

Chapter Three

Aboriginal Peoples and Disadvantage in Western Australia

Contents

| | |
|---|----|
| Aboriginal Peoples in Western Australia | 43 |
| The Impact of Colonial Occupation | 43 |
| Geographical and Cultural Diversity of Aboriginal Peoples Today | 45 |
| Overcoming Aboriginal Disadvantage in Western Australia | 46 |
| Consultation Findings | 46 |
| Overcoming Aboriginal Disadvantage | 46 |
| A whole-of-government approach | 46 |
| Cultural awareness | 49 |
| Office of the Commissioner for Indigenous Affairs | 52 |
| The Need for Ongoing Monitoring and Evaluation | 52 |
| Methods of evaluation | 52 |
| Recommendation-by-recommendation review | 52 |
| Outcomes-based review | 53 |
| The Proposed Office of the Commissioner for Indigenous Affairs | 55 |
| The importance of independence | 55 |
| Other key requirements: information and funding | 55 |
| Role and functions | 56 |
| Powers | 57 |

Aboriginal Peoples in Western Australia

The Impact of Colonial Occupation

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',¹ 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.² Various legislative and administrative measures for the protection of Aboriginal people,³ the segregation of Aboriginal people into missions away from town sites,⁴ and the removal of 'half-caste' children⁵ were in place from the early days of colonial occupation of Western Australia.

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

dire consequences would follow if the existing system of 'land-grabbing' was 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.¹⁰

The 1904 Royal Commission resulted in the enactment of the *Aborigines Protection Act 1905* (colloquially referred to as 'the 1905 Act'). This statute 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' Aboriginal people from one reserve or district to another; and required the permission of the Chief Protector of Aborigines for a marriage between an Aboriginal woman and a non-Aboriginal man.¹¹ Section 8 of the 1905 Act gave the

1. Australians for Reconciliation (WA), *Western Australia's Other History: A short guide* (undated).
2. Royal Commission into the Condition of the Natives (WA), *Report of the Royal Commission on the Condition of the Natives* (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 into the Condition of the Natives (WA), *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: see 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 into the Condition of the Natives was headed by Dr WE Roth, an ethnographer and Chief Protector of Aboriginals in Queensland.
7. Royal Commission into the Condition of the Natives (WA), *Report of the Royal Commission on the Condition of the Natives* (1905) 15–17.
8. *Ibid* 23.
9. *Ibid* 28.
10. *Ibid*.
11. Human Rights and Equal Opportunity Commission (HREOC), *Bringing Them Home*, Report (1997) Appendix 5 'Western Australia'.

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 and placing them 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'.¹² 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'.¹³

The impact of the official integration and protection policies followed in Western Australia since settlement 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.¹⁴ 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.¹⁵ 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.¹⁶

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.¹⁷

As outlined in the Commission's Discussion Paper, the challenge of overcoming the legacies of Australia's past treatment of its Indigenous population is substantial. The Commission has welcomed the challenge to devise pragmatic recommendations that will assist the government to significantly reduce the conditions of disadvantage facing Aboriginal people in this state. The Commission's recommendations also seek to address past government actions by creating an environment within Western Australian law where Aboriginal law and culture can thrive.

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 HREOCs *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].

The impact on Aboriginal people of the official integration and protection policies followed in Western Australia since settlement has been profound.

Geographical and Cultural Diversity of Aboriginal Peoples Today

Today, Western Australia has the third largest Indigenous population in Australia.¹⁸ Of the estimated 1.9 million people resident in Western Australia, almost 66,000 are Indigenous. The highest number of Aboriginal people in the state resides in the Perth metropolitan area; although, there are significant numbers of Aboriginal people in the state's regions, particularly in the Kimberley. 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. Some language groups in those regions only experienced their first substantial contact with non-Aboriginal people in the mid-20th century.¹⁹ 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'.²⁰

It is important to note from the outset that, like the general Western Australian population, the Aboriginal population of the state is extremely 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.²¹ Each of these tribes had its own language, 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 descended from different language groups and who may have integrated their traditional cultural practices over a period of many years.²² The fact that today there are over 300 discrete Aboriginal communities in Western Australia²³ is a clear illustration of the contemporary diversity of Aboriginal peoples in this state.



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. Such as the Northern Ngatjatjarra (Ngaanyatjarra), Mangala, Mantjiltjarra and Walmatjarri peoples: see ALRC, *The Recognition of Aboriginal Customary Laws*, Report No. 31 (1986) [34].
20. 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.
21. A map of 'Tindale's Tribal Boundaries – Western Australia' was appended to the Commission's Discussion Paper: see LRCWA, *Aboriginal Customary Laws: Discussion Paper*, Project No. 94 (December 2005) 467. 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.
22. For further discussion, see LRCWA, *ibid* 17–19.
23. Denis Callaghan, Department of Indigenous Affairs, telephone consultation (6 September 2006).

Overcoming Aboriginal Disadvantage in Western Australia

Consultation Findings

During the Commission's consultations a number of issues arose that were of particular concern to Aboriginal communities. These included issues surrounding the decline of cultural authority; children and youth; health and wellbeing; Aboriginality and identity; racism and reconciliation; education, training and employment; housing and living conditions; and substance abuse. While these issues may have links to the customs of Aboriginal communities, they often have far less clear connections with Aboriginal law. Nonetheless, the Commission was of the opinion that these issues fell within its mandate as matters relevant to 'the views, aspirations and welfare of Aboriginal persons in Western Australia' and were crucial to the proper execution of the reference.¹

The Commission's Discussion Paper addressed each of these issues in detail, tying the voices of Aboriginal people consulted for this reference to the many reports that have sought to draw attention to these issues in the past.² None of these issues are new – they have been recurrent themes in Australian Indigenous affairs for at least half a century. And yet, the grossly disproportionate levels of disadvantage and discrimination experienced by Aboriginal people in Western Australia (and confirmed by the Commission's consultations and research for this reference) remain. The gaps between the expectations, substance and recommendations of earlier reports³ and the achievement of actual positive outcomes for Aboriginal Australians are of considerable concern to the Commission.

Overcoming Aboriginal Disadvantage

Part II of the Commission's Discussion Paper painted a clear picture of the appalling state of entrenched and transgenerational disadvantage experienced by Aboriginal people in Western Australia. Clear disparities can be found across all indicators of quality of life. In the first world, Australia has the worst record of improving the life expectancy and infant mortality rates of its indigenous peoples.⁴ Australia also has a worse indigenous infant health record than developing countries such as Ethiopia, Tanzania, Mexico and Indonesia.⁵ In recent years these issues have come to the forefront of the political agenda in Australia, yet little progress has been made. Australian governments now recognise that improving the living conditions and quality of life of our indigenous peoples requires a long-term commitment. The Commission believes that this commitment must be more than mere resources; governments must show respect for Aboriginal cultural values and involve Aboriginal people in the decision-making processes that affect their everyday lives.

A whole-of-government approach

The current fragmentation of services to Aboriginal Western Australians and the lack of communication between the agencies that deliver these services was clearly evident in the Commission's research and consultations for this reference. The Commission believes it is vital that agencies work together to achieve real outcomes for Aboriginal people. For instance, there

1. LRCWA, *Aboriginal Customary Laws: Discussion Paper*, Project No. 94 (December 2005) 20.

2. *Ibid* 20–42.

3. The Commission's Discussion Paper referred to a great number of previous reports, studies and recommendations of agencies and governments published over the past two decades; each aimed at the improvement of conditions of Aboriginal people, the redress of past wrongs or the factors underlying Aboriginal disadvantage. The following is a mere handful of reports for which real outcomes and implementation of widely accepted and acknowledged recommendations are still outstanding: RCIADIC, *Report of the Royal Commission* (1991); Human Rights and Equal Opportunity Commission, *Bringing Them Home*, Report (1997); 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); Steering Committee for the Review of Government Service Provision (SCRGSP), *Overcoming Indigenous Disadvantage – Key Indicators 2003* (November 2003); Equal Opportunity Commission (WA), *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).

4. For a comparison between Canada, New Zealand, Australia and the United States, see: HREOC, 'A Statistical Overview of Aboriginal and Torres Strait Islander Peoples in Australia', <http://www.hreoc.gov.au/social_justice/statistics/> 5.

5. Based on rates of low birth-weight babies: *ibid* 7.

The Commission believes it is vital that agencies work together to achieve real outcomes for Aboriginal people.

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 and coordination between each of these policy areas at all levels – federal, 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 Western Australian agency the responsibility to constructively communicate with other agencies regarding Aboriginal service delivery and to appreciate the potential capacity for input from other policy areas.⁶

The Commission therefore proposed that the state government adopt a genuine whole-of-government approach to the delivery of services to Aboriginal people in Western Australia.⁷ Noting that the term ‘whole-of-government’ is an over-used term in modern politico-speak and has the potential of lapsing into meaningless platitude,⁸ the Commission made clear that this approach would require meaningful multi-agency cooperative responses that deliver tangible outcomes which impact upon the problems of Aboriginal disadvantage currently existing in Western Australia.⁹

All submissions that commented on this proposal supported the whole-of-government approach.¹⁰ Several of the submissions from Western Australian government agencies detailed initiatives currently underway;¹¹ others stated that they were willing to be involved in a multi-agency approach to their policy area, but that promised funding was elusive.¹²

The Aboriginal Education and Training Council (AETC) of Western Australia’s Department of Education Services noted that the Commission’s proposal highlighted two realities: ‘the ineffectuality of past and present methods of service delivery to Aboriginal people’ and the failure to genuinely commit to addressing this ineffectiveness.

Aboriginal communities have called upon governments to overhaul this splintered approach in order to address the blatant disparity [between standards of service provision to Aboriginal people and to non-Aboriginal people]. These appeals were met by lack of will within each of the non-Indigenous bureaucracies to break down their own individual powerbases and review their ambiguously worded definitions of responsibility, so that cooperative, multi-agency, jointly funded models of service delivery could be examined for suitability and feasibility. In this context the AETC fully endorses the expeditious implementation of this proposal to bring about appropriate, sustainable, structural change.¹³

6. LRCWA, *Aboriginal Customary Laws: Discussion Paper*, Project No. 94 (December 2005) 42–43.

7. *Ibid* 43, Proposal 1.

8. This sentiment was supported by the Pilbara Development Commission which stated in its submission that ‘[u]nless agencies embrace Indigenous disadvantage as part of their core functions and create a framework for cooperation, the whole-of-government approach will continue to be a term that is over-used, to describe a method that results in limited outcomes’: Pilbara Development Commission, Submission No. 39 (19 May 2006) 1.

9. 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 may be interchangeable.

10. Michelle Scott, Office of the Public Advocate, Submission No. 13 (18 April 2006) 3; Kimberley Aboriginal Law and Culture Centre, Submission No. 17 (17 April 2006) 1; Aboriginal Education and Training Council, Department of Education Services (WA), Submission No. 20 (26 April 2006) 2; Dr Dawn Casey, Western Australian Museum, Submission No. 24 (1 May 2006) 1; Catholic Social Justice Council, Archdiocese of Perth, Submission No. 25 (2 May 2006) 2; Minister for Education and Training, Submission No. 27 (1 May 2006) 3; Department of Indigenous Affairs, Submission No. 29 (2 May 2006) 2; Department of Corrective Services (WA), Submission No. 31 (4 May 2006) 2; Department of the Attorney General, Submission No. 34 (11 May 2006) 1; Gascoyne Development Commission, Submission No. 38 (11 May 2006) 3; Pilbara Development Commission, Submission No. 39 (19 May 2006) 1; Law Council of Australia, Submission No. 41 (29 May 2006) 7; Department of Fisheries, Submission No. 42 (25 May 2006) 1; Office of Commissioner of Police, Submission No. 46 (7 June 2006) 4; Department of Consumer and Employment Protection (WA), Submission No. 48 (14 June 2006) 2; Department for Community Development, Submission No. 51 (27 June 2006) 1; Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, Submission No. 53 (27 June 2006) 1.

11. Minister for Education and Training, Submission No. 27 (1 May 2006) 1–2; Western Australia Police, Submission No. 46 (7 June 2006) 4; Department of Consumer and Employment Protection (WA), Submission No. 48 (14 June 2006).

12. The Department of Corrective Services noted that the whole-of-government approach had also been recommended by the Gordon Inquiry, but that there had been ‘no satisfactory resolution to the issue of joint funding for multi-agency initiatives. The need for reform of public sector funding and resource flexibility needs to be addressed by the Government, in particular by Premier and Cabinet and Treasury.’ See Department of Corrective Services (WA), Submission No. 31 (4 May 2006) 1.

13. Aboriginal Education and Training Council, Department of Education Services (WA), Submission No. 20 (26 April 2006).

The Commonwealth Aboriginal and Torres Strait Islander Social Justice Commissioner of the Human Rights and Equal Opportunity Commission submitted that, while a coordinated approach to policy development and program and service delivery had potential benefits (including recognition of Aboriginal customary law), these would be somewhat undermined without effective mechanisms for Aboriginal participation.¹⁴ The *Social Justice Report 2005* states:

From a human rights perspective, Aboriginal and Torres Strait Islander peoples must be assured the opportunity to participate effectively in all aspects of policy development and service delivery by governments that impact on their communities. This includes the design, delivery, monitoring and evaluation of programs and services delivered by governments.¹⁵

This sentiment is reflected in Article 19 of the revised draft of the international *Declaration on the Rights of Indigenous Peoples*¹⁶ which defends the right of indigenous peoples to participate in decision-making in matters which affect their rights. The Commission observes that this position is relatively uncontentious and that the decision-making right of indigenous peoples has the support of the Australian government in international forums.¹⁷ The Western Australian government has also publicly committed to developing democratic processes and inclusive governance structures for Aboriginal people.¹⁸ However, with the demise of the Aboriginal and Torres Strait Islander Commission (ATSIC) there is currently no organised representative mechanism in place for Aboriginal participation in decision-making across Western Australia. The Commission believes this is an important aspect of the whole-of-government approach and something that must be addressed if the reconciliatory gestures of the government's statement of commitment are to be practically realised. The Commission has therefore amended its recommendation accordingly.

Finally, the submissions of the Law Council of Australia and the Department of Indigenous Affairs noted that

the Commonwealth Government has a partnership role in the whole-of-government approach and that they should therefore be included in the recommendation. Of course the Commission agrees that the Commonwealth has an important role to play in facilitating this approach and providing bilateral funding to state-Commonwealth initiatives; however, it is not within this Commission's mandate to make recommendations at the federal level. Nonetheless the Commission acknowledges and stresses the need for the state government's effective cooperation with Commonwealth authorities if Western Australia is to have any real chance of significantly reducing Aboriginal disadvantage.

Recommendation 1

Whole-of-government approach to Aboriginal service and program provision

1. That the State of Western Australia adopt a genuine whole-of-government approach to the design, development and delivery of services and programs 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 Aboriginal disadvantage in Western Australia.
2. That, in recognition of the right of Aboriginal peoples to be involved in decision-making affecting their interests, the State of Western Australia put mechanisms in place to ensure the effective participation, consultation and consent of Aboriginal peoples in relation to the design and delivery of government services to Aboriginal communities in Western Australia.

14. Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, Submission No. 53 (27 June 2006) 2–4.

15. Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, *Social Justice Report 2005* (2005) 99.

16. The draft declaration has been adopted by the United Nations Human Rights Council and has been referred for adoption to the General Assembly. For further discussion, see Chapter Four 'Recognition and the Relevance of International Law', below pp 67–69.

17. On 22 May 2006 at a meeting of the Permanent Forum on Indigenous Issues the Australian delegate stated that Australia supports 'efforts to increase indigenous peoples' participation in decisions that affect them, whether in the form of international processes ... or domestic arrangements designed to protect and advance indigenous interests': *Statement by Mr Peter Vaughan, Head of the Australian Delegation to the Permanent Forum on Indigenous Issues, on behalf of Australia, New Zealand and the United States of America On Free, Prior Informed Consent* (22 May 2006) <http://www.australiaun.org/unweb/content/statements/social/2006.05.17_soc_indigenous.pdf>.

18. Government of Western Australia, *Statement of Commitment to a New and Just Relationship between the Government of Western Australia and Aboriginal Western Australians* (2002).

It is crucial that cultural awareness programs ‘deliver real cultural respect outcomes for Aboriginal people’.

Cultural awareness

The success of the whole-of-government approach to addressing issues of Aboriginal disadvantage in Western Australia will depend, in part, on government’s awareness and appreciation of Aboriginal customary law and cultural issues. The Commission’s consultations and research demonstrated that Western Australian government agencies and service providers are not sufficiently apprised of relevant cultural issues at the regional and local levels. This impacts negatively, not only on the delivery of services to Aboriginal people, but also on their design, development and evaluation. As observed in the Commission’s Discussion Paper, it is crucial that cultural awareness programs ‘deliver real cultural respect outcomes for Aboriginal people’.¹⁹ The Commission therefore proposed that staff of all Western Australian government departments, agencies and public service providers who have regular dealings with Aboriginal people be required to undertake cultural awareness training delivered at the regional or local level. The Commission also proposed that consideration be given to making agency-arranged cultural awareness training a condition of contract where contractors or sub-contractors to any Western Australian government agency work directly with Aboriginal people.²⁰

Submissions indicated considerable support for this proposal and this support was across-the-board from government departments to community organisations to individuals.²¹ Undoubtedly recognising the diversity of Aboriginal peoples and cultures in Western Australia,

most submissions acknowledged the importance of cultural awareness training that was appropriately adapted to reflect the cultural values, customs and expectations of Aboriginal people in the specific locality. This view was endorsed by the verbal submissions of Aboriginal people at community meetings conducted by the Commission around the state.

During the Commission’s return visit to Fitzroy Crossing to discuss its proposals, the Commission was shown an impressive cultural awareness booklet compiled by the



19. LRCWA, *Aboriginal Customary Laws: Discussion Paper*, Project No. 94 (December 2005) 23. The Commission referred to the development in relation to health services of the concept of ‘cultural security’ which ‘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’: see Department of Health (WA), *Aboriginal Cultural Security*, Background Paper (undated) 13.

20. *Ibid* 44, Proposal 2.

21. Michelle Scott, Office of the Public Advocate, Submission No. 13 (18 April 2006) 3; Kimberley Aboriginal Law and Culture Centre, Submission No. 17 (17 April 2006) 1; Marian Lester, Submission No. 18 (27 April 2006) 1; Aboriginal Education and Training Council, Department of Education Services (WA), Submission No. 20 (26 April 2006) 2; Dr Dawn Casey, Western Australian Museum, Submission No. 24 (1 May 2006) 1; Catholic Social Justice Council, Archdiocese of Perth, Submission No. 25 (2 May 2006) 2; Minister for Education and Training, Submission No. 27 (1 May 2006) 3; Department of Indigenous Affairs, Submission No. 29 (2 May 2006) 2; Department of Corrective Services (WA), Submission No. 31 (4 May 2006) 2; Department of the Attorney General, Submission No. 34 (11 May 2006) 1; Aboriginal Legal Service (WA), Submission No. 35 (12 May 2006) 3; Law Society of Western Australia, Submission No. 36 (16 May 2006) 1; Gascoyne Development Commission, Submission No. 38 (11 May 2006) 3; Pilbara Development Commission, Submission No. 39 (19 May 2006) 1; Law Council of Australia, Submission No. 41 (29 May 2006) 7; Department of Fisheries, Submission No. 42 (25 May 2006) 1–2; Office of Commissioner of Police, Submission No. 46 (7 June 2006) 4; Department of Consumer and Employment Protection (WA), Submission No. 48 (14 June 2006) 2; Indigenous Women’s Congress, Submission No. 49 (15 June 2006) 1; Department for Community Development, Submission No. 51 (27 June 2006) 1.



local Karrayili Adult Education Project and designed specifically for non-Aboriginal people working in the Fitzroy Valley.²² The booklet details the history of Aboriginal peoples in the region and discusses language, law and culture. It also contains helpful tips for appropriate communication and how to deal with certain issues, such as what cultural protocols must be observed in the event of a death. The Commission was told that there are written resources and experienced individuals in many Aboriginal communities that can assist in or undertake cultural awareness training for government employees and contractors. The Commission considers that drawing upon the networks and skills of local Aboriginal people is crucial to the success of cultural awareness training. This has been recognised by government and is made clear in the *Consulting Citizens: Engaging with Aboriginal Western Australians* document jointly published by the Department of Premier and Cabinet, ATSIIC and the Department of Indigenous Affairs.²³ The Department of Indigenous Affairs submitted that agencies should draw upon this document for assistance in the process of designing, developing and delivering cultural awareness training packages.²⁴

In its submission the Aboriginal Legal Service (ALS) made the pertinent point that the general community's lack of understanding or knowledge about Aboriginal people is often the foundation of prejudice toward them. On this basis the ALS submitted that all government employees, not just those who have regular dealings with Aboriginal people, should be required to undertake cultural awareness training.²⁵ While agreeing in principle with this submission, the Commission believes that it is not an imperative to mandate cultural awareness training for all employees. Nonetheless, the Commission has

expanded its recommendation to make clear that *all* employees of Western Australian government agencies should be offered and actively encouraged to participate in cultural awareness training programs regardless of their position or the frequency of their interaction with Aboriginal people.

Several submissions highlighted the need for ongoing cultural awareness training to ensure continuing effectiveness in delivery of services.²⁶ A very considered submission from the Aboriginal Education and Training Council of the Department of Education Services strongly recommended that a formal cultural awareness program with higher education credits and accreditation be developed and offered in Western Australia. The Council considered that the program should be multi-staged, commencing with 'fundamental knowledge and sequencing to more sophisticated understandings and protocols by the end'.²⁷ The Commission believes that this suggestion is worth pursuing, but it notes the advice of the Department of Indigenous Affairs that cultural awareness training should not be seen as a 'licence' for non-Aboriginal people working directly with Aboriginal people.²⁸ The Commission also warns against generic metropolitan-

22. Karrayili Adult Education Project, *Tell Me More About the People I Work With* (undated).

23. This document is available on the Department of Indigenous Affairs website: <<http://www.dia.wa.gov.au/Policies/Communities/Files/ConsultingCitizensSept2005.pdf>>.

24. Department of Indigenous Affairs, Submission No. 29 (2 May 2006) 2. The Department of Consumer and Employment Protection's *Guidelines for Working with Aboriginal Peoples and Torres Strait Islanders* (undated) is an excellent example of general protocols to observe and assumptions to avoid when dealing with Aboriginal people and clearly implements the *Consulting Citizens* guide.

25. Aboriginal Legal Service (WA), Submission No. 35 (12 May 2006) 3.

26. Marian Lester, Submission No. 18 (27 April 2006) 1; Aboriginal Education and Training Council, Department of Education Services (WA), Submission No. 20 (26 April 2006) 2; Minister for Education and Training, Submission No. 27 (1 May 2006) 3; Department of Indigenous Affairs, Submission No. 29 (2 May 2006) 2. That training should be sufficiently long was also expressed by participants at the Commission's return consultation: see LRCWA, Discussion Paper community consultation – Geraldton, 3 March 2006.

27. Aboriginal Education and Training Council, Department of Education Services (WA), Submission No. 20 (26 April 2006) 2.

28. Department of Indigenous Affairs, Submission No. 29 (2 May 2006) 2.

The general community's lack of understanding or knowledge about Aboriginal people is often the foundation of prejudice toward them.

based programs and stresses that all cultural awareness programs must recognise the diversity of Aboriginal peoples in Western Australia, and emphasise regional and local customs and protocols.

In light of the supportive submissions on this matter the Commission has confirmed its recommendation but has expanded it by making clear what is expected of agencies in the design, development and delivery of

cultural awareness training to employees and contractors. It should be noted that this recommendation should be read together with Recommendations 11, 12, 56 and 128, which pertain to cultural awareness training for people in specific positions within the criminal justice system such as judicial officers, court staff, lawyers, police and corrective services officers.

Recommendation 2

Cultural awareness training for government employees and contractors

1. 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:
 - (a) be designed and/or developed in consultation with local Aboriginal people, in particular traditional owners;
 - (b) draw upon existing local Aboriginal resources, networks and skills;
 - (c) be conducted or include presentations by Aboriginal people;
 - (d) be delivered at the regional or local level to allow programs to be appropriately adapted to take account of regional cultural differences and customs and concerns of local Aboriginal communities;
 - (e) include protocols and information specific to the role or position of the individual undertaking the training;
 - (f) be sufficiently long and detailed to meaningfully inform participants of matters necessary to the delivery of programs and services to Aboriginal clients; and
 - (g) be evaluated, updated and reinforced on a regular basis.
2. That *all* employees of Western Australian government agencies be offered, and encouraged to participate in, cultural awareness training programs regardless of their position or the frequency of their interactions with Aboriginal people.
3. That participation in agency-arranged cultural awareness training be a contractual condition where contractors or sub-contractors to any Western Australian government agency are required to work directly or have regular dealings with Aboriginal people.

Office of the Commissioner for Indigenous Affairs

The Need for Ongoing Monitoring and Evaluation

During the Commission's consultations Aboriginal people expressed frustration about the amount of reports prepared and recommendations made by government that are never implemented.¹ As the Human Rights and Equal Opportunity Commission (HREOC) stated in its submission to this reference, it would be a 'tragedy given the breadth of consultation and considered discussion [which has occurred in] the inquiry process to date'² if action is not taken to implement the Commission's recommendations. HREOC commented that a process should be put in place to report on what action has been taken to implement the recommendations of this Final Report and to make follow up recommendations if necessary.³ The Commission's agreement with this approach is reflected in the guiding principles for reform in the previous chapter; in particular, the requirement for ongoing monitoring and evaluation.⁴

Methods of evaluation

Recommendation-by-recommendation review

The Commission has given careful consideration to the best method of evaluating the implementation of the recommendations of this Report. The implementation

of the recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) provides an interesting precedent. In 2000, nine years after the RCIADIC released its findings, the Western Australian government published a review of the implementation of the RCIADIC recommendations in Western Australia.⁵ In that review the relevant government departments reported on the implementation status of the RCIADIC's recommendations. The review is detailed, but does not contain any analysis or make any observations about the implementation process as a whole. Neither does it make any follow-up recommendations.⁶

In 2005 the Victorian government published its own review of the implementation status of RCIADIC recommendations in that state (the Victorian RCIADIC report).⁷ The report contained a similar description by each department about the progress of implementation, but also made observations about the implementation process in Victoria and made further recommendations for reform. The Victorian RCIADIC report highlights a number of problems with the recommendation-by-recommendation style of review: that the self-assessment by government 'is silent on what Aboriginal people themselves perceive and experience in terms of progress';⁸ and that it is neither ongoing nor independent.⁹

1. It was noted in the Commission's Discussion Paper that similar frustrations were expressed to RCIADIC 15 years ago: LRCWA, *Aboriginal Customary Laws: Discussion Paper*, Project No. 94 (December 2005) 42.
2. Human Rights and Equal Opportunity Commission, Submission No. 53 (27 June 2006) 19.
3. Ibid 18–19. HREOC also suggested that the Commission should identify a lead agency responsible for the implementation of each recommendation made in this report as 'experience tends to show that if such focal points are not identified, there will be little progress in implementing the recommendations'. For a list of recommendations and the lead agencies responsible for their implementation, see Appendix B, below pp 397–408.
4. See discussion under 'Principle Nine: Ongoing Monitoring and Evaluation', above pp 39–40.
5. Aboriginal Affairs Department, *Government of Western Australia 2000 Implementation Report: Royal Commission into Aboriginal Deaths in Custody* (June 2001).
6. The report states that the Aboriginal Affairs Department will report annually to Parliament on the progress of implementing the recommendations. This has never been done. The Department of Indigenous Affairs advised the Commission that it is no longer its responsibility to coordinate the reporting on the RCIADIC recommendations: Helen Stokes, Senior Policy Officer, Department of Indigenous Affairs, telephone consultation (31 August 2006). One of the recommendations of the RCIADIC was the establishment of Aboriginal-run organisations to monitor the implementation of the recommendations. The Aboriginal Justice Council of Western Australia was established for that purpose and provided statistical reports and reviews until it was abolished in 2002. At that time it was stated that ATSIC and other various state government departments would create a new monitoring body: see Morgan N & Motteram J, *Aboriginal People and Justice Services: Plans, programs and delivery* in LRCWA, *Aboriginal Customary Laws: Background Papers*, Project No. 94 (January 2006) 235, 242 & 315.
7. Victorian Department of Justice, *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody*, Review Report (Vol. 1, October 2005).
8. Ibid 702. The report asks: 'Consultations may be engaged in, policies agreed, committees established and programs activated, but just what has been achieved in terms of the social, economic, cultural and legal position of Indigenous Victorians?'
9. Ibid. The report stated that 'the Review Team became aware of the complex multi-agency and multi-layered range of policy, administrative and program-related issues.'

Recommendation-by-recommendation reviews conducted at a fixed point in time are limited in their usefulness because programs and policies are not necessarily evaluated at their completion.¹⁰ Further, such reviews can present a huge task to the reviewing body,¹¹ and if they are not conducted promptly there is a chance that crucial information may be lost.¹² Additionally, the kind of recommendation-by-recommendation review conducted by Western Australia and Victoria is clearly not independent. As the Victorian review team observed, ‘the reported situation with regard to Victoria’s implementation of Royal Commission’s Recommendations remains largely what government departments say it is’.¹³ Reviews of this nature can be useful where it is desirable to focus on the efforts of specific agencies, but must be supplemented by independent, ongoing reviews that focus on outcomes for Aboriginal people.

Outcomes-based review

There has been a recent movement toward focusing on outcomes (rather than policy and process) in the delivery of government services to Aboriginal Australians.¹⁴ The background to this movement is the failure of many programs to deliver any real results to Aboriginal people and the fact that the policy promises of government have not always been rendered in reality ‘on the ground’.¹⁵ The response by both Commonwealth and state governments has been the development of key indicators and benchmarks¹⁶ with which to measure the effectiveness of programs and policies. The report prepared for the Council of Australian Governments’ Steering Committee into the Review of Government Service Provision—*Overcoming*



Indigenous Disadvantage – Key Indicators 2003—has led the way in establishing a means of benchmarking government programs for Aboriginal people throughout Australia.¹⁷ This was the basis for the *Overcoming Indigenous Disadvantage in Western Australia Report 2005*.¹⁸ This report brought together Western Australian specific information to assess indicators (such as life expectancy and home ownership) and benchmarks (such as substance use and misuse, and early school engagement and performance). This kind of outcomes-based review is clearly more appropriate to a whole-of-government framework to addressing Aboriginal disadvantage.¹⁹ Further, it is intended to be an ongoing coordinated process throughout Australia.

While there are some distinct benefits to the outcomes-based approach, concern has been expressed about the accountability of individual departments to implement policies and programs and the potential for the departments to become bogged down in discussion

10. Ibid. The Victorian Review Team found that ‘the inevitable outcome was that achieving finality, in the sense of an implementation snapshot that would accurately convey the current dynamic situation, became all but impossible.’

11. For example, the *Report of the Royal Commission into Aboriginal Deaths in Custody* made 339 recommendations.

12. The Auditor General for Western Australia made this point in its findings on the implementation of the initiatives of the Gordon Inquiry. The Gordon Inquiry reported to Parliament on 31 July 2002. In November 2002 the Western Australian Government published its response *Putting People First: The Western Australian state government’s action plan for addressing family violence and child abuse in Aboriginal communities* (November 2002). This response included an Action Plan containing over 120 initiatives. In November 2005 the Auditor General reported on the effectiveness of the monitoring of the implementation of the Action Plan. The Auditor General was critical of the fact that no evaluation framework had been finalised to determine the effectiveness of the Action Plan and that the delay of three years was significant as the ‘opportunity may have been lost to collect some baseline data’: see Auditor General for Western Australia, *Progress with Implementing the Response to the Gordon Inquiry* (November 2002) 10.

13. Victorian Department of Justice, *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody*, Review Report (Vol. 1, October 2005) 703.

14. Notably since the publication of the Council of Australian Government (COAG) *National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal and Torres Strait Islanders* (1992), <<http://www.alga.asn.au/policy/indigenous/nationalCommitment.php>>

15. See Morgan N & Motteram J, *Aboriginal People and Justice Services: Plans, programs and delivery*, Law Reform Commission of Western Australia, Project No. 94, Background Paper No. 7 (December 2004) 235, 312.

16. There is a distinction between indicators and benchmarks. As explained by Greg Marks in his background paper to this reference indicators are of a quantitative, statistical nature. By contrast benchmarks are targets established by government and partly quantitative and partly qualitative, linked to time frames and set with the participation of people whose rights are affected: for a fuller discussion. See Marks G, ‘The Value of a Benchmarking Framework to the Reduction of Indigenous Disadvantage in the Law and Justice Area’ in LRCWA, *Aboriginal Customary Laws: Background Papers*, Project No. 94 (January 2006) 121.

17. SCRGS, *Overcoming Indigenous Disadvantage – Key Indicators 2003* (November 2003).

18. Department of Indigenous Affairs, *Overcoming Indigenous Disadvantage in Western Australia*, Report (2005).

19. See Recommendation 1, above p 48.



with each other.²⁰ The difficulty in managing a whole-of-government approach to the implementation of recommendations is apparent in the response of the Western Australian government to the Gordon Inquiry. As outlined in the Commission's Discussion Paper, the government responded to the Gordon Inquiry in December 2002 by releasing an Action Plan that detailed more than 120 initiatives to be implemented by 15 agencies and a whole-of-government approach to organising and delivering services.²¹ Groups were formed²² to enable the monitoring and evaluation of the progress of implementing the initiatives. In 2005 the Auditor General reported to Parliament on the progress that had been made towards implementing the initiatives and found that an evaluation framework for assessing whether the Action Plan was making a difference had not been finalised.²³ The Auditor General noted that because many of the initiatives are interlinked, delay in implementing one can delay progress in implementing others.²⁴ The Auditor General asserted that the delay in setting up an evaluation framework was important:

because a clear and shared sense of purpose is important during the planning and implementation phases and because the opportunity may have been lost to collect some important baseline data. In the medium and longer term the evaluation of information is needed to guide changes to the Action Plan to ensure that its key outcomes are best achieved.²⁵

It is clear that where a number of departments and agencies are involved in the process of reform it is difficult to ensure accountability. To address this issue the Gordon Inquiry recommended the establishment of a Children's Commission. In the government's response in 2002 it stated that 'having a Children's Commission in this State would duplicate existing accountability and advocacy processes'.²⁶ However, concern about the issues raised in the Gordon Inquiry (and problems with implementation of its recommendations) prompted the establishment of a select committee²⁷ to investigate the proposal and, as a result, the Commissioner for Children and Young People Bill 2005 (WA) is now before Parliament. The Select Committee found that one of the more important functions of the Commissioner would be to coordinate a joint agency response to issues concerning children.²⁸ Similarly, the Victorian RCIADIC report acknowledged the need for the whole-of-government approach to Aboriginal affairs to be overseen by an independent body and recommended the appointment of a Social Justice Commissioner.²⁹

The need for a body to oversee the reform in Aboriginal affairs was also recognised recently by Patrick Dodson:

We should consider the creation of a Responsibility, Rights and Opportunities Commission to oversee and guide the process of reform and reconstruction

-
20. Since the demise of ATSIC the Commonwealth government has set up a commonwealth departmental secretaries group to oversee the new system of service provision to indigenous communities under its policy of 'mainstreaming'. It is reported in an article in *The Australian* (20 April 2006) that 'Secretaries from departments including Family and Community Services, Prime Minister and Cabinet, Health and Education have revealed to researchers from the Australian National University's Centre for Aboriginal Economic Policy Research that they are wasting time in meetings with each other rather than getting things done.'
 21. See LRCWA, *Aboriginal Customary Laws: Discussion Paper*, Project No. 94 (December 2005) 351–52.
 22. It was determined that the responsibility for overseeing and monitoring the implementation of the Action Plan would be with the State Government Human Services Directors-General Group through a Senior Officers' Group. A Secretariat was retained to support the Senior Officers' Group. The Department of Premier and Cabinet was initially responsible for the Secretariat, but in April 2005 that responsibility was transferred to the Department of Indigenous Affairs.
 23. The Commission has been advised that the Department for Indigenous Affairs is currently putting in place a monitoring and evaluation process: David Waters, Senior Policy Officer, Gordon Implementation Unit, Department of Indigenous Affairs, telephone consultation (27 July 2006).
 24. Auditor General for Western Australia, *Progress with Implementing the Response to the Gordon Inquiry* (November 2002) 11.
 25. *Ibid* 13–14.
 26. Government of Western Australia, *Putting People First: The Western Australian state government's action plan for addressing family violence and child abuse in Aboriginal communities* (November 2002) 30.
 27. Western Australia, *Parliamentary Debates*, Legislative Council, 14 May 2003, 7623b-7642a/1.
 28. Western Australia, *Parliamentary Debates*, Legislative Assembly, 1 June 2005, 2582b-2585a/1.
 29. Victorian Department of Justice, *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody*, Review Report (Vol. 1, October 2005) 703. Note also that Recommendation 1(a) and 9(b) of the RCIADIC call for regular reporting on the progress of the implementation of the recommendations of that report and for ATSIC to be given responsibility and funding to monitor that progress and report to the Indigenous community about it.

It is crucial to the success of the Office of the Commissioner for Indigenous Affairs that the position of Commissioner is independent.

necessary in Aboriginal affairs. Such a Commission would work to avoid the mistakes of the past, help clarify what Rights and Responsibilities are and can be exercised and what needs to be done to improve them as well as develop consensual strategies and policies while aiming to achieve true and lasting reconciliation as Australians.³⁰

The Proposed Office of the Commissioner for Indigenous Affairs

The Commission recognises the need for an ongoing flexible review process that facilitates the participation of Aboriginal people in the implementation of the recommendations of this Report. The Commission considers that this can best be achieved by the establishment of a 'watchdog' body for Aboriginal issues in Western Australia.³¹ This body would not be simply a further layer of government administration in the area of Aboriginal affairs: it would provide an independent audit of the information provided by government departments to avoid the problems associated with self-assessment. The Commission proposes that an independent, Aboriginal Commissioner (preferably Western Australian) should be appointed to head an Office of the Commissioner for Indigenous Affairs for Western Australia.³²

The importance of independence

It is crucial to the success of the Office of the Commissioner for Indigenous Affairs that the position of Commissioner is independent. For this reason, the Commission considers that the Office should be outside the public service and the Commissioner should not be regulated under the *Public Sector Management Act 1994* (WA). The Office of the Commissioner for Indigenous Affairs should be a statutory office with its own operating Act.³³ To preserve its independence, a standing committee of both Houses of Parliament should oversee its work to enable direct reporting to Parliament. The Commission suggests that the Commissioner be appointed by the Governor on the recommendation of the Premier in consultation with Aboriginal people. The term of the office should be five years (renewable by both Houses of Parliament) and the Commissioner should only be suspended or removed from office by the Governor on addresses from both Houses of Parliament.³⁴

Other key requirements: information and funding

In order for the Office of the Commissioner for Indigenous Affairs to properly perform its functions, it is necessary for it to have access to reliable information including statistics;³⁵ progress data from agencies;³⁶ and

30. Dodson P, 'The Role of Education in Reconciliation' Samuel Alexander Lecture (18 May 2006) 10.

31. It was suggested to the Commission at a meeting of male Elders in Fitzroy Crossing that what was needed was an independent Commissioner to hold government departments accountable: LRCWA, Discussion Paper community consultation – Fitzroy Crossing, 9 March 2006.

32. Although, as noted in the introduction to this Report, there are very few Torres Strait Islanders residing in Western Australia and most Aboriginal people in Western Australia apparently prefer the term 'Aboriginal' to 'Indigenous', the Commission has chosen the name Office of the Commissioner for Indigenous Affairs to ensure that the office is inclusive of Torres Strait Islanders and follows current state nomenclature (eg, the Department of Indigenous Affairs).

33. The Office of the Commissioner for Children and Young People has been established in the same way: see Commissioner for Children and Young People Bill 2005, Explanatory Memorandum, cl 6.

34. The Commission suggests that the scheme currently in place for the removal of the Corruption and Crime Commissioner ought to be adopted for the Commissioner for Indigenous Affairs: see *Corruption and Crime Commission Act 2003* (WA) s 12.

35. The Victorian RCIADIC report highlighted the need for improved and reliable data on Aboriginal people and noted: 'At least 15 Recommendations referring to this need are scattered throughout the Royal Commission Report ... The ABS has a key role to play and, as noted in the *Report on Government Service Provision: Indigenous compendium 2004*, work is currently underway to develop and improve Indigenous data flowing from the government administrative systems'. Victorian Department of Justice, *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody*, Review Report (Vol. 1, October 2005) 704. The Commission has also recognised the need for improved data in Western Australia and recommended improvements to the way in which the Western Australia Police collect information on Aboriginal people. See Recommendation 57, below p 213.

36. The inadequacy of the information provided to the Secretariat overseeing the implementation of the Gordon Inquiry initiatives was noted by the Auditor General for Western Australia. It provided the following example: the Department for Community Development (DCD) is responsible for implementing 30 initiatives, but the central reporting process contains DCD progress data on eight initiatives in 2003, 17 in 2004 and 18 in 2005. Of 17 initiatives led by the Western Australia Police only six are included on the reporting database: Auditor General for Western Australia, *Progress with Implementing the Response to the Gordon Inquiry* (November 2002) 11.



Role and functions

The Commission considers that the Office of the Commissioner for Indigenous Affairs should be tasked with reporting on the progress of the recommendations of both this Final Report and of the report of the RCIADIC. As noted above, there is presently no system for regular reporting of progress in Western Australia on the implementation of the Royal Commission's recommendations. The Commission also notes the recent cessation of funding to the Deaths in Custody Watch Committee (WA). One of the recommendations of the RCIADIC was the establishment of watch committees in each state to, among other things, advocate for the implementation of the recommendations of the RCIADIC. Since its inception in 1993 the Deaths in Custody Watch Committee (WA) was funded through ATSIC. With the demise of ATSIC the responsibility for funding fell to the federal Attorney General who decided⁴⁰ to tender for the monitoring role in Western Australia.⁴¹ Given the overlap in areas on which the RCIADIC and the Commission has made recommendations, the Commission considers that it would be an effective use of funding and resources to give one body responsibility for reporting on the implementation progress of both of sets of recommendations.

the perspective of Aboriginal people.³⁷ It is also necessary for the Office to be adequately funded to perform its functions³⁸ and that this funding is ongoing. In commenting on the need to adequately fund the proposed Commissioner for Children and Young People, Giz Watson MLC recognised that the provision of funding 'goes to the very heart of the question of independence. There are many ways in which to restrict independence. One of those is to place restrictions on the way in which funds can be used'.³⁹

The Commissioner for Indigenous Affairs will be required to report annually to the Western Australian Parliament⁴² and to the Aboriginal people of Western Australia on:

- departmental participation in the whole-of-government approach;
- progress on implementation of the recommendations of this Report⁴³ and the *Report of the Royal Commission into Aboriginal Deaths in Custody* (1991);

-
37. In its submission HREOC noted the requirement for 'adequate and appropriate consultation with the Aboriginal community' in the implementation of the recommendations of this report: Human Rights and Equal Opportunity Commission, Submission No. 53 (27 June 2006) 18. The Commission noted the importance of the Commissioner for Indigenous Affairs consulting with the appropriate Aboriginal body in respect of each of the issues it considers.
38. This was recognised in the Victorian RCIADIC report in respect of the proposed Social Justice Commissioner: Victorian Department of Justice, *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody*, Review Report (Vol. 1, October 2005) 705.
39. Western Australia, *Parliamentary Debates*, Legislative Council, 13 April 2006, 1699b-1702a/1 (Ms Giz Watson).
40. See Deaths in Custody Watch Committee (WA) Inc., 'Deaths in Custody is Facing Its Own Demise', media release (25 November 2005), <http://www.deathsincustody.com/media_release.php?id=54>.
41. The Deaths in Custody Watch Committee (WA) failed to win the tender and so has no further government funding; however, it does intend to continue on a volunteer basis. The Commission has been advised that the Aboriginal Legal Service won the tender for Western Australia and is in the process of employing a person to carry out this role: Mark Newhouse, Trustee, Deaths in Custody Watch Committee (WA), telephone consultation (7 September 2006).
42. In order to ensure independence the Commissioner for Indigenous Affairs should not report through any Minister. The Commissioner for Indigenous Affairs should report directly to both Houses of Parliament in the same manner as the Corruption and Crime Commissioner.
43. This should include an analysis of departmental and agency reports to the Commissioner for Indigenous Affairs and a review of legislative amendments.

The Commissioner for Indigenous Affairs will be required to report annually to the Western Australian Parliament and to the Aboriginal people of Western Australia.

- outcomes achieved in regard to reducing Aboriginal disadvantage in Western Australia;⁴⁴ and
- progress in the reduction of over-representation of Aboriginal people in the criminal justice system in Western Australia.

The Office of the Commissioner for Indigenous Affairs will monitor and evaluate state government initiatives addressed to Aboriginal people in Western Australia, including Aboriginal courts,⁴⁵ community justice groups,⁴⁶ the proposed statewide Aboriginal language interpreter service,⁴⁷ the by-law scheme under the *Aboriginal Communities Act 1979* (WA)⁴⁸ and pilot diversionary programs.⁴⁹ The Commissioner's role will also include the promotion of reconciliation in Western Australia and advocating for the rights of Aboriginal people.

Powers

The Commissioner for Indigenous Affairs should have the power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions⁵⁰ and must have sufficient powers to allow it to hold departments to account. In particular, the Commissioner should have the power to:

- require departments and agencies to provide information on request;⁵¹
- require departments and agencies to report annually

on outcomes achieved in respect of Aboriginal issues and policies;

- establish joint working parties or collaborate with state or federal agencies and/or research bodies on issues affecting or relating to Aboriginal people in Western Australia;⁵²
- review laws and policies, and provide advice to government;
- publish research, reports and information on issues relating to Aboriginal people in Western Australia;
- make findings and recommendations to Parliament or to any Western Australia government agency in relation to any matter within the Commissioner's remit; and
- undertake investigations on matters as directed by the Premier of Western Australia from time-to-time.⁵³

It is the Commission's firm opinion that the Commissioner for Indigenous Affairs should not receive or investigate complaints from individuals. There are other bodies in Western Australia that are experienced in dealing with individual complaints based on certain criteria; for example, the Ombudsman and the Corruption and Crime Commission (for government agencies and public officers) and the Equal Opportunity Commission (for discrimination).

44. The Commission suggests that the benchmarks established by the Steering Committee for the Review of Government Service Provision should be the starting point for the assessment of the outcomes achieved in the reduction of indigenous disadvantage: SCRGSP, *Overcoming Indigenous Disadvantage – Key Indicators 2003* (November 2003).

45. See Recommendation 24, below p 136.

46. See Recommendation 17, below pp 112–13.

47. See Recommendation 117, below p 337.

48. See Recommendation 18, below p 115.

49. See Recommendation 51, below p 205.

50. This is the expression used to grant powers to the Human Rights and Equal Opportunities Commissioners: see *Human Rights and Equal Opportunity Act 1986* (Cth) s 13(1).

51. The Commission proposes that the Commissioner for Indigenous Affairs use this power to conduct an ongoing review of each recommendation of this Final Report so that periodic recommendation-by-recommendation style reviews are made redundant.

52. For example, this could include collaboration with the Office of the Ombudsman; Equal Opportunity Commission; Office of the Inspector of Custodial Services; Department of Indigenous Affairs; Crime Research Centre (University of Western Australia); Centre for Aboriginal Studies (Curtin University); Commonwealth Aboriginal and Torres Strait Islander Social Justice Commissioner; and relevant parliamentary committees.

53. It is important that any directions for investigation be transparent and tabled in Parliament by the Premier. Adequate resourcing for extraordinary investigations must be provided.

Recommendation 3

Establish an Office of the Commissioner for Indigenous Affairs

1. That the Western Australian government establish, by statute, an independent and properly resourced Office of the Commissioner for Indigenous Affairs to report directly to Parliament on:
 - (a) progress on implementation of the recommendations of the Law Reform Commission of Western Australia's Final Report into Aboriginal Customary Laws (2006) and the Report of the Royal Commission into Aboriginal Deaths in Custody (1991);
 - (b) departmental and agency participation in the whole-of-government approach;
 - (c) outcomes achieved in regard to reducing Aboriginal disadvantage and achieving reconciliation in Western Australia; and
 - (d) progress in the reduction of over-representation of Aboriginal people in the criminal justice system in Western Australia.
2. That the Office of the Commissioner for Indigenous Affairs be responsible for independent monitoring and evaluation of government initiatives directed toward Aboriginal people in Western Australia.
3. That the Office of the Commissioner for Indigenous Affairs be headed by an independent Aboriginal Commissioner, preferably from Western Australia.
4. That the Commissioner for Indigenous Affairs have the power to:
 - (a) require departments and agencies to provide information on request;
 - (b) require departments and agencies to report annually to the Commissioner on outcomes achieved in respect of Aboriginal issues and policies;
 - (c) establish joint working parties or collaborate with state or federal agencies and/or research bodies on issues affecting or relating to Aboriginal people in Western Australia;
 - (d) review laws and policies and provide advice to government;
 - (e) publish research, reports and information on issues relating to Aboriginal people in Western Australia;
 - (f) make findings and recommendations to Parliament or to any Western Australia government agencies in relation to any matter within the Commissioner's remit; and
 - (g) undertake investigations on matters as directed by the Premier of Western Australia from time-to-time.
5. That the Commissioner for Indigenous Affairs be appointed by the Governor on the recommendation of the Premier in consultation with Aboriginal people.
6. That the Commissioner for Indigenous Affairs' term of office be five years, renewable by both Houses of Parliament. The Commissioner should only be suspended or removed from office by the Governor on addresses from both Houses of Parliament.