exacerbated when Aboriginal families are evicted from their homes as they often have no choice but to impose upon other family members for shelter.<sup>137</sup> Because of large waiting lists for public housing (and because staying with relatives is considered a 'viable housing option' by Homeswest – leading to a lesser level of priority status for housing assistance) the imposition on family members can extend for a significant period.<sup>138</sup>

In her background paper for this reference Kathryn Trees reports that in Roebourne it is not unusual that between 17 and 20 people live in a single house.<sup>139</sup> Conditions such as these pose considerable risk to people's physical health. Some infectious and other diseases which are rife amongst northwest Aboriginal communities have barely been seen in Australia's non-Indigenous population for 90 years.<sup>140</sup> Medical and environmental health experts believe that these health problems are primarily the result of overcrowded and inadequate housing, poor diet and unsatisfactory social infrastructure such as sewerage, water supplies and waste disposal.<sup>141</sup>

In addition, the problem of overcrowding in Aboriginal households places women and children at greater risk to their personal safety.<sup>142</sup> Trees reports that in Roebourne 'there is no privacy and no space for children

to be away from adults or for women to be alone'.<sup>143</sup> Disturbingly, Trees also reports:

A young woman in her twenties who I spoke with said that the inadequate housing makes it impossible to keep people who have been drinking away from the children. Older women have confirmed this. The young woman said that everyone may be in the yards and on the streets, playing with the other kids until after dark but when they go inside they cannot isolate themselves from the drinkers and often they will not know that they need to try and do this. She said this often results in neglect, family violence and sexual abuse of women and children. As one older woman said: 'They might just crawl over people and get to a girl. They don't even know what they are doing'.<sup>144</sup>

Trees' background paper echoes the concerns of the *Report of the Royal Commission into Aboriginal Deaths in Custody* (RCIADIC) where the impact on Indigenous families of housing shortages was made clear:

Grossly overcrowded housing—particularly when associated with excessive drinking—creates a context for domestic violence. Women and children are primarily the subjects of this violence, and men are arrested. Other consequences that may follow include children being unable to sleep or eat properly. This situation in turn contributes to child malnutrition and high truancy rates.<sup>145</sup>

136. The 2001 Census counted 981 multi-family households in Western Australia containing 7,794 people, making an average of eight people in each multi-family household (compared with an average of 5.2 in non-Indigenous multi-family households). Of those Indigenous families living in separate dwellings, 314 of the dwellings housed more than 10 people, the majority of which only have three bedrooms (169). See ABS, 'Indigenous Profile: Western Australia', 2001 Census of Population and Housing (2002) Tables 21 & 24.

137. This dependence on family for accommodation (which leads to overcrowding) is considered a 'secondary form of homelessness'. See Shelter WA, *No Place Like Home: Homelessness in Western Australia* (December 2004) 7–8.

138. It should be noted that '[b]ecause of Homeswest's "rent to income ratio" policy, a host family must pay extra rent to cover relatives who stay. This can lead to paradoxical cases where tenants are forced to pay much higher than market value rent on their homes': Equal Opportunity Commission, *Finding a Place: An Inquiry into the existence of discriminatory practices in relation to the provision of public housing and related services to Aboriginal people in Western Australia*, DVD (December 2004). 'Homeswest' is the name of the Western Australian Department of Housing and Works' public housing tenancy service.

139. Trees K, *Contemporary Issues Facing Customary Law and the General Legal System: Roebourne – a case study*, LRCWA, Project No 94, Background Paper No 6 (November 2003) 10. Similar conditions have been reported in Balgo where it has been said that 'about 12 people and half a dozen dogs' live in each house: Harvey A, 'Inside Australia's Shame', *Sunday Times*, 5 September 2004.

140. Such as acute rheumatic fever, a preventable communicable disease that can lead to rheumatic heart disease – a serious contributor to mortality rates of Aboriginal people in Australia. See: 'Stories from a Children's Hospital – Outreach', Catalyst, ABC, 4 November 2004.

141. Ibid. See also SCRGSP, *Overcoming Indigenous Disadvantage: Key Indicators 2003* (November 2003) 10.1.

142. As detailed in the supporting evidence to WA's Gordon Inquiry: Gordon S, Hallahan K & Henry D, *Putting the Picture Together: Inquiry into Responses by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities* (July 2002).

143. Trees K, *Contemporary Issues Facing Customary Law and the General Legal System: Roebourne – a case study*, LRCWA, Project No 94, Background Paper No 6 (November 2003) 10.

144. Ibid 26.

145. RCIADIC, *Report of the Royal Commission into Aboriginal Deaths in Custody* (Canberra: Australian Government Publishing Service, vol 2, 1991) as cited in Shelter WA, *No Place Like Home: Homelessness in Western Australia* (December 2004) 7–8.

These problems are not confined to remote communities in Western Australia.<sup>146</sup> The Commission's consultations recorded similar issues of overcrowded public housing with metropolitan Aboriginal families. When asked for their ideas for resolving problems in this area, Aboriginal communities suggested that public housing authorities needed to adjust their planning policies to 'reflect the realities' and suit the specific needs of Aboriginal families.<sup>147</sup> They said that Indigenous households required more than five bedrooms or attached 'granny flats' to accommodate extended families in need with minimal disruption to the established family home.

Overcrowding can lead to allegations of antisocial behaviour against Aboriginal tenants and this may be used by Homeswest to justify the eviction of Aboriginal families.<sup>148</sup> The Equal Opportunity Commission (EOC) has heard stories of evictions for antisocial behaviour following reports of domestic violence, complaints of too many children or cars on the property and behaviour of visitors.<sup>149</sup> Consultations with the community in Armadale suggested that problems of antisocial behaviour could be better resolved through mediation and family conferencing rather than eviction, which simply exacerbates the problem and potentially moves it to another location. A submission to the EOC said:

Evictions should be a last resort. A lot of it could be sorted out other ways. Eviction only causes overcrowding somewhere else. There are no steps to try and sort things out first. Evictions break families up, interfere with children's school, cause health problems.<sup>150</sup>

In relation to eviction the Commission makes special note of the observations of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) which in 1997 remarked that Indigenous peoples 'suffer disproportionately from the practice of

forced eviction'.<sup>151</sup> CESCR also highlighted that the non-discrimination provisions of the *International Covenant on Economic, Social and Cultural Rights* (ratified by Australia) 'impose an additional obligation upon governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved'.<sup>152</sup>

### Discrimination in the provision of public housing

Provision of public housing in Western Australia is the responsibility of the Department of Housing and Works (DHW) and its tenancy services arm, Homeswest. It has been reported that despite Aboriginal people making up a relatively small proportion of the population of Western Australia, Indigenous tenants represent 18 per cent of tenants in public housing supplied by the DHW.<sup>153</sup> During its consultations with Aboriginal people in Western Australia, the Commission heard a number of complaints about unfairness and discrimination by the state's public housing body. Since 1985 the EOC has also received 'persistent heavy rates of complaints by Aboriginal people about their access to public housing',<sup>154</sup> many of which allege racial discrimination. The EOC has recently released the findings of a two-year investigation into the DHW, which assessed whether the department's policies, practices, decision-making and appeal processes directly or indirectly discriminate against Aboriginal people on unlawful grounds. The submissions to the EOC inquiry make for harrowing reading and provide a window into the problems facing many Aboriginal people living in public housing in Western Australia. Chapter 13 of the report identifies the major issues and themes that emerged from these submissions, including:

- the provision of substandard accommodation to Aboriginal people (which, if knocked back, may result in the applicant being removed from the waiting list);<sup>155</sup>

146. For a full statistical understanding of overcrowding in Western Australia, see Shelter WA, *No Place Like Home: Homelessness in Western Australia* (December 2004) 9 (Table 1: 'Overcrowding by ATSI Region and Indigenous Status').

147. It is noted, however, that Western Australia has developed its own *Code of Practice for Housing and Environmental Infrastructure Development in Aboriginal Communities* (Environmental Health Needs Coordinating Committee Inter-governmental Working Group, 2000) which establishes building requirements specific to remote areas. See Etherington S & Smith L, 'The Design and Construction of Indigenous Housing', *2004 Year Book Australia* (Canberra: ABS, 2004) 553–55.

148. Equal Opportunity Commission, *Finding a Place: An inquiry into the existence of discriminatory practices in relation to the provision of public housing and related services to Aboriginal people in Western Australia* (December 2004) 208–15.

149. *Ibid.*

150. *Ibid.* 200.

151. Committee on Economic, Social and Cultural Rights, *General Comment No 7 on the right to adequate housing: forced evictions* (20 May 1997) UN doc. E/C.12/1997/4.

152. *Ibid.*

153. Equal Opportunity Commission, *Investigation into the Provision of Public Housing to Aboriginal People in Western Australia*, Consultation Paper (2003) 2.

154. *Ibid.* 3.

155. In 2002 the Department of Housing and Works reported that 23 per cent of Indigenous public houses required major repairs with 11 per cent required replacement. Department of Housing and Works (WA), *An Agreement for the Provision of Housing and Infrastructure to Aboriginal and Torres Strait Islander People in Western Australia July 2002–June 2007* (2002) <[http://www.dhw.wa.gov.au/abor/abor\\_agreement.pdf](http://www.dhw.wa.gov.au/abor/abor_agreement.pdf)>.



- problems with transparency of direct debit payments for rental, maintenance and facilities;
- issues of accessibility of correspondence from DHW, especially where tenants may be illiterate;
- non-Aboriginal people allegedly receiving priority for public housing;
- segregation of Aboriginal tenancies (leading to creation of Aboriginal ghettos, especially in rural towns);
- extremely lengthy waiting periods for those with urgent housing needs, including women and children who are the subject of family violence (leading to overcrowding of relatives' homes or other forms of homelessness);
- experiences of racist attitudes or lack of respect by DHW and Homeswest staff;

- unacceptable delays with repairs and maintenance to properties (leaving some properties unsecured or posing a threat to physical health for long periods);
- concerns regarding tenant liability for property damage and wear and tear (which may be increased by overcrowding, itself caused by non-provision of housing and contributed to by Homeswest's viable housing options policy);<sup>156</sup> and
- eviction or termination of leases without attempts to resolve problems in other ways.<sup>157</sup>

The EOC inquiry concluded that systemic discrimination against Aboriginal people did exist and that 'Aboriginal people experience disadvantage and less favourable treatment in relation to many aspects of public housing access, services and residence'.<sup>158</sup> The EOC made 165 recommendations for reform addressing all aspects of DHW services to Indigenous clients. It is too early to say whether the EOC report will result in any substantive reforms by DHW but the immediate responses to the report by DHW and the state government indicate that there is some considerable disagreement with the EOC's findings.<sup>159</sup> For its part, the Commission supports the implementation of recommended strategies for the promotion of cultural awareness of Indigenous Australians in the public housing sector and improvement of their current housing options and living conditions.<sup>160</sup> Such improvement, it is noted, forms the basis of many recommendations of the Gordon Inquiry as a means of addressing problems of family violence and child abuse in Western Australian Indigenous communities.<sup>161</sup>

### Improving Indigenous housing in Western Australia

The Commission notes that Western Australia is party to a national strategy to improve Indigenous housing outcomes over a 10-year period and has signed an agreement with the Commonwealth government and Aboriginal Australia's former representative body ATSIC

156. These issues were also raised in the Commission's consultations in Carnarvon where it was said that damage was not repaired until the tenant filed a police report. Apparently this necessity caused problems for Aboriginal tenants who were unwilling to involve police for fear of being blamed for the damage or who were unwilling to implicate family members who might then face criminal charges for property damage. As a result of the failure to file a police report property damage remained unrepaired, unless the tenant was willing to pay. There was a suggestion by those consulted that Homeswest should consider reviewing this requirement.

157. Equal Opportunity Commission, *Finding a Place: An inquiry into the existence of discriminatory practices in relation to the provision of public housing and related services to Aboriginal people in Western Australia* (December 2004) Ch 13.

158. *Ibid* 239.

159. The Hon. Nick Griffiths, Minister for Housing and Works, 'State Government Backs Homeswest' (Media Statement, 15 December 2004). See also statements of DHW Executive Director Greg Joyce reported in 'Racist Officers Favour White Tenants', *The Australian*, 16 December 2004, 6.

160. In Part VI the Commission notes that recognition of the special duty under Aboriginal customary law to accommodate kin is necessary to the implementation of meaningful change to current public housing provision programs. See 'Recognition of Aboriginal Kinship Obligations', below p 272.

161. Gordon S, Hallahan K & Henry D, *Putting the Picture Together: Inquiry into Responses by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities* (July 2002) recommendations 49-62.

to pool state, Commonwealth and ATSIC housing and infrastructure funds and collaborate with Aboriginal communities to eliminate overcrowding and homelessness in Western Australia.<sup>162</sup> Still, it must be remembered that it is now over a decade ago that the RCIADIC reported:

Complaints about housing from Aboriginal people in [Western Australia] are not rare, nor are they new, and again we find an area that has been well researched and documented, but where government has failed to act.<sup>163</sup>

With the dissolution of ATSIC, a principal signatory to the housing and infrastructure agreement, the status of the agreement is yet unclear. However, in view of the ongoing inadequacy of public housing and unacceptably high rates of homelessness and the repercussions this has on the social, emotional and physical health of Indigenous Australians it is critical that this program continues and develops under the new state-Commonwealth Indigenous affairs arrangements and that tangible outcomes are delivered. The Commission therefore supports the recent recommendations of Shelter WA in its report *No Place Like Home: Homelessness in Western Australia* that funding should be increased under the Commonwealth-State Housing Agreement for the provision of social housing, that the capacity of the Supported Accommodation Assistance Program be increased to provide services in areas where need is located, and that the state government implement strategies to address overcrowding in Indigenous households.<sup>164</sup>

## Overcoming Indigenous Disadvantage

The preceding discussion of the Commission's consultation findings and of the issues that most concern Aboriginal people in Western Australia today place the proposals presented in this Discussion Paper into illuminating perspective. The extent of Indigenous disadvantage in this state is confronting, the statistics often shocking. However, none of these issues are new

– they have been recurrent themes in Australian Indigenous affairs for at least half a century.

During the Commission's consultations many Aboriginal people expressed their frustration with the constant consultations by government authorities and publication of reports and recommendations that appear to reap no substantive results. Similar frustrations were clearly expressed to the RCIADIC some 15 years ago. Speaking of the education system in his report prepared for RCIADIC, Patrick Dodson said:

There is probably nothing in the history of this country which has promised and denied so much to Aboriginal people than the education system. No other institution has made more attempts to assimilate, socialise and continue the process of colonisation ... At the same time no other institution has issued so many reports or made so many recommendations. People have been consulted, research projects initiated and Aboriginal people have said many times what they want, but despite the many proposals and suggestions over a number of years, it appears little has been heard and much is still to be done.<sup>165</sup>

This statement could probably now be said of almost any government authority or agency. As can be gleaned from the discussion above, there have been a vast number of consultations, reports and recommendations by any number of bodies (state and federal) including the RCIADIC. The gaps between the expectations, substance and recommendations of these earlier reports and the achievement of actual positive outcomes for Indigenous Australians are of considerable concern to this Commission.

In 2002 the Council of Australian Governments commissioned the Steering Committee for the Review of Government Service Provision (SCRGSP) to produce a regular report which measures the efficiency and effectiveness of Indigenous policy and program outcomes against key indicators of Indigenous disadvantage. Those key indicators (and the disturbing statistics that support them) were published by SCRGSP in November 2003.<sup>166</sup> It is too early to know how

162. Housing Ministers' Advisory Council, *Building a Better Future: Indigenous Housing to 2010* (May 2001). See also Department of Housing and Works (WA), *An Agreement for the Provision of Housing and Infrastructure to Aboriginal and Torres Strait Islander People in Western Australia July 2002 – June 2007* (2002), <[http://www.dhw.wa.gov.au/abor/abor\\_agreement.pdf](http://www.dhw.wa.gov.au/abor/abor_agreement.pdf)>.

163. RCIADIC, *Regional Report of Inquiry into Underlying Issues in Western Australia* (Vol 1, 1991) [13.2].

164. Shelter WA, *No Place Like Home: Homelessness in Western Australia* (December 2004) 25. The Commission notes that housing issues (in particular, priority need and improved housing) are included as objectives in the recently circulated discussion draft of the Housing Strategy WA (undated); however, as yet no outcomes or actions have been established.

165. RCIADIC, *Regional Report of Inquiry into Underlying Issues in Western Australia* (Vol 1, 1991) [12].

166. The most recent report of the SCRGSP into Indigenous disadvantage is the 2005 Key Indicators Report, published after the writing of this section. However, the 2005 report draws on 2002 statistics (as opposed to the 2001 statistics of the previous report) and so does not appear to affect the information in this Part. In the overview to the 2005 report the SCRGSP notes that 'many of the indicators show little or no movement' while victim rates for crime, imprisonment rates and substantiated child notifications appear to have increased and labour force participation appears to have improved. See SCRGSP, *Overcoming Indigenous Disadvantage: Key Indicators 2005* (July 2005) xx.

*The extent of Indigenous disadvantage in this state is confronting, the statistics often shocking. However, none of these issues are new – they have been recurrent themes in Australian Indigenous affairs for at least half a century.*

Western Australia has performed in respect of these key areas; however, SCRGSP have indicated that the focus will be on actual outcomes for Indigenous peoples and that this can only be achieved by employing a 'whole-of-government approach to meeting the needs of Indigenous people'.<sup>167</sup>

It will be evident from what has preceded that this is an approach that the Commission supports. The current fragmentation of services to Indigenous Western Australians and the evident lack of communication between the agencies that deliver these services are clearly problematic. The Commission believes that it is vital that agencies work together to achieve real outcomes for Indigenous people. For instance, there is sufficient evidence that the typical overcrowding in Aboriginal houses is not simply a problem for the state housing authority: it is also a matter that affects health outcomes; education and employment figures; the rates of child abuse and family violence; and crime and substance misuse statistics. Overcoming these problems requires cooperation between each of these policy areas at all levels – state, regional and local. In practice this may mean the joint funding of cooperative programs, the holding of regular inter-agency conferences or the combined delivery of services in the regions. At the very least it imposes upon each agency the responsibility to constructively communicate with other agencies regarding Indigenous service delivery and to appreciate the potential capacity for input from other policy areas.

By proposing that government better facilitate the interaction of agencies and specialists that are currently responsible for the delivery of services to (and the development of policy for) Indigenous people in Western Australia, the Commission does not wish to detract from the importance of individual agencies delivering services within their particular areas of expertise. However, the Commission agrees with SCRGSP that:

Achieving improvements in the wellbeing of Indigenous Australians in a particular area will generally require the involvement of more than one government agency, and that improvements will need preventative policy actions on a whole-of-government basis.<sup>168</sup>

The term 'whole-of-government' is an over-used term in modern politico-speak and has the potential of lapsing into meaningless platitude; but if there is one area of governmental focus that requires such a cooperative and coordinated response between government departments and information-sharing between different jurisdictions, it is that of Indigenous disadvantage. This includes the causes of Indigenous disadvantage (such as loss of traditional culture and identity stemming from colonial practices, marginalisation, poverty and unemployment) and the effects of Indigenous disadvantage (including intergenerational violence, child abuse, entrenched substance abuse, reduced life-span and health problems). Indeed, the cyclical nature of Indigenous disadvantage means that many of the causes and effects just mentioned may be interchangeable.

There is, therefore, a significant case for *meaningful and tangible* multi-agency cooperative responses to overcoming the very real problems of Indigenous disadvantage that exist in Western Australia.

#### **Proposal 1**

That the Western Australian government adopt a genuine whole-of-government approach to the delivery of services to Aboriginal people in Western Australia requiring the constructive communication between agencies at the state, regional and local levels and the consideration of cooperative multi-agency joint-funded programs to achieve real outcomes that effectively address the current state of Indigenous disadvantage in Western Australia.

167. SCRGSP, *Overcoming Indigenous Disadvantage: Key Indicators 2003* (November 2003) xxii.

168. *Ibid* [2.1].

The success of the whole-of-government approach to addressing issues of Indigenous disadvantage in Western Australia will depend, in part, on the awareness and appreciation of government in regard to Aboriginal customary law and cultural issues. As the preceding discussion makes clear (particularly in relation to health services and public housing) the Commission's consultations revealed that the level of cultural awareness among Western Australian government agencies and service providers was an issue of considerable concern. The Commission has made specific proposals in Part V and Part IX, below, for resources to be made available for appropriate cultural awareness training programs to be developed for police, community corrections officers, prisons officers, judicial officers court staff and others. The following proposal relates to all Western Australian government departments, agencies and public service providers (as well as contractors and sub-contractors to those entities) to ensure that those staff who work directly with Aboriginal people are sufficiently aware of the local customary law and cultural issues that may affect their dealings with Aboriginal people or otherwise impact upon the effectiveness of service delivery to Aboriginal people.

### **Proposal 2**

That employees of Western Australian government agencies who work directly, or have regular dealings, with Aboriginal people be required to undertake cultural awareness training. Such training should include presentations by Aboriginal people and be delivered at the regional level to allow programs to be appropriately adapted to take account of regional cultural differences and customs and concerns of local Aboriginal communities.

That consideration be given to agency-arranged cultural awareness training being a condition of the contract where contractors or sub-contractors to any Western Australian government agency are required to work directly, or have regular dealings, with Aboriginal people.