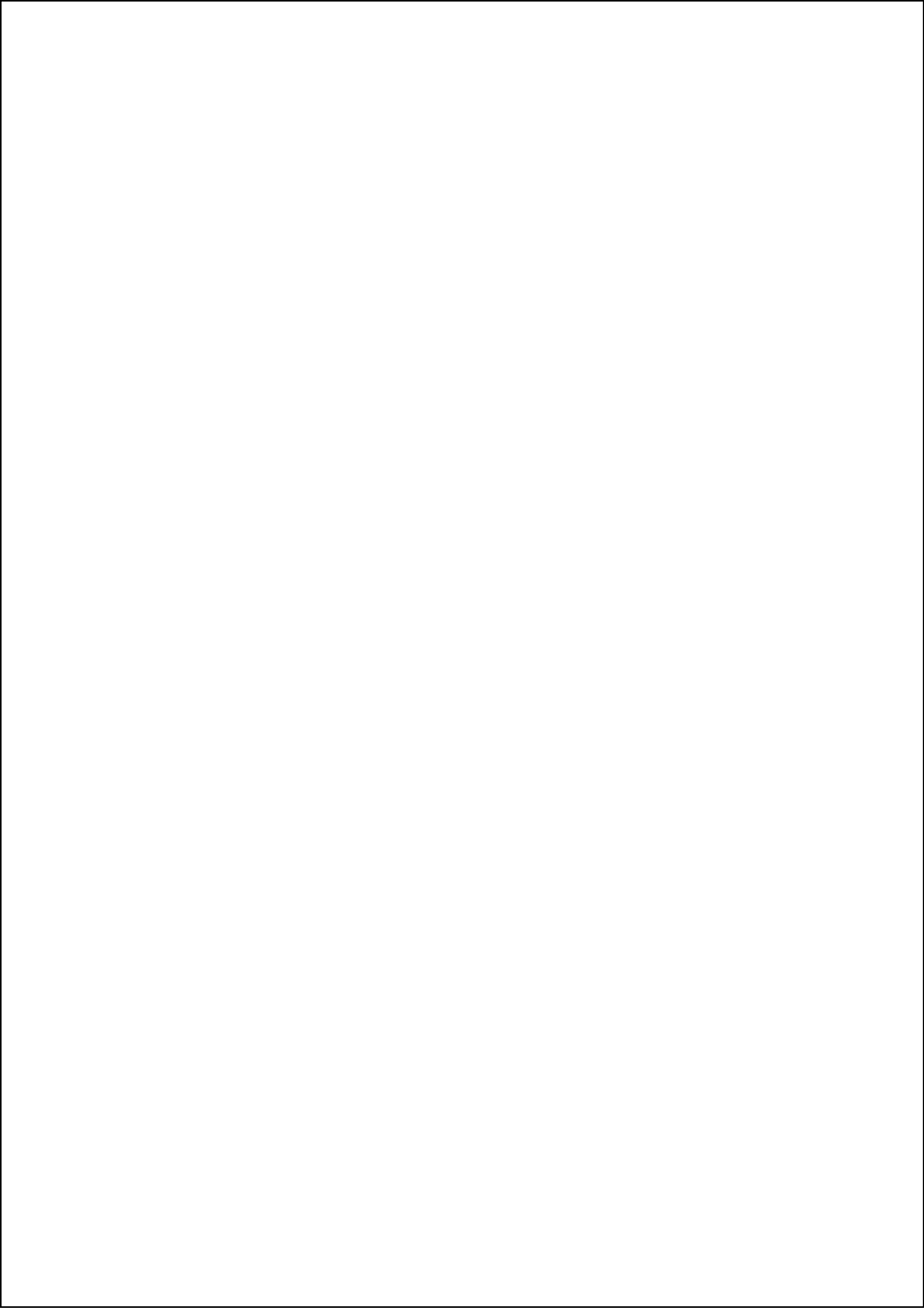


SECURING THE TRUTH



NSW Government Submission to the Human Rights
and Equal Opportunity Commission Inquiry into the
Separation of Aboriginal and Torres Strait Islander
Children from their Families



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This publication has only come about as the result of the collaborative efforts of a large team of people.

In 1995-96, the Department of Community Services chaired an Inter-Departmental Committee to oversee the production of the NSW Government's submission to the National Inquiry.

The Committee consisted of the following representatives: Rodney Ella, Phil Smith, Mary Kellaheer (Department of Community Services), Keith Hall (Department of Health), Phil Nean, Sharon Galleguillos (Department of School Education), Terry Hill (Department of Housing), Steve Merritt, Carol Thomas (Department of Juvenile Justice), Boe Rambaldini, Megan Wilson (NSW Police Service), Sharon Boyd (The Cabinet Office), Karin Harrison (Crown Solicitor's Office), Gary Ella, Tony McAvoy (Department of Aboriginal Affairs), Richard Gore (Archives Authority of NSW), Joanne Selfe (Department of Corrective Services), Ivan Simon (Department of Urban Affairs and Planning) and Barry Duroux (Link-Up (NSW)).

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Foreground photo of group of girls taken at Brewarrina in 1932

Background photo of Carowra school boys taken in 1929

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securing the truth

FOREWORD

In 1996, the Human Rights and Equal Opportunity Commission commenced its inquiry into the *Separation of Aboriginal and Torres Strait Islander Children from their Families*.

All Governments were asked to provide information on their involvement in the removal of Aboriginal children from their families.

The Carr Government has been committed to this process. In 1996, we undertook an extensive compilation of material and information regarding the removal of Aboriginal children. The resulting submission, *Securing the Truth*, was given to the National Inquiry. This document is a true response and an open account of the practices of removal in New South Wales over the past two centuries.

Through *Securing the Truth*, we are better able to understand the difficult task faced by Aboriginal people in finding their families. We are more able to understand the consequences of removal. And most importantly, we are able to truly acknowledge our past.

To move forward in the process of reconciliation, we must deal with the legacies of the past and understand how they shape the present. In renewing our partnership, we must ensure that the mistakes of our past relationships are never repeated.

Securing the Truth is an invaluable resource. It puts forward the true history of our past - a history which we must all learn and which cannot be forgotten.



Andrew Refshauge

Deputy Premier

Minister for Health

Minister for Aboriginal Affairs

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Background

1.1

This is a “whole-of-government” report which has been prepared by an Inter-Departmental Co-ordination Committee convened by the Minister for Community Services comprising representatives from nine government Departments including: Community Services, Juvenile Justice, Corrective Services, Police, Health, Housing and Housing Policy, School Education, Attorney-General’s and Cabinet Office.

The Committee was established at the Premier’s request, and its original purpose was to assist the Human Rights and Equal Opportunity Commission staff with their preparations for the New South Wales Hearings. Specifically, issues related to access to departmental records, and the gathering of information on current and past Government practice formed the primary focus of the initial work of the Committee.

The preparation of a written submission on behalf of Government has been a major focus of the Committee’s work since January 1996. It has involved extensive searches of departmental records, Archives material, departmental reports and studies and legislation and parliamentary speeches on the passage of the Bills.

In addition to the preparation of the report, the Committee had a sub-committee engaged in the preparation of Draft Guidelines for Departments on Access to Records; it has been responsible for making regular reports to the Premier on progress with the Inquiry, and it has been working with Link-Up (NSW) to facilitate access to government records by individuals. The Committee has also been receiving feedback from Link-Up (NSW) community consultations on the Inquiry.

In gathering the material for this report several major themes became apparent. The first is that there is considerable evidence that agencies worked together on issues related to the separation of children. In many instances police powers, Aborigines Protection (and later) Welfare Board’s powers, and the authority of health care providers overlap or are delegated through administrative arrangements. This has made it difficult to ascribe sole responsibility to these agencies for particular aspects of separation.

Secondly, poor record keeping, the loss of records and changes to departmental structures and organisation have made it difficult in the short period of time available to

the Committee to explore these connections fully by tracing administrative instructions, annual reports and departmental correspondence.

Finally, a major difficulty in tracing the full impact of these connections has been that Aboriginality was not recorded on departmental files before 1973. To overcome some of these problems, rather than present the information according to the ordering of the Terms of Reference, the Committee has tried to open windows into some of these aspects of the separation issue by providing the information in the document in a sequential manner, focusing on historical periods, which attempt to set the policy culture of the day in context. This has been supported, where possible, with primary source material which highlights the prevailing attitudes and beliefs of the day.

The relationship between the Terms of Reference and the chapters in this report is shown in the table below.

Table 1 - Relationship between Terms of Reference and Report Chapters

Inquiry's Terms of Reference	Chapters
<p>a Trace the past laws, practices and policies which resulted in the separation of Aboriginal and Torres Strait Islander children from their families by compulsion, duress or undue influence and the effect of those laws, practices and policies.</p>	2-5
<p>b Examine the adequacy of and need for any changes in current laws, practices and policies relating to services and procedures currently available to those Aboriginal and Torres Strait Islander peoples who were affected by the separation under compulsion, duress or undue influence of Aboriginal and Torres Strait Islander children from their families, including but not limited to current laws, practices and policies relating to access to individual and family records and to other forms of assistance towards locating and reunifying families.</p>	9
<p>c Examine the principles relevant to determining the justification for compensation of either persons or communities affected by such separations.</p>	9.5
<p>d Examine current laws, practices and policies with respect to the placement and care of Aboriginal and Torres Strait Islander children and advise on any changes required taking account of the principle of self determination by Aboriginal and Torres Strait Islander peoples.</p>	6-8

Approach of this Report

1.2

The New South Wales Government recognises the enormous impact past government legislation, policies and practices have had on Aboriginal communities, the lives of Aboriginal children, their parents and their families. The legacy of those practices and laws is evident in the lives of many Aboriginal and Torres Strait Islander people in New South Wales.

This report is designed primarily for the purpose of assisting the Inquiry to understand the nature of past practices, how these have changed, particularly in recent years, and how the New South Wales Government is addressing the needs of Aboriginal and Torres Strait Islander people who were affected by separation.

The New South Wales Government has begun to address this issue. *Learning from the Past (1995)* was commissioned by the Department of Community Services. It reports on the impact of separation from an Aboriginal and Torres Strait Islander perspective. The Department of Community Services consultation paper, *A New Generation of Services for Aboriginal and Torres Strait Islander Peoples: Our Future*, documents the Department's response.

The New South Wales Government has also provided financial assistance to Link-Up (NSW) to organise consultations with Aboriginal and Torres Strait Islander communities across New South Wales to encourage Aboriginal and Torres Strait Islander people to present information to the Inquiry.

Because Aboriginal and Torres Strait Islander issues are of national concern, and much of the separation policies of New South Wales arose in the context of past national assimilation policies, the New South Wales Government supports, as part of the reconciliation process, a national approach to the recognition of past practices, the development of initiatives to redress harmful effects of those practices, and the continual refinement of current laws, policies and practices affecting Aboriginal and Torres Strait Islander children and their families.

Note: In the historical chapters of this report, Aboriginal and Torres Strait Islander people are frequently referred to in terms which today are seen as demeaning or unacceptable. This language was used in legislation and Parliamentary debate of the time, and is reported as such.

Date	Event	Effect	1.3
1788	European settlement	First instances of Aboriginal children separated from their families, used as guides by early settlers and explorers.	Chronology
1814	Governor Macquarie founds Native Institution for Aboriginal children of both sexes at Parramatta.	Children taken from families to be educated and "civilized". Annual "feast" held to reunite parents with children and to develop better relations with Aboriginal people.	
1824	Serious conflicts lead to martial law being proclaimed on Aboriginal people.	Police as supervisors of Aboriginal people.	
1838	Bill for <i>Protection of Aborigines</i> drafted.	After massacres of Aboriginal people this Bill was drafted to protect their just rights and privileges as subjects of Her Majesty, the Queen.	
1878	Creation of the first reserves and missions in New South Wales.	Beginning of containment and control.	
1880	Private body known as the Association for the Protection of Aborigines formed.	The purpose of the society was "to ameliorate the current deplorable condition of the remnants of the Aborigine tribes of this colony".	
1881	<i>State Children Relief Act 1881</i>	This established the State Children's Relief Board which had powers to remove children from charitable institutions, admit them to wardship and approve adoption of wards.	
1883	Aborigines Protection Board established.	Mass dislocation of Aboriginal people from their traditional lands in New	

Date	Event	Effect
		<p>South Wales to reserves and stations. The Board had no legal powers to remove children at this stage.</p>
1893	<p>First children's home, Warangesda Aboriginal School for Girls, established by Aborigines Protection Board.</p>	<p>Aboriginal girls, particularly "half-caste" were trained for domestic service. Parents were encouraged with threats and promises to send their daughters. Board had no legal powers over children.</p>
1902	<p><i>Children's Protection Act 1902</i> amended.</p>	<p>This introduced the concept of "neglected" children which was later used by the Aborigines Protection Board as legal authority to remove children.</p>
1904	<p><i>Infant Protection Act 1904</i></p>	<p>The establishment of the Children's Courts.</p>
1905	<p><i>Neglected Children and Juvenile Offenders Act 1905</i></p>	<p>This introduced the category of the "uncontrollable" child under the concept of neglect.</p>
1909	<p><i>Aborigines Protection Act 1909</i></p>	<p>This gave legal sanction to the Aborigines Protection Board to separate and remove Aboriginal children from their families. Regulation 31 allowed for the establishment of children's dormitories on stations: "Every Aboriginal male under the age of 14 years and every unmarried Aboriginal female under the age of 18 years shall, when so required by the manager, reside or take his or her</p>

Date	Event	Effect
1915	Amendment to the <i>Aborigines Protection Act 1915</i>	meals and sleep in any building set apart for such purposes". This gave the Board the power to remove any child without parental consent and without a court order.
1918	<i>Aborigines Protection Act</i> amended.	The powers of the Board specifically included "half castes".
1923	<i>Child Welfare Act 1923</i>	Consolidation of previous Acts relating to children's protection and juvenile justice. Laws relating to the adoption of children were also included under this Act. The Children's Relief Board was dissolved and its powers transferred to the Minister for Public Instruction.
1937	National Conference of Commonwealth and State Aboriginal Authorities	Assimilation Policy adopted - all Aboriginal people were expected to live like European Australians.
1939	<i>New South Wales Child Welfare Act 1939</i>	The definition of "neglected child" was expanded to include "improper" or "incompetent" parenting and not attending school regularly.
1940	The Aborigines Welfare Board replaced the Aborigines Protection Board.	Focus on assimilation with removal of "light skinned" children from their families. Aboriginal children could be removed under the provision for a "neglected" or "uncontrollable" child as set out in the <i>Child Welfare Act</i> .

Date	Event	Effect
1941	<i>Child Endowment Act</i> passed.	No endowment was to be paid to nomadic or dependent natives. (Later the Aborigines Welfare Board decided to administer child endowment to those entitled, only allowing those it approved to be paid directly).
1942	Housing Commission of NSW established.	Aboriginal people considered for housing under normal eligibility criteria, but applications from Aboriginal persons were to be accompanied by a report from the Aborigines Welfare Board.
1943	<i>Aborigines Protection Act</i> amended.	The Board began to board-out children to foster parents and began to buy land and building homes and sell or lease them to "deserving Aborigines". Exemption certificates introduced. Mr William Ferguson from Dubbo "elected to represent persons possessing Aboriginal blood".
1952	Some Government records held at St Peters were destroyed.	Some valuable records prior to 1948 cannot be located and it is assumed they were destroyed. At this stage (1996) it is not certain which records were lost, but it seems some records of adoptions were destroyed.
1962	<i>Commonwealth Electoral Act</i> amended.	All Aboriginal people may vote.
1965	Commonwealth-State Conference of Aboriginal Affairs	Aboriginal schools closed and education integrated. Housing

Date	Event	Effect
	Ministers endorse Assimilation Policy as national policy.	integrated; no further houses built on reserves in New South Wales. Assimilation and integration strategies are developed throughout New South Wales government.
	<i>Adoption of Children Act 1965</i>	This Act showed no regard for the cultural needs of adoptees or the significant impact of children being removed from their natural families.
1967	Referendum to change Federal Constitution, removing discriminatory clauses.	Aboriginal people were recognised as Australian citizens. The Commonwealth passed laws relating to Aboriginal people in all states and shared a responsibility for Aboriginal people with the States.
1969	<i>Aborigines Act (NSW) 1969</i>	Abolition of the Aborigines Welfare Board. Responsibility for Aboriginal Affairs assumed by the Federal Government. Aboriginal children under the care of the Aborigines Welfare Board became wards of the State. Establishment of Aboriginal Welfare Services in the Department of Child Welfare and Social Welfare. The Directorate of Aboriginal Welfare and the Aborigines Advisory Council were established.
1972	Tent Embassy set up on the lawns of Parliament House, Canberra.	An Aboriginal flag became a national symbol. Commonwealth Department of Aboriginal Affairs established under Minister for Aboriginal Affairs.

Date	Event	Effect
	New South Wales Teachers Handbook - regulation withdrawn.	Principals no longer had the right to refuse enrolment of Aboriginal children in New South Wales schools.
1973	Commonwealth Self-Determination Policy announced.	Whitlam Government Administration provided funding for Aboriginal organisations and conferences took place all over the country, enabling contact between groups who had not previously met. Major concerns were land rights, self determination and feelings of separate identity.
1973	Community Welfare and Social Welfare Department becomes Department of Youth and Community Services (YACS)	YACS reported increased movement of Aboriginal families from remote and small country centres to larger centres. YACS encouraged resettlement and provided casework services for young Aboriginal people moving to urban areas.
1975	Title of Mission and Reserves in New South Wales handed over to the New South Wales Aboriginal Lands Trust (ALT).	Self-determination progressed.
1978	First Aboriginal Community workers graduate.	The graduates become the first Aboriginal District Officers with the Department of Youth and Community Services.
1980	Link-Up (NSW) established.	First help for Aboriginal people to find their families of origin.
1981	Aboriginal Advisory Board to the	The role of the committee was to

Date	Event	Effect
	Housing Commission established.	provide advice of a program and policy nature to the Minister.
1982	Aboriginal Education Policy launched.	Mandatory for all schools by 1987.
1983	<i>Aboriginal Land Rights Act</i> passed in New South Wales.	
	Report to the Commonwealth Welfare Administrators Standing Committee on <i>Aboriginal Fostering and Adoptions, Review of State and Territory Principles, Policies and Practices</i> .	This national report strongly recommended that Aboriginal children be placed in their own communities and that the Aboriginal community be involved in decisions about their children's placement for the purposes of fostering and adoption.
1985	First Aboriginal managers appointed in Department of Community Services.	Aboriginal Managers appointed to Gullama and in District Offices at Bourke and Brewarrina.
1987	<i>Children (Care and Protection) Act 1987</i>	This introduced the current Aboriginal Child Placement Principle. It also saw a shift from the general concept of "neglect" to "behavior that harms the child".
	<i>Community Welfare Act 1987</i>	This Act made specific reference to the promotion of Aboriginal culture, identity and community structures. It also promoted the rights of Aboriginal people to raise and protect their children and their rights to be involved in the decision making processes that affect them and their children.

Date	Event	Effect
	Royal Commission into Aboriginal Deaths in Custody begins.	This resulted in a number of recommendations relating to the placement and care of Aboriginal and Torres Strait Islander children. It included a recommendation that New South Wales Government Departments actively provide the support to people affected by the past welfare practices which separated Aboriginal and Torres Strait Islander children from their families.
1988	Training package for Aboriginal Foster Parents launched.	Aboriginal Community Fostering Education Program was compiled by three Aboriginal staff of New South Wales YACS.
1990	Amendment to the <i>Children (Care and Protection) Act 1987</i>	The amendment introduced discretionary payment to non-parents caring for children, known as the Non Parent Care Allowance.
1991	The Council for Aboriginal Reconciliation established by a unanimous vote by the Federal Parliament.	Reconciliation processes progressed.
	Final Report of the Royal Commission into Aboriginal Deaths in Custody released.	Government Departments commenced change to policies and procedures to comply with recommendations of the Royal Commission.
1992	Native title granted federally.	High Court decided Australia was not "terra nullius" when colonised by the British in 1788, but occupied by

Date	Event	Effect
1993	First Minister for Aboriginal Affairs appointed in New South Wales.	people who had their own laws and customs. The first Minister was Mr Jim Longley, MLC.
1994	ATSI Division created in the Department of Urban Affairs and Planning.	Aboriginal Housing Development Committee established in the Office of Housing Policy.
1995	Deputy Premier appointed Minister for Aboriginal Affairs.	Aboriginal Affairs nominated as a priority for the Government.
	Cabinet Committee on Aboriginal Affairs established.	Government committed to a whole of government approach in Aboriginal Affairs.
	Review of Substitute Care Services for Aboriginal and Torres Strait Islanders.	Substitute care needs of Aboriginal and Torres Strait Islander children identified.
	<i>Learning from the Past</i> released.	Impact of past practices in child protection on Aboriginal people recognised.
	Establishment of the Aboriginal Environmental Health Infrastructure Forum by NSW Health.	Recognised the link between health and environmental infrastructure.
1996	Release of the Department of Housing Green Paper on Housing.	Government acknowledged the importance of consultation with Aboriginal people in design and delivery of programs and services.

Overview of past practices

1.4

The removal of children from their families has a powerful contemporary resonance in the lives of Aboriginal and Torres Strait Islander Australians today. Somewhere between 5,000 and 8,000¹ Aboriginal and Torres Strait Islander children were removed from their families in New South Wales under the policies, practices and laws described in this document. An accurate figure is impossible to determine as records of such events were poor, records did not identify whether a child was Aboriginal or Torres Strait Islander, and some records have been lost or destroyed.

a

Types of separation

Aboriginal children separated from their families could be placed in a number of situations. These are listed below, together with key legislative changes that allowed this placement to occur. (The relevant sections of the *Aborigines Protection Act* are shown in [brackets]). The "Board" is the Aborigines Protection Board up to 1940, then the Aborigines Welfare Board.

This range of figures is indicated as it has been impossible to make an accurate estimate. *Learning from the Past* suggest the figure of 8,000 where Read, P. *The Stolen Generations*, (p.9) indicates 5,000 based on available records. There is no doubt there were more children removed than can be determined through available records.

Indentured apprentices

1909

The Aborigines Protection Board could indenture the child of any Aborigine, or any neglected child aged 14-17 apparently having an admixture of Aboriginal blood, to any employer, and to collect their wages, subject to the *Apprentices Act* [section 11(1)]. Employers were required to pay apprentices pocket money.

1915

The Board could indenture any neglected child under 18 years [section 11(2)]. References to the *Apprentices Act* were removed so the Board could apprentice on any condition [section 11(1)].

Date	Event	Effect
	Release of New South Wales Aboriginal Education Policy.	Provided a framework for the development of education programs and services which more effectively meet the needs of Aboriginal students.
	<p>The removal of children from their families has a powerful contemporary resonance in the lives of Aboriginal and Torres Strait Islander Australians today. Somewhere between 5,000 and 8,000¹ Aboriginal and Torres Strait Islander children were removed from their families in New South Wales under the policies, practices and laws described in this document. An accurate figure is impossible to determine as records of such events were poor, records did not identify whether a child was Aboriginal or Torres Strait Islander, and some records have been lost or destroyed.</p>	
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1909	<p>The Aborigines Protection Board could indenture the child of any Aborigine, or any neglected child aged 14-17 apparently having an admixture of Aboriginal blood, to any employer, and to collect their wages, subject to the <i>Apprentices Act</i> [section 11(1)]. Employers were required to pay apprentices pocket money.</p>	
1915	<p>The Board could indenture any neglected child under 18 years [section 11(2)]. References to the <i>Apprentices Act</i> were removed so the Board could apprentice on any condition [section 11(1)].</p>	

1943 The Board could apprentice or place in employment any ward [section 11D(1)]. A ward of school leaving age who was not fostered out could be apprenticed or placed in employment [section 11D(5)]. The consent of the ward over school leaving age could be obtained if the foster parent was not to pay award wages [section 11D(4)].

1967 Wards placed with employers came under the *Child Welfare Act*.

Homes (institutions)

1911 The Board established the Cootamundra Girls Home, altering an old hospital building for the purpose. It could move any child in its custody to a Home which was on a reserve it controlled [section 7(c)].

1915 Children absconding from apprenticeship could be placed in a Home by the Board [section 11A(1)].

1940 The Board was empowered to establish Homes for the reception, training and maintenance of wards [section 11].

Any ward not ready for employment or apprenticeship or not likely to succeed in employment or as an apprentice could be placed in a Home [section 11B]. An apprenticed child who was found by the Children's Court to have not satisfied conditions of indenturing could be sent to a Home [section 11C].

1940 Any ward who absconded from his or her proper custody could be found guilty of an offence for which he or she could be sent to a Home [section 12(4)].

The Children's Court could rule a child "neglected or uncontrollable" and place the child in one of the Board's Homes [section 13A].

1967 Homes of the Board became depots under the *Child Welfare Act*.

Wardship

1939 The *Child Welfare Act* defined a "Ward" as any child or young person (i.e. under 18) who had been (a) admitted to State control; (b) committed to an institution; (c) admitted into a hostel for expectant and nursing mothers; or (d) admitted into a home for mentally defective children.

1940 The *Aborigines Welfare Act* defined "child" as an Aborigine under eighteen years of age and a "ward" as a child who has been admitted to the control of the Board or committed to a Home.

Any ward who absconded from his or her proper custody could be found guilty of an offence for which s/he could be made a Ward of the Board [section 12(4)].

The Children's Court could rule a child "neglected or uncontrollable" and place the child under the control of the Board as a Ward [section 13A].

1943 The Board had authority to admit a child to its control, and direct the removal or transfer of any ward [section 11D(1)(a), (d)].

1967 All wards became Wards under the Minister for Child Welfare.

Note: Ward (capitalised) here means a ward of the state under the *Child Welfare Act*; ward (lower case) means a ward of the Board under the *Aborigines Welfare Act*.

Fostered out

1943 "adopted boarder" meant a child who was allowed by the Board to remain with a foster parent... (without payment of allowance and without the Board taking the child's wages); "boarded-out" meant placed in the care of a foster parent.

The Board could board-out or place as an adopted boarder any ward [section 11D(1),(3)].

1967 All boarded-out wards became foster children under the *Child Welfare Act*.

Adoption

1923 The *Child Welfare Act 1923* (NSW) introduced sections 123-129 which regulated adoption of children. When an order of adoption was made under this Act, the order terminated all rights and liabilities existing between the child and his natural parents, except the right to inherit the property of the natural parents. This Act required that the parents or guardian or one (surviving) parent, or the mother if the child was illegitimate, consent to the adoption. However parental consent could be dispensed with if the court was “of the opinion that such person (natural parent or guardian) had deserted or abandoned the child”.

1939 The *Child Welfare Act 1939* (NSW) was introduced. Sections 162-173 continued the power of the court to dispense with the consent requirements where, having regard to the circumstances, the court deemed it just and reasonable to do so.

Placed in a Child Welfare institution

1939 Under the *Child Welfare Act*, children with disabilities could be removed from their parents' care and made Part IX wards. These children were institutionalised in hospitals for appropriate care.

1943 The Board was given power to place Aboriginal children in institutions established under the *Child Welfare Act* [section 11D(2)].

Return to Family

1943 The Board could direct the restoration of a ward to the care of his parent or any other person or direct the absolute discharge of any ward [section 11D(1)].

Reasons for Separation	b	The reasons given for removal of children from their families changed over time. The following chronology reflects these changes.
		<p>Aboriginality</p> <hr/>
	1909	<p>The Board was given the duty of providing for the custody, maintenance and education of the children of Aborigines [section 7(c)]. It could indenture the child of any Aborigine [section 11(1)].</p> <p>“Aborigine” defined as a full-blood, or a person apparently having an admixture of Aboriginal blood who receive rations or lived on a reserve [section 3].</p>
	1918	<p>“Aborigine” redefined as a full-blood or half-cast Aboriginal who is a native of NSW [section 3].</p>
	1936	<p>“Aborigine” redefined as a full-blood or half-caste Aboriginal who is a native of Australia and living permanently or temporarily in New South Wales [section 3]. However, a court could rule that someone was Aboriginal based on appearance [section 18B].</p>
	1967	<p>“Aborigine” redefined as a person who is descended from an Aboriginal native of Australia.</p>
		<p>Neglected</p> <hr/>
	1905	<p>The <i>Neglected Children and Juvenile Offenders Act</i> 1905 defined eleven types of neglect including those with no visible means of support or no fixed address. Only the Children’s Court could declare a child “neglected”.</p>
	1909	<p>The Board could indenture neglected children apparently having an admixture of Aboriginal blood aged 14-17 [section 11(2)].</p>
	1915	<p>Children under 18 absconding from a Home could be dealt with as “neglected” [section 11B].</p>

The Board could indenture a neglected child apparently having an admixture of Aboriginal blood under 18 years [section 11(2)].

1916 The *Public Instruction (Amendment) Act* allowed truants under 14 years old to be charged as “neglected”.

1918 References to “neglected” were removed from the *Aborigines Protection Act* [section 11(1)] - neglected Aboriginal children now came under the *Child Welfare Act*.

1940 The Children’s Court could rule a child “neglected or uncontrollable” (as defined under the *Child Welfare Act 1939*), and then place the child under the control of the Board as a ward, or place him or her in one of the Board’s homes [section 13A].

Absconding

1915 Children absconding from apprenticeship could be placed in a Home by the Board [section 11A(I)].

Children under 18 absconding from a Home could be dealt with as “neglected” [section 11B].

1940 Any ward placed in a home, employment or apprenticed, who is absent without leave of the Board, may be apprehended by any member of the police or any officer of the board and conveyed to a Home or back to his employer [section 12(1)].

Any ward who absconded from his proper custody could be found guilty of an offence for which the Children’s Court could make him or her a ward of the Board or send him or her to a Home [section 12(4)].

1963 Section 12(4) was repealed so that absconders could be sent to a Child Welfare home.

Moral and physical welfare

1915 The Board could assume full control of a child of an Aborigine if satisfied it was in the moral or physical welfare of the child, and could remove the child from its parents [section 13A].

1936 The Board could remove to a reserve or home any Aboriginal person not receiving proper treatment by an employer [section 13B].

1963 Section 13B was deleted.

Training

1940 Any ward not ready for employment or apprenticeship, or not likely to succeed in employment or as an apprentice, could be placed in a Home [section 11B].

Failing apprenticeship

1940 An apprenticed child who was found by the Children's Court to have not satisfied conditions of indenturing could be sent to a Home [section 11C].

Age

1914 Until 1934 police were issued with instructions to remove Aboriginal children from their parents and send them to the Board's "Training Homes" on the grounds that they were 14 years of age (or older).

1943 A ward who, when reaching school leaving age, was not fostered out could be apprenticed or placed in employment [section 11(D)(5)].

Committing offences

1940 The Children's Court could punish an absconding Aboriginal child as allowed for an inmate of an institution, or could make the child a ward of the Board or place the child in a Home run by the Board [section 12(4)].

1963	Section 12(4) was deleted so the Children's Court could send absconders to a Child Welfare Home or make the absconder a ward of the State.
Disability	
1939	Under the <i>Child Welfare Act</i> , children with disabilities could be removed from their parent's care and made Part IX wards. These children were institutionalised in hospitals for appropriate care.

The table below shows an estimate of the approximate number of children who were separated from their families. These figures were compiled by Peter Read, ANU Historian, from his Occasional Paper, *The Stolen Generations: the Removal of Aboriginal children in NSW 1883 to 1969*.

c
Estimates of number of children separated

Table 2 - Estimates of Aboriginal Children removed 1883-1969

Period	Placement	Number of Children
Pre 1909	Placed at Warangesda dormitory and subsequently into domestic service before 1909.	300
1909-1916	Aborigines Protection Board - trained and placed out.	400
1916-1938	Aborigines Protection Board - trained and placed out.	1600
1939-1969	Kinchela and Cootamundra Homes combined: total children, any one year turnover - approx. 25 per year.	100 825
	Other Board approved denominational Homes.	300
	Other non-Aboriginal Child Welfare Institutions.	200
	Aborigines Welfare Board wards to foster homes.	300

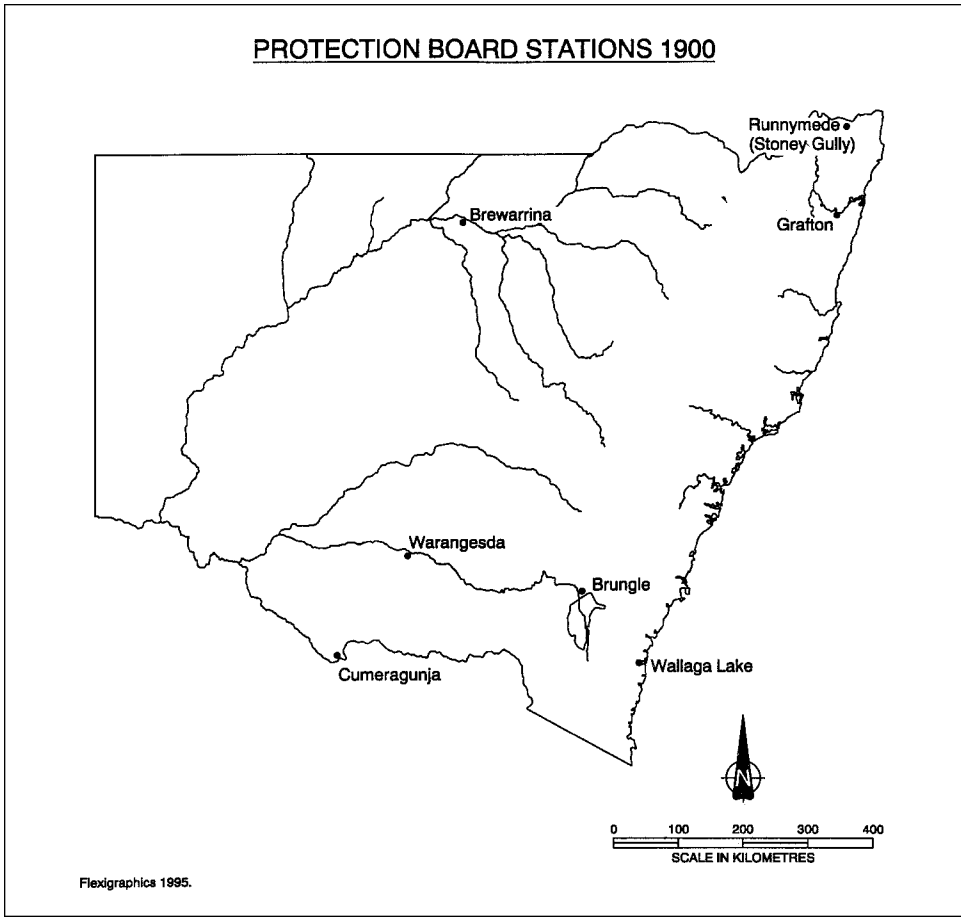
As at 1969	"Uncontrollable" children committed to Child Welfare institutions.	400
	Child offenders committed to corrective institutions.	400
	Children of "light caste" committed to Child Welfare as wards and placed in approved non-Aboriginal homes and foster homes.	800
	TOTAL	5,625

Because the Aborigines Protection and Welfare Board jurisdiction applied to "full blood" and "half-caste" Aboriginal people, many children who were Aboriginal were considered to be European if they had fair skin, and thus they became the responsibility of the Child Welfare Department of the time.

The Department of Child Welfare did not begin to record that a child was Aboriginal or Torres Strait Islander until 1973. Photographs of children's homes in the 1970s indicate that there was an over-representation of Aboriginal children in the Department's residential care facilities at that time.

Actual numbers of children of Aboriginal families placed into care between 1939 and 1969 may be higher than these figures indicate. There is no accurate estimate of numbers of children separated between 1969 and 1996. Comprehensive searches of the Department of Community Services files on wards (approximately 70,000 records) have not been undertaken by the Department at this time.

¹This range of figures is indicated as it has been impossible to make an accurate estimate. Learning from the Past suggest the figure of 8,000 where Read, P. *The Stolen Generations*, (p.9) indicates 5,000 based on available records. There is no doubt there were more children removed than can be determined through available records.



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CONQUEST AND ISOLATION

1788 - 1909

Early European Colonisation

2.1

The Aboriginal people of New South Wales were the first to suffer the impact of European settlement. Early European settlers generally had little regard for Aboriginal people as a human race. However, there are only occasional references in early written records to the treatment of Aboriginal children.²

This period saw the beginning of the separation of children from Aboriginal families. Children, often kidnapped for the purpose, were exploited and used as guides, servants or even slaves by explorers and settlers.³ Aboriginal women were forced to leave their own children to be used as nursemaids or midwives and were often sexually abused.⁴

An historical precedent was set for the authorised separation of Aboriginal children from their homes as early as 1814 when, under the direction of Governor Macquarie, William Shelley established a government run "native institution" at Parramatta.⁵ Its purpose was to "civilise" Aboriginal children.⁶

Massacres and the introduction of European diseases took a severe toll on the Aboriginal people during this period. By the 1880's conflicts between Aboriginal people and settlers over land were increasing. Many Aboriginal people were driven from their land by force or hunger, and began to occupy the banks of waterways and the fringes of European settlements. Residents in country towns began to demand that the State take greater control over Aborigines.⁷

In 1838, following some violent clashes which led to massacres of Aboriginal people, a *Bill for the Protection of Aborigines* was drafted with provisions to protect "their just rights and privileges as subjects of Her Majesty the Queen." The Act established the first 'Protector of Aborigines', appointed to the Port Phillip District, but funding for the Protectorate was cut in 1842 and it was abolished in 1849.⁸

Reserves and Missions

2.2

Missions and reserves were initially set up as a way of controlling Aboriginal people by restricting them to defined areas and paving the way for European settlers to take over those lands. The first reserve to be set up in New South Wales was the Maloga Reserve, established in 1878 by the local Aboriginal Protection Association.⁹ By 1939,

some 180 reserves had been created and subsidised by the Government of New South Wales.

Missions and reserves meant the same thing to the people forced to live on them. Although not established by churches, reserves were often administered by them and eventually controlled by them. Missionaries were dedicated to “civilising” Aboriginal people through teaching them to sing hymns, teaching Scriptures and training them in “useful” occupations like housework, horticulture, livestock management and some skilled trades.

The process of “civilising” Aboriginal people meant the imposition of European values and the suppression of customary beliefs and tradition. In most instances traditional song and dance were banned. The authority of tribal leaders was usurped by the missionaries and children were made to live apart from their parents in dormitories on the missions and reserves.¹⁰

Despite these controls, in the early days of missions, reserves and on stations where Aboriginal people were also contained, Aboriginal people often retained their link to the land. In some cases, where possible, traditional lands were used as semi-permanent campsites. In these instances some Aboriginal groups were able to retain their tribal structure and culture.

In some areas outside New South Wales, missionaries actually helped some Aboriginal people retain and protect their culture. But there is no evidence of such missions in New South Wales. Missions and reserves were often overcrowded and poorly run. There is evidence that disease in some missions wiped out entire families. Medical services were often restricted to poorly trained missionaries.

In 1880, a non-government body called the Association for the Protection of Aborigines was established to ameliorate “the present deplorable condition of the remnants of the Aboriginal tribes”.

Following agitation from this body, the Government appointed a Protector of Aborigines in 1882. One of the first tasks of the Protector was to conduct a census that found 7,500 “adult Aborigines” and a further 1,500 Aboriginal children in New South Wales. His main task was the dispersal of rations to “pure-bred” Aboriginal people.

A year later, the Government established by Minute (later ratified by the Executive Council) a Board for the Protection of Aborigines. The Board, composed of officials and gentlemen “who have taken an interest in the blacks, have made themselves acquainted with their habits, and are animated by a desire to assist raising them from their present degraded condition.”¹¹

The objectives of the Aborigines Protection Board were to “provide asylum for the

2.3

**Aborigines
Protection Board
1883 - 1909**

aged and sick... but also, and of at least equal importance, to train and teach the young, to fit them to take their places amongst the rest of the community."¹²

Initially the Board was not set up under any legislation and many of its so called protective policies were unsanctioned by law. From 1883 to 1909 it relied on existing regulations in the *Supply of Liquors to Aborigines Protection Act 1867*, the *Vagrant Act* and the *Neglected Children's Act 1902*, to sanction its activities.¹³ It utilised force to get Aboriginal people onto reserves and doled out punishment to families whose children did not attend school.

The Minutes of the Board show that the removal of children from their families occurred as early as 1891, with education being put forward as the motivation.¹⁴ By 1900, "the removal of Aboriginal children from their families and their subsequent placement in "training homes" and other "educational" institutions was already an integral part of the Board's practice."¹⁵

In 1893, the Board established the first children's home, the Warangesda Aboriginal School for Girls at the Warangesda Station on the Murrumbidgee River. By 1889, "the manager of the Warangesda station has reported that he has sent several half-caste girls to service and that they were giving satisfaction."¹⁶

There were no legal powers to force girls to Warangesda, but the Board did use threats and promises. In 1918 it was reported that:

*There were then (10) children in the Girl's Training Home, which under the able management of the Matron (Miss Rutter), continues to give every satisfaction; and, at her suggestion, instructions were issued that all girls between the ages of 7 and 14 were to go into the home, otherwise the issue of rations was to be stopped.*¹⁷

The Board reported in 1899¹⁸ that the number of "full-blood" Aborigines had fallen from 6,540 in 1882 to 3,230 in 1909 while the number of "half-castes" had increased from 2,379 to 3,661. In 1912 it reported that the numbers of "full-bloods" had fallen further to 2,067; 577 of whom were children, while the number of "half-castes" continued to rise to 5,253; of whom 2,956 were children.¹⁹

In its annual report of 1899 the Board reports:

It having been brought under the notice of the Board that a number of able-bodied persons, many of whom should be classed as Europeans rather than as Aborigines, were in residence at the Aboriginal stations, it was decided to issue a Circular to all Local Boards and Managers of such Stations, impressing upon them the desirability of furthering by every means in their power the aim of the Board, that all youths and girls should, after receiving instruction, and when of an age fit to work for a livelihood, be placed in suitable service or

induced to accept it. It was at the same time again pointed out that the reasons for forming such establishments (reserves and stations) were simply that they might be asylums for the aged, crippled or infirm; that the children might be provided with schooling and instruction; and that a home might be provided for Aborigines where they could find means to labour for the support of their families; not a place where people - not Aborigines - of all ages and both sexes could idle their lives away as pensioners on the public.

Table 3 - Aborigines in New South Wales, 1911²⁰

Classification of Aboriginal	Males	Females	Children	Total
"full-bloods"	935	564	577	2076
"half-castes and descendants"	1238	1059	2956	5253
Total	2173	1623	3533	7329

The Board also had a role in housing. The 1899 report noted that:

Aborigines have been assisted to erect comfortable dwellings for themselves (at 11 locations). The practice followed has been to supply tools, nails, and roofing iron, the Aborigines themselves procuring the necessary timber and providing the labor.

In 1908, the Board reported to Parliament that:

One of the most important questions the Board has to face is that of a large number of half-caste and other children, some of whom are almost white, at the various camps and stations. Under present conditions, though much has been done for some as regards to primary education, and also (on the Board's stations) training the girls for domestic duties, they are to a large extent, growing up in idleness and under the influence of ill-regulated parents. An attempt will be made to solve what is undoubtable (sic) a difficult problem. Returns are being obtained from the various Superintendents of Police throughout the Sate (sic), furnishing full information regarding the children at the stations and camps, up to the age of 18 years, and the Board will endeavor, without unduly interfering with parental control, to evolve a scheme for training these children to proper spheres of usefulness, instead of allowing them to become an encumbrance on the State.²¹

The Public Health Act 1902 and its regulations included "power over people" which include powers of detection, e.g., quarantine, compulsory removal to hospital, compulsory medical treatment and compulsory treatment and compulsory screening for

infection and covered all citizens.

The separation of children from their families on racial/environmental grounds could not be carried out by Departmental officials under the above regulations. The Aborigines Protection Board and subsequent Aborigines Welfare Board powers encompassed the above regulations.

The Report of the Board for the Protection of Aborigines of 1910 is a typical sample of the reports on health of Aborigines:

Every attention is paid to the health of the aborigines. At most of the Board's stations and at other places where there are a large number of aborigines there are regular medical officers who attend to the wants of those who are sick while the managers and police at other places are empowered to requisition the services of the Government medical officer where needful. Medical comforts are supplied to those who are ill and also to the very aged. Where there has been any outbreak of fever or other sickness, special reports have been obtained and necessary steps taken to suppress the same.

2.5

Early Aboriginal/Police Relations

The early Australian police forces evolved from the colonial military administrations of the convict settlements. It was the role of the early police forces to assist settlers moving into the interior. Policies of dispersal were put into practice to dislocate Aboriginal people from their lands. Punitive action was taken against those who resisted settlement, resulting in the annihilation of many Aboriginal people and groups.²²

Prior to 1870, there was no coherent government policy in relation to Aboriginal people. During the 1860's, the Government provided each Aboriginal person with a blanket every year. In country areas, the blankets were distributed by police and magistrates.

The Protector of Aborigines, appointed in 1881, continued arrangements for police to distribute rations, clothing and blankets. When the Protector wished to conduct a census of Aborigines in 1882, it was to the Inspector-General of Police that he turned.²³ The Protector also reported in 1882:

The Inspector-General has given special instructions to the police throughout the Colony to prevent as much as they possibly can the supply of drink to the aborigines by unscrupulous persons... The supply of intoxicating drinks to the aborigines is the fruitful source of nearly all evils and misery to which the poor creatures are subject.

The Protector of Aborigines had wide powers to establish reserves and compel Aboriginal people to live on them. In 1883, when the six member Aborigines Protection Board was established, the then Inspector-General of Police was elected as Chairman.

The protection system was administered by the Police who at this time had wide,

although informal, powers in relation to Aboriginal people including the power to refuse rations. This power was used to force compliance with the Board's requirements and to force parents to send their children to school. Police were frequently enlisted as members of local Protection Boards.²⁴

There is little information available in police records about their role in the administration of the protection system, other than the acknowledgment that Police were agents for the Aborigines Protection Board in various Police Department Annual Reports. This does not necessarily indicate a "conspiracy of silence" about these matters, rather it appears that, as these activities were not regarded as "core" duties, there was little perceived need to record them.

The *New South Wales Prisons Act 1840* was influenced by the English "separate" system. This involved the total isolation of each prisoner in a separate cell. The prisoner would remain in isolation for twenty-four hours each day except for a brief period of silent exercise. This was said to be a reformatory measure in that the prisoner was removed from the contaminating influence of his fellow prisoners, and through silent meditation could reach a state of contrition. This system had been adopted in the United States towards the 18th century and later in England. It remained in vogue for more than 100 years despite the fact that many prisoners who were subjected to it were driven insane. It appears that prison administrators gave no thought to the potential effect of such isolation on the mental health of the prisoner.²⁵ Aboriginal prisoners would have been subject to this total isolation practice.

The early history of child welfare in New South Wales was summarised in a Family Services Survey - States Research Project in 1975 by an officer of the then Department of Youth and Community Services, Barbara Burgess.²⁶ Among the key stages to 1881 highlighted by this report were:

- Action to protect non-Aboriginal children occurred soon after the initial European settlement, with the Female Orphan School for the protection of girls aged 7-14 opened in Sydney in 1800.
- In 1819, an Orphan School for Boys was established.
- The first legislation was the *Orphan School Act 1826* and the *Apprentices Act 1929*, which initiated the process of the "boarding-out" of children as apprentices. It was on this system that the later removal of Aboriginal children was based.
- In 1849, *An Act for the Care and Education of Infants who may be Convicted of a Felony or Misdemeanor* established the basis of the probation system, allowing children under 19 who offended to be consigned to the care of a guardian.

2.6

The Early Corrections System

2.7

Developments in Child Welfare to 1909

- In 1866, the *Industrial Schools Act* provided for the establishment of “industrial schools” for vagrant and deserted children, and the *Reformatory Schools Act* established similar institutions for children who had offended.

Burgess also states:

*In the 1870's, however, NSW began to feel the impact of a new humanitarian spirit that was developing in England. This laid stress on two important points: the value of each human as an individual and the importance of family life. One result of this new spirit was an increasing agitation for the substitution of the boarding-out system for the institution system, in caring for dependent and delinquent children.*²⁷

This spirit was echoed in inquiries of the 1870s. The 1873 Royal Commission into orphan schools recommended “that the boarding-out system be introduced.” A 1879 Inquiry into Randwick Asylum for Destitute Children found that the boarding-out system “was worthy of trial and a child, trained in a well-ordered family circle, should do better in after life than one from the barrack-like life of institutions.” Both public and press began urging a change from barrack to boarding-out.²⁸

The new approach to child welfare became explicit in 1881 with the passing of the *State Children's Relief Act*. This Act established the State Children's Relief Board which managed both the adoption and boarding-out of children and the residential asylums (orphanages and children's homes). The Act allowed the whipping of boys who absconded from asylums and the imprisonment for up to two months of adults who encouraged them to abscond.

In 1891, the *Children's Protection Act* was adopted. Part I of this Act governed the care of children under three years old, requiring people to register their possession of these children if not theirs, and the registration of birth of illegitimate children. Part II provided for penalties for the cruelty of neglect of children aged from 3 to 14 (boys) or 16 (girls). Debate on the Act in Parliament indicates that it was directed towards children generally - there is no mention of Aboriginal children. The debate provides an indication of contemporary attitudes to child labour, with the Minister citing as unacceptable “a girl, 11 years of age, who was made to do the housework for a large household and who... was found cleaning a chimney, and she was reported as being clothed in a chaff-sack and a dirty chemise.”²⁹

An amendment to the *State Children's Relief Act* in 1896 allowed for “the boarding-out of children with their own mothers, if they (were) widows or deserted wives. This seemed to be the first recognition of the child's own family. These children were nevertheless ‘wards’”.³⁰

The *Infant Protection Act* 1904 extended Government regulation of the care of children. This Act required fathers to pay maintenance for deserted children, and set up the licensing

of children's homes. Again, the debate contains no reference to Aboriginal people.

The *Neglected Children and Juvenile Offenders Act* 1905 was to prove to have a major effect on Aboriginal children, though the debate still contained no reference to them, except for a comment that "nothing is done for white men. I have known families to be starving, whilst the children of Aborigines were fed by the State."³¹

The purpose of this Act was to bring together a number of previous Acts to "make better provision for the protection, control, education, maintenance, and reformation of neglected and uncontrollable children and juvenile offenders."³² It also brought the Acts relating to juvenile justice under that same Act and allowed the *Reformatory and Industrial Schools Act* 1901 to be repealed.

The Children's Relief Board was transferred from the Chief Secretary's Department to the Department of Public Instruction.³³ A link between the care and the education of neglected and offending children was established. This philosophy was later carried on in the dealings with Aboriginal children.

There were eleven categories of "neglected children" under the Act:

- those living in a brothel or with thieves or people without visible means of support;
- those with no visible means of support or no fixed address;
- those who beg or are homeless;
- those ill-treated, exposed, or without food, clothing, nursing or lodging;
- those engaged in dangerous performances;
- those found street trading;
- those whose parents are drunkards;
- those females who solicit men;
- those found in any place where opium is smoked;
- those living in conditions indicating that they may lapse into a career of vice.

This Act also introduced the category of the "uncontrollable" child, defined as a "child whom his parent cannot control".³⁴ It also gave the power to a constable or a person "authorised by the Governor" to apprehend a child before a warrant had been issued.³⁵ It provided for wide discretionary powers to magistrates for the committal of children to institutions.

This Act became the legal authority for the Aborigines Protection Board to separate many Aboriginal children from their families. According to Read,³⁶ the Board used the definition of "without visible means of support or fixed abode" to seek to have children classified as neglected by the Court.

This Act included a section on offences toward children by carers in institutions.

According to many Aboriginal people who were in institutions, their carers were constantly in breach of this Act.³⁷

By 1907, the number of children under supervision of the Children's Relief Board was 7,049 of whom 3,025 (43%) were placed with their mothers. This amounted to 4.56% of the children in New South Wales.³⁸ These figures provide an indication of the levels of State involvement in non-Aboriginal families, and are in sharp contrast to the levels of involvement reached with Aboriginal children.

From 1883 to 1909, approximately 300 Aboriginal children were removed from their families and placed at Warangesda.³⁹ However, because record keeping was poor it is not possible to conclude precisely how many Aboriginal children were separated from their families in this period.

²*Learning from the Past: Aboriginal perspectives on the effects and implications of welfare policies and practices on Aboriginal families in New South Wales*, The Gungil Jindibah Centre, Southern Cross University, for the Department of Community Services, 1994 p.10

³Reynolds, 1990 pp.166-169 cited in *Learning from the Past*, op cit. p.10

⁴*Learning from the Past*, op cit. p.11

⁵Lawrie, R. *Inventory of the records of Aborigines Welfare Board and a guide to the other Records relating to Aborigines in the Archives Office of NSW, 1992*, UNSW School of Librarianship, Diploma of Archives Administration Special Projects 1982, p.ii

⁶*Learning from the Past*, op cit. p.11

⁷Read, 1983, p.61 cited in *Learning from the Past*, p.12

⁸Lawrie, 1982, op cit. p.ii

⁹*Learning from the Past*, op cit. p.13

¹⁰Aborigines Protection Act 1909, section 31, gave the power for station managers to set up dormitories and require children to eat and sleep in them

¹¹Lawrie, 1982, op cit. p.ii

¹²Lawrie, 1982, op cit. p.ii

¹³*Learning from the Past*, op cit. p.15

¹⁴Read, 1980, cited in *Learning from the Past*, op cit. p.15

¹⁵*Learning from the Past*, 1994, pp 14-15

¹⁶Aborigines (Report of the Board for 1898), NSW Legislative Assembly, 1899

¹⁷Annual Report of the Aborigines Protection Board, 1908, p.13

¹⁸Aborigines (Report of the Board for the Protection of, for the Year 1899), NSW Legislative Assembly, 1899

¹⁹Aborigines (Report of the Board for the Protection of, for the Year 1911) NSW Legislative Assembly, 1912

²⁰Aborigines (Report of the Board for the Protection of, for Year 1911) p.21

²¹Aborigines (Report of the Board for the Protection of, for the Year 1907) NSW Legislative Assembly, 1908

²²Hazelhurst, K. (1993) "Aboriginal and Police Relations" in Moir, P and Eijkman (eds.) *Policing Australia: Old Issues New Perspectives*

²³Aborigines, Report of the Protector, NSW Legislative Assembly, 1882

²⁴Ronalds et al. (1983) "Policing Aborigines" in Findlay, M., Egger, S.J and Sutton, J. (eds.) *Issues in Criminal Justice Administration*, Allen and Unwin, Sydney

²⁵A Perspective - Royal Commission into New South Wales Prisons (p.33)

²⁶Burgess, 1975, NSW Department of Youth and Community Services, *Family Services Survey - Historical Background 1800 - 1975* (DCS Library 362.82 NEW Vol. 1)

²⁷Burgess, 1975, op cit. p.5

²⁸Burgess, op cit. p.6

²⁹Legislative Council debate on the Children's Protection Bill, 16 September 1891, p.1753

³⁰Burgess, op cit. p.7

³¹Legislative Assembly debate on the Neglected Children and Juvenile Offenders Bill, 6 July 1905, p.675

³²Act No. 16, 1905, Neglected Children and Juvenile Offenders Act (1905) NSW

³³Burgess, op cit. p.7

³⁴Ibid. p.36

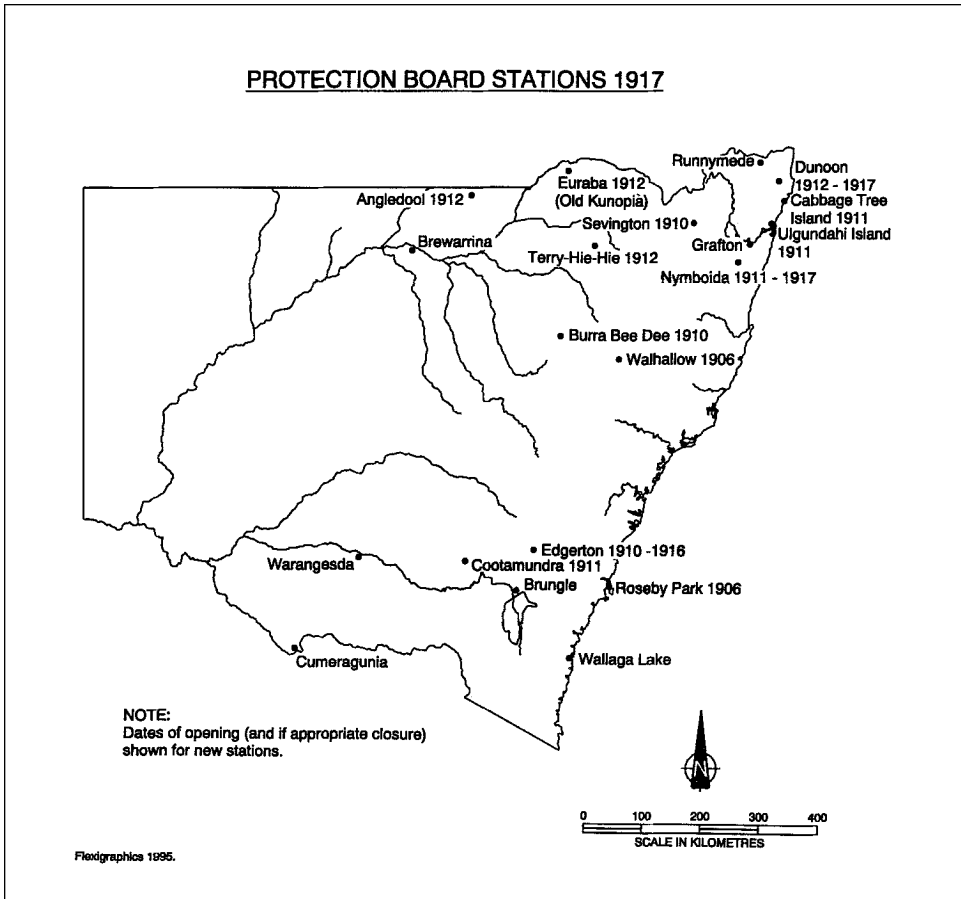
³⁵Ibid. Section 16 p.38

³⁶Read, P. NSW Ministry of Aboriginal Affairs. *The Stolen Generations. The Removal of Aboriginal Children in NSW 1883 to 1969*

³⁷*Learning from the Past* op cit

³⁸Burgess, op cit. p.10

³⁹Read, P, op cit. p.9



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FROM PROTECTION TO SEGREGATION

chapter 3

1909 - 1939

3.1

Attitudes and Morals

The dominant philosophy of European Australians of the nineteenth century was that the Aboriginal people were a dying race that would soon be extinct. Towards the end of the century it became obvious that this was not the case because the number of Aboriginal people of mixed descent was increasing.

The increase in “half-castes” provided strong evidence to the leaders of the time that Aboriginal people, particularly women, were immoral. This is illustrated by an exchange made during the debate on amendments to the *Aborigines Protection Act* in 1915, between an opponent and supporters of the Bill:

Mr J Storey: *It appears from the report that of 6,915 aboriginals, 5,054 are half-castes, and yet the hon. member does not want protection for them!*

Mr McGarry: *... I do not care what the caste or colour may be... We should not take the offspring from the parents.*

Mr J H Cann: *The hon. member talks as if I want to separate every child from its parents!*

Mr McGarry: *This bill means that practically every aboriginal child will be taken away from its mother in cases where a squatter wants a child or where an official wants a child to be separated from the mother. It means, broadly speaking, the breaking up of the camps.*

Mr J H Cann: *It means that where a mother is leading an immoral life the child shall be saved!*

Mr McGarry: *In how many cases can it be proved that that is not the fact?*

Mr Morrish: *How does the hon. member account for all these half-castes?*

Mr McGarry: *That adds to my argument. Most of these aboriginal mothers may be*

regarded as leading an immoral life, but is there no way of dealing with the position other than that of robbing the mothers of their children?

One Member told Parliament (in the same debate) that:

If you have a large number of half-castes, it is due to the boarding-out system. They take young girls from the mothers and send them to stations where there are a number of hands, sons of the owners of the stations and other men working there. Very often these girls are practically left to the mercies of these men... The result is the increase in the half-caste population.⁴⁰

Yet there was no acceptance that the official system had itself caused the problem that it now sought to address by the removal of children. It was common practice to blame the Aboriginal people for immorality and to take their children as a result.

The *Aborigines Protection Act* of 1909 gave the Aborigines Protection Board legal authority to carry out the practices of removing children that they had begun well before.

"Aborigines" were defined as "any full-blooded aboriginal native of Australia and any person apparently having an admixture of aboriginal blood who applies for or is in receipt of rations or aid from the Board or is residing on a reserve."

The Board was vested with all reserves in NSW, and entry onto reserves by other than "aborigines" or officers of the Board was made illegal. The Board could remove any "aborigine" from a reserve for misconduct or if the Board felt that s/he should be earning a living away from the reserve. It could direct any "aborigine or part-aborigine" to move away if camping near any reserve or town. Any officer of the Board or the Police could enter any building on a reserve to make an inspection.

The Board was made up of about nine non-Aboriginal members chaired by the Inspector General of Police. Four were members of the Legislative Assembly in 1916. The report, *Learning from the Past*, argues that most Board members "justified their action in terms of Christian beliefs. Their policies were based on an ignorance of Aboriginal culture and a disregard for the hardship imposed by white Australians on the Aboriginal people."⁴¹ They saw their role as the countering of the "positive menace to the State".⁴² For them, being Aboriginal was sufficient reason to remove children from their families.

Although the practice of removing Aboriginal children from their families had been going on for almost a century prior to the Act, this saw it recognised as a legitimate practice. From this time onwards, large numbers of children were removed. In presenting the Bill to the Legislative Assembly, the Colonial Secretary said:

3.2

The Aborigines Protection Act 1909

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*Powers over
children*

*The other main provisions of this bill are very essential ones. They give the board better power to deal with aboriginal and half-caste children. There is great difficulty at present in doing as much as it is considered desirable to do for the purpose of educating these children and giving them opportunities to start out in life.*⁴³

The Act gave the Board the duty “to provide for the custody, maintenance and education of the children of aborigines” (section 7(c)). Section 11 of the Act empowered the Board to apprentice any child of an Aborigine, or any neglected child aged 14 to 21 years “apparently having an admixture of aboriginal blood in his veins”, to any “Master” and to collect his or her wages. The concept of “neglect” was defined in accordance with the *Neglected Children and Juvenile Offenders Act 1905* which required an order by the Children’s Court.

Section 13 of the Act made it an offence for any person to entice an Aboriginal child to leave his apprenticeship, school or institution, with a fine of up to twenty pounds. Proceedings could be commenced by officers of the Board or the Police. Absconding by the child was punishable in accordance with the *Apprenticeship Act*.

The 1909 Act also allowed the Board, under section 16, to go to the Children’s Court to seek maintenance from any near relative for any child aged 5-16 years taken into its control. This could be for future maintenance or past maintenance, even if the child had died.

The Board saw the requirement to present children before a magistrate to be given custody as a weakness in the process. From 1909 to 1915 magistrates tended to refuse the Board custody of children who were well fed and well dressed.⁴⁴ By 1912, members of the Board stated they were not happy with the powers of the Act, and started pressing for amendments finally made in 1915.



“Group of five girls in domestic uniform” Cootamundra Girls Home (undated) Courtesy Archives Authority of NSW

In 1911, the Cootamundra Aboriginal Girls Home was set up in an old hospital for those girls too young to go straight into domestic service.⁴⁵ This marked the beginning of sixty years of official placement of Aboriginal children in institutions in NSW.

In 1912, the Board appointed a Home-Finder, whose duties consisted of "visiting the stations and camps, with a view to inducing the parents to allow their children to be apprenticed out, or (if they are not old enough to be sent straight out) to allow them to enter Cootamundra Home to undergo a course of training to fit them for situations."⁴⁶

The 1914 *Report of the Aborigines Protection Board* (p. 6) gives an indication of the attitude and practice of the time:

Cootamundra Home

The Board are pleased to announce that during the year the necessary additions to the Training Home for girls at Cootamundra were carried out, and accommodation is now available for the thirty-five (35) inmates. When the Amending Bill... has been passed by parliament, it is anticipated that the Board will have no difficulty in filling this Institution with girls whose parents hitherto withheld their consent to their transfer thereto, and who were unable to see the advantage of having their children taken from surroundings which offered them no decent prospect for their future welfare.

The possibility of giving them from three to twelve months training for domestic service in the case of the elder girls is a great boon. Without such preliminary training these girls would only prove failures if placed in homes as servants.

Home-Finder

This Officer... has been successful in placing many girls in situations during the year, in addition to securing the transfer of others to Cootamundra homes. Sixty-two (62) are now enjoying the comfort of good homes... A number of girls were also placed out at service as general servants, while others, who were unfit for service, were admitted, to the Church Rescue House, Sydney Rescue Work Society, and Female Refuge, with a view to improving their moral characters. Several, too, were handed over to the State Children Relief Department as neglected children. These will not be allowed to return to their former associations, but will be merged into the European population.

It is anticipated that, with the additional power which will be vested in the Board by the "Amending Bill" now under consideration, that numbers of girls placed in situations or transferred to Cootamundra Home, will be largely augmented when the Act comes into operation.

In 1914 the Board noted in its annual Report that:

3.3 Amendments to the *Aborigines Protection Act* 1915

As a result of very careful consideration, the Board had a Bill drafted to amend the Aborigines Protection Act, 1909, with a view to vesting sufficient powers in the Board to enable them to deal effectively with the aboriginal children by placing them in training homes and apprenticing them to suitable employers (p. 3).

Apart from the Cootamundra Training Home, some stations also had their own Homes. In 1912 the Board reports on Grafton Home, Runnymede Home and Warangesda Dormitory.

The Board achieved its goal of increased powers when the *Aborigines Protection Amending Act 1915* was passed. The underlying purpose of the amendments appears to have been to reduce expenditure on Aborigines through assimilation. This was to be achieved through the separation of children from their parents. The Colonial Secretary argued in the Second Reading speech that:

If we give the board the powers..., these half-caste children will be given a chance to better themselves, and instead of the Government being called on to maintain stations all over the state for the protection of the aboriginals, the aboriginals will soon become a negligible quantity and the young people will merge into the present civilisation and become worthy citizens.

The number of children removed from Aboriginal families between 1909 and 1916 has been estimated to be about 400.⁴⁷ The regulations to this Act also required that:

All quadroon, octoroon, and half-caste lads on the Board's stations and reserves of or above the age of eighteen (18) years shall leave same on or before the 31st May, 1915, and shall not again be allowed upon a station or reserve, except for a brief visit to relatives, at the discretion of Managers of stations, or local officers in charge of Police in the case of reserves where there are no Managers. In all cases such visits shall not extend beyond ten (10) days, and a report shall forthwith be made of permission so granted.⁴⁸

Although this measure was not directed at children under the age of 18 years it would have contributed significantly to the breaking up of families and the fragmentation of Aboriginal communities.

The structure of the Board was altered with more public servants - the Chief Inspector of Police being joined by the Under-Secretary of the Colonial Secretary's Department, the Director-General of Public Health, and the Chief Inspector of the Department of Education, as well as the ex-president of the State Children's Relief Department.

A new section 13A said that the Board:

may assume full control and custody of the child of any aborigine, if after due inquiry it is satisfied that such a course is in the interests of the moral or physical welfare of the child. The Board may thereupon remove such child to such control as it thinks best. The parents of any such child so removed may appeal against any such action on the part of the Board to a Court as defined in the Neglected Children and Juvenile Offenders Act, 1902, in a manner to be prescribed by regulations.

The amendments put the onus of proof on the parents to demonstrate that a child had a right to be with them. No court hearings were required for State custody, unlike the requirements for other children under the *Neglected Children and Juvenile Offenders Act*.

The Colonial Secretary said in the Second Reading speech that:

... the reason we cannot make provisions of this kind is because it is difficult to prove neglect; if the aboriginal child happens to be decently clad or apparently looked after, it is very difficult indeed to show that the half-caste of aboriginal child is actually in a neglected condition, and therefore it is impossible to succeed in the court.⁴⁹

Anyone with the authority of the Board could order a child be removed. The new section 13A of the *Aborigines Protection Act* allowed parents to appeal to the Children's Court after removal of their child, but these Courts were generally located in urban areas far from where they lived. The capacity of people with little formal education to raise such an appeal would have been limited.

The amendments also extended the Board's powers over neglected children to those under 14 years old. The amendments also removed any protective restriction of the *Apprentices Act* from Aboriginal apprentices. The new section 11A said that if a child refused to go to a person to whom the Board has apprenticed him, he could be sent to a home or institution as the Board may arrange. The new section 11B said that if an Aboriginal child absconds from an apprenticeship, he becomes a neglected child under the *Neglected Children and Juvenile Offenders Act* (and can thus be placed in an institution).

In 1916 the Board began removing children under the powers of this amendment and the "Register of Wards" was established to record names and details of each commitment and the later history of the wards. The *Register of Wards 1916-1928* is available in the State Archives of NSW. It records 800 Aboriginal children removed over this period under the 1915 Act.⁵⁰

An additional Home was purchased in 1918 at Singleton, previously run by the Aborigines Inland Mission, where "forty six children were accommodated... and is

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*Increased powers
over children*

*Some opposition
to separation*

b

practically a home for waifs. The Home was managed by the people who have been there for many years past..., and they are deeply imbued with the missionary spirit so necessary in dealing with the welfare of the dark people."

The debate around this 1915 amendment shows the first significant Parliamentary concern over the effects on children, though it passed with just three votes against. As an example of the opposition:

Colonial Secretary: *This bill is... one which has been urged by the Aborigines Protection Board for a number of years. The main principle... is actually to empower the board to take the place of the parents.*

Mr McGarry: *To steal the child away from the parents!*

Colonial Secretary: *No, the hon. member's suggestion is wrong. It is not a question of stealing the children but of saving them... There are at the present time... half-caste children of ages up to 12 years actually housed with parents who are leading immoral lives... The moral status of these aboriginals is very different from that of white people.*

Mr McGarry: *... there is something much more serious to be considered, and that is the question of separating the child from its parents. To me the separating of a swallow from its parents is cruelty.*

Mr James: *Would not the hon. member take a child away from parents not fit to keep it?*

Mr McGarry: *That power exists now, and it applies to the white race apart from the aborigines. There is a camp in my district... it would be well if the government provided decent protection of some kind for the unfortunate people concentrated in that camp instead of introducing a bill of this kind... These people are unfortunate because, in the interests of so-called civilisation, we have over-run their country and taken away their domain. We now propose to perpetrate further acts of cruelty upon them by separating the children from their parents. The mothers and fathers of these children love them just as much as the birds and animals of the bush care for their offspring, and hon. members would not perpetrate a cruelty of this kind even upon an animal.⁵¹*

The debate on the *Aborigines Protection Amending Bill* 1915 contained some interesting comments on the likely effects and problems the amended Act would create and on

alternatives. Such comments included the following:

The meanest person in the interior is the farmer who looks for a state child. He will not pay wages. When he does get such a child he will not feed it.

Cases of hardship might arise if the board were so short-sighted as to take children away from their parents and send them to some remote locality. In such cases, parents would not have the opportunity of ever seeing their children again.

If you take an aboriginal person away from his native place, he will never be contented.

We know there is one characteristic predominating above all others among the aborigines, and it is the love of freedom, and that in the second place they have an inclination to roam around.

It is highly desirable that provision be made for giving the better class of men small plots of land... so they may be encouraged to cultivate the soil.

The difficulty is that very few people in the towns will employ these Aboriginal girls as domestics. Their colour is against them because there is a strong prejudice against employing young girls belonging to the coloured races.

I have always felt that we have never done our duty to the aboriginal owners of this country; that we have neglected our manifold duties to them in many directions, and that we have a great deal to learn from other countries, even from New Zealand and America where the original owners of the soil are protected by the governments and are in possession of large areas of cultivable soil set apart for their sole use.

A amendments to the *Aborigines Protection Act* in 1918 changed the definition of Aboriginality from that in the 1909 Act to be “any full-blood or half-caste aboriginal who is a native of NSW”. This narrower definition restricted who could live on Aboriginal reserves under the control of the Aborigines Protection Board, though the Board was empowered to allow part-Aborigines to live on reserves. The aim was stated by the Acting Premier as:

If this Bill is passed, quadroons and octoroons will be merged in the white population, and the camps will merely contain the full-blooded aborigines and their descendants... By this means, considerable savings will be effected in the expenditure of the Aborigines Protection Board... There is hope that... in years to come, the expenditure in respect of Aborigines

3.4

**Amendments to
the *Aborigines
Protection Act*
1918**

*will reach vanishing point.*⁵²

The intention of the amendments remained, as with previous Acts, to allow the Aboriginal race to die out by isolating “pure-blood” and “half-caste” Aboriginal people from other people, and removing other part-Aboriginal people into Australian society where they would blend away. This would solve the “Aboriginal problem” which was proving expensive. Comments in the debate in the Legislative Assembly included:

Unfortunately the pure-bred blacks are diminishing to vanishing point, whereas the half-castes are increasing, and I think that should be checked by every means possible (Mr Morton).

The amendment also changed the definition of reserves from lands reserved by the Governor to lands reserved under the *Crown Lands Act*, which put them under Ministerial control. The debate in the Legislative Assembly showed considerable dispute over the impact of this, with one opponent, Mr Wright, claiming “the bill will give power to the Minister to take away from these people those lands on which they would like to roam.”

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Amendments affecting separation

The amendments also removed from the Board the power to indenture into apprenticeship “neglected children of any person apparently having an admixture of Aboriginal blood in their veins”. References to the *Neglected Children and Juvenile Offenders Act* were removed from the *Aborigines Protection Act*.

The effect of this was that Aboriginal children living outside reserves and stations were not subject to the Aborigines Protection Board but to the *Neglected Children and Juvenile Offenders Act 1905* - they were becoming the responsibility of “The Welfare”.

The principal effect of the other amendments was to remove the Board’s powers over Aboriginal people who were not “full-bloods”, “half-castes” or their children, except for the power to exclude them from reserves (there were 112 camps including 22 stations). In the Parliamentary debate, the number of Aborigines in NSW in 1916 was given as 6,599. The table below indicates that 2,721 Aborigines (41%) were children who could be excluded from reserves, that is, taken from their parents. At least one Opposition Member of the Legislative Assembly foresaw this possibility:

*I do not know any hon. members on this side who opposes the object of the bill, but... if all the half-caste and quarter-castes are to be removed from the camps and are to mingle, so to speak with the white population, there is a possibility that the board will be fully engaged in moving these children from the camps.*⁵³

Table 4 - Aboriginal people in New South Wales in 1916

Classification of Aborigines	Males	Females	Children	Total
"full-bloods"	669	450	454	1573
"half-castes and descendants"	1280	1025	2721	5026
Total	1949	1475	3175	6599

The establishment of the Cootamundra Girls' Home in 1911 and the Kinchela Boys' Home in 1924 were for children too young to be placed immediately into apprenticeship or domestic service. As children who were fair-skinned were not seen as Aboriginal, they were sometimes placed in non-Aboriginal homes. This adds to the difficulty in determining exactly how many children were removed from their families in the period after the First World War. From Board records available, it is known that at least 1600 children were removed between 1916 and 1938.⁵⁴

The amendments to the *Aborigines Protection Act* in 1936 widened the powers of the Aborigines Protection Board. It maintained power over custody, maintenance and education of the children of Aboriginal people.

The definition of "Aboriginal" was altered slightly to be "any full-blood or half-caste Aboriginal who is a native of Australia and who is temporarily or permanently residing in NSW". However, this definition was effectively widened by a new section 18B which said:

In any legal proceeding or inquiry, whether under this Act or any other if the court, judge, coroner, magistrate, justice or justices do not consider that there is sufficient evidence to determine whether a person concerned or in any way connected with the proceedings or inquiry is or is not an aborigine, such court... having seen such person may determine the question to his or their own opinion.

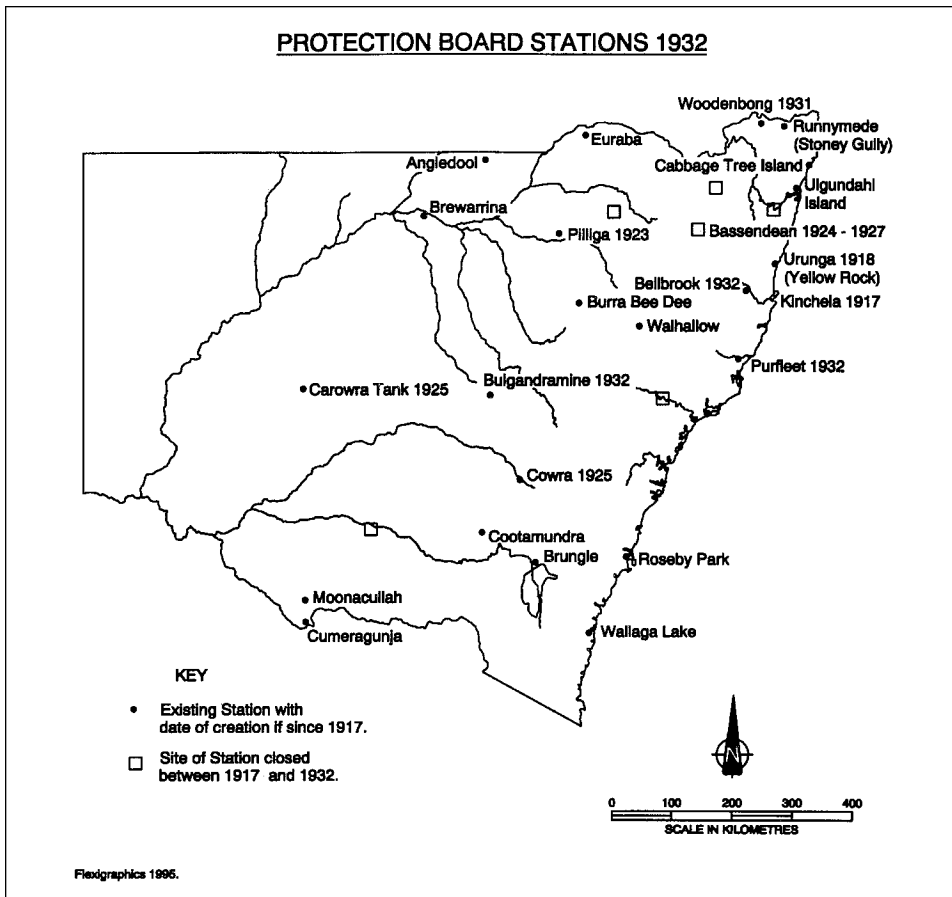
In other words, if a person was taken to court as an Aboriginal, the court could decide whether he or she was Aboriginal on the basis of appearance. This may have meant that an Aboriginal child taken before the Children's Court could have been determined to be Aboriginal and referred to the Board rather than Child Welfare. For the first time, Aboriginal people outside reserves and stations could come under the control of the Board. There were a number of changes to the Act to bring this about:

3.5

Amendments to the *Aborigines Protection Act* 1936

- The Board's duty under section 7 "to exercise a general supervision and care" was expanded by adding the words "over all aborigines";
- Through a new section 8A, the Board could apply to the Magistrate for any Aborigine "living in unsanitary or undesirable conditions" to be brought under its control and placed on a station or reserve - the Legislative Assembly debate indicates this was directed at "the unsightly and unsanitary conglomeration of dwellings the aborigines erect, usually in close proximity to a town or village";⁵⁵
- Under another new section 13B, the Board was empowered to remove to a reserve or home any Aboriginal person or child being mistreated - the Second Reading speech indicated this was to protect young girls;
- Under a new section 13C, the Board could require an employer to pay an Aboriginal child's wages to the Board;
- The power of the Board and the Police to inspect stations and reserves under section 19 was extended to include "any home or institution in which any aboriginal is resident".

These amendments generally extended control over Aboriginal children to those living off reserves, even if they were not "Aborigines" as defined under the Act. The Board could set conditions for the employment of child Aborigines and if the child refused could remove him/her to a home or institution.⁵⁶



This map is reproduced with the kind permission of Heather Goodall from her book *Invasion to Embassy: Land in Aboriginal Politics in New South Wales, 1770-1972* Allen & Unwin in association with Black Books, 1996.

The Board operated three types of properties housing Aboriginal people; stations and children's homes which were staffed, and reserves which were directly supervised by the Police. There were about 180 reserves under the Board in 1939.⁵⁷ The stations were generally larger settlements, up to 300 people, while the reserves were generally around 20-30 people.⁵⁸ In 1929, there were 17 stations, rising to 19 in 1940. Most were staffed by a teacher-manager (employed by the Education Department with an allowance from the Board) and a matron (generally the wife of the teacher manager).⁵⁹ The teacher-manager supervised the children and the general appearance of the reserve and "acts as a kind of labour exchange... most stations have a telephone and employers take full advantage of this when wishing to engage assistance."⁶⁰ The Board reported in 1929 on three children's institutions as follows.⁶¹

3.6

Operations of the Aborigines Protection Board

- Cootamundra House had 44 girls. "This institution is a most important unit in the Board's activities, as the majority of female children who are rescued from neglected conditions are placed there for a period of training prior to being sent out to service."
- Kinchela Home for Boys (Kempsey) had 28 boys who "are given training (in cultivation) which, supplemented by carpentry and other manual training at the school, fits them for positions on dairy farms and stations."
- The Board also contributed to the Children's Home at Bomaderry, run by the Australian Aborigines Mission. This housed 40 children, boys "only remaining until they attain the age of 10 years when they are transferred to Kinchela. As the girls arrive at a proper age they are placed in service, and apprenticed by the Board."



"Pupils, Kinchela Boys Home" (undated) Courtesy Archives Authority of NSW

At the 1st June 1928, the Board reported there were 1,201 "full-bloods" and 6,844 "half-castes" in care and protection. Since 1916, there had been a fall in "full-bloods" of 372 (24%) and a rise in "half-castes" of 1,818 (36%).

The report of the Board to Parliament in 1929 provides interesting glimpses into the situation of Aboriginal people on the stations and reserves it managed.

Work was scarce owing to new industrial awards and regulations, which resulted in a considerable increase in the ration lists.

New huts were erected on the Aboriginal reserves... with the Board supplying the materials.

While much has been done by the Board... in the general improvement of housing conditions... and the provision of adequate water supplies, there are several centres where much work remains to be done.

The passing of the Family Endowment Act has resulted in a large number of Aborigines benefiting... in some cases the money has been wisely expended but it is feared that in most instances the reverse is the case...A proposal is being considered that the duty of administering money payable to aborigines... be imposed on the Board.

This wish of the Board to have Family Endowment paid to it rather than to the Aboriginal people was in effect by the time of the 1936 amendments to the Act. In Parliament, the Board came under some criticism. For example, in the debate on the 1936 Amendments, Mr Davidson said:

... the members of the Aborigines Protection Board are well intentioned people, but some of them are ignorant of the customs and traditions of the aborigines. The same applies to a number of the managers in charge of missions. No special attempt has been made to obtain the services of men conversant with the customs and traditions of the aborigines... The consequence is that they want to discipline the aborigines in a way that is repugnant to their nature.

Housing on the reserves and stations improved slowly over the first half of the twentieth century. In 1940, the Colonial Secretary reported to the Legislative Assembly as follows:

Some of the earlier homes that were constructed were very poor quality, which shows very clearly the limited amount of money that was available in those days for such homes. Throughout the years a much better class of home has been constructed. The majority of homes consisted of two rooms and a verandah. One room was a living room, while the other was used as a kitchen and dining room. This prevented the possibility of segregating the sexes and maintaining the moral tone of the community and the home. In more recent years, the homes that have been built contain three rooms and a verandah back and front, thus providing sufficient accommodation to enable the sexes to be separated.⁶²

In the same speech, it was reported that expenditure on housing rose from £650 in 1931/2 to £6,000 in 1937/8, and jumped to £16,100 in 1939/40. This latter allocation allowed 78 new houses to be constructed on 10 stations.

3.7

Housing

Relationships with the Police 1909 - 1940

3.8

With the passing of the *Aborigines Protection Act* in 1909 (and subsequent amendments in 1915, 1936, 1940 and 1943) police powers in relation to Aboriginal people were greatly increased and formalised. The power and influence of the police was firmly established by the requirement, under the legislation, that the Aborigines Protection Board's *ex officio* chairman be a Commissioner of Police (section 4(1)).

Under the Act, the Board was granted control of all reserves and almost every aspect of Aboriginal people's lives. Eighty-five Board managed reserves were created throughout New South Wales to facilitate the Board's control. Due to the Board's lack of resources, the Police statewide network continued to administer and enforce the Board's policies.

Under the Act, all police officers were appointed as "guardians" of Aborigines. In 1916, local civilian committees were disbanded and their functions taken over by two inspectors employed by the Board. The positions of "Guardian of Aborigines" (civilians who represented the Board in areas where no committees existed) were retained until after 1916 when these duties were given exclusively to local police officers.

As "guardians" the police were both protectors and prosecutors of Aborigines. Over the period 1914 to 1934, a series of instructions was issued to police by the Board.⁶³

These directed them to do the following:

- issue rations to aid Aborigines;
- investigate all applications and issue rations to any 'deserving' cases;
- force children to attend school by withholding rations if they did not comply;
- refuse rations to Aborigines in order to 'persuade' them to go to another locality or to move onto an Aboriginal reserve or station;
- decide whether or not an Aborigine was sick enough to see a doctor;
- patrol and maintain order on unsupervised Aboriginal reserves;
- recommend on the disposal of reserve land;
- expel 'trouble makers' from Aboriginal reserves;
- remove children from their parents and send them to the Board's 'training homes' on the grounds that they were 14 years of age;
- institute proceedings against Aboriginal parents who took their children away from Aboriginal reserves or from schools;
- expel light-coloured people from Aboriginal reserves and stop them from returning to their families still living on reserves;
- institute proceedings to remove whole Aboriginal communities from certain localities under section 14 of the Act.

As much of the administrative power of the legislation came from the regulations to the Act, Parliament had little control or oversight over their introduction.⁶⁴

Under the Act, the Board was empowered to indenture or apprentice any Aboriginal child to any master, thereby bringing the child under the supervision of the Board or a person authorised by the Board under the regulations [section 11(1)]. If the child refused to go, the Board then had the power to remove the child, for the purpose of being trained, to a training home or institution [section 11A(1)]. Police were often the agents of the Board in these matters and enforced the provisions of the Act when necessary.

In response to pressure from the Board, the Act was amended in 1915 to enable any Aboriginal child to be removed without parental consent if the Board considered it to be in the best interests of the child's moral or physical welfare, specifically if the child was believed to be "neglected" (section 13A). No court hearings were necessary and section 13A(4) allowed any officer authorised by the board or any member of the police force to remove a child to a shelter or training home established under the Act without a warrant.

On some stations and reserves the practice was for police or Board members to visit in order to remove all children once they turned 14, particularly girls who were sent to the training home before being apprenticed out as domestic servants. Aborigines Protection Board records for period 1916-1938 show that 1600 children were removed, apparently as a matter of course, under these instructions from the Board to the police.⁶⁵

The *Child Welfare Act* 1923 consolidated and replaced the four earlier child protection Acts - the *State Children Relief Act* 1910, the *Children's Protection Act* 1902, the *Infant Protection Act* 1904 and the *Neglected Children and Juvenile Offenders Act* 1905 (see 2.2.5). It maintained the concepts of neglected and uncontrollable children, who were to be brought to the Children's Court for determination of their care and custody. The Act also abolished the Children Relief Department and established the Child Welfare Department.

There is no reference to Aboriginal people in the Act, nor in the debate in the Legislative Assembly over the Second reading of the Bill.

The first Annual Report of the new Child Welfare Department shows a softening of attitudes to European unmarried mothers that contrasts with the views of the immorality of Aboriginal unmarried mothers:

There was a time in past years when the unmarried mother was not considered in this regard, but the community has now a greater breadth of view, and it is the welfare of the child that now governs the situation.... If the unmarried mother desires to keep her child

3.9

Child Welfare Legislation 1909 - 1940

*with her, and she is considered a proper person to retain it, she is given an allowance the same as a married mother.*⁶⁶

Over 1933-34, a Commission of Inquiry into Child Welfare Administration investigated "charges of grave abuse of power, defective and incompetent administration and brutal and revolting treatment of inmates of institutions."⁶⁷ The Commissioner was asked to draft a revised *Child Welfare Act*, upon which the Bill presented in 1939 was based.

The *Child Welfare Act* 1939 incorporated the 1923 Act without great change but included several additional sections - Parts IV (establishment of depots, homes and hostels), IX (mentally defective children - this section was never proclaimed),⁶⁸ XI (punishment of inmates of institutions), XII (maintenance of children by their relatives), and XV (transfer of persons from a prison to an institution).

The Act "embodied the underlying principles of all child welfare legislation that in a general sense the State (sic) stands in loco parentis for all parents. It is recognised that... where child life is neglected, ill treated, or without proper means of support, or living under conditions that will cause it to lapse into a career of vice and crime, the State has a special duty to discharge."⁶⁹

While the Minister, in presenting the Bill, made no reference to Aboriginal people, the new Act became a powerful tool for the Department of Child Welfare. The amendment introduced new categories to the definition of "neglected as a child":⁷⁰

- s.72 k) *who is destitute; or*
- l) *whose parents are unfit to retain the child or young person in their care, or, if one parent be dead, insane, unknown, undergoing imprisonment, or not exercising proper care of the child or young person, whose other parent is unfit to retain the child or young person in his care; or...*
- o) *who, without lawful excuse, does not attend school regularly.*

The amended Act still required magistrates to give hearings to all custody cases. There is, however, no evidence of a reduction in the numbers of children removed. As before, Children's Courts would have been far removed from most Aboriginal reserves. The introduction marked a turning point in the welfare department's historical role in the removal of Aboriginal and Torres Strait Islander children from their families.⁷¹

Under the *Child Welfare Act*, children with disabilities could be removed from their parent's care and made Part IX wards. These children were institutionalised in hospitals for appropriate care. They could be detained without limitation as to age until discharged. The extent this affected Aboriginal children is not known.

Table 5 - Aborigines in New South Wales in 1939

Classification of Aborigines	Adults	Children	Total
"full-bloods"	600	194	794
"half-castes and descendants"	5759	4385	10144
Total	6359	4579	10938

The role of the Department of School Education, and its forerunners, has been to implement aspects of policies developed by other Government departments and agencies. A significant example was the exclusion of Aboriginal children from public schools. The Department complied with this Government policy but provided education to the Aboriginal children of the missions and reserves.

The Department of School Education (as part of the then Ministry for Public Instruction) inherited powers relating to children from the dissolved Children's Relief Board in 1923. There is no recorded instance, however, of principals in government schools being required to hand over Aboriginal children, knowing that they were to be removed from their families.

In 1916, attendance at school by children was made compulsory until the age of 14 years under the *Public Instruction (Amendment) Act*. It established Attendance Officers to police this attendance, and truants could be charged as neglected under the *Neglected Children and Juvenile Offenders Act 1905*.⁷² In 1929, the Board said, in its Annual Report to Parliament, that:

At one or two centres where dark children have previously attended the public school, a difficulty has been created by the local Parents and Citizens Association raising an objection to their presence, with the result that the Department has found it necessary to exclude them from further attendance.

Aboriginal children were required to attend school as were all other children until the age of 14 years. However, instances of European parents objecting to an Aboriginal child attending their child's school continued.⁷³ This led in 1937 to the Minister for Education issuing a Minute that said:

The requests that have been made from time to time that aboriginal children should be excluded from various public schools in the State, render it necessary to define the policy that the Department should follow in dealing with such requests.

3.10

Education

It is not desirable that... action should be initiated with respect to a limited number of aboriginal children attending public schools to whom no objection is raised by the parents of the white children...

It is desirable that where a number of aboriginal children are attending the school they should be segregated from the ordinary school pupils and provided with education in a school set apart for the purpose, preferably in an Aboriginal settlement...

For many years a practice has been followed by the Aborigines Protection Board which may be taken as a reasonably sound procedure in future action by this department. According to this practice, those persons who are distinctly of aboriginal blood... are regarded as belonging to a child race incapable of satisfactorily handling their own affairs... In effect, the policy... lays emphasis not upon a difference in colour, but upon the natural handicaps of a child race... it would certainly appear that where aboriginal children occur in any marked number, it would be desirable in their own interests that they should be excluded from the ordinary public school and suitable provision for their education made...⁷⁴

The *Youth Welfare Act* 1940 raised the school leaving age from 14 to 15, and established the Youth Welfare Department concerned with vocational guidance and employment of youth.⁷⁵

⁴⁰Legislative Assembly debate on the Aborigines Protection Amending Bill, 27 January 1915, p.1958

⁴¹Learning from the Past, *op cit.* pp. 15-17

⁴²Read, P. *op cit.* p.5

⁴³Legislative Assembly debate on the Aborigines Protection Bill, 14 December 1909, p.4493

⁴⁴Read, P. *op cit.* p.5

⁴⁵Read, P. *op cit.* p.6

⁴⁶Aborigines (Report of Board for the Protection of, for the Year ended 30th June, 1912) p.4

⁴⁷Read, P. *op cit.* p.9

⁴⁸Item 7337, Management of Stations. NSW Government Gazette, No. 97 2nd June, 1912, p.3073

⁴⁹Legislative Assembly debate on the Aborigines Protection Amending Bill, 27 January 1915, p.1951

⁵⁰Read, P. *op cit.* p.6

⁵¹Legislative Assembly debate on the Aborigines Protection Amending Bill, 27 Jan. 1915, p.1952-53

⁵²Legislative Assembly debate on the Aborigines Protection (Amendment) Bill, 9 Oct. 1917, p.1560

⁵³Legislative Assembly debate on the Aborigines Protection (Amendment) Bill, 9 Oct. 1917, p.1561

⁵⁴Read, P. *op cit.* p.9

⁵⁵Legislative Assembly debate on the Aborigines Protection (Amendment) Bill, 23 June 1936, p.4849

⁵⁶Lawrie, *op cit.* p.vi

⁵⁷Learning from the Past *op cit.* p.14

⁵⁸Second Reading speech on the Aborigines Protection (Amendment) Bill, 8 May 1940, NSW Legislative Assembly, p.8284

⁵⁹Second Reading speech on the Aborigines Protection (Amendment) Bill, 8 May 1940, NSW Legislative Assembly, p.8283

⁶⁰Annual Report of the Board for the Protection of Aborigines, NSW Legislative Assembly, 1929

⁶¹*Ibid*

⁶²Second Reading speech on the Aborigines Protection (Amendment) Bill, NSW Legislative Assembly, 2 May 1940, pp. 8283-4

⁶³Ronalds et al 1983, *op cit*

⁶⁴Cuneen, C and Libesman, T. *Aboriginal and Torres Strait Islander People and the Law (1995)* Butterworths, Sydney

⁶⁵Read, P. *op cit.* p.9

⁶⁶Annual Report of the Department of Child Welfare 1923, cited in Burgess, B., *op cit.* p.21

⁶⁷Mr Drummond, Minister for Education, in the Second Reading debate of the Child Welfare Bill 1939, NSW Legislative Assembly, 23 Feb 1939, p.3766

⁶⁸Burgess, B, *op cit.* p.28 notes that Part IX was not proclaimed, but was replaced by a new Part IX in 1967, which in turn did not commence until 1974. This part pertains to 'Mentally Defective Children'

⁶⁹Mr Drummond, Minister for Education, in the Second Reading debate of the Child Welfare Bill 1939, *op cit.* p.3767

⁷⁰Second Reading debate on the Aborigines Protection (Amendment) Bill, NSW Legislative Assembly, 2 May 1940, pp 8283

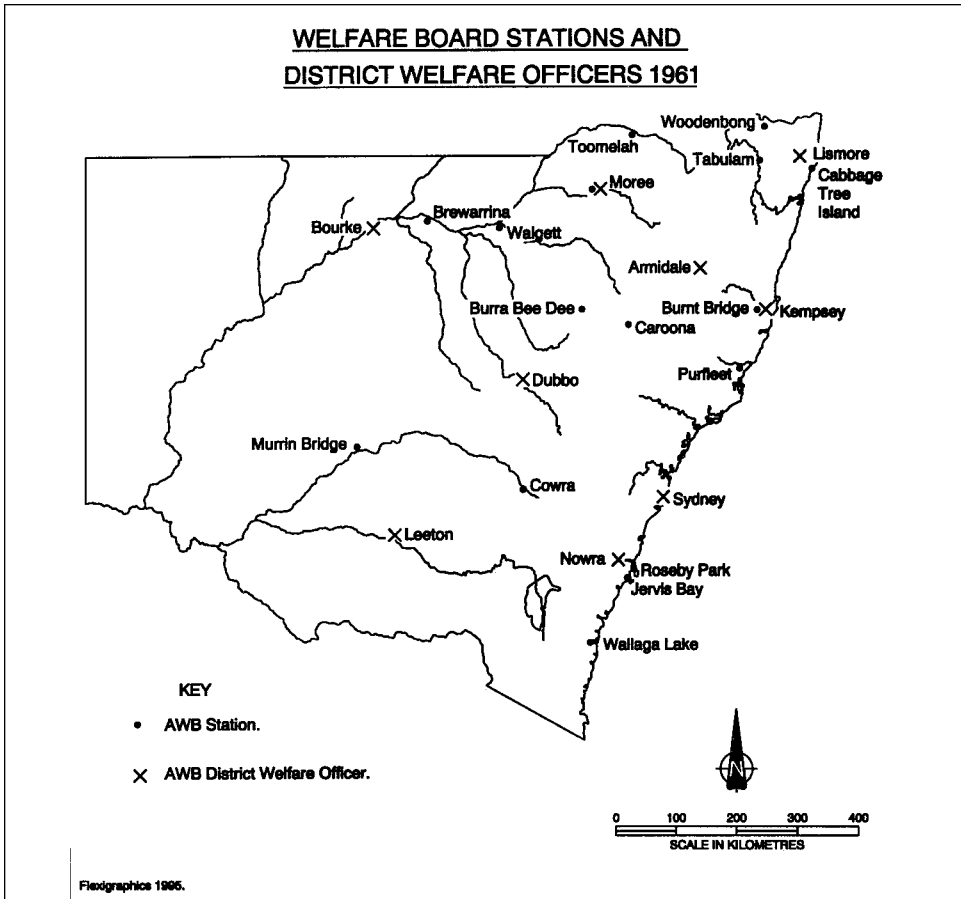
⁷¹Department of School Education (DSE) Response to HREOC Inquiry into the Separation of Aboriginal and Torres Strait Islander Children (which has been incorporated into section 3.10 of this Report)

⁷²Burgess, B. *op cit.* p.14

⁷³See comments, for example, in the Second Reading debate on the Aborigines Protection (Amendment) Bill, NSW Legislative Assembly, 4 May 1943

⁷⁴Reported by the then Minister in the NSW Legislative Assembly, 4 May 1943. p.2850

⁷⁵Burgess, B. *op cit.* p.30



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4 ATTEMPTED ASSIMILATION

1940 - 1969

4.1

**The Aborigines
Protection
(Amendment) Act
1940**

This Act established the Aborigines Welfare Board to replace the Aborigines Protection Board, and provided it with greater powers over children, particularly those not living on reserves.

The Act arose from a 1937 Parliamentary Select Committee inquiry into the administration of the Aborigines Protection Board, which lapsed without reporting, and a subsequent 1938 Public Service Board investigation into the same matter. The Public Service Board reported in 1940. Recommendations cited by the incoming Aborigines Welfare Board in its first report as most important were:

1. Reconstitution of the Aborigines Protection Board and the appointment of a Superintendent who would be the senior officer.
2. Reorganisation of staffing arrangements including the separation of the duties of Manager and Teacher on the larger stations and the appointment, as far as possible, of fully qualified teachers. It also recommended that all members of staff should be subject to the Public Service Act.
3. The development of Stations to their fullest extent for the production of crops and food stuffs as a means of augmenting the diet of the Aborigines and training them in rural pursuits.
4. The provision of additional funds (for) improving the housing conditions.
5. The incorporation of a policy which would result in the gradual assimilation of Aborigines into the general community.⁷⁶

The new Board consisted of ten members - the Under-Secretary of the Chief Secretary's Department (chair), the Superintendent of Aboriginal Welfare, nominees of the Departments of Public Instruction, Public Health and Police, experts in agriculture and sociology or anthropology, and three others appointed by the Minister. For the first time, the Police did not chair the Board. The first Superintendent was an expert in agriculture, appointed so that the production of foodstuffs on the stations could be increased.

In introducing the amending Act, the Colonial Secretary said:

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

... the greater part of the Bill (provides) for the control of delinquent aboriginal children and the apprenticeship of aboriginal children under the supervision of the board. Those clauses have been taken directly from the Child Welfare Act.

The whole object of the bill is to facilitate the administration and the work of the board, to provide additional benefits for the aborigines, and to make possible a continuation of the policy of assimilating the aborigines into the Australian community.

This central purpose of assimilation was facilitated by providing the new Aborigines Welfare Board with a number of powers to separate children from their parents. All Aboriginal children under the control of the Board (i.e. living on stations or reserves) or admitted to one of its homes became wards.

Notably, section 8A of the Act introduced in 1936 was strengthened so that any part Aboriginal person could be sent to a reserve. This section previously allowed a magistrate to remove Aboriginal people from "undesirable" conditions (on the fringe of towns), and place them on reserves. It now permitted:

where an aborigine or a person apparently having an admixture of aboriginal blood... should in the opinion of the board be placed under control, a... magistrate may... order such aborigine or person to remove to a reserve.

The amending Act removed any suggestion that the Board's role was educational. The responsibility for general education was taken from the Board and placed with the Education Department - in section 7(d), "education" was removed from the duty "to provide for the custody, maintenance and education of the children of aborigines." The teacher role of the Board's station managers was removed, and teachers were employed

a

The Assimilation Policy

b

Removal of the educational role

	<p>directly by the Education Department.</p> <p>However, the Board responsibility for “training schools” or “homes” was made more explicit with the redrafting of section 11 of the <i>Aborigines Protection Act</i>, which now said:</p> <p style="padding-left: 40px;"><i>s. 11. The board may... establish... homes for the reception, maintenance, education and training of wards.</i></p>
<p><i>The concept of wards</i></p>	<p style="text-align: center;">c</p> <p>Importantly, the 1940 amendment brought in a new definition of “child” and introduced the concept of wards:</p> <p style="padding-left: 40px;"><i>‘Child’ means an aborigine under eighteen years of age.</i></p> <p style="padding-left: 40px;"><i>‘Ward’ means a child who has been admitted to the control of the board or committed to a home constituted and established under section eleven of this Act.</i></p> <p>This definition of ward meant that wards under the Board were not the same as those under the <i>Child Welfare Act 1939</i> which defined a ward as “any child or young person (i.e. under 18) who has been (a) admitted to State control; (b) committed to an institution; (c) admitted into a hostel for expectant and nursing mothers; (d) admitted into a home for mentally defective children.”</p> <p style="padding-left: 40px;"><i>s. 11B (1) Where a ward is not regarded by the Board as ready for placement in employment or for apprenticeship, such ward may be placed in a home for the purpose of being maintained, educated and trained.</i></p> <p style="padding-left: 80px;"><i>(2) Where the Board is satisfied that any ward is not likely to succeed in his employment or as an apprentice, the board may, with the approval of the employer or guardian of such ward, cancel any indenture of apprenticeship or agreement, and may place such ward in a home for the purpose of being maintained, educated and trained.</i></p>
<p><i>Indenturing of children</i></p>	<p style="text-align: center;">d</p> <p>The wages of children indentured to employers were paid to the Board under section 11A(3) of the amended Act, with the child paid pocket money. The Board kept the money in a Trust Account for the child. Under regulation 23A, which commenced in 1944, the Board could use this money “towards the maintenance, advancement, education or benefit of such ward or ex-ward at any time before he attains the age of 21 years. Any balance remaining shall be paid to the ex-ward upon his attaining the age of 21 years.” This was three years after the child ceased to be a ward of the Board. Amendments to the Regulations in 1947 set the wages and pocket money of the</p>

indentured wards as shown below. The increase in pocket money after the age of 17 was because up to that age the Board bought clothing from the child's Trust Account, and after that the child was responsible.

Table 6 - Wages and pocket money, indentured children, 1947

Age	Wages paid to Board		Pocket Money	
	Boys	Girls	Boys	Girls
15-16	16/-	13/6	3/-	3/-
16-17	19/-	15/-	4/-	4/-
17-18	14/-	9/-	12/-	12/-

Children had no choice when placed in employment, apprenticeship or in an institution, called "a home". If they left or were taken away, they were automatically guilty of an offence and punishable by the Children's Court as prescribed by section 12:

- s.12 (1) If any ward placed in a home... or in employment or apprenticed, is absent without leave of the board, any member of the police force or any officer of the board may apprehend such ward and convey him to a home or back to his employer.*
- (2) Any magistrate or justice may issue a warrant for the arrest of any ward who has absconded or has been illegally removed from his proper custody.*
- (3) Where any ward who has absconded or been illegally removed from his proper custody is arrested, he shall... be brought before the children's court...*
- (4) Any ward who absconds from his proper custody shall be guilty of an offence.*

The punishments possible by the Children's Court were defined under section 11(4). The Court could punish the absconding Aboriginal child as allowed for an inmate of an institution under the Part XI of the *Child Welfare Act 1939* which include forfeiture of rewards, isolated detention, corporal punishment (the cane), or fatigue duties. Alternatively, the Court could use the summary offences punishments under section 83 of the same Act, except that if it made the child a ward of State, he/she became a ward of the Board, and if it placed the child in an institution, that institution was to be a home run by the Board.

<p>e</p> <p><i>Parental contact</i></p>	<p>The 1940 amendments to the <i>Aborigines Protection Act</i> also restricted contact by parents with their children. A new section 13 provided for this:</p> <p><i>s.13 (1) Whosoever without the consent of the board (or officer)... holds or attempts to hold any communication with any ward who is an inmate of such home, or who enters or attempts to enter any such home... and does not depart therefrom when required to do so,... shall be guilty of an offence.</i></p> <p><i>(2) A person shall be guilty of an offence against this Act if he... (b) counsels or causes or attempts to cause any ward to be withdrawn or to abscond from any home... or from the charge of any person with whom he is placed or to whom he is apprenticed or to escape from his proper custody... (c) knowing any ward to have so been withdrawn or to have absconded or escaped, harbours or conceals such ward.</i></p> <p>The offence was punishable by a fine of £20 or one month's gaol or both.</p> <p>Section 16 which allowed the Board to collect maintenance for children 5-16 years of age was replaced and extended to "an aborigine under sixteen years of age, so that the near relatives shall be liable for or to contribute towards his maintenance."</p>
<p>f</p> <p><i>Neglected and uncontrollable children</i></p>	<p>Of particular importance to the removal of children from their parents was a new section 13A of the <i>Aborigines Protection Act</i> which introduced a new category of "neglected or uncontrollable" Aboriginal children. The importance of this section lies in the fact that it enabled children not living on reserves and stations to be brought under the control of the Board, and thus become wards who could be indentured or placed in the Board's homes.</p> <p>Section 13A empowered any justice to summons an Aboriginal child under 18 years old to appear before the Children's Court if any Board officer or Police said he believed the child was "neglected or uncontrollable" (as defined under the <i>Child Welfare Act</i> 1939). Children so summoned could be apprehended by the Police and held in a shelter until brought before the Children's Court, which could then place the child under the control of the Board as a ward, or place him/her in one of the Board's homes.</p>
<p>g</p> <p><i>Opposition to the Bill</i></p>	<p>The presentation of the Bill to the Legislative Assembly was the cause for considerable criticism of the Aborigines Protection Board and the Government's policies by Mr Davidson. While the full text of the debate including his speech is given in the Attachments,⁷⁷ a few quotes indicate the strength of his opposition:</p>

There is no doubt that the Minister has drawn a beautiful picture of the aborigines condition... Much of the information given to the House by the Minister is absolutely incorrect...

There is no need for me to exaggerate the misery of these unfortunate people, because everyone who knows anything about the subject knows perfectly well that their conditions are absolutely abominable...

What little evidence they (board officers) did give (to a select committee) revealed that the board adopts fascist methods and that it has no use for an inspector, a manager or a matron who has sympathies with aborigines. It means the sack for any manager or matron who complains of the conditions under which the aborigines are compelled to exist...

At one station there was no water, so the aborigines were transferred to Menindee where they were accommodated in tin huts. And at Menindee in summertime the temperature is anything up to 120 degrees. Those tin huts are built on the side of a sandhill. When the wind blows, the huts are almost filled with sand. Some of the older aborigines found out that the site on which the huts are built is an old burying ground. Many of them became ill. Many of them are suffering from tuberculosis and are dying like flies. Others suffer from eye complaints and venereal disease. The shacks that these people are asked to live in are not fit for a dog.

(Note: the first report of the new Aborigines Welfare Board said "At Menindee the aborigines are existing under unsatisfactory conditions and steps are being taken to move the station to a better locality").

We cannot segregate the mixed bloods because they are members of the family. The Bill however, gives the Board power to take control of the children without the consent of the parents. All the Board has to do is kidnap the children without worrying about the misery and suffering it causes the parents.

The bill also provides for the control of aborigines in regard to employment. It has been known for years that these unfortunate people are exploited. Girls of 12, 14 and 15 years of age have been hired out to stations and have become pregnant. Young male aborigines who have been sent to stations receive no payment for their services. Some are paid as little as sixpence a week pocket money and a small sum is retained on their behalf by the

Board. In some instances they have difficulty later in recovering that amount from the Board.

Mr Davidson also summarised to the Assembly what the Aboriginal people themselves wanted, though the debate does not indicate where these views came from:

What the aborigines are seeking and what the bill does not give them is the same social, political and economic rights as those enjoyed by other races... They ask for the cancellation of all licenses and indentures, and the cessation of the exploitation of aboriginal labour. Where evidence shows they have been exploited in the past, they ask that the Government take action to ensure that they are compensated.

They further request that when employed in any calling they should enjoy the same wages and conditions as a white man. They also declare with justification that they are entitled to the protection of our industrial laws...In addition, they advocate the abolition of the so-called homes and missions which, by segregation of the races, is exterminating the race. They want an opportunity to make themselves self-supporting.

... They also object to being brought before courts and examined without legal representation.

... They also complain about the discrimination against aborigines in educational institutions.

... The Bill is the reverse of what the aborigines ask for. It does not give them the liberty that they require and it does not improve their conditions.

4.2

The Aborigines Protection (Amendment) Act 1943

These amendments placed two Aboriginal members on the Aborigines Welfare Board for the first time. The Board was incorporated and made able to be sued. It was given power to acquire land outside reserves and stations and build upon it, for the purpose of constructing houses, and to sell houses and land to Aboriginal people. The Colonial Secretary, in introducing the Bill, said:

... the conditions under which some aboriginals are living... are not too good, and the board should be given the power to provide better housing facilities and some greater protection than they have today.⁷⁸

The philosophy of assimilation was strong. Excerpts from the Legislative Assembly debate illustrate this:

Lt Colonel Bruxner: ... these people are a vanishing race... As the years pass they will no doubt be absorbed into our race, and Dr Lethbridge says that would be a good thing for both sides. (p.2836)

Mr Hefferen: We should therefore try to bring them up to the standard of the white community so they can eventually be absorbed in the white race. (p.2837)

There were several significant amendments which had a direct effect on children.

An amendment inserted a new section which authorised the Board to grant Exemption Certificates which removed an Aboriginal person from the control of the Board:

s.18 (c) (1) The board may... issue any aborigine or person apparently having an admixture of aboriginal blood, who in the opinion of the board ought no longer be subject to the provision of this Act or the regulations or any of such provisions, a certificate... exempting such aborigine or person from the provisions of this Act... Upon the issue of such Certificate,... any such aborigine or person shall be deemed not to be an aborigine or person apparently having an admixture of aboriginal blood within the meaning of the... Act.

The Board reported that this "was for the sole purpose of giving the more advanced aborigines an opportunity to free themselves from the restrictive section of the Act, and to enable them to establish themselves as citizens of the State in the full sense of the word."⁷⁹

One effect of the Exemption Certificate was reported by the Board in its 1945 Annual Report:

The Commonwealth Government has recognised the usefulness of the Exemption Certificate, in so far as it is prepared to regard the holder as being equal in living standards and general intelligence to members of the general community. Ordinarily, the Commonwealth Government is not prepared to provide Pensions and Maternity Allowances to aborigines possessing a preponderance of aboriginal blood, and also to aborigines who reside on an Aboriginal Reserve. Any aborigine, however, who possesses an Exemption Certificate becomes eligible to receive social benefits.

This meant, in effect, that the Board had power over which Aboriginal people on

a

*Exemption
Certificates*

Amendments related to children

b

reserves or stations received social security.

The Amending Act inserted additional definitions:

'adopted boarder' means a child who... is allowed by the board to remain with a foster parent... (without payment of allowance and without the board taking the child's wages).

'boarded-out' means placed in the care of a foster parent.

As well, under a new section 11D, the Board's powers over children were extended as follows:

s. 11D (1) The Board shall be the authority to

(a) Admit a (Aboriginal) child to its control;

(b) Provide for the accommodation and maintenance of any child admitted to its control

(c) Pay for foster parents...

(d) Direct the removal or transfer of any ward...

(e) Apprentice, place in employment, board-out or place as an adopted boarder any ward...

(f) Approve of persons applying for the custody of wards...

(g) Arrange the terms and conditions of custody of any ward

(h) Direct the restoration of a ward... to the care of his parent or any other person;

(i) Direct the absolute discharge of any ward...

c

Placement of children with "the Welfare"

The Board was given power to place Aboriginal children in institutions established under the *Child Welfare Act* under section 11D(2). This was because:

The Aborigines Welfare Board has experienced considerable difficulty in making satisfactory arrangements for the reception of uncontrollable children who have been committed by the court under section 13A of the Principal Act... The view is taken that such few numbers could be absorbed into appropriate institutions under the control of the Child Welfare Department...⁸⁰

The Board was further given the power to board-out children over school age (14 years) with a foster parent (section 11D(3)). This foster parent could be an employer of the child, and the Board could permit payment at less than the prescribed wages.

Another amendment made it clear that Aboriginal children under the Board's control were not to attend school past the minimum leaving age. Section 11D(5) stated that a ward who was not fostered out "shall... be apprenticed or placed in employment."

In 1953 and 1958 wages and pocket money for indentured apprentices were increased.

Table 7 - Wages and pocket money, indentured children, 1953

Age	Wages paid to Board		Pocket Money	
	Boys	Girls	Boys	Girls
15-16	35/-	30/-	10/-	10/-
16-17	43/-	35/-	15/-	15/-
17-18	40/-	30/-	30/-	30/-

Table 8 - Wages and pocket money, indentured children, 1958

Age	Wages paid to Board		Pocket Money	
	Boys	Girls	Boys	Girls
15-16	38/-	33/-	13/-	13/-
16-17	47/-	39/-	19/-	19/-
17-18	45/-	34/-	35/-	35/-

The importance of family to Aboriginal people was acknowledged in the debate in the Legislative Assembly on the amendments. Lt. Colonel Bruxner advised the Assembly: "They set great store on relationships. That is the strong tie that keeps the half-caste to his mother's side, for these people love their children greatly."⁸¹

With the changing definition of "neglected child" under the *Child Welfare Act* 1939, the Department of Child Welfare became active in Aboriginal affairs. In the 1940 Annual Report of the Aborigines Welfare Board it states: "Inspectors of the Child Welfare Department have undertaken the visitation and supervision of apprentices in outlying districts where the Board's officers have not been able to make visits."

In its 1948 Annual Report, the Board advised of further developments:

The Board is aware of the unsatisfactory living conditions and social behaviour of many

d

Placement of children in employment

e

Opposition to separation of children

4.3

**Child Welfare
1939 - 1969**

aboriginal families who are living in and adjacent to a number of country towns. This section of the aboriginal community is a group apart from those who are residing on Station settlements and reserves where conditions are more favourable and the people subject to oversight. Many of those away from control are living an aimless existence and are not making a satisfactory effort to raise their standard of living and to accept normal family responsibilities. The Board decided that this section of the aboriginal community should be assisted and guided by District Welfare Officers...

From the early 1950s, the Department of Child Welfare managed the process of adoption and fostering of Aboriginal and Torres Strait Islander children. This generally occurred at an early age and had the effect of easing the number of children placed in institutions.

In 1956, the Aborigines Welfare Board put out a circular to clarify its responsibilities and those of the Child Welfare Department in regard to "neglected" children including truants. It said:

Officers (of the Board) should note that their authority only extends to proceedings against aboriginal children when such are uncontrollable or neglected.

Cases of children with an admixture of aboriginal blood who are less than half cast should be referred to the Child Welfare Department.

Cases of any children who are juvenile offenders should be referred to the Police.

Adoptions

a

The *Adoption of Children Act 1965* arose from a model bill developed for the national conference of Attorneys General. In the presentation of the Bill for this Act, the Attorney General advised that from 1923 to 1964, 58,000 children had been adopted in NSW, 10,951 in the previous five years. There was no mention of Aboriginal people in the Act or in the debate in the Legislative Assembly.

In speaking to the second reading of the Bill the Attorney General said:

The bill attempts as far as possible to equate the position of the adopted child with that of a child born to the adoptive parents in wedlock. It severs all prior relationships existing between parent and child and its natural parents. The purpose (of the record keeping) is to preserve the anonymity of the natural parents from the adoptive parents, of the adoptive parents from the natural parents, of the natural parents from the child and so forth... that certificates of birth (after adopting) in later years will show the name of the

adopted parents in relation to its adoptive parents.

The *Adoption Act* did not require a child's race to be taken into account in selecting the parent. In section 22(c)(1)(b) the applicant "is a suitable person to adopt that child, having regard to relevant considerations including the age, state of health, education (if any) and religious upbringing or conviction (if any)."

The Supreme Court was empowered under section 32(2)(i):

to dispense with the consent of a person... to the adoption where...

c) that person is, in the opinion of the Court, unfit to discharge the obligations of a parent or guardian by reason of his having abandoned, deserted, neglected or ill-treated the child.

The Aborigines Protection Board's practices did not change significantly after it became the Aborigines Welfare Board in 1940. It continued to pursue its policies and practices of removing Aboriginal children to train them for domestic situations and manual work. The outcome was the fragmentation of Aboriginal communities and families, and the dismantling of Aboriginal culture in most instances. The Board continued to judge Aboriginality principally by skin-colour. The introduction of the assimilation policy by the Federal and State governments endorsed the continuing removal of children from their families.

The policies of the Board also had a wider effect on the dislocation of many more Aboriginal people from their traditional lands. Most of the reserves were forcibly closed (over a period since 1918) and others were simply not supported or maintained in the hope that residents would leave. In many towns in NSW, this saw the beginning of fringe communities.

The means by which children were removed continued to be devious and often brutal. *Learning from the Past* documents some of the experiences told by people who were taken away by the authorities as children: "One woman recalled how children would be asked by Welfare Officers 'do you want to come to the circus with us?'"⁸² Another said "No one to this day has told us why we were taken away and why we were told our mother was dead."⁸³

Margaret Tucker in her biography tells of policemen coming to school to remove her and her sister, without her mother's knowledge. Other children who were dismissed from class ran to bring her mother. She writes:

The policeman, who no doubt was doing his duty, patted his handcuffs, which were in a leather case on his belt, and which May and I thought was a revolver... 'I'll have to use

4.4

The Aborigines Welfare Board 1940 - 1967

this if you do not let us take these children now'. Thinking that the policeman would shoot Mother, because she was trying to stop him, we screamed: 'we'll go with him Mum, we'll go...' My last memory of her for many years was her waving pathetically, as we waved back and called out goodbye to her.⁸⁴

Personal testimonies such as this suggest that both children and their parents were lied to and tricked by inspectors from the Board, then welfare officers from the Welfare Department. It is clear that this practice was seen by Aboriginal people as a kind of theft. In many cases, the children were taken away without any explanation.

There is evidence that often a magistrate's hearing was set prior to children being removed from their families.⁸⁵ This indicates a disregard for facts about the circumstances they were living in and for the rights of parents. According to *Learning from the Past*, this practice appears to have continued until 1972 even though the "welfare" of Aboriginal and Torres Strait Islander children became the responsibility of the Department of Child Welfare and Social Welfare from 1969. Many of the child protection practices which had been followed by the Board did not begin to change significantly until the late seventies.⁸⁶

In 1940, the Board introduced a new housing policy. The policy deemed that Aboriginal people living on rations should be relocated in towns as part of the assimilation process. This often meant moving Aboriginal families far from their land and placing them amongst European residents in cities to prevent the growth of urban ghettos. This policy was carried on by the Department of Child Welfare and Social Welfare and then the Department of Youth and Community Services from 1969 until 1974.

The Report of the Minister for Social Welfare on the working of the *Aborigines Act* 1969 for the year ended in June 1970 states (p.9):

Wherever possible, Aboriginal housing in a particular town is scattered to prevent large congregations of Aboriginal families in one district... Many were under the misapprehension that Aborigines were incapable, generally, of occupying normal housing... These fears are being rapidly dispelled.

Not all families applying for homes are considered suitable for immediate tenancy but their application enables the Department's field officers to undertake particular counseling to ensure that if possible an acceptable standard can be reached.

The following excerpts from the Annual Reports of the Aborigines Welfare Board provide some evidence of their practices and policies in the separation of Aboriginal children from their parents.

The Board's Policy⁸⁷

Upon its establishment the Board gave careful consideration to the formulation of a policy upon which to base its activities, and the following points have been laid down as guiding principles:

- a) To assimilate the aborigines, particularly those of lighter caste, into the general community. With this end in view, to give assistance to deserving families to enable them to secure homes of their own...*
- e) To give attention to the problem of the youths, with a view to preventing, as far as possible, their lapsing into a life of idleness.*
- f) To give technical training to youths with promising intelligence and to establish handicraft classes on the stations.*
- g) To organise the employment of aborigines, in addition to the training and employment of boys and girls.*
- h) To maintain the system of juvenile employment of boys and girls after leaving school and until they attain the age of 18 years.*
- i) To supervise the system strictly in the interests of the future welfare of the children concerned.*

The following excerpts quote directly (in italics) from the Annual Reports of the Board or summarise information contained within them as indicated by the year (in bold):

1940

There were 116 "full-blood" and 2,540 "half-caste" children on supervised stations, reserves and camps, with an additional 78 "full-blood" and 2,000 "half-caste" children living privately, in camps or nomadic.

The Cootamundra Girls' Training Home had an average of 40 residents aged 5-15 years. Kinchela Boys' Training Home had 43 boys at the end of the year. Bomaderry Children's Home for children from babies up to 10 years had an average of 24 residents. On reaching age, 10 children were transferred to either Cootamundra or Kinchela.

Of late years, most of the children who have become apprenticed have been sent out from the Board's homes at Cootamundra and Kinchela after having reached the age of 14 to 15 years. As at 30th June, 1940, ten male apprentices and forty female apprentices were

4.5

**Excerpt from
Aborigines
Welfare Board
Annual Reports**

in employment under the Board's jurisdiction... The Board intends to revise the arrangements for apprenticeship so that the conditions will be similar to those laid down by the Child Welfare Department for white children.

The care of Aboriginal children committed to the Board's care because of cruelty, neglect or loss of parents, is still regarded by the Board as one of the very important features of its administration... In all of these homes (Cootamundra, Kinchela and Bomaderry), every endeavor is made by the staff to create a spirit of happiness and confidence on the part of the little ones. Many of the children are brought into the Homes at a very tender age, and are cared for, educated and trained until ready to go out into the world at fifteen years of age.

All children received into the Homes are admitted, either by consent of the parents or next of kin, or by committal by a duly constituted Children's Court, after the circumstances have been fully investigated.



"Group of children – Bomaderry Childrens' Home 1932" Courtesy Archives Authority of NSW

1941

According to the Report for 1941, there were 61 "full-blood" and 1,938 "half-caste" children on supervised stations, reserves and missions, with an addition 54 "full-bloods" and 2,674 "half-caste" children living privately, in camps or nomadic.

The total population of Aboriginals resident in NSW has reduced by 254 during the past year. [This was attributed to] quite a few residing within the vicinity of state borders (having) moved temporarily or permanently to other states, and to enlistment of aborigines

for war service (estimated to be between 150 and 200 since the outbreak of the War).

The Board's Annual Report notes on Children's Homes:

Children may be received into the Homes at a tender age, often times as young as five or six years of age - and they attend school until reaching school leaving age, when they are given a brief training before being placed out in employment under apprenticeship conditions.

There were four new admissions to Cootamundra Girl's Training Home and eight discharges:

Of the thirty-six children accommodated at the Home 16% were full blood, 71% half castes and the balance lesser castes. The Matron has reported that the full blood children are slow in mental responses, but excel at handiwork and sport. The half-caste children, while possessing great mental alertness, are lazy and frequently sullen. In some cases they are resentful of their state of life and require sympathetic handling and firm control.

At Kinchela Boys' Training Home there were ten new admissions and eight discharges, with an average enrolment of 46. An average of thirty children aged under ten were maintained at the Bomaderry Children's Home.

1942

Mr J McLeod, a "half-caste aborigine" was appointed to the Board to represent Aboriginal people.

Due to the war's impact on finance and manpower, the Board felt it was "not opportune to proceed with any large scale reforms".

1943

The *Aborigines Protection Act* was amended so that the Board was empowered to arrange for the boarding-out of Aboriginal wards with approved foster parents or placing them as adopted boarders as an alternative to placing such children in one of the Children's Homes controlled by the Board.

The training of the aboriginal adolescent will in the future form part of the general scheme of education for aborigines, and it is proposed... to establish training schools for trades, agriculture and domestic economy at which selected adolescents will be enrolled.

1944

The Board appoints its first Welfare Officer, who has "experience with the handling of natives in New Guinea."

1945

The estimated Aboriginal population was 594 "full-bloods" and 10,022 "mixed-bloods". Of these, 2,520 lived on 19 Stations and 1,956 on Reserves. Progress had been made in the separation of teacher and manager roles with five stations having full-time managers.

During the year, 38 children were committed by the Courts as wards of the Board. Of these, 8 were boarded out privately with families on stations, 2 to homes off reserves, 10 were admitted to Bomaderry Home, 7 were placed in church institutions and 11 were placed in Cootamundra or Kinchela.

Table 9 - Aboriginal People in New South Wales in 1945

Classification of Aborigines	Adults	Children	Total
"full-bloods"	478	116	594
"mixed-bloods"	5410	4612	10022
Total⁸⁸	5888	4728	10616

1946

Mr A Solomon, a "full-blood" was elected by the Aboriginal people as a member of the Board. He resigned from the Board after attending two meetings.

1947

In its report under Children's Homes the necessity for more institutions is raised:

The Homes... accommodate children from five to fifteen years of age, but these institutions are not sufficient for the numbers requiring care or for a proper division of the children into age and behaviour groups. The Board is strongly of the opinion that additional Homes should be established to house the children in proper groups. It is obvious that children of tender years need much individual attention and that their segregation from children of adolescent years, particularly those presenting psychological problems, is highly desirable.

Another essential Institution... is a Cottage Home for young children of pre-school age, capable of accommodating upwards of thirty children. An average of five or six children of this age grouping are brought under the Board 's care and control year by year, and it is highly probable that this number would be increased if satisfactory facilities were available for their accommodation (p. 8).

1949

The 1949 Report stated:

The term of office of the two aboriginal members expires...Mr Ferguson, who is a quarter-caste, was re-elected unopposed. No nomination was received for the vacant office of full-blood aboriginal and the seat is still vacant. (This seat was still vacant in 1959).

The Board decided to partition the State into four Areas and appoint a welfare office to each Area.

The Courts committed twenty-six children to the care of the Board during the year. The Board assumed control of nine children under section 11D(1)(a) of the *Aborigines Protection Act*. Five wards were released from the Board's control and resumed to the care of their parents.

In regard to Children's Homes the Report says:

The Board does not possess an institution for children of pre-school age, and it has become necessary, with considerable difficulty, to have children coming within such category admitted to private families or private denominational homes.

1950

The policy of separating the teacher-manager role proceeded slowly, with managers now teaching at only four stations. There were difficulties maintaining domestic staffing at the Cootamundra Girls Home.

1951

The 1951 Report stated:

The Board feels that the present set-up (of Homes) is not ideal, mainly because family groups, i.e. brothers and sisters, have to become separated and henceforth have no opportunity of meeting again except at long intervals. The Board hopes in due course to formulate a plan to overcome this disability.

1953

The 1953 Report stated:

The Board recognises the generally accepted principle that a child's natural heritage is to be brought up in its own home, under the care of its natural parents. There is no wholly satisfactory substitute for this. Unfortunately, some parents, despite all efforts on their behalf, prove themselves incapable or unsuitable to be entrusted with this important duty, and the Board is forced to take necessary action for the removal of the child. The best

substitute for its own home is a foster home, with competent and sympathetic foster parents. Failing this the only alternative is a Home under management of the Board's own officers. The Board found difficulty in securing an adequate number of suitable foster homes and for this reason is forced to maintain two homes for wards (Kinchela and Cootamundra).



"Kinchela Boys' Home" (undated) Courtesy Archives Authority of NSW

1956

The last teacher-manager position was split so that "there are now no schools in NSW attended by Aboriginal children which are not staffed by teachers of the Education Department."

1960

Homes exceeded previously stated capacities, and the Homes were expanded to accommodate more children to meet demand. There were 42 children (girls and boys of tender years) at Cootamundra and 56 boys at Kinchela.

The 1960 Report indicated:

Of 302 children under control of the Board during the twelve month period, 20 were discharged, 132 boarded out with foster parents and 26 placed in employment. (p.6)

1962

The Board now employed thirteen Welfare Officers throughout the State, and was thus

able to undertake casework with a large number of families. The increased number of children taken in as wards appears to reflect the increased capacity of the Board to carry out its work in the field. In keeping with community attitudes of the time, there was a greater emphasis on finding foster families and boarding out children, rather than institutionalising young children. The Board's stated attitude had not changed significantly since the 1950's.

The 1962 Report stated:

It should be noted... that the Board is empowered under the Aborigines Protection Act only to deal with children who are half caste Aborigines or more. Any child with a lesser degree of Aboriginal blood than half must be dealt with by the Department of Child Welfare. The Board also does not deal with Aboriginal delinquent children.

1964

The Board no longer reported on the number of wards under its care in its annual report, and ceased the extensive reports on the operation of the Homes which featured in the annual reports during the fifties.

1965

The 1965 Report stated:

Following recommendation by the Board, an Inter-Departmental Committee was convened by the Chief Secretary and the Minister for Child Welfare to determine the most beneficial method to be adopted for the care and training of those Aboriginal children admitted to the care of the Board and accommodated in the two homes established, under statute, for the purpose. (Section 44).

The conclusion was reached that the present system tended to perpetuate a form of segregation and it was recommended, therefore, that arrangements be put in train to transfer all such wards of the Aborigines Welfare Board, who are inmates of the Board's training homes and for whom residential care in a children's home is required, to establishments under the administration of the Child Welfare Department at such times as the additional accommodation required is available to that Department. (Section 45).

1966

The Board appointed two Aboriginal Welfare Officers who were of Aboriginal descent. They were Mr Herbert Simms and Mr L Ridgeway. No report was made on the operation of Homes or of the welfare of the Board's wards. Mr Simms became "Liaison Welfare Officer" in 1970 in the Department of Child Welfare and Social Welfare, upon the

Board's demise.

1967

The Board was wound up, following the 1967 Report from the Joint Committee of the Legislative Council and the Legislative Assembly upon Aborigines' Welfare.

1968

Last Report of the Aborigines Welfare Board made no mention of wards or the Homes.

Table 10 – Number of children admitted and committed to the Aborigines Welfare Board, and place of residence, 1940 - 1963, Annual Reports of the Board

Year end in	Admitted	Committed	Discharged	No @ end of year	Kinchela		Cootamundra		Church		Fostered		Apprent/Emp/d		Other		Total no	
					in	t'fer no.	in	t'fer no.	in	t'fer no.	in	t'fer no.	in	t'fer no.	in	t'fer no.		
1940													19	-9	50			
1941					1	43	3	2	40	21								
1942					10	46	4	8	36	30								
1943						43	6	5	49				5	28				
1944						43	12	10	49			10						
1945					11	48	5	9	44			9	20					
1946					12	52	2	6	40			13	25					
1947					5	42	7	4	43	5		12	21					
1948		1			2	32	6	37				6	26					
1949		2			16	40	7	9	35			9	18	4				
1950		18			6	44	8	10	33	3	12	12	19					
1951	2	30	10	169	8	46	9	9	33	5	10	9	15	3				
1952	2	17	17	171	1	42	1	0	34	6	-25	31	10	-36	46	1	-2	18
																		0

Relations with Police

4.6

The 1940 Police Annual Report noted that:

...the Aborigines Protection (Amendment) Act 1940 dissolved the Aborigines Protection Board, relieved the Commissioner of Police of the Chairmanship, and constituted a new body, the Aborigines Welfare Board. Similar powers by the Act were given to the Police to those under the Child Welfare Act 1939, in respect of uncontrollable and neglected Aboriginal juveniles and provided for extensions of Police authority in matters touching the administration of Aboriginal affairs. The Police Department retain(ed) representation on the Board by a member of or above the rank of inspector.⁸⁹

Under the Police Instructions of the time, Aboriginal children who were neglected or uncontrollable were to be charged under section 13A of the *Aborigines Protection Act* and not under the *Child Welfare Act 1939*.⁹⁰ The definitions of “neglected” and “uncontrollable” were taken from the *Child Welfare Act*. Police were instructed that the provisions of section 72 of the *Child Welfare Act* did not apply to Aboriginal people.

Police continued to be involved in removing children from their parents as agents for the welfare departments, particularly in rural areas where no welfare officer was appointed. Additionally, police would often accompany welfare officers charged with removing children in order to “preserve peace and good order”. Police acted in charge of many reserves which were not staffed by the Board.⁹¹

However, in 1963 the Chief Secretary advised the Legislative Assembly that:

In a recent court case, the presiding magistrate upheld an objection that he had no jurisdiction as it was not properly laid in the name of the board. The information had, in fact, been laid by a police officer in his own name, a practice which had been followed since the inception of the Act.

To meet the position revealed by the magistrate's decision, the board delegated to managers of aboriginal stations, supervisors of reserves and a number of welfare officers the power to institute proceedings in the name of the Board.

However, it was not considered practicable to delegate similar powers to individual police officers in view of frequent changes arising from promotions and for other reasons.⁹²

The impact of this magistrate's ruling was spelled out by another Member:

Unfortunately, there has been some misunderstanding between police and welfare authorities. This has resulted from a ruling by a magistrate about two years ago that

*police did not have direct authority to enter reserves and apply the law.*⁹³

Police sometimes had a role in the payment of child endowment for the Commonwealth. One Member of the Legislative Assembly reported:

*... in regard to family endowment that is paid to a mother of half-castes whose husband is working, say, on a station while his wife and family are living in a nearby town. In many instances, these mothers have to attend the local police station to obtain endowment, and sometimes they are not paid in money but in rations.*⁹⁴

1943 amendments to the *Aborigines Protection Act* empowered the Aborigines Protection Board

*... to acquire land, erect buildings thereon, and to sell and lease such land and buildings on terms to aborigines... This form of assistance to deserving aborigines has been for some time regarded by the Board as an important step forward in the policy of assimilating the better type of Aborigines into the general community... As a first step a few families only will be assisted in the forthcoming financial year, but in future years it is hoped that many deserving families will be assisted to purchase their homes.*⁹⁵

In 1942, the Housing Commission of NSW was established. Aboriginal people were considered for housing under normal eligibility criteria. Housing applications from Aboriginal persons had to be accompanied by a report from the Aborigines Welfare Board (AWB). Tenancy Advisory Committees were established to approve applications for housing. These Committees consist of representatives of the Ex-Services League, a women's group, Local Government and local Members of Parliament.

The practice of the Housing Commission in regard to housing Aboriginal families is reflected in a letter from the Secretary to Mr Cahill, MLA in August 1960:

... any aborigine family who applies to the Housing Commission for assistance receives exactly the same consideration as a white Australian family. Quite a number of aborigine families - full-blood and part aborigine - are at present housed by the Commission in various parts of the state.

As you are aware, ALL applications lodged with the Commission are investigated. In any case where it is felt that positive evidence exists that a family - irrespective of colour - will not prove suitable tenants (because of low living standards, unreformed criminal tendencies, acute incompatibility with other families, and so on) local Tenancy Committees may refuse admission to the eligibility lists. This of course is considered necessary as the

4.7

Housing

Government Housing Scheme could be severely criticised if the Commission failed to ensure that its properties were properly cared for.⁶⁶

During the period 1942 to 1969, the Department of Housing housed 250 Aboriginal families. However, responsibility for housing Aboriginal people from 1942 to 1969 rested with the Aborigines Protection and Welfare Boards and other welfare authorities. The Housing Commission undertook to construct houses for the AWB and other welfare agencies.

The policies of the Department at this time did not have a direct bearing on the separation of Aboriginal children from their families, nor were they designed to place Aboriginal people "at risk" and expose families to agencies such as the Aborigines Welfare Board or the Child Welfare. As poor housing was a criterion for determination of "neglect", lack of housing for Aboriginal people did have the effect of placing children at risk, as being neglected and being unsuitably cared for.

Aboriginal people encountered actions and practices which may have impeded access to services of the Department of Housing.

The practice and actions of Tenant Advisory Committees during the late 60s and during the 70s were questioned at this time, and families were refused housing for being "undesirable tenants" on the basis of their housekeeping standards or the Committees assessment of their ability to care for the property of the Commission. Some Senior Departmental officers strongly resisted suggestions that there be Aboriginal representation on Tenant Advisory Committees which was suggested to redress these problems.⁶⁷

Correspondence of 1965 between an Officer of the AWB and the Superintendent of the AWB shows how housing problems could lead to Aboriginal children being removed from their families.

In this case, two sisters and their families, each with five children, had apparently moved in with their mother, resulting in one house being occupied at times by twenty four people. The Tenancy Advisory Committee rejected the family's applications for Housing Commission Homes because they were classified undesirable tenants. The Council issued an order against the mother (presumably because of overcrowding and upset in the local community). The two sisters moved into another house formerly occupied by their sister. The Aborigines Welfare Board advised them this house was unsuitable for ten people, and that if they did not find other housing the Child Welfare Department was likely to take action against them. They stated they had few assets and no saving, (and were thus unlikely to be able to raise a bond or to obtain other rental accommodation). Further, the Aborigines Welfare Board Officer questioned the lightness of their skin, in

effect questioning their eligibility for housing by the Aborigines Welfare Board.⁹⁸

The Department of Housing is unable to provide any statistical data relating to the operation of the committees due to the fact that records of this period have been destroyed through archive procedures.

An account of the difficulties faced by the Aboriginal community can only be relayed by personal recollections of dealings with the Department of Housing or through records of welfare agencies holding personal files of applicants, or those such as Aboriginal Advancement Societies who attempted to intercede on behalf of members of Aboriginal communities.



"Children at Purfleet School" (undated) Courtesy Archives Authority of NSW

Some of the features of the assimilation policy in schools reported by J Harris in *The Aboriginal Child at School*⁹⁹ were resistance and hostility from the European community to the admittance of Aboriginal students, continued exclusion of Aboriginal children on the grounds of cleanliness and health, the segregation within a school of Aboriginal students to Aboriginal schools (on missions, reserves or stations) when the European Australian community demanded it.

In 1943, a Member of Parliament reported on a "half-caste" Aboriginal child just of school age who was asked to leave the public school in Moree because of colour. Other Members reported that Aboriginal children did attend public schools in their electorates, but expressed no surprise that exclusion had occurred at this school. Parliament seemed content to leave this to local discretion.¹⁰⁰

Harris reports that the regulations requiring Principals to defer or refuse enrolment of

**The Aborigines
Protection
(Amendment)
Act 1963**

4.9

Aboriginal children on the grounds of “home condition” or “substantial (community) opposition” were finally withdrawn from the NSW Teachers’ Handbook in 1972.¹⁰¹

This amending Act started the process of removing the coercive powers over Aboriginal people by removing a number of sections from the *Aborigines Protection Act* including:

- s.8A Which allowed a magistrate to send mixed-blood Aboriginal people to a place controlled by the Board;
- s.8B Which made it an offence to remove an Aboriginal person from a reserve;
- s.8C Which made it an offence to take an adult Aboriginal person outside NSW without permission of the Board;
- s.9 Which made it illegal to sell alcohol to Aboriginal people;
- s.10 Which made it an offence for non-Aboriginals to live with Aboriginal people;
- s.14 Which allowed the Board to move any Aboriginal person camped near a town; and
- s.14 Which allowed the Board to send any Aboriginal or mixed-blood person for medical treatment.

In introducing the amending Bill, the Chief Secretary first referred to world opinion:

*As the treatment of coloured people is a matter receiving world-wide attention, it is essential that we in Australia do not allow our approach to the problems of aborigines to be misunderstood.*¹⁰²

The Chief Secretary noted that of one of the sections being removed was that it was:

... basically discriminatory in that it denies to one class of people a right enjoyed by other classes, simply and only because of racial characteristics.

However, the amendments were:

... In keeping with the general assimilation policy of welfare authorities all over Australia.

In the debate, the Chief Secretary reported that 1,200 Exemption Certificates had been granted. There were, at the time, about 5,000 Aboriginal people on stations, 3,000 on reserves, and 6,000 elsewhere.

a

Of particular importance to the separation of children were amendments to three sections. Section 12(4) was amended so that the Children’s Court could not send an absconding ward of the Board to a home of the Board. The Chief Secretary advised in

the Second Reading Speech that:

... the (Board's) home... is not a disciplinary institution. As it would not be practicable to set up a separate home for the small number of aboriginal children who offend in this manner, the board feels that the court should have the authority to commit such children to a suitable institution under the control of the Child Welfare Department.

Other amendments that may have affected the treatment of children were that sections 13B and 13C were deleted so that the Board could no longer remove an Aboriginal child who it believed was being mistreated, nor collect the wages in the best interest of an Aboriginal person.

In March 1962, before these amendments were adopted, the Aborigines Welfare Board recommended additional amendments to clarify its position as legal guardian over the Aboriginal children in its care. The need for these arose because of a case

... where a ward of the Board had been transferred by his foster parents with the consent of the Board to Victoria. The foster parents desired to adopt the child, but when the request came up for consideration it was found that legally the committal of the child did not actually constitute the Board a guardian and that strictly the parents remain the guardian subject to the Board's control. In the instance cited the whereabouts of the parents were unknown.¹⁰³

The Crown Solicitor examined the matter and advised:

It is not specifically enacted in the Aborigines Protection Act that upon a child becoming a ward of the Board the rights, powers and duties of the natural guardians of the child are suspended or annulled, it is significant that the powers of sec. 11D(2) of cancelling any indenture of apprenticeship or agreement are expressly made exercisable with the approval of the employer or guardian of the ward.

It might be mentioned that sec. 9 of the Child Welfare Act expressly provides that notwithstanding any other law relating to the guardian of every child or young person who becomes a ward, to the exclusion of the parent or other guardian, until the child or young person ceases to be a ward; a provision which finds no counterpart in the Aborigines Protection Act.

It seems to me that the powers and authorities conferred by the Act upon the Board do not constitute it as a guardian of a ward.¹⁰⁴

The Superintendent commented on this opinion that “further consideration of the legal position emphasises the desirability that the Act should be amended to provide for the Aborigines Welfare Board to be the legal guardian in respect of its wards.”

In response to Board advice, the Under-Secretary wrote in May 1962 to the Crown Solicitor seeking advice on an amendment to the Act. However, no amendment to address this issue was included in the 1963 amendments.

In February 1964, the Crown Solicitor replied with further advice. This raised the question of whether the Board should be the guardian of the ward, the property of the ward, or both. The Superintendent advised that the Board should be the guardian of the person, not the property, and recommended this to the Board. Subsequently, the Board and the Under-Secretary recommended to the Minister that amendments to the Act be made. However, it appears as if the work of the 1967 Joint Parliamentary Committee superseded this advice (see next chapter).

The Board also recommended in 1964 another amendment that was not proceeded with, possibly for the same reason. This was to remove section 18C from the *Aborigines Welfare Act* (Exemption Certificates). Certificates were seen as no longer necessary since the 1963 amendments had removed the restriction on Aboriginal people’s access to alcohol, which was, according to the Superintendent of Aborigines, “the sole benefit sought by Aborigines by means of Certificate.”¹⁰⁵

⁷⁶Annual Report of the Aborigines Welfare Board NSW for 1940, p.1

⁷⁷Second Reading debate on the Aborigines Protection (Amendment) Bill, NSW Legislative Assembly, 2 May 1940 pp. 8288-90

⁷⁸Second Reading debate on the Aborigines Protection (Amendment) Bill, NSW Legislative Assembly, 4 May 1943 pp. 2819

⁷⁹Annual Report of the Aborigines Welfare Board, NSW for 1944, p.10

⁸⁰Second Reading speech, Aborigines Protection (Amendment) Bill, NSW Legislative Assembly, 4 May 1943, p.2820

⁸¹Debate on the Second Reading speech, Aborigines Protection (Amendment) Bill, NSW Legislative Assembly, 4 May 1943 p.2836

⁸²Learning from the Past, *op cit.* p.30

⁸³*Ibid.* p.30

⁸⁴*Ibid.* p.32

⁸⁵*Ibid.* p.29

⁸⁶*Ibid.* p.48

⁸⁷Aborigines Welfare Board, Annual Report for the Year ended June 1941, p.1

⁸⁸Report of the Aborigines Welfare Board for the year ended 30th June 1946

⁸⁹Police Department Annual Report, 1940

⁹⁰Police Instruction No. 9 Children and Young Persons - Neglected and Uncontrollable, Juvenile Offenders and Child Protection, para 22

⁹¹Second Reading speech, Aborigines Protection (Amendment) Bill, NSW Legislative Assembly, 7 March 1963, p.3187

⁹²*Ibid.* p. 3186

⁹³Debate on the Second Reading speech, Aborigines Protection (Amendment) Bill, NSW Legislative Assembly, 7 March 1963, p. 3193

⁹⁴Debate on the Second Reading speech, Aborigines Protection (Amendment) Bill, NSW Legislative Assembly, 4 May 1943 p.2841

⁹⁵Report of the Aborigines Welfare Board for the year ended 30th June 1944, p.9

⁹⁶Letter located in Department of Housing records, 4 August 1960 (JMB:NMR) to T Cahill, Esq. M.L.A., Parliament House, Sydney from the Secretary of the Housing Commission

⁹⁷Attachment 43 comprises three letters, regarding Appointment of Aboriginal Members to Housing Applications Committees: one undated letter from the Dubbo District Office, District Supervisor, to the Orange Area office, in response to internal advice about the Minister's proposal to appoint an additional member (specifically an Aboriginal member) to Housing Application Committees and supporting letter from the Orange Area Office date 19/1/1977. Additionally a letter dated 29.1.1977 from the Acting Secretary of the Housing Commission advising the Minister on this issue, noting the consensus of opinion of "many Senior Commission Officers" advising against the appointment of Aboriginal members in determining eligibility for Housing for Aboriginal dwellings

⁹⁸See Attachment 4.4. Letter to the superintendent, Aborigines Welfare, AWB on 18th October, 1965 from Armidale Aborigines Welfare Officer, re-housing for Aboriginal families in Werris Creek. See also Correspondence of 7 August 1965, attached from Werris Creek Tenancy Advisory Committee Chairman to AWB, refusing the Aboriginal families application (classified undesirable tenants) and consequent letter from Chief Secretary's office to F.L. O'Keefe, MLA (1.12.65)

⁹⁹Harris, J W. The Education of Aboriginal Children in NSW Public Schools since 1788, Part One from *The Aboriginal Child at School* Vol. 6, no 4, 1978, p20-27

¹⁰⁰Debate on the Second Reading speech, Aborigines Protection (Amendment) Bill, NSW Legislative Assembly, 4 May 1943, p.2838

¹⁰¹*Ibid.* p26

¹⁰²Second Reading speech, Aborigines Protection (Amendment) Bill, NSW Legislative Assembly, 7 March 1963, p.3183

¹⁰³Aborigines Welfare Board minute from the Superintendent, ref c. 16776, 30 March 1962, NSW Government Archives

¹⁰⁴*Op cit*

¹⁰⁵Annual Report of the Aborigines Board, 1964

TOWARDS SELF DETERMINATION

1967 - 1996

The Joint Committee on Aboriginal Welfare

5.1

In 1966, a New South Wales Joint Parliamentary Committee examined Aboriginal welfare, resulting in the *Aborigines Act 1969* which abolished the Aborigines Welfare Board and passed responsibilities to the Department of Child Welfare and Social Welfare.

In 1969 an Inter-Departmental Committee on Aboriginal Welfare was established, with representatives of the Departments of Child Welfare and Social Welfare, Education, Public Health, and the Housing Commission, with Liaison Officers representing Treasury, Police Department, and Departments of Technical Education, Decentralisation and Development and Lands. Two of the personnel appointed were former members of the Aborigines Welfare Board.

The Committee reported that there were 15,440 Aboriginal people including 127 "full-bloods" and 6,807 lesser castes. Of these, only 6,000 were resident of reserves. This did not include Aboriginal people or part-Aboriginal people living in Sydney, estimated to number 15,000. It is "obvious, therefore, that the Aboriginal problem in NSW basically concerns persons with an admixture of Aboriginal blood."¹⁰⁶

The Committee recommended that the policy of assimilation as reaffirmed at the 1965 Commonwealth - State Conference of Aboriginal Affairs Ministers

... is the best for Aborigines and the community generally.

The policy of assimilation seeks that all persons of aboriginal descent will choose to attain a similar manner and standard of living to that of other Australians and live as members of a single Australian community, enjoying the same rights and privileges, accepting the same responsibilities, and influenced by the same hopes and loyalties as other Australians. Any special measures taken are regarded as temporary measures, not based on race, but intended to meet their need for special care and assistance and to make the transition from one stage to another in such a way as will be favorable to their social, economic and political advancement.¹⁰⁷

In this light, the Committee's finding that "legislation aimed at preventing discrimination in NSW would serve no useful purpose"¹⁰⁸ is unsurprising. Similarly, "some evidence was placed before the Committee that Aborigines in NSW were entitled to some form of land compensation, but the Committee was not convinced by the validity of these submissions."

Key recommendations from the Joint Committee included:

- "Aboriginal" to be defined as full-blood Aboriginal or such other person of part-Aboriginal blood who is a native of Australia and living permanently or temporarily resident in NSW and who chooses to be known as an Aboriginal. This was not adopted.
- In education, Aboriginal schools to be closed and education integrated. Special efforts to be made by officers of the Department of Child Welfare to ensure regular attendance at school.¹⁰⁹ Pre-schools were to be established in Aboriginal centres. A variety of measures to improve and increase secondary education were suggested.
- Housing responsibility to be transferred to the Housing Commission under normal policies, and the Commonwealth to be asked to provide dollar for dollar funding. No further housing to be constructed on reserves.
- The Aborigines Welfare Board to be abolished, and a Director of Aboriginal Affairs responsible to the Minister for Child Welfare be appointed. An Aboriginal Advisory Committee to be created.
- An employment officer be appointed, and pre-employment courses created.
- Every effort be made to encourage Aborigines to leave reserves; residential areas of reserves be vested in the Housing Commission.

The Joint Committee recommended that the child welfare and social welfare responsibilities of the Board should be transferred to the Department of Child Welfare. Wards of the Board would come under Child Welfare, and Child Welfare to take responsibility for substitute care.

In regard to Kinchela Boys Training Home, the Committee reported:

The home is reasonably comfortable but has a rather cold institutional atmosphere, probably brought about by the dormitory system. Toilet and ablution facilities are reasonable only.

The boys in the home are either neglected children or have been committed at their parents request. When the Committee visited, nine of the thirty-six boys were in the latter category.

a

**Recommendations
on children**

The staff, consisting of ten permanent with two or three casuals; are all non-Aboriginal... Apparently no attempt has been made to attract suitable Aboriginal labour.¹¹⁰

The Committee recommended that the children be moved to Child Welfare homes, and Kinchela become a hostel for Aboriginal boy students.

In regard to Cootamundra Girls Home, the Committee reported:

... there were only twenty-seven girls living in residence. The Committee was informed that no more girls were being sent to Cootamundra and when the present inmates finished their schooling the home will close... The staff of six is non-Aboriginal except for the cook.¹¹¹

The Committee recommended that the girls be transferred to Child Welfare Homes, and Cootamundra become a hostel for Aboriginal girl students.

The Joint Committee also reported on Kirinari Hostel built by the Aboriginal Children's Advancement Society which "provides accommodation for ten boys". It recommended financial assistance to this hostel.

It should be noted that in 1965 the Special Aborigines Conference held on 16th October, included in their Resolutions that:

Conference strongly objects to the two segregated Welfare Board training homes, at Kinchela and Cootamundra, and asks that they be closed; responsibility for this work should be transferred to the Child Welfare Department.

5.2

The Aborigines Act 1969, Abolition of the Aborigines Welfare Board

In introducing the Bill, the Chief Secretary Mr Willis spoke of "the new concepts embodied in the bill of consultation with the Aborigines themselves and their assuming the major role in deciding their own future."¹¹²

Interestingly, the debate records some discussion about the notion that the Government consulted with Aboriginal people in the drafting of the Bill. Comments from an opposition member Mr Earl included: "If the Minister had taken this course (of consulting Aboriginal organisations), there would not be such a hullabaloo (over the Bill)."

Mr Earl also made the only comments in the debate related to children in care of the State:

Clause 7 deals with the children's homes at Kinchela and Cootamundra. These two institutions have done outstanding work in the past. Their activities are to be wound up

and rightly so. The children... are to be sent to child welfare homes where they will mingle with white children and be educated into the society where they properly should be.

Rightly or wrongly, I have always felt that Kinchela and Cootamundra were similar to segregated schools. Their maintenance was a form of racism which we white people quite wrongly accepted... They (Aboriginal children) are Australian children, and if their families break up, if their parents separate and the children become the responsibility of the State, they should be sent where white children are sent... However, although the principle was wrong, both institutions did an exceptional job for the children... However, it is time that those children were treated as white children are...

The aborigines are anxious that Kinchela and Cootamundra reserves will not be disposed of by sale. Instead, they hope that when they cease to be used as institutions for aboriginal children, the Government will make it possible for aborigines to take up tenancies on these reserves and develop them. I ask the Minister to consider this submission.

Assimilation remained the underlying attitude. An indication is that, as recommended by the Joint Committee in 1966, the Board's journal, *Dawn*, continued to be published for a further six years with a new title of *New Dawn* under the sponsorship of the Department of Child Welfare (then Youth and Community Services).¹¹³ The journal maintained its paternalistic position and upheld the Board's 86 year legacy by promoting the correct path for addressing "the Aboriginal problem".

The principal changes in the new Act were:

- s.2 (1) The definition of "Aboriginal" was changed to "a person who is descended from an aboriginal native of Australia".

- s.7 (1) All reserves became Crown land reserved for Aboriginal people, while Stations and property of the Board were vested in the Minister for the Act as a corporation.
 - (k) All wards of the Board became Wards under the Minister for Child Welfare.
 - (l) All boarded-out wards became foster children under the Child Welfare Act.
 - (m) Wards placed with employers came under the Child Welfare Act.
 - (n) Agreements made about wards became agreements under the Child Welfare Act.
 - (o) Homes of the Board became depots under the Child Welfare Act.

Changes in the Welfare Department

5.3

s.8 An Aboriginal Advisory Council of ten members (six being elected by and from Aboriginal people, three appointed by the Minister)¹¹⁴ was established.¹¹⁵

s.18 The Minister for the Act may arrange with the Minister for Housing “the terms and conditions upon which, and the cases in which, the Housing Commission of NSW shall acquire land for the purposes of the housing of Aborigines.”

In 1969, the Department for Child Welfare and Social Welfare established Aboriginal Welfare Services. This section of the Department took over the administration of the previous work of the Aborigines Welfare Board which was abolished in 1967.

The name of the Department responsible for child welfare changed four times from 1956 to date:

- 1974 Department of Youth, Ethnic and Community Affairs
- 1975 Department of Youth and Community Services
- 1988 Department of Family and Community Services
- 1990 Department of Community Services

In 1971, the Department of Child Welfare and Social Welfare set up the Aborigines Advisory Council with nine Aboriginal members (six of those elected by the community and three appointed by the Minister) and the Director of Aboriginal Welfare Services as the non-voting chairman. The role of the Council was to provide advice. Their main concerns were with land, reserves, housing and infrastructure for Aboriginal communities.

In the period between 1972 and 1976, the Department established a number of Hostels in the Sydney area for Aboriginal girls of working age. They also supported similar hostels for boys run by other agencies and later in other areas of the State. It appears that many came from rural areas.

It should be noted that under the powers of the juvenile justice system during this period many young people were institutionalised for being “uncontrollable”. This was particularly the case for girls or young women. Often girls were treated as offenders because of “immoral” behavior, or for being “exposed to moral danger”.

In 1975 the Department of Youth and Community Services Annual Report indicates the first effort by the Department to introduce any form of training for Departmental staff on Aboriginal issues. Liaison Welfare Officers “played a significant role in the education of non-Aborigines by undertaking speaking engagements addressing staff training groups on the problems and needs of the Aboriginal community.”¹¹⁶

In 1977, the Department officially recognised that young Aboriginal people under the care of the Department “were often isolated from any positive communication with their own people.” The 1977 Annual Report states: “It is the deep and natural desire of Aboriginal people, particularly the young adolescents, to be housed and cohabit with those of their own race and foster placement within the Aboriginal community would help to resolve this situation.”¹¹⁷

The 1980s saw the beginnings of the first positive Departmental policy toward Aboriginal and Torres Strait Islander people and in particular its clients. The Department was able to learn from a series of critiques of its practices that it was still failing Aboriginal people in the delivery of its welfare services. Some clear messages came out of these critiques:

- the need for more Aboriginal staff in the welfare system;
- the need for greater participation by the Aboriginal community in services for Aboriginal people, particularly community-based services for child care and placement; and
- the Department had to do something to help the survivors of past injustices re-establish contact with their families.¹¹⁸

In 1970, an Aboriginal person, Mr Herbert Simms was employed as Liaison Welfare Officer by the Department of Child Welfare and Social Welfare, in the Directorate of Aboriginal Welfare. This was a discrete service within the Department and had the status of a Division. Its role was to provide welfare services to the entire Aboriginal population in the State and to liaise with other agencies such as Health, Housing and Education. Another liaison function was to “keep in very close touch with Aboriginal communities and organisations throughout the State so that the wishes of these people at a local and State level will be known and understood.”¹¹⁹

One Aboriginal Liaison Welfare Officer was employed to carry out this liaison for the entire State. The Liaison Welfare Officer visited reserves, settlements and townships with the dual purpose of explaining government policy to Aboriginal communities and bringing to the notice of the Department particular problems encountered.

It was not until 1975-6 that the Department started to include Aboriginal workers in the process of placing Aboriginal children away from their families. It was also in the late seventies that Aboriginal families were sought out for adoption of Aboriginal children. This was limited, however, as the Department saw only a limited range of middle class Aboriginal people as appropriate adoptive parents.¹²⁰

In 1977-78, the Department was provided with funds from the Commonwealth

5.4

Aboriginal welfare staffing

Government for an Aboriginal Trainee Caseworker Scheme. Under this scheme, the first 12 Aboriginal caseworkers started working on casework in 1978.¹²¹ At this time, the NSW Health Commission had more than 60 Aboriginal people employed.¹²²

In 1985, the Department published a Discussion Paper, *The Unique Role of Aborigines in Welfare*, by Dr Roberta Sykes which raised a series of issues about the engagement of Aboriginal workers in the welfare department. It commented:

The previous policies of the Department, for example to remove delinquent children from homes in which the parent(s) were unable or unwilling to exercise authority and maintain the cooperation of the child to conduct him/herself in a law-abiding manner, impacted most severely on the Aboriginal family - not because the family was unwilling to exercise authority, but because their authority had been totally undermined by circumstances far beyond their control and dating back 200 years.¹²³

By 1986-87, there were 98 Aboriginal people who were members of the Department's staff. Seventy of these were District Officers.¹²⁴

5.5

Aboriginal Agencies

Changes to Departmental practice toward Aboriginal child placement were accelerated because Aboriginal people set up their own services to have input into policy. The Aboriginal Children's Service in Redfern was the first agency of its kind in Australia and continues to play an important role in Aboriginal child placement and family support in NSW. Initially the service was funded by Australian Catholic Relief; it later received funding from the Department.

5.6

Adoption since 1965

Although there have been 100,000 legal adoptions in New South Wales since 1923, the only way in which one could estimate the number of children of Aboriginal and Torres Strait Islander background who were adopted would be to look at each individual record. This would be possible only if the NSW Supreme Court gave explicit permission for each individual search. Even then the information on the adoption record would not necessarily include identification of Aboriginal or Torres Strait Islander background.

Up until 1990, with the introduction of the *Adoption Information Act*, adoption practice was always carried out in long-term secrecy. A common finding in adoptions research is that, where children were adopted to families with a completely different cultural background to their own and where the adoptive family did not maintain some cultural links for the child, the adopted children have suffered from inter-cultural adoption.

It is now recognised that adoption itself is a specific way of caring for children that

has its roots in non-Aboriginal concepts of family: "Aboriginal families do not necessarily function on the same premise as non-Aboriginal families; they have unique features which must be considered when determining ways to care for Aboriginal children."¹²⁵

In 1983, the Aboriginal Community Workers conference raised as one of its concerns the high number of Aboriginal children who had been placed with non Aboriginal families through adoption. According to the report of the conference, eight Aboriginal children were placed in this manner. The conference put forward a proposal that "it (is) imperative that it be a Departmental policy that before an adoption surrender is taken from an Aboriginal woman - an Aboriginal worker from the Department interview the expectant mother and advise her of the alternatives."¹²⁶

In 1985-86, the Department of Youth and Community Services developed a set of policies specifically related to the adoption and fostering of Aboriginal children. The policy recognised that Aboriginal people should be used to care for Aboriginal children wherever possible. A review of these policies in that year shows a slight reduction in the proportion of Aboriginal wards (although it was still high at 12% of the total number of wards) and an increase in the number of children placed in Aboriginal care. There was also an increase in consultation with Aboriginal communities regarding Aboriginal wards.¹²⁷

In 1986-87, there was a 12% reduction in the number of Aboriginal wards from 352 in 1985-86 to 311 in 1986-87. This was attributed to the above-mentioned Departmental policy shift.

In 1983, the Standing Committee of Social Welfare Administrators was presented with a Report completed by a working party of the committee. The report, *Aboriginal Fostering and Adoption Review of State and Territory Principles: Policies and Practices*, introduced the first significant positive policies relating to services to Aboriginal and Torres Strait Islander people and in particular the placement and care of Aboriginal and Torres Strait Islander children.

The key policy areas which were later endorsed by the Commonwealth and the States and Territories included the following:

- A definition of Aboriginal as "a person of Aboriginal (or Torres Strait Islander) descent who identifies as an Aboriginal (or Torres Strait Islander) and is accepted as such by the Aboriginal (or Torres Strait Islander) community."¹²⁸
- The inclusion in data of specification of Aboriginality.
- The Aboriginal child placement principles (basically as they exist in the current Act) and the inclusion of these principles in legislation.
- The proper consultation with Aboriginal people in matters related to the care and

5.7

Children (Care and Protection) Act 1987 and Community Welfare Act 1987

placement of children.

- The importance of Aboriginal staff and their appropriate training.¹²⁹

Although the Department's work on its legislative review had already begun, this was a significant point in policy development which recognised the specific needs and aspirations of Aboriginal and Torres Strait Islander people.

The *Children (Care and Protection) Act 1987* is the Act under which the Department of Community Services provides child protection and substitute care services. This Act provides for a descending order or recommended placement options for Aboriginal children. The options included the extended family (as recognised by the Aboriginal community) as its first preference.

Section 87 of the Act sets out the steps that must be followed prior to the separation of Aboriginal children from their people. This action was now considered to be the last resort. The following options were required to be considered for each individual case:

1. the child is placed in the care of a member of the child's extended family, as recognised by the Aboriginal community to which the child belongs;
2. the child is placed in care of a member of the Aboriginal community to which the child belongs;
3. the child is placed in the care of some other Aboriginal family residing in the vicinity of the child's usual place of residence;
4. the child is placed in the care of a suitable person approved by the Director General after consultation with members of the child's extended family and Aboriginal welfare organisations involved in the case...¹³⁰

Each descending placement option can only be dismissed if it can be shown to be "not practicable" or would prove to be detrimental to the child.

This legislation was the first in which Government policy in welfare gave any recognition to the importance of Aboriginal culture, identity, family structure and community.

There is little disagreement with the principle of placing Aboriginal children with Aboriginal families and communities. There are, however, a number of circumstances where dilemmas arise for Departmental case workers.

This includes instances where there is no non-Aboriginal parent, therefore another family's rights must be taken into account; where the Aboriginal family chooses to place their child with a non-Aboriginal family; cases where the child is not safe with their

extended family; or cases where no Aboriginal foster parents are available.

Section 19 (2) of the *Children (Care and Protection) Act 1987* was introduced as an amendment to the Act in 1990, as part of a preventive policy. The section provides an allowance to support the placement of a child with relatives, thus preventing entry into the formal substitute care system. Although not targeted at Aboriginal and Torres Strait Islander families, there has been a high take-up rate amongst Aboriginal and Torres Strait Islander families. Currently the payment is less than the Standard Age-Related Fostering Allowance which is provided in formal fostering arrangements.

It is fair to assume that there has always been a high representation of Aboriginal children in the number of child protection registrations (a registration being a confirmed notification of physical, emotional or sexual abuse, or neglect). However, the earliest data available which specify ethnic background are from 1983-1984.

It should be recognised that a higher proportion of child protection registrations for Aboriginal and Torres Strait Islander children might be due to the fact that the Aboriginal and Torres Strait Islander population has higher proportions of young people than the NSW population on average.

As the protective structures and government administrators were removed from reserves after the abolition of the Aborigines Protection Board, Police increasingly focused on the enforcement of criminal law in Aboriginal communities.

Most arrests related to relatively minor offences against public order and street offences such as public disturbance, offensive behavior and language, vehicle and driving related offences and juvenile offences. The overwhelming majority of offences for which Aboriginal people were and still are arrested were alcohol related.

The relationship between Aboriginal communities and the police continued to deteriorate over this period which resulted in record numbers of Aboriginal people, particularly Aboriginal young people, in the criminal justice system.

Recognition of the need for dialogue between Aboriginal communities and the Police in NSW can be traced back to 1975 when meetings were held to discuss community development and Aboriginal/Police relations in the Redfern area of Sydney.

Few real steps were taken to improve relations until 1980 when a Parliamentary Select Committee of the Legislative Assembly of NSW conducted a general inquiry into the situation of Aboriginal people in the State. The Committee recommended that the NSW Government examine the possibility of establishing a Police/Aboriginal Liaison Scheme to improve Aboriginal/Police relations.

The NSW Police Aboriginal Liaison Unit was set up in 1980, and later became a

5.8

Non-Parental Care Allowance 1990

5.9

Aboriginal/Police Relations

section of the Community Relations Bureau based in Sydney. With the regionalisation of NSW Police Services in 1986, Police liaison and community relations became the direct responsibility of regional commanders and the unit was discontinued.

The Aboriginal Community Liaison Officers scheme, initiated by local Aboriginal communities in Bourke in 1986, was later extended to other patrols with significant Aboriginal populations. The scheme involves the appointment of Aboriginal representatives to work with the local patrols to improve communication and co-operation between local Aboriginal communities and local Police. The scheme has been highly successful in improving Aboriginal/Police relations in key areas and has been extended statewide.

Concerns about the continuing high rates of Aboriginal people in custody and poor relations between the Police and Aboriginal communities culminated in 1987 with the establishment of the Royal Commission to review the causes of Aboriginal deaths which occurred in Police custody, prison or any other place of detention since January 1980. The Royal Commission was also to recommend subsequent actions to be taken regarding the conduct of Colonial, Police or Prison Authorities.

Preliminary findings handed down by the Royal Commission in 1988 were that Aboriginal people were over represented in custody. It was found that this general over representation exposed Aboriginal prisoners, to an extraordinary degree, to dangers of cell death. It also found that Aboriginal deaths were occurring more frequently in Police cells than State prisons and that proportionately larger numbers of Aboriginal prisoners were young men.

Interim recommendations of the Royal Commission handed down in 1988 focused on improving Police procedures, cell facilities and safety guidelines to reduce the risk of deaths in custody. At a broader level, the Royal Commission recommended that drastic and immediate action should be taken by State Governments to reduce the numbers of Aboriginal offenders, particularly young Aboriginal offenders, entering the criminal justice system. It recommended that alternatives to imprisonment be introduced to break the cycle of offending, imprisonment and recidivism that many Aboriginal young people fall into.

5.10

Housing

Following the 1967 Referendum, the States commenced negotiations with the Commonwealth regarding social and housing programs for Aboriginal people in the respective States.

The introduction of the Housing for Aboriginals (H.F.A.) program made access easier. Since 1969, Aboriginal people have been able to apply for housing assistance under H.F.A. or the mainstream programs of the Department of Housing.

According to the terms of the *Aborigines Act 1969*, the Housing Commission had the role of agent for the Minister for Child Welfare and Social Welfare, in the construction and management of homes for Aboriginal families.

The NSW Parliamentary Joint Committee upon Aborigines Welfare report dated 13 September 1967 recommended, inter alia:

The housing of Aborigines should be the responsibility of the Housing Commission of New South Wales. To bring this about those portions of Aboriginal Reserves used for residential purposes will have to be vested in the Housing Commission... non-residential areas will be vested in the Director of Aboriginal Affairs.

No further homes should be built on reserves and as rent collection must be separated from welfare work, the Housing Commission is the logical body to take over the responsibility for rent collection.

As families moving from humpies would not have sufficient furniture or many modern household aids, short term furnishing loans should be introduced and administered by the Housing Commission. Under no circumstances should 'hand outs' be considered.

Younger people should be counselled to leave reserves with a view to obtaining suitable housing and employment. (p2)¹³¹

Housing Commission officers under regulations of the Department of Child and Social Welfare were given the responsibility of notifying the Department of Child and Social Welfare of perceived child abuse, neglect and exposure to moral danger. Housing Commission Instruction No. 741 to District and Housing Officers states:

It is normal practice for officers of the Commission to bring to the notice of local officers of the Child Welfare Department instances of neglect of physical welfare of children of tenants, exposure to moral danger, ill treatment etc. of which they become aware... Where it is evident, whether eviction proceedings are in train or not, the Commission tenant's children appear to be neglected to an extent warranting investigation by the Child Welfare Department, action should be taken to contact the appropriate District Office of the Department and report the circumstances and request appropriate action... (and) action can be pursued so far as the tenancy itself is concerned e.g. rental arrears, neglect of property etc.

This memo concerns all tenancies of the Commission, not just Aboriginal tenants.

a

Reporting to Child Welfare

*Casework and
monitoring*

b

It indicates the extent to which families, including Aboriginal families, were under continuing scrutiny and subject to the opinion of Housing Officers as to the appropriateness of parenting of their children.

During the 1970s, white cultural standards placed on applicants in relation to domestic and housekeeping skills may have placed some Aboriginal families at a disadvantage and impeded access to public housing.

Departmental Circulars and Instructions show the development of Casework with Aborigines related to housing. Extensive monitoring of Aboriginal families was initiated with Instruction No. 386 of 25th September 1972 (Attachment 47), which stated:

1. The Department's Casework Service is to be provided to Aborigines on the same basis as with other members of the community... (with) particular regard to the cultural and social background.

2. In general, counselling should be directed towards promoting the general well being of the family, improving the acceptability of the family within the community, motivating them to apply for and accept tenancy of standard housing as soon as they are able, and assisting them with budgeting so that the family can take their place in the community of their choice. In addition to these matters of counselling in respect of personal functioning, other particular areas of attention should be cleanliness, the use of domestic facilities and appliances and the use of community resources.

3. ... However, in order to promote the State's programme for Aboriginal advancement, it is necessary to provide a more wide ranging family counselling service to assist certain Aboriginal families who are unsuitably housed or who may be experiencing some difficulty or be in need of a degree of support in adjusting to changed housing conditions. Accordingly, where Family Casework Files are not in existence for certain Aboriginal families by reason of previous Departmental procedures, a Family Casework File is to be established immediately in respect of:

- a) each family living on a Reserve, whether the head of that family is the nominal tenant or not;*
- b) each family living on a Settlement, whether a Reserve or not;*
- c) each family unsuitably housed whether in sub-standard conditions in rural (e.g. river banks, camping areas or in isolated areas) or urban (e.g. sub-standard or overcrowded accommodation) areas;*
- d) any family whose Application for H.F.A. housing is marked out;*
- e) any family whose Application for H.F.A. housing is deferred;*

- f) any family who is offered a H.F.A. cottage;
- g) any family who moves into an H.F.A. or Housing Commission Cottage;
- h) any H.F.A. or Housing Commission tenant (whether children are living with the tenant or not) who has been issued with a Notice to Quit;
- i) any family who is the subject of proceedings for the recovery of possession of an H.F.A. or Housing Commission, OR
- j) where a family or group exhibits:
 - i. an unsatisfactory manner of living;
 - ii. inability to cope with reasonable community standards;
 - iii. poor standards of hygiene;
 - iv. difficulties in child care including obtaining regular school attendance;
 - v. significant budgetary problems including the regular payment of rent;

the Officer in Charge is IMMEDIATELY to arrange for a full programme of family casework and counselling to be undertaken. The programme is to be maintained until approval is given to relax visitation or to cease casework...

6. Where the District Officer...is of the opinion that in the first instance there is no necessity for casework or the Department's intervention with any family or group... he is to submit... A Special Report... including the following...

- b) full names, dates of birth, relationship to one another, of all persons living in the house, camp etc;
- c) brief description of care (including regularity of school attendance) given to any children living with the family;
- d) brief description of state of cleanliness of living quarters...

22. Where an Officer of the Housing Commission issues a Notice to Quit for an H.F.A tenancy (and in relation to rent arrears breaches, this would normally issue where the rent is three weeks in arrears) he will forward a copy of that notice to the District Office of the Department...

23. ... where the rental account is five weeks in arrears... he will forward a request seeking the DO's concurrence with the laying of information. (For the Recovery of Possessions of H.F.A. Premises). (The DO could agree or state reasons why he/she did not agree to the laying of information)...

32. ... where a Warrant of Possession (granted by the Court) is executed, the Officer in Charge is to arrange for a Report... to cover...

- c) *arrangements made for proper care of any child formerly living in the house,*
- d) *where known, the present circumstances of each child or young person and their parents, formerly living in the house;*
- e) *the District Officer's proposals in the light of the execution of the Warrant of Possession for modification of the Casework Plan for the family as a whole.*

In August 1976 Instruction No. 386 was amended to reflect changes in housing allocation and eviction procedures, but the requirements for family casework for Aboriginal families remained, as above.

The impact of this intensive case working of Aboriginal families on the removal of children is yet to be analysed, however it seems likely that this level of intervention would have brought the Child Welfare Office's attention to many more children who were inadequately housed than previously would have been the case.

It is less likely that at this time parents would have remained uninformed about the whereabouts of their children, though difficulties in visiting them frequently in institutions or with foster parents may have had an impact similar to the former removal practices, in disrupting families and causing grief to the family unit and extended family.

Resettlement

c

The Department during the early years of the introduction of the assimilation policy encountered objection to the settlement of Aboriginal people into towns, cities and larger rural areas. The Department of Housing continued to provide housing options to Aboriginal people. The first mention of housing for Aboriginal people in the Annual Report of the Housing Commission 1970 reports:

The integration of families into various communities is not an easy task... Dispersal of Aboriginal families within various towns is an essential element of the process of integration and the acquisition of suitable building lots is proving difficult due to the limited number of vacant lots in built up residential areas.¹³²

The Housing Commission developed policy and conditions for Resettlement of Families to Areas of Better Opportunity, under the Homes for Aborigines (H.F.A.) program. It required the involvement of Child Welfare Officers to make assessment of suitable families. The policy stated:

In several areas (currently in the Sydney Metropolitan Area and Newcastle) the Commission is constructing or assisting in acquiring dwellings for the Department of Child Welfare and Social Welfare which have been specially designated for the purpose of resettling Aboriginal families... In relation to the dwellings at Newcastle it is intended that they will be tenanted by families proposed for resettlement from Bourke under a research

*project currently being carried out by the University of NSW. At Mount Druitt a small number of dwellings will be available for families nominated by the Department of Labour and National Service for resettlement from Brewarrina...*¹³³

Conditions included:

*Where a family is selected for resettlement to some other town, and this would normally be conveyed to the Commission by the local Child Welfare Officer, the application, if approved should be transferred to the resettlement town and formally considered at a joint review in that town.*¹³⁴

In 1972, Housing Application Committees were required to approve tenancies. Memos to District Officers and Area Managers indicate that there are "misconceptions of how procedures should be applied" in practice. Homes for Aboriginals Allocation Procedures Memo of 7/1/72 states:¹³⁵

1. There is no provision in the instructions for Aboriginal families to be approved for normal H.F.A. town housing, if rejected by the local Housing Applications Committee. Should a Committee refuse to accept favourable recommendations... the case should be reported immediately to the Area Manager...

2. An Aboriginal family considered not to be ready for town housing and who has been deferred for further counselling, may be included on the H.F.A list in normal priority order, but the list must be noted 'Reserve Type Housing Only' and allocations of this type of accommodation only made... At some later stage, of course, the application may be approved for town housing after a period of counselling...

3. There are towns where there is no reserve type of housing. Should an Aboriginal family be deferred for further counselling, the application should not be included on the list marked 'Reserves Type Housing Only' because obviously none will be available.

The Department of Housing continued to work hand in hand with Aboriginal communities and played a major role in the Aboriginal Resettlement Program aimed at providing choice to Aboriginal people wanting to move away from the socio-economic situations of remote or small rural centres or reserves and missions.

The 1970 groundswell for social change and self-determination by various Aboriginal groups sought acknowledgment by Government of the importance of Aboriginal involvement in housing. The Commonwealth State Housing Agreement recognised this and developed and strengthened the Housing For Aboriginals Program.

1973

Total H.F.A. properties reached 1145 plus mainstream tenants. Resettlement program commenced with the participation of Housing Commission, Australian Employment Service and Australian Department of Labour. NSW Department of Youth and Community Services reported increased movement of Aboriginal families from remote and small country centres to larger centres (numbers unknown). Discussion between Commonwealth and State commenced regarding the responsibility of Aboriginal Housing and other social programs.

1974

H.F.A. dwellings now 1235 - Housing Commission had high number of Aboriginal applications.

1975

Title of missions and reserves in NSW handed over to the NSW Aboriginal Lands Trust (ALT). During the year, 264 properties in twenty-three reserves were transferred to the Trust.

1976

Commonwealth H.F.A. program commenced. The program excluded Aboriginal Reserves and Missions. H.F.A. dwellings now number 1355. Title to H.F.A. properties built by the Aborigines Welfare Board and the NSW Department of Child Welfare and Social Welfare prior to 1970 became the property of the Housing Commission. Federal Minister for Aboriginal Affairs sought Aboriginal participation on Tenancy Advisory Committees, but the NSW Minister for Housing on advice from the Housing Commission rejected the need for Aboriginal participation on committees.

1977

Housing Commission District Officers were consulted about the appointment of an Aboriginal member to all Housing Application Committees, an issue "raised on many occasions since the Commission first became involved in the management of H.F.A. Housing in 1969."¹³⁶

1978

1331 H.F.A. properties with approximately 600 mainstream (Aboriginal) tenants. Commission saw no need to distinguish between nationality or ethnic background of families, with selection policies for all applicants the same. The Housing Commission reported that transfer of houses and title to the Aboriginal Lands Trust was not in the best interest of Aboriginal people. Commonwealth sought special condition to ease eligibility criteria for H.F.A. properties.

The Department of Housing since the 1980s has encouraged and strengthened its relationship with the Aboriginal communities of NSW through the establishment of Aboriginal Advisory Boards, Committees, Units and the employment of Aboriginal people in key service delivery areas.

The Department placed great emphasis on ensuring the issues for Aboriginal people were maintained as an important part of its core business. This is in contrast to the 1970s where efforts to involve Aboriginal people on Tenant Advisory Committees were unsuccessful.

1981

Aboriginal Advisory Board to the Housing Commission was established. The role of the Board was to provide advice of a program and policy nature to the Minister in regard to the provision and administration of housing and associated services for Aboriginal people, and to liaise, cooperate with and advise the Housing Commission in relation a variety of matter including selection of Aboriginal tenants.¹³⁷

1983

Aboriginal Housing Advisory Board recommended the appointment of eight Aboriginal Liaison Officers (identified positions) to commence work with the Housing Commission in areas with a significant Aboriginal population. Single people not in receipt of a pension became eligible for housing.

1984

2600 H.F.A. dwellings. Aboriginal people now well represented on Housing Application Committees (formally Tenant Advisory Committees). Discussion commenced regarding Local Aboriginal Lands Council (LALC) desire to gain control of H.F.A. Program and H.F.A. properties in line with self management guidelines. Aboriginal tenants expressed concern over this proposal.

1985

Debate continued regarding H.F.A. transfer to LALCs. Advisory Board disbanded, replaced with an Aboriginal Advisory committee with Lands Council representation. Housing on Aboriginal Lands (HOAL) program commenced.

1986

Results of a Commonwealth Housing survey indicated that some 3500 houses were needed to meet the basic demand of the Aboriginal community of NSW. Housing Application Committees (formerly Tenant Advisory Committees) disbanded. New eligibility

criteria, with need now not a requirement. Public Housing H.F.A. stock now 3128. The fact remains that the Aboriginal population still lived in some of the worst housing conditions. Housing Commission and LALCs cooperate.

1987

Local communities are being fully involved in all stages of the projects wherever possible. Some of the dwellings constructed will be on missions and reserves where it is recognised that housing conditions are worst in NSW.¹³⁸

1989

Aboriginal Unit established within the Housing Commission to administer H.F.A. program and provide advice to the Housing Commission. 3500 H.F.A. dwellings, with 3500 Aboriginal people on waiting lists. Dwellings were designed in consultation with the communities on whose land they were built. A management training package was developed to help Local Aboriginal Land Councils to manage housing stock.

1992

There were 1827 applicants on H.F.A. waiting lists at 30th June 1991.

1993

3700 dwellings were provided through the H.F.A. with 1979 households on the waiting list. Aboriginal Housing Policy: Review undertaken, and the aim is for "eventual self management of housing by Aboriginal communities in accordance with the principles of self determination."¹³⁹ The demand for Aboriginal Housing showed a 38% increase in applications from 1991 to 1993. The waiting list increased by 51% in the same period.

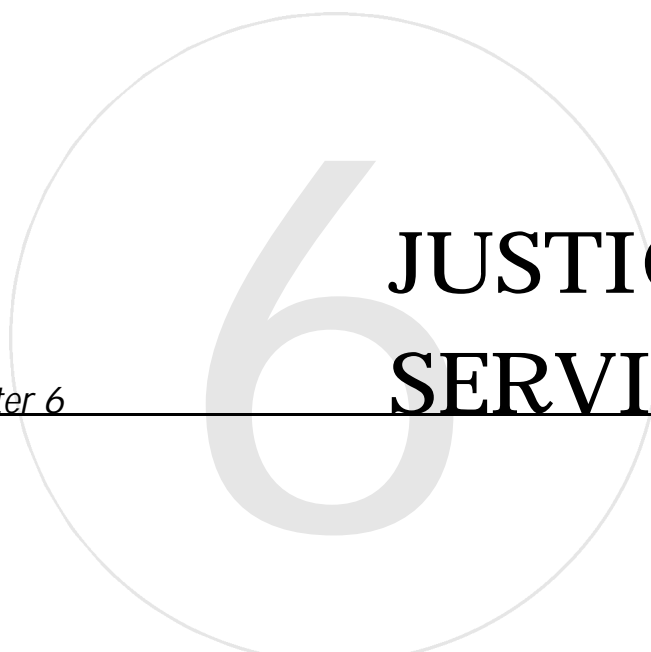
1994

The Aboriginal Housing Policy and Planning Unit of the Department of Housing was transferred to the Office of Housing Policy and formed the Division of ATSI Housing. At June 1994 there were 3770 dwellings within H.F.A. and 2022 households on the waiting list.

1995

The H.F.A. program was administered by the Department of Housing and provided homes that are culturally appropriate to the needs of the Aboriginal and Torres Strait Islander community. The Housing for Aboriginal Communities Program provided housing managed by Aboriginal community organisations including Land Councils.

- ¹⁰⁶Report from the Joint Committee of the Legislative Council and Legislative Assembly upon Aborigines Welfare, 13 Sept. 1967 p.7
- ¹⁰⁷op cit. p.24
- ¹⁰⁸op cit. p.25
- ¹⁰⁹op cit. p.10
- ¹¹⁰op cit. p.21
- ¹¹¹op cit. p.22
- ¹¹²Second reading speech, Aborigines Bill 1969, NSW Legislative Assembly 18 Feb 1969 p.3731
- ¹¹³Copies of the journal are held in the Mitchell Library at the NSW State Library, Macquarie Street, Sydney. They hold volumes of Dawn from 1952-1969 and New Dawn from April 1970 to April 1975
- ¹¹⁴The members of the Aborigines Advisory Committee were: Elected members - Mr WJ Cohen, South Kempsey, Mr O Cruse, Kiah, Mr H Hall, Walgett, Mr LAF Ridgeway, Moree, Mrs MP Stewart, Mount Druitt, Mr TH Williams, La Perouse. Nominated members - Mr WJ Naden, Gilgandra, Mr RG Riley, Broken Hill, Mrs IMA Smith, Armidale. The Chairman was the Director of the Aboriginal Welfare, Mr IS Mitchell
- ¹¹⁵The Aborigines Act, 1969
- ¹¹⁶Department of Youth and Community Services Annual Report, 1975, p.28
- ¹¹⁷Ibid. p.27
- ¹¹⁸The following papers were significant critiques: Chisholm, R. Aboriginal Children: Political Pawns or Paramount Consideration?, in 1983 in Reports and Proceedings of the Social Welfare Research Centre, UNSW, No. 34. Tomlinson, J. Aboriginalising Child Care, 1992. Presented at the Department of Social Work, Sydney University, Summer School. Sykes, R. The Unique Role of Aborigines in Welfare, 1984. Paper adapted from an evaluation study conducted on the role of Aboriginal Community Workers for the NSW Department of Youth and Community Services, Sydney (see also Attachment 25)
- ¹¹⁹Department of Child Welfare and Social Welfare Annual Report, 1972, p.16
- ¹²⁰Learning from the Past, op cit. p.49
- ¹²¹Department of Youth and Community Services Annual Report, 1972 p.27
- ¹²²Sykes, R. op cit. p.7
- ¹²³Sykes, R. op cit. p.4
- ¹²⁴Department of Youth and Community Services Annual Report, 1986-87 p.33
- ¹²⁵NSW Law Reform Commission, Review of the Adoption Act 1965, p.193
- ¹²⁶See Attachment 14. Aboriginal Community Workers Conference Report, Gullama Aboriginal Community Services Section, Sept 1983. p.6
- ¹²⁷Department of Youth and Community Services Annual Report, 1985-86 p.17
- ¹²⁸Report of the Working Party of the Standing Committee of Social Welfare Administrators Aboriginal Fostering and Adoption Review of State and Territory Principles, Policies and Practices, October 1983 p.31
- ¹²⁹For further details, see the above report
- ¹³⁰Children (Care and Protection) Act 1987 (NSW), p.68
- ¹³¹See attachment 45. Housing of Aborigines, p4
- ¹³²Annual report of the Housing Commission, 1970 p.38
- ¹³³See Attachment 48. Homes for Aborigines: Resettlement of families to areas of better opportunity, Housing Commission of NSW, 1971
- ¹³⁴Ibid
- ¹³⁵See attachment 49, H.F.A Allocation Procedures Memo of 7/1/72
- ¹³⁶See attachment 43. Letter from the Acting Secretary of the Housing Commission of NSW to the Minister, dated 29/11/1977 re-determination of eligibility for H.F.A. dwellings p.1
- ¹³⁷Housing Commission, Annual Report 1981/82 p.7
- ¹³⁸Housing Commission, Annual Report 1987, p.24-25
- ¹³⁹Housing Commission, Annual Report 1993, p.33



JUSTICE SERVICES TODAY

chapter 6

6.1

The Police

Following the release of the final report of the Royal Commission into Aboriginal Deaths in Custody in 1991, the Police Service has introduced a range of strategies to reduce the number of Aboriginal people in custody. The Police Service is continuing to implement the recommendations of the Royal Commission leading to improvements in policies and practices as they relate to the use of Police discretion, cell facilities and safety guidelines.

Particular attention has been given to addressing issues for Aboriginal young people. Generally, Aboriginal young people appear in the system at an earlier age, appear more often and reflect the demographic concentrations of isolated and service deprived rural communities. The over representation of Aboriginal young people in the criminal justice system points to the need for diversionary measures, where appropriate, such as Police cautions and other pre-court diversion schemes.

a

Cautions

Currently, cautions are allowed under *Commissioner's Instruction 75 - Child Offenders* (Attachments). There is no legislative support for this diversionary scheme. Police cautions effectively exist as a Commissioner "endorsed" use of Police discretion. There is concern about the differential use of Police cautions particularly, for Aboriginal juvenile offenders. Measures are being introduced by the Police Service to encourage the greater use of Police cautions in dealing with young people generally and in particular with Aboriginal young people.

Police use of discretion (arrest, bail, caution, etc.) is currently undergoing detailed review. Cross-cultural training and education issues that may be factors influencing Police decision-making is also the subject of review.

b

Youth Policy and Action Plan

With the introduction of the *White Paper on Juvenile Justice*, which received bipartisan government support, the Police Service has been participating in a "whole of government" approach to the problem of Aboriginal young people in the juvenile justice system. As a result the Police Service has developed a comprehensive *Youth Policy and*

Action Plan (Attachment 34) that incorporates the projects developed for implementation under the White Paper.

The Youth Policy and Action Plan promotes a pro-active approach to dealing with young people generally and aims to:

- Ensure that young people are treated fairly;
- Reduce youth crime;
- Use courts as a last resort;
- Support and involve victims; and,
- Foster positive social change.

Specific strategies include:

- The employment of Youth Liaison officers;
- Greater use of Police discretionary powers and alternatives to arrest; and
- Working with other agencies and the community to develop and participate in crime prevention strategies at a policy and local level.

A Working Party to be chaired by the South West Regional Commander is being established to administer the implementation of the Youth Policy and Action Plan across the Police Service.

The *Aboriginal Policy Statement* was developed and endorsed at the first ever forum between Aboriginal people and the Police Service held in October 1992. The policy explicitly aims to “provide a service to Aboriginal people and in doing so, bring about the prevention and reduction of their involvement in the criminal justice system as both victims and offenders.”

A Police Aboriginal Council was established in 1992, chaired by the Commissioner, to promote better communication between Aboriginal people and the Police Service.

The first *Aboriginal Strategic Plan* (Attachment 35) was launched by the Police Commissioner in November 1993. The Plan’s focus is to “reduce the number of Aboriginal people entering the criminal justice system as victims of crime or as offenders.” It contains the five key result areas of Police Discretion, Appropriate Services, Education and Training, Communication and Safety in Custody. The Plan is currently being reviewed to ensure its effectiveness.

The Aboriginal Community Liaison Officers (ACLO) Scheme has been extended to 50 officers throughout the state servicing metropolitan, regional and remote areas of NSW. Approval has been given for the creation of the position of an ACLO State Coordinator

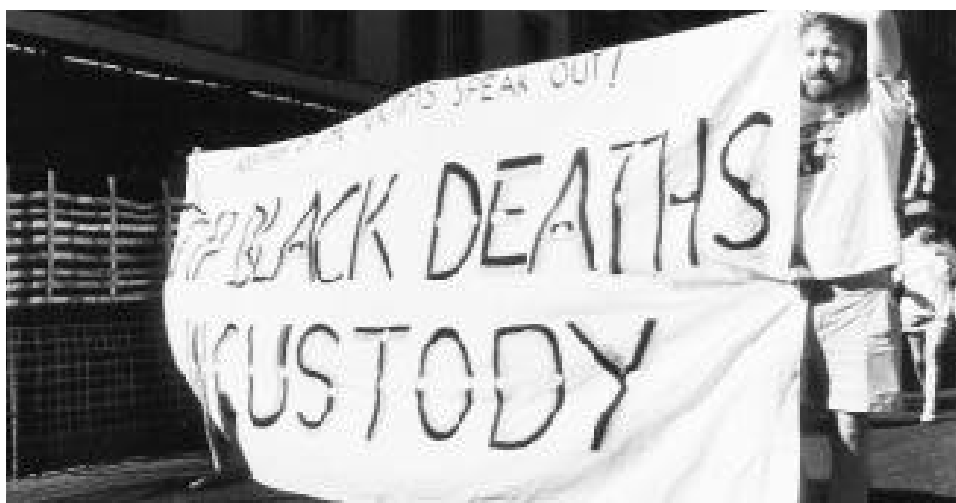
c

Aboriginal Policy

to provide direction and co-ordination for the scheme.

Active steps have been taken to increase the number of Aboriginal Police. To date, there are 147 sworn Aboriginal Police Officers, 4 Regional Aboriginal Coordinators, one Aboriginal lecturer at the Police Academy, one Cross Cultural Employment Officer attached to the EEO Branch and an Aboriginal Client Consultant in the Strategy and Review Command.

An *Aboriginal Employment Strategy* was launched in December 1995 aimed at increasing the level of Aboriginal representation throughout the service to a minimum level of 2%.



6.2

Correctional Services

a

Aboriginal and Torres Strait Islander Unit

The NSW Department of Corrective Services is not directly involved in the separation of Aboriginal children from their families but has an indirect role in that many of its Aboriginal inmates may have been affected by such separations. Some of the actions of the Department arise from its response to the Royal Commission into Aboriginal Deaths in Custody.

The Department has established an Indigenous Services Unit. Four Regional Aboriginal Project Officers have been appointed, one to each Region, to assist with the management of Aboriginal inmates whilst in custody. These officers are responsible for monitoring, developing and implementing appropriate policies, procedures and services for Aboriginal inmates in the region. They play a role in the classification and placement of Aboriginal inmates, and participate in initial Reception Committees and Program Review Committees when considering classification of Aboriginal inmates. To facilitate their involvement, Induction and Classification Coordinators provide lists of Aboriginal

inmates due to be seen by these committees to regional representatives. The Aboriginal and Torres Strait Islander Service Unit of the Department of Correctional Services advises that it is vital that:

- there are services for people who have experienced a death in custody, separation, mental illness, alcohol and drug abuse and that these services are developed and controlled by Aboriginal people;
- culturally appropriate Aboriginal family therapy programs could be developed by the Aboriginal Legal, Medical and Children's Services;
- that Link-Up (NSW) be resourced to provide treatment and healing to their client groups;
- that women be given the support through programs run by Aboriginal women that promote self awareness, self esteem and life realities.

The Department has developed a policy on Aboriginal inmate classification and placement. The *Policy on Aboriginal Inmates*¹⁴⁰ states:

In accordance with policy where practicable, an Aboriginal inmate should be placed in a Correctional Centre as close as possible to the place of residence of his/her family.

Where an Aboriginal inmate is subject to a transfer to a Correction Centre further away from his/her family, the inmate may seek a review of the decision by the Classification Committee, Long Bay.

Whilst the policy is to place Aboriginal inmates near their families, there may be occasions when this cannot be achieved.

When circumstances prevent the placement of an Aboriginal inmate in the Centre nearest to his/her family sympathetic consideration should be given to providing financial assistance for travel and accommodation to assist the family.

The Department's Action Plan for Aboriginal and Torres Strait Islander Offenders¹⁴¹ identifies five key issues:

1. *The involvement of Aboriginal and Torres Strait Islander people in planning and implementation of Department of Corrective Services policies, services and programs.*
2. *The reduction of the rate of imprisonment of Aboriginal and Torres Strait Islander people and, where possible diversion of Aboriginal and Torres Strait Islander offenders from*

b

Aboriginal Policy

the criminal justice system.

3. An increase in the representation of Aboriginal and Torres Strait Islander staff in the Department of Corrective Services.

4. The raising of awareness among all staff concerning Aboriginal and Torres Strait Islander cultural matters which are necessary for effective interaction with Aboriginal and Torres Strait Islander people and to eliminate discriminatory and racist behaviours.

5. Meeting the special needs of Aboriginal and Torres Strait Islander offenders.

An Inmate Contact Screening Form has been developed. This assists in the identification of Aboriginal and Torres Strait Islander people who have been separated from their families by noting whether he or she has ever been under the Care of the Department of Community Services or has been a Part IX Ward.¹⁴²

c

*Additional
corrective services
for Aboriginal
people*

Aboriginal Post-Release Program

This is a program designed to reduce re-offending and imprisonment rates among Aboriginal people, by addressing some of the social disadvantages faced by Aboriginal people, especially those deriving from lack of employment, education and training. There are 5 established programs at Bathurst, Lismore, Newcastle, Parramatta and Dubbo. The Dubbo office is community based.

In addition, through the Community Grants Program, the Department funds the Aboriginal women's ex-inmate support scheme.

Drug and Alcohol

As a result of the Royal Commission into Aboriginal Deaths in Custody, the Federal Government is to provide NSW Corrective Services with funds to employ four Aboriginal Drug and Alcohol workers and a Coordinator. They are to be placed in correctional centres that have a high population of Aboriginal inmates.

Welfare Officers

There are seven identified Aboriginal Welfare Officer positions at correctional centres with a large Aboriginal inmate population.

Aboriginal Psychologist

An Aboriginal consultant psychologist is employed on a sessional basis. In order to

attract more Aboriginal psychologists, a cadetship scheme is being developed.

Education and Training

A number of education and training programs specifically for Aboriginal inmates have been introduced throughout the State. Educational service providers include community based organisations, universities and colleges from other States. After prolonged negotiation with Aboriginal stakeholders, a joint memorandum of understanding has been negotiated with TAFE for the provision to Indigenous inmates of educational services.

Family travel assistance

The Department of Corrective Services provides financial assistance for families to travel to visit inmates of custodial centres located at some distance from their families. In 1994/95, \$2,143 was expended on families visiting Aboriginal inmates, 15% of the total allocation for such travel.

Health

Corrections Health Services Policy is to involve Aboriginal health services in the planning of its services and selection of Aboriginal staff. A standing Aboriginal Health Advisory Committee will be chaired by the Aboriginal Board Director. The Committee will advise on policy and monitor the provision of health services to Aboriginal inmates and the implementation of Recommendation 192 of the Royal Commission into Aboriginal Deaths in Custody.

On 13 April 1994, there were 111 Aboriginal juveniles in custody, over 26% of the NSW Juvenile Justice Centre population on that day. Given that Aboriginal youth make up less than 2% of the NSW youth population, the over-representation of Aboriginal youth is most alarming. In the four years to 1994, there was an upward trend in the proportion of Aboriginal juveniles detained in these centres. Juvenile Justice programs have developed practices and programs which are culturally sensitive and inclusive.

The Department of Juvenile Justice was established as a separate autonomous government body in November 1991 and as a Department in September 1993. Prior to 1991 Juvenile Justice was part of the Department of Community Services and governed by any laws, policies and practices of that Department.

The Department of Juvenile Justice operates community based and custodial facilities for young people subject to orders of the Children's, District and Supreme Courts of New South Wales.

6.3

Juvenile Justice

Current Law	a	<p>The services provided by the Department of Juvenile Justice are governed by legislation including the <i>Children (Criminal Proceedings) Act 1987</i>, the <i>Children (Detention Centres) Act 1987</i> and the <i>Children (Community Service Orders) Act 1987</i>.</p>
Policy on Juvenile Justice for Aboriginal and Torres Strait Islander Children	b	<p>The proportion of Aboriginal young people in custody has remained high. It fluctuates between 22% and 30% of all juveniles in detention.</p> <p>In part, the high incarceration rate is due to factors outside the control of the Department of Juvenile Justice. For example, the Department has no control over how many juveniles are being charged with criminal offences as opposed to those being cautioned.</p> <p>The Green Paper, <i>Future Directions for Juvenile Justice in New South Wales</i>, introduced the issue regarding Aboriginal young people in the justice system by way of the following statement:</p> <p><i>An analysis of police cautioning, police utilisation of summonses and court attendance notices, police arrest rates, and the court appearance rate of Aboriginal juveniles clearly shows that Aboriginal young people receive fewer cautions, fewer summonses and court attendance notices, have higher arrest rates and are significantly over represented in Juvenile Justice Centres when compared to non Aboriginal young people. The conclusion can be drawn that Aboriginal young people receive more punitive interventions than non Aboriginal young people.¹⁴³</i></p> <p>Legally, the NSW Government, through the provision of Juvenile Justice services, has a special duty of care to ensure the safe and responsible management of young people ordered by the Courts into its protective care.</p> <p>Effective, culturally appropriate Aboriginal programs and services are needed to manage effectively young people ordered into custody. Similar professional services are needed in relation to the supervision of Aboriginal young people in the community.</p> <p>More important, however, is the provision of a range of services to provide alternatives to detention for Aboriginal young people. The provision of programs which are determined and managed by Aboriginal people must be a priority if the recommendations of the Royal Commission into Aboriginal Deaths in Custody and the recommendations of the Green Paper regarding Aboriginal young people are to be treated seriously by the NSW Government.</p> <p>In past years, the Department of Juvenile Justice conducted an extensive community consultation process. In February 1992, the Minister for Justice requested that the Juvenile Justice Advisory Council undertake the preparation of a Green Paper on Juvenile</p>

Justice. The purpose of the Green Paper was to raise issues for public discussion and consultation and to provide a basis for the production of a White Paper by the Government, as an agenda for reform.

As part of its consultation process, the Juvenile Justice Advisory Council, which comprised community representatives, service provider, and experts on Juvenile Justice, held discussion forums in both metropolitan and rural areas with representatives of Aboriginal communities and organisations during 1993/94.

The White Paper, *Breaking the Crime Cycle: New Directions for Juvenile Justice in NSW*, was approved by Cabinet and released in September 1994. There has been bipartisan support of the White Paper reforms.

Both the Green Paper and the White Paper included a chapter on issues affecting Aboriginal young people. Following the release of the White Paper, funds were allocated for the implementation of its recommendations.

The White Paper recommendations relating to Aboriginal issues aims to ensure that Departmental policies and programs address the specific needs of Aboriginal young people and make both community-based supervision and detention centre programs relevant to Aboriginal youth. The emphasis of the White Paper is on liaising with, and funding Aboriginal people, to provide needed services that are culturally relevant and address the needs of young people.

It recognised that Aboriginal communities wish to be involved in the delivery of services and programs to their young people who have offended. Communities have an important role to play in preventing juvenile crime, providing alternative accommodation for Aboriginal young people who are "refused bail" (usually on the basis of homelessness or lack of suitable accommodation for the night), providing support and supervision to young people who receive community based court orders, maintaining links with Aboriginal young people sentenced to detention and providing post-release services.

Juvenile Justice Community Services (JJCS) are responsible for the provision of advice to sentencing courts and the supervision of community based orders. JJCS also maintains responsibility for the Community Service Order Scheme, Railway Reparation Scheme and Fine Default Scheme.

It recognised that a large number of young people offend as a result of specific issues which may be addressed through individual counselling in conjunction with group programs. The Department employs Juvenile Justice counsellors who are qualified in psychology or social work. In rural areas, these services are more broadly distributed and fee for service counsellors from local communities are often employed to provide counselling support for young people.

c

*Juvenile Justice
Community Services*

Current practice

d

The Department operates 10 Juvenile Justice Centres for young people who have been either remanded in custody prior to final court appearances or who are subject to periods of control. 568 young people can be accommodated in those centres. Juvenile Justice Centres attempt to provide the most humane methods of containment. Detention is viewed as a final option of sentencing alternatives and should be limited to those young people who have committed serious offences or have proven to be repeat offenders.

As the majority of Centres are in the Sydney metropolitan region, young people from rural areas have to spend their period of detention in Centres away from their family and community.

Admissions Procedure

The current admissions procedures for Juvenile Justice Centres outline special provisions for Aboriginal young people such as:

- Ensuring provision of special programs aimed at providing Aboriginal young people with opportunities to maintain contact with their own culture.
- Ensuring that Aboriginal young people demonstrating a fear of isolation from others are given the opportunity to share accommodation if in custody in a unit providing single room accommodation.

Family and cultural contact

Where possible detainees are placed near their families but because of the small number of Juvenile Centres, their limited geographical locations and dependence on the availability of beds, this is not always possible. If detainees are aggrieved by decisions related to placement, they are able to write to the Manager outlining their circumstances.

Visits by family, extended family and significant others are possible and encouraged in all Juvenile Justice Centres. Whenever possible, a degree of flexibility regarding visiting hours is maintained. Financial support for travel and accommodation is also provided if required. The majority of Juvenile Justice Centres have facilities where families who travel excessive distances to visit are able to stay overnight. Where overnight accommodation is not available, the Department often uses local motels.

Centres take account of specific needs of Aboriginal residents in regard to visits, such as extended family and distance from home. If a visit is not possible, the Centres allow for reverse charge calls where families have no telephone, or arrange contact through Officers of Juvenile Justice Community Services.

Sympathetic consideration is given to Aboriginal detainees to attend funerals of

relatives. Granting leave for remandees is more problematic but section 23(1) of the *Children (Detention Centres) Act 1987* gives the Director-General power to authorise leave for remandees to attend funerals in particular circumstances.

Managers of Juvenile Justice Centres, wherever possible, arrange for community based Aboriginal groups to be involved in Juvenile Justice Centre programs. Aboriginal organisations visit Juvenile Justice Centres for the purposes of education and support of residents. Cultural subjects such as art, craft, dance, culture, history are taught. The Aboriginal chaplain and organisations such as the Aboriginal Medical Services represent the interest and views of the residents. All Juvenile Justice Centres have residents' committees, comprising both Aboriginal and other residents, who meet regularly with the Manager of the Centre.

Case management

The United Nations' rules and principles for juveniles in custody have been the basis for a new case management system being implemented by Juvenile Justice. The management system includes casework and supportive intervention, contact with families, health services etc for juveniles in Juvenile Justice Centres ensuring that, wherever possible, links with the community are maintained. The system will require the active participation of the family, extended family and/or significant others, wherever possible.

Persons of significance from the young person's cultural background also assist in case management e.g. Aboriginal Chaplain, Aboriginal groups, services or persons.

Medical Services

Additional nursing staff have been employed in Centres and Local Area Health teams provide 24 hours on call services to residents in all Centres. Whenever possible, the Aboriginal Medical Service is in regular contact with Aboriginal clients.

Multi-disciplinary teams which comprise a nurse, visiting medical officer, psychologist, consultant psychiatrist (most centres), AOD counsellor (most Centres) and a case work manager, have been established in Juvenile Justice Centres. Chaplains frequently attend multi-disciplinary team meetings. These teams deliver "holistic" health care with an emphasis on the influence that family, culture, gender and sociological factors can have on health needs and status.

In-service training has been provided on the health needs of Aboriginal young people in custody. The 24 hour crisis support team (rostered psychologists) links residents to 24 hour medical nursing care and mental health care.

Care of detainees

Section 22 of the *Children (Detention Centres) Act 1987* specifies that humane interactions between staff and detainees are required. Any breach of the requirements is an offence and an Officer can be punished by fine or by imprisonment. In an instruction in the procedures and practices manual, it is specifically required that humane and courteous behaviour includes such things as not speaking deliberately in a hurtful or provocative manner. In practice, the type of work involved in Juvenile Justice Centres is educative. Residents cannot be ordered to carry out any work or activity other than:

- work in the nature of housekeeping in and about the detention centre;
- activities in the nature of education or training programs; or
- such other kinds of work or activity as may be prescribed by the regulations.

Complaints and other redress mechanisms

All Juvenile Justice Centres have at least one independent, ministerially appointed Official Visitor who can take up issues with the Manager once they have been approached by a detainee.

All residents in Juvenile Justice Centres are able to officially seek advice or redress regarding their treatment or care of special problems from the Ombudsman, official visitors, Departmental chaplains, Juvenile Justice Officers, the Minister's Office, Managers of Centres or their legal representatives.

A new protocol to be introduced advises residents that they can complain to any of the Directors in the Department. Managers have been instructed to forward the complaints to the Directors without delay. The appointment of an Aboriginal Official Visitor has provided an appropriate person for residents to take up any issue.

The Information Kit, *Information for Families*, outlines available avenues and independent mechanisms for conflict resolution. A Guarantee of Service document is currently being developed and will be distributed to families as well as to young people in the care of the Department of Juvenile Justice.

A system exists whereby any resident who seeks to see an Administration Officer places his name on a list in a register accessible to all residents. They are seen as soon as practicable. The system is seen as adequate in providing for prompt attention to residents' enquires.

There is an Official Visitors Scheme providing persons appointed with power to enter and inspect a facility at any reasonable time; confer privately with any person who is a resident, employed or detained in the facility; report to the Minister independently of the Department on any matters relating to the conduct of the facility. One of the Official

Visitors is an Aboriginal woman with extensive experience in the area of Juvenile Justice. She is available for consultation with other Official Visitors in addition to visiting the Centres herself.

Aboriginality is currently recorded when an offender comes under the Department's supervision.

For offenders not requiring supervision by the Department (e.g. those who receive fines or unsupervised orders), Aboriginality has not been recorded by the courts. An initiative has been launched by the Department of Juvenile Justice and the Judicial Commission, (involving the Attorney-General's Department) which will address this omission, allowing a calculation of rates of Aboriginal recidivism and an assessment of the effectiveness of non-custodial sentences and parole.

The Department provides the Australian Institute of Criminology with the relevant data when a request is received. Data was provided in 1992. Any procedure introduced to provide more frequent and regular data to the Institute will be complied with.

The Annual Report of the Department, which is tabled in State Parliament, includes information, such as Aboriginality, about young people in custody. Furthermore, this data is available to researchers and is published annually by the Department as part of its statistical trends bulletin.

Criteria for the funding of research on Juvenile Justice matters concerning Aboriginal people has been included in the Department of Juvenile Justice Research Policy.

Section 38 of the *Children (Criminal Proceedings) Act* 1987 and section 353AB of the *Crimes Act* 1900 provide for the destruction of certain photographs, fingerprints and all other prescribed records in certain limited circumstances i.e., where a matter is not proved or where the juvenile is admonished and discharged, or where the Magistrate so orders.

All matters regarding mental or physical health, complaints, requests, medical history are documented. Under the new case management system, a system of detainee file (D file) and medical file (Allied Health File) has been implemented to ensure consistency of information and its transfer between centres.

This system ensures that direct health providers and allied health professionals maintain critical information on a detainee. This file is transferred with the detainee when he or she is moved between Juvenile Justice Centres and allows medical and allied health staff, such as alcohol and other drug counsellors and psychologists, to access critical health related information. Medical records for juveniles travel with the detainees whilst in transit where possible.

Critical information is also recorded on the *Authority to Move a Detainee* form which

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Records on Juveniles

*Additional and
proposed services*

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must accompany any detainee. Electronic records and the implementation of the case management ensure a consistent transfer of records for Aboriginal juveniles in Juvenile Justice Centres.

The White Paper *Breaking the Crime Cycle* identifies various "Key Projects" to be implemented. Emphasis is placed on liaising and working with Aboriginal communities to deliver programs and services to Aboriginal young people, such as:

- Increasing sentencing options;
- Aboriginal Counselling;
- Community based programs for Aboriginal offenders; and
- Family Visiting Assistance Scheme.

Section 33(2) of the *Children (Criminal Proceedings) Act 1987* provides for the principle of imprisonment as a sanction of last resort. Non-custodial sentencing options are under constant review. The Department is developing additional programs such as the Attendance Centre Order and the Aboriginal Mentor Program. The White Paper recommends the development of further Aboriginal specific community based sentencing options. The effect of community programs currently being developed and implemented will be evaluated twelve months after commencement.

Dubbo Aboriginal Bail Support

This program assists Aboriginal young people who have committed minor offences and are likely to be refused bail on the basis of homelessness or lack of suitable accommodation. The Department identifies suitable carers from the community, who are prepared to care for young people between the ages of 10 to 18 years, who are in contact with the law. Wherever possible, the extended family of the juvenile will be the first placement option explored - the Department supports the concept of Aboriginal young people residing with their families wherever possible.

Metropolitan Bail Hostel

The bail hostel will provide 24 hour, 7 days a week residential care with intensive supervision for up to six Aboriginal young people (male and female). The hostel will be staffed by suitably trained and skilled Aboriginal residential care workers. A supervisor/coordinator who is not a residential care worker will manage the service and be responsible for the overall administration of the project.

Nardoola Bail Hostel Program

The northern regional support group of the Community Youth Support Task Force, established in 1994, looked at a number of youth issues, including the social, economic and cultural problems in the Moree area. After extensive community consultation, the Nardoola program evolved to provide an accommodation option.

Nardoola will provide accommodation for six young Aboriginal people on remand, additional accommodation for young people on conditional discharge, and a day program for young people on Community Service Order placements. All young people will undergo assessment by the Department of Juvenile Justice prior to entering the program.

Programs and activities provided at Nardoola will include:

- Living skills, literacy and numeracy tuition;
- Alcohol and other drug education; and
- Group work examining violence and abuse issues.

South Sydney Youth Services - Court Support and Post Release Program

South Sydney Youth Services Court Support and Post Release Program is targeted primarily at Aboriginal and non-English speaking background young people between 10 and 18 years who are either at risk of re-offending, have come into contact with the Juvenile Justice system, or are about to be released from a Juvenile Justice Centre. The geographical area from which the target group is drawn is the South Sydney locality.

The program involves:

- Court-based work with young people from the area;
- Supervision of community based orders;
- Referrals from Community Youth centres for counselling; and
- Contact with young people prior to their release from a Juvenile Justice Centre and appropriate follow up.

Aboriginal Mentor Program

The Aboriginal Mentor Program (AMP) is being developed to provide extra assistance and support to Aboriginal young people on remand and/or under supervision in order to encourage positive growth and facilitate reintegration into the community.

Mentors will provide guidance, support and advocacy to Aboriginal young people for periods specified by the Department, and assist to address identified needs in the areas of education/training, recreation, financial assistance etc.

Safe Haven

Safe Haven recruits, trains and supports carers within Aboriginal communities in the Riverina district. These carers provide Aboriginal juvenile offenders with a safe and caring environment when these adolescents are unable to remain or return to their own family homes.

The Ending Offending Program

A structured program which is an alternative to the incarceration of juvenile young offenders. Participants will be referred to the program by the court and participation is mandatory.

The program consists of a group program one day a week (5 hours each day) for a total of 12 weeks. Topics to be addressed in group sessions include values and attitudes, the impact of offending, peer pressure, addictive behaviour, taking responsibility, dealing with emotions, independent living and employment.

Employment of Aboriginal workers

Existing staff numbers in the Department of Juvenile Justice are considered adequate to ensure no Aboriginal youth are disadvantaged through lack of resources.

The Department of Juvenile Justice has 53 identified Aboriginal positions.

- 1 Community Project Officer (Aboriginal)
- 23 Senior Youth Workers (Aboriginal)
- 1 Caseworker (Aboriginal)
- 19 Juvenile Justice Officers (Aboriginal)
- 9 Program Development Officers (Aboriginal) - temporary.

The nine Program Development Officers (Aboriginal) consult with Aboriginal communities and organisations about program development and delivery, and obtain feedback from the Aboriginal community about program effectiveness. They focus on issues such as access, cultural relevance and participation with respect to programs administered by the Department, and the development and delivery of Aboriginal-specific programs by Aboriginal organisations.

The Department also employs Aboriginal sessional supervisors to meet particular needs such as weekend supervision, isolated locations or culturally specific needs.

The Department uses the services of an Aboriginal Chaplain.

The Coordinator, Aboriginal Programs consults Aboriginal communities, and coordinates services being developed and delivered statewide. On a local level,

Aboriginal communities are consulted and actively involved. The White Paper makes several recommendations about the involvement of Aboriginal people and organisations in the development, design, implementation and management of programs.

Rural and remote Aboriginal communities are serviced by 51 Juvenile Justice officers. Fifteen of these Juvenile Justice Officers are Aboriginal and are located in areas of significant Aboriginal population.

Juvenile Justice Officers provide community based support for young offenders to ensure that non-custodial sentencing options are complied with and to communicate with Aboriginal communities. The greater part of diversionary programs are located in rural areas.

¹⁴⁰See Attachment 37, Section 12 of the Policy on Aboriginal Inmates Department of Correctional Services

¹⁴¹See Attachment 39, The Action Plan for Indigenous Offenders, Department of Correctional Services

¹⁴²See Attachment 38, The Inmate Contact Screening Form, Department of Correctional Services

¹⁴³See Attachment 28, Breaking the Crime Cycle - New Directions for Juvenile Justice in NSW, Chapter 8, p.201

CHILD CARE & PROTECTION TODAY

chapter 7

7.1

Introduction

The painful memories and associations with the removal of Aboriginal and Torres Strait Islander children from their families are, for many people, attached clearly to the Department of Community Services as it is today. The Department is still “the Welfare” for many people, particularly older people who witnessed or were subjects of the practice of removing children from their families.

This “stigma”, as it is now referred to, continues to haunt the work of the Department today. For staff working with Aboriginal communities, it is always a hurdle to be overcome. It is particularly confronting for Aboriginal staff as they struggle with their own family histories and their desire to move on and change things. As well, their own families bear the stigma of them working for “the Welfare”.¹⁴⁴

As Aboriginal and Torres Strait People represent a significant proportion of consumers of the Department’s services, this association continues to challenge its image and work in key areas of legislative responsibility such as Child Protection, Substitute Care and Adoptions.

Significant parts of this submission draw upon, *Learning from the Past*, a report commissioned by the Department. Completed in 1994 and prepared by the Gungil Jindibah Centre of the Southern Cross University, this report represents the Aboriginal perspective on the effects and implications, an historical overview of past and present separation of children, welfare policies and practices on Aboriginal families in New South Wales. At this time there is insufficient information available on the history of Torres Strait Islander people in NSW in regard to these issues.

Learning from the Past contains sixty-four recommendations flowing from its analysis of Departmental involvement in the practices of removing Aboriginal children from their families. The Minister for Community Services has responded to the recommendations. This response is included in the internal Discussion Paper, *A New Generation of Services: Our Future 1995 - 2000*, the recently drawn-up strategic plan for the Department’s Aboriginal and Torres Strait Islander Services.

Under the *Children (Care and Protection) Act 1987*, the Department of Community Services pursues policies which are primarily concerned with Aboriginal and Torres Strait Islander children maintaining their family and cultural links if they come under the care of, or to the attention of the Department. If children must be removed from their families and there is no alternative, they are to be placed within their extended family, community or another Aboriginal or Torres Strait Islander family as appropriate. There is also a requirement that Aboriginal and Torres Strait Islander people and communities are consulted on matters relating to the removal and placement of children.

A full list of legislation for which the Minister for Community Welfare is responsible is presented at the end of this submission.

The Department is currently undertaking a review of the *Community Welfare Act 1987* (the enabling Act) and the *Children (Care and Protection) Act 1987* and regulations. The Terms of Reference for the Review are to ascertain whether the current Acts are adequate, whether they require amendment or whether they need to be repealed and replaced with new legislation. It is anticipated that when the processes for the Review are completed, new legislation will be passed in Parliament and ready for implementation by mid 1998.

The current placement principles for Aboriginal children and their families contained in the *Children (Care and Protection) Act 1987* seek to recognise and ensure that the injustices of past child welfare law and policies are not perpetuated. These principles will be maintained in any new legislation. The processes through which these principles are implemented are being reviewed with a view to better meeting the current needs of Aboriginal and Torres Strait Islander children and their families.

The definition of "Aboriginal" and concepts of "family" and "community" and how this impacts on the placement principles contained in the Act are being reviewed. A variety of community consultation processes have been designed to link with metropolitan and rural groups around NSW including Aboriginal communities, Land Council and Aboriginal child care agencies. These processes will become more focused upon the release of a Discussion Paper on the Legislative Review in mid 1996.

The responsibility for child protection and substitute care is within the Child and Family Support sub-program. All policies relating to the removal of Aboriginal and Torres Strait Islander children from their families are set in the context of Departmental Aboriginal and Torres Strait Islander policies.

The sub-program recognises that it is not sufficient to have policies to ensure that if Aboriginal and Torres Strait Islander children are removed they should remain in their

7.2

Legislation

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Proposed changes to laws

7.3

Child Protection

communities or with a family of the same culture. The sub-program also deals with prevention of abuse and neglect and with empowering and strengthening families. It accepts that appropriate supports for self-determination and independence must be put in place.

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Policy

The Child and Family Support sub-program policy for Aboriginal and Torres Strait Islander children includes the following objectives, as set out in the internal Discussion Paper, *A New Generation of Services: our Future 1995 - 2000* as follows:

1. *Reduce the number of Aboriginal and Torres Strait Islander children renotified of suspected abuse or neglect. This will be achieved through strategies which will: increase cultural sensitivity; put greater resources into community development; review and support Aboriginal and Torres Strait Islander workers in the field; ensure that these workers are in the areas of highest need; and develop stronger links with key members of the Aboriginal and Torres Strait Islander community.*

2. *Develop culturally appropriate, flexible services for Aboriginal and Torres Strait Islander children and families. This will be achieved through strategies which will: increase the number of services provided by Aboriginal and Torres Strait Islander people for Aboriginal and Torres Strait Islander children, families and communities; increase support for such services; ensure that an appropriate proportion of Aboriginal and Torres Strait Islander people work in areas where they have a high representation; ensure that funded services employ an adequate number of Aboriginal and Torres Strait Islander people and that non-Aboriginal and Torres Strait Islander people have Aboriginal and Torres Strait Islander cultural awareness training; build formal and informal support networks for Aboriginal and Torres Strait Islander workers in the community.*

3. *Reduce the number of Aboriginal and Torres Strait Islander children in the Department's Alternate Care Services. This will be achieved through strategies which will: establish and strengthen informal support and extended family networks for children 'at risk'; develop an early intervention and prevention strategy for 'at risk' Aboriginal and Torres Strait Islander children and communities; increase the availability of Aboriginal and Torres Strait Islander in-home and out-of-home foster care options; develop protocols for consulting Aboriginal and Torres Strait Islander workers on the entry of Aboriginal and Torres Strait Islander children into care and; improve the cultural sensitivity of out-of-home care for Aboriginal and Torres Strait Islander children.*

Child protection practice in Aboriginal and Torres Strait Islander communities must use models developed in consultation with those communities. There are, however, cases where it is necessary to take immediate action as required under the *Children (Care and Protection) Act 1987* and to separate children from their families.

Departmental staff, both Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander, face the legacy of past practices as they carry out their duties. There is anecdotal evidence that reporting of abuse in some Aboriginal communities is low. Unsurprisingly, the fear of “the Welfare” can stop people taking appropriate action to protect their children.¹⁴⁵

There is also a perception amongst both Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander communities that relevant government agencies are not as inclined to intervene into Aboriginal and Torres Strait Islander families in situations that they would not hesitate to take action on if it were a non-Aboriginal or Torres Strait Islander family. This may deny the rights of Aboriginal and Torres Strait Islander children to prompt and appropriate intervention, under the law, for their protection.¹⁴⁶

In areas where there was a long history of destructive practices, District Officers may be reluctant to remove Aboriginal children from their families on the basis “that the abuse the child is suffering in their home is less damaging than the outcome of the removal.”¹⁴⁷

Although the number of child protection notifications are increasing at a greater rate than confirmed notifications, notifications regarding Aboriginal and Torres Strait Islander children are increasing at an even higher rate. However, only fifty percent of all notifications are confirmed as involving abuse.

In 95% of Department of Community Services Areas, the proportion of Aboriginal and Torres Strait Islander child protection cases is greater than the 1.2% expected of the total population of Aboriginal and Torres Strait Islander children. Over the period from 1986 - 1994, child protection figures show there has been an increase in the net numbers of Aboriginal and Torres Strait Islander children notified, and an increase in the proportion of the total notifications (see table opposite).

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Practice

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Trends

Table 11 - Number of Aboriginal and Torres Strait Islander Children notifications to the Department of Community Services (Source: DCS)

Year	Number of Aboriginal and Torres Strait Islander children notified	Percentage of all children notified
1989/90	955	6.60%
1990/91	1,377	8.10%
1991/92	1,483	7.70%
1992/93	1,715	7.90%
1993/94	2,184	8.60%
1994/95	2,848	9.00%

The Areas which saw significant increases in both the number of and proportion of total notifications were Eastern Sydney, Macarthur, Southern Highlands, Far North Coast, Riverina Murray, Orana Far West and Central West.

Explanations of this trend may include such factors as the low family income of any extended family taking on the care of a child family member increasing due to the likelihood that various forms of assistance are required and that, therefore, the family will come to the attention of the Department.

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Along with changes in attitudes and understanding of Aboriginal and Torres Strait Islander people and their communities, improvements in practice are also reflected in a number of community services. One such service is the Intensive Family Based Services Pilot (IFBS).

This project is being piloted in Casino and is modelled on the native Indian Family Based Service in the United States. Services under the Casino program are provided to Aboriginal and Torres Strait Islander families by Aboriginal and Torres Strait Islander workers.

The IFBS pilot provides intensive, time-limited (2-3 months), in-home, supportive and therapeutic assistance to families in which at least one child is at risk of imminent placement because of protective concerns, or reunification of the child to their natural parents. Aboriginal and Torres Strait Islander caseworkers are available 24 hours a day and intervention is individually designed to meet the needs of each family.

The program aims to protect children from abuse, prevent breakdown in Aboriginal and Torres Strait Islander families and assist in the reunification of families where children

are currently in care. It promotes a regard for the safety of the children, empowerment of parents to provide a safe environment for the children, a reduction of the probability of re-notification of children, and the involvement of local communities in the protection of children.

Another model of practice is the Family Conferencing Model which is operating at Bourke Community Services Centre. This approach provides an alternative to the formal removal of Aboriginal and Torres Strait Islander children from their families.

The Family Conferencing Model involves the Department facilitating a meeting of the child's immediate and extended family to discuss and agree on an appropriate placement for the child within the natural family. Action is then initiated in the Family Law Court by the family to formalise custody and access arrangements where appropriate.

The child and carer receive ongoing support from the Department and other relevant Aboriginal and Torres Strait Islander services within the local community.

Substitute or Alternate Care refers to the fostering of children. Legislation covering fostering is in the *Children (Care and Protection) Act 1987* and under *Fostering Authorities Regulation 1989*. This regulation includes a Code of Conduct for carers. The Code of Conduct sets out the minimum requirements in relation to matters such as the material and physical needs of children in care, together with their social, educational, cultural and spiritual well-being.

The Department of Community Services has developed *Strategic Directions for the Substitute Care Program* to improve services to children and young people in substitute care (Attachment 15). The work of the Aboriginal Review Committee (Attachment 4) and of the Department's Area planning process has identified the need to review the consultation processes and resources for Aboriginal services. Service Development work will be emphasised and models of consultation within Aboriginal communities will be developed.

The proportion of Aboriginal and Torres Strait Islander children entering into care across all Department Areas is higher than their 1.2% population group representation in the total NSW population.

Over 1992-1995, substitute care figures show that there has been an increase both in the net numbers of Aboriginal and Torres Strait Islander children entering into care and an increase in the proportion of Aboriginal and Torres Strait Islander children of the total number of children entering into care. The net number of Aboriginal and Torres Strait Islander children entering care increased from 885 in 1991 to 1291 in 1995. The proportion

7.4

Substitute or Alternate Care

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*Numbers of
Aboriginal and
Torres Strait
Islander Children*

of Aboriginal and Torres Strait Islander children in care was 21.3% of the total in 1995.

Table 12 - DCS Division/Cluster Breakdown of Children in Care in 1995

Division	Rate per 1,000 (0-18 yrs)	Children in Care	Aboriginal Children in Care	% of Aboriginal Children in Care
Met North	2.58	1554	148	11.30%
Southern	2.73	1567	202	15.00%
Northern	3.2	1258	263	20.91%
Western	3.69	741	272	36.71%
State Total:	3.06	5120	885	17.29%

Source: New South Wales Department of Community Services

The following table shows the numbers of children placed in substitute care for the years between 1990 and 1994. It also shows the types of placements made by non-government agencies and by the Department. Although the number of Aboriginal and Torres Strait Islander children placed with non-Aboriginal carers by the Department remains almost constant over the period, this should be contrasted with the increasing overall number of children in care in the same period.

Table 13 - Placement of Aboriginal and Torres Strait Islander Children in Substitute Care in DCS and NGOs 1990/91 - 1993/94

Aboriginal & Torres Strait Islander Children in Substitute Care	90/91	91/92	92/93	93/94	94/95
Funded NGOs: Aboriginal Programs	191	195	242	296	304
Funded NGOs: non-Aboriginal Programs	66	57	37	44	60
DCS Placement: Aboriginal Carers	971	503	555	653	750
DCS placement: non-Aboriginal Carers	157	155	154	157	157
Total	1385	910	988	1150	1271

For further data showing age of children in substitute care entries between 1991-1994 (Attachment 20).

Note: In reading this data, "Actual Entries" is the total recorded entries, but because the same child may enter care more than once in a year, the "Actual Entries" is usually higher than the total number in care in one year.

The number of Aboriginal and Torres Strait Islander couples who were registered by the Department as foster parents as of March 1995 was 347. This figure does not, however, represent the exact number of Aboriginal and Torres Strait Islander couples actually caring for Aboriginal and Torres Strait Islander children as:

- It represents the number of couples who have been approved as foster carers, rather than the number acting as carers at any given time; and
- Most Aboriginal and Torres Strait Islander children are placed with their extended families under kinship arrangements, rather than through formal fostering arrangements.

In addition a number of non-government agencies are also authorised to approve foster parents. The register in these cases is kept by the Principal Officer of the agency concerned, and statistics are kept by the Department (as shown in Table 11).

The current departmental policy on the relationship between the Department and agencies responsible for the placement of Aboriginal and Torres Strait Islander children is currently under review. New standards and protocols are being developed, and new services are being funded according to the needs identified through the Area Substitute Care Planning process. Area Substitute Care Planning Committees have Aboriginal and Torres Strait Islander and other community representation in each Area.

Informal reports from Departmental field staff indicate that Aboriginal and Torres Strait Islander children, who would not necessarily come to the attention of the Department, are receiving services from a number of non-government agencies and other government departments.

Alternate Care funding which supports non-government agencies providing residential and foster services for children in out-of-home care began in 1982. Funding was allocated through the Alternate Care Committee which has one designated non-departmental Aboriginal member.

Funding was made available as part of approved costs from the Department and the balance must be made up by the agency. It was clear that Aboriginal and Torres Strait

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*Aboriginal
Foster Carers*

c

*Non-Government
Aboriginal and
Torres Strait
Islander Child Care
Agencies*

	<p>Islander agencies would not have the independent resources available to the more established agencies. A decision was made to fund Aboriginal and Torres Strait Islander agencies 100% of approved costs. This funding would go exclusively to services for Aboriginal and Torres Strait Islander children with staff and management committees who were Aboriginal and Torres Strait Islander people.</p> <p>Currently there are six agencies providing seven foster care services and three group homes receiving annually a total of \$1,071,240. Two services are located in the city, with the remaining four located in rural regions.</p>
<p>d</p> <p><i>Aboriginal Foster Care Program</i></p>	<p>The Aboriginal Foster Care Program has been developed to reflect current child protection practices, substitute care reform standards and training requirements. Through the <i>Aboriginal Foster Care 'Train the Trainer' Program</i>, Aboriginal and Torres Strait Islander staff are to receive accredited training to recruit and train Aboriginal and Torres Strait Islander foster carers.</p> <p>The objective of this program is to enable Aboriginal and Torres Strait Islander foster families to provide high quality care, and to maintain and preserve the family and community context for Aboriginal and Torres Strait Islander children and young people.</p>
<p>e</p> <p><i>Aboriginal Substitute Care Development Initiatives</i></p>	<p>There is currently a range of developmental projects underway. Substitute Care Program initiatives are commencing in Bourke and New England regions of NSW and involve seeding grants for service development work within Aboriginal communities. The aim is to develop models of services which may be less traditional, more culturally appropriate and which cut across problem areas (e.g. substitute care, child protection, family support).</p> <p>A Statewide Substitute Care Coordinator (Aboriginal) has been appointed and commenced in January 1996 for 12 months. This position was created to address a specific need for Aboriginal and Torres Strait Islander input into service planning to support the work of Area Managers.</p>
<p>f</p> <p><i>Non-Parental Care Allowance</i></p>	<p>As can be seen from the following table there is a very high proportion of Aboriginal and Torres Strait Islander children in non-parent care arrangements in receipt of this allowance.</p>

Table 14 - Children who received section 19(2) Allowances

Year	Aboriginal & Torres Strait Islander population	Total population	Ages				
			0-4	5-7	8-11	12-15	16+
1992	493	958	229	204	292	229	4
1993	631	1259	313	248	350	318	30
1994	697	1408	341	271	400	363	33
1995	712	1494	335	295	397	429	38

Source: NSW Department of Community Services

Although there has been no formal research into the high take-up rate amongst Aboriginal and Torres Strait Islander families, there are a number of anecdotal explanations, such as:

- A commitment by Departmental staff to pursue the Aboriginal Child Placement Principle, section 87 of *Children (Care and Protection) Act*, to place Aboriginal and Torres Strait Islander children within their own kinship system;
- Because there is such a high proportion of dependent children compared with the number of able-bodied adult carers in Aboriginal and Torres Strait Islander communities, the same kin are repeatedly called upon to care for children; therefore, they need financial support and can gain it through the allowance;
- Carers paid this allowance do not have to go through the same approval and training process as foster carers. Therefore it may be a less threatening and less formal option for Aboriginal and Torres Strait Islander carers. It also amounts to less work for the Department than arranging and supervising the placement; and
- Aboriginal and Torres Strait Islander carers may not be aware that they can apply to be foster carers for the Department, or they may not wish to be regarded as such.

It is a feature of the Aboriginal and Torres Strait Islander community that non-parental relatives play a significant role in child-rearing and the nature of familial, tribal and community relationships is such that they do not fit into the Department's current substitute care system.

Once carers receive this payment, the placement is counted as an official substitute care placement. This has the effect of inflating the absolute number of Aboriginal and

Adoption

7.5

Torres Strait Islander children in substitute care. This must be taken into account when considering the overall figures of Aboriginal and Torres Strait Islander children in substitute care. Some of these children for reasons outlined above may not actually be “at risk”.

It is possible that there are many other Aboriginal and Torres Strait Islander children and young people in the care of non-parents (kinship care) who do not come to the notice of the Department because no support is sought or provided.

Section 4 of the *Community Welfare Act 1987* embodies the principle that Aboriginal and Torres Strait Islander communities be involved in decisions about their children's placement for the purpose of fostering and adoption. The *Adoption Act 1965* and its regulations *Adoption of Children*, the *Adoption Regulation 1985* and the *Adoption Information Regulation 1985* currently govern adoption practice in the Department of Community Services.

The *Adoption of Children Act 1965* was reviewed by the NSW Law Reform Commission in 1994 and the Department is preparing a revised Act.

The Law Reform Commission reviewed the *Adoption Information Act 1990* in 1994 and found that the public appears to be aware of the Act, its implementation was successful and its administration is working well. It also found that the vast majority of adopted persons and birth parents welcomed the rights to information and are exercising them responsibly.¹⁴⁸

The NSW Law Reform Commission in its *Review of the Adoption of Children Act, 1965 (NSW)* under 8.9. notes:

Adoption, as it is currently defined, is an unknown institution in Aboriginal customary law. The separation of children from natural families and the absolute transfer of parental rights are incompatible with the basic tenets of Aboriginal society.

Further under 2.8.33 it notes:

Unlike Aboriginal law, Torres Strait Islander law recognises adoption in a form that is not totally dissimilar to NSW adoption law. Adoption in Torres Strait Islander communities involves permanent transfer of parental rights to adoptive parents and there is a reluctance to tell their children of their adoptive status.

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Policy

Currently, the adoption of Aboriginal and Torres Strait Islander children is guided by a draft policy which has been in effect since 1987. The *Placement of Aboriginal Children Policy Statement* was developed in consultation with Aboriginal workers in the

Department (Attachment 13). The policy is based on the Aboriginal Child Placement Principle as set out in the *Children (Care and Protection) Act 1987*, section 87. As proposed in the NSW Law Reform Commission Review, this will be embodied in the new *Adoption Act*.

The policy includes twelve separate principles including:

- Aboriginal children surrendered for adoption must be placed with Aboriginal families;
- All adopted Aboriginal children should have access to information regarding their family and cultural background; and
- In any case where an Aboriginal child is proposed to be surrendered for adoption an Aboriginal worker must be involved in any decision or in any case conference or in any meeting convened to make a decision about the future of that child.

The Adoption Branch of the Department specifically promotes the need for Aboriginal adoptive parents in its Adoption Newsletter in order to maintain a pool of approved adoptive parents for the small number of Aboriginal children relinquished for adoption.

The Department's current draft *Aboriginal Adoption Policy* has, in the main, enabled appropriate decisions for Aboriginal children relinquished for adoption.

Twelve Aboriginal children were placed in adoption by the Department of Community Services in the 5 years from July 1990 to April 1995. The children were placed in the following situations:

- Eleven infants (up to 12 months old) were placed through the local adoption program. All were placed with Aboriginal adopters; and
- The other child was a 13 year old blind boy with cerebral palsy and an intellectual disability. This child was placed through the Special Needs Program with a non-Aboriginal family following extensive efforts to recruit an Aboriginal family. However, this placement was later disrupted and the child was not adopted. The effort to find an Aboriginal family for this child included a new sheet being sent to Aboriginal Child Care Services and all Aboriginal Departmental officers as well as advertising in the press. There were no responses to these efforts.

Over the same period, eight Aboriginal Wards were adopted by their foster-carers. These children were placed in the following way:

- Five of the adoptive families were Aboriginal; and
- The Director General's discretion was used to approve "out of policy" adoption for

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Practice

the other three Aboriginal wards, following consultation with Aboriginal workers. For all three children, their family of identity was clearly their foster family. One child's Aboriginality was not traced until he was nine, while the others, despite involvement in the Aboriginal community, chose at ages sixteen and eighteen not to identify themselves as Aboriginal and consented to their own adoptions.

There are two other agencies in NSW conducting adoptions, Careforce (Anglican Adoption Agency) and Centacare (Catholic Adoption Agency). Details of Aboriginal or Torres Strait Islander placements should be obtained from them.

7.6

Other initiatives in Community Services

A full list of the Acts and Regulations for which the Minister for Community Services is responsible is attached. This section discusses other initiatives of the Department of Community Services relevant to the Terms of Reference of the Inquiry.

a

Disability Services

The Department of Community Services provides services for people with disabilities within a variety of contexts. 2% of those consumers receiving services are Aboriginal or Torres Strait Islanders.

The provisions of disability services within NSW provided, funded or licensed by the Minister for Community Services and Disability Services are required to conform to the *Disability Services Act 1993*. This Act provides a clear framework to the quality of services that are to be provided to people with disabilities regardless of their cultural background.

The supporting Standards to the legislation require that each person's needs are met within an individual response, which is culturally sensitive:

Standard 2.9

Services are provided in a manner sensitive to the age, sex, and the cultural, linguistic and religious background of each person with a disability.

Standard 9.7

Services are provided in a manner sensitive to the cultural background and linguistic environment of each person with a disability.

In addition the Department of Community Services has developed a policy framework that gives specific procedures for how disability services are provided by this Department. The policies of Maintaining Family Relationships, Palliative Care, Advocacy,

Across Agency Liaison, and Sexuality and Human Relations refer specifically to the requirement of cultural awareness. All the policies however require that the individual needs of the consumer are reflected in the services that are provided to them.

In recognition of the importance of increasing the number of Aboriginal and Torres Strait Islander staff in the Department of Community Services, and the need for them to be fully supported and appropriately trained, the Department has developed a comprehensive *Aboriginal Employment Strategy* (Attachment 10).

The strategy has the following objectives to:

- Increase the representation of Aboriginal and Torres Strait Islander staff within the Department. The Aboriginal staff level as of June 1995 was 118 compared to a target of 2% of all staff at 159;
- Implement Departmental awareness and recruitment strategies designed to increase the representation of Aboriginal and Torres Strait Islander staff in the Department;
- Ensure that over a two year period all staff have participated in initiatives designed to increase cultural awareness of Aboriginal and Torres Strait Islander issues and the causes/manifestations of racial inequity/harassment;
- Promote and provide career development and training for all present and newly recruited Aboriginal and Torres Strait Islander staff; and
- Develop and implement support mechanisms for Aboriginal and Torres Strait Islander staff.

The Aboriginal Reference Group is made up of Aboriginal or Torres Strait Islander staff from each of the regions (Attachment 9). Its functions are to:

- Provide Aboriginal and Torres Strait Islander staff with an effective voice on key policy and professional practice issues;
- Provide the Department of Community Services with a mechanism for consultation with Aboriginal and Torres Strait Islander staff on key policy and professional practice issues;
- Be consulted when any Departmental policy is being developed, reviewed or considered for implementation when such policies affect Aboriginal and Torres Strait Islander staff, clients or communities; and
- Initiate consideration of any issues or policies which members determine to be of concern to Aboriginal and Torres Strait Islander staff, clients or communities.

b

*Aboriginal
Employment
Strategy*

c

*Aboriginal
Reference Group
Policy*

<p>d</p> <p><i>Aboriginal History, Heritage and Culture Curriculum</i></p>	<p>The Department is currently developing a training module for all staff to raise awareness and knowledge of Aboriginal history, heritage and culture (Attachment 24).</p> <p>The curriculum is still at a developmental stage. When completed it is intended that it will be part of a comprehensive training program as described below.</p>
<p>e</p> <p><i>Aboriginal Training and Development Strategy</i></p>	<p>This strategy, currently in draft form, is designed to provide an integrated and coordinated framework for both the skill development of Aboriginal and Torres Strait Islander staff, and the training of all staff in Aboriginal, history, heritage and culture (Attachment 22).</p> <p>The strategy also includes a training package for Aboriginal foster carers which is being reviewed for accreditation.</p>
<p>f</p> <p><i>General support for Aboriginal Community Organisations</i></p>	<p>The Department funds fifteen Aboriginal and Torres Strait Islander organisations under its Community Services Grants Program. These support Aboriginal communities in a range of ways, including maintaining and regaining links with culture, and through funding programs strengthening their own communications. The total amount of funding for 1994-95 was \$395,010.</p>
<p>7.7</p> <p>Over-Representation of Aboriginal and Torres Strait Islander Children</p>	<p>Despite the significant changes in practice by the Department of Community Services over the past 15 years, there continues to be a marked over-representation of Aboriginal and Torres Strait Islander people in the child protection and substitute care programs.</p> <p>There are a range of social and economic reasons for this. According to the life stories of a number of Aboriginal and Torres Strait Islander people, some factors can be directly attributed to the effects of past welfare practices. Separation of children has led to an inter-generational transmission of trauma, stress and parenting difficulties because of an inter-generational loss of parenting skills and traditional ways, particularly for those who were institutionalised as children.</p> <p>There is also a rapidly growing population of young Aboriginal and Torres Strait Islander people in comparison to the wider population, as demonstrated by the following statistics:</p> <ul style="list-style-type: none"> • In NSW, 40% of the Aboriginal and Torres Strait Islander population are under 15 years of age compared with 22% of the overall population. • Only 12% of the Aboriginal and Torres Strait Islander population are aged 45 years and over compared with 32% of the overall population, demonstrating lower life expectancies. • In the overall population, the 0-5 year old group increased by 1.4% between 1991 - 1994 whereas the Aboriginal and Torres Strait Islander population of this age bracket increased by 12.7% over the period.

The different age profile for Aboriginal and Torres Strait Islander people is shown in the following table.

Table 15 - Aboriginal and Torres Strait Islander and NSW Population 1991

1991 Population by age	Aboriginal & Torres Strait Islanders	Total NSW	%
0 - 4	10,676	427,053	2.50%
5 - 14	17,174	835,997	2.05%
15 - 24	14,720	878,855	1.67%
25 - 34	11,312	922,644	1.23%
35 - 44	7,614	858,933	0.89%
45 - 54	4,457	626,798	0.71%
55 - 64	2,488	500,615	0.50%
65 & over	1,583	681,179	0.23%
Total	70,024	5,732,074	1.22%

Source: 1991 Census Aboriginal Community Profile and 1991 Basic Community Profile (ABS 2722.1)

Another factor that may lead to higher representation by Aboriginal and Torres Strait Islander children in child protection and substitute care programs is the higher proportion of lone parent families with dependent children among the Aboriginal and Torres Strait Islander population. It is commonly acknowledged that lone parent families are more frequently under stress than two-parent families, primarily for economic reasons. The proportion of families with one parent was 9% in NSW in 1991, but for Aboriginal and Torres Strait Islander families the proportion was 25%.

¹⁴⁴From comments by an Aboriginal staff member of the Department of Community Services. 1996. See also Attachment 23 Heilpern, S&H, *Evaluation of Departmental Services for Child Protection - Aboriginal Clients*, Department of Community Services NSW, page 89

¹⁴⁵*Learning From the Past*, op cit. p97-99

¹⁴⁶See Attachment 4. *Aboriginal Review Committee, A Review of Substitute Care Services for Aboriginal People in New South Wales*, 1995, p18

¹⁴⁷Heilpern, op cit. p105 (see Attachment 23)

¹⁴⁸NSW Law Reform Commission, *Review of the Adoption Information Act 1990: Summary Report 1995*, p.2

ABORIGINAL HEALTH SERVICES TODAY

chapter 8

Aboriginal Health Branch

8.1

The structure of the Aboriginal Health Branch within the NSW Department of Health has changed many times in an attempt to address Aboriginal Health issues in this State. The Branch was set up as a Unit in 1970 with one administrator and four nurses. Before the Unit was created services to Aboriginal communities were generally incorporated in the mainstream Departmental structure. In 1971 the Unit grew with the employment of Aboriginal Health Workers.

The Unit was originally intended to achieve two main objectives:-

1. To improve the health of Aboriginal communities by promoting access to mainstream services; and
2. Educating mainstream health administration and service providers about Aboriginal needs, perceptions and culture.

In 1983 the New South Wales Task Force on Aboriginal Health reported that despite a general level of dissatisfaction with mainstream services, some improvement in the utilisation rates by Aboriginal people of hospital casualty services had occurred following the employment of Aboriginal Health Workers. However, the Report suggested that there needed to be a greatly enhanced contribution from mainstream services towards Aboriginal health.

The 1987 Ministerial Committee of Review revealed the dissatisfaction felt by communities towards mainstream services. Importantly, the Report suggested the employment of Aboriginal Health Workers in mainstream services may not in itself be sufficient to engender the type of changes required. It suggested that attention to the quality of management of mainstream services was needed, if further gains were to be achieved.

The Program Evaluation Review 1989 considered the ability of the Unit to achieve its goals. While it noted the value of Aboriginal Health Workers, it suggested that "minimal attention" had been paid to the process of systems reform i.e. changing the existing

health system so that it matched the perceptions, culture and needs of Aboriginal communities.

The Program Evaluation Review suggested that the Department's failure to address this perspective may have indirectly fostered the prevailing Departmental view that if anything is to be done in Aboriginal Health, then the Aboriginal Health Unit will do it.

The joint Aboriginal Health Resources Committee and Aboriginal Health Unit Advisory Committee meeting in December 1989 re-affirmed this view in decisive terms. It called for changes that would empower the Aboriginal Health Unit to perform a range of senior managerial functions associated not only with its own activities, but also those of other portfolio Agencies, and of other State instrumentalities whose activities impacted on Aboriginal health.

To summarise, it would appear that while the employment of Aboriginal Health Workers and the operation of the Unit has brought about some change in the capacity of the Health system in New South Wales to provide appropriate services, the inability of the Unit to influence senior Central and Regional administrations in an incisive and authoritative way has acted to not only limit the extent to which change can be affected, and therefore improvements realised, but also to limit the potential of any changes won.

According to *The Last Report - Report of the New South Wales Task Force on Aboriginal Health 1990* improvements in Aboriginal health to date have largely been through Aboriginal program and managerial initiative (Attachment 60). Despite prompting, mainstream services have not fulfilled a significant role.

As a result of the recommendations of the Task Force, the Unit was restructured in order to ensure a more equitable health service for Aboriginal people in NSW. The Office of Aboriginal Health was established in January 1993. *The Last Report* envisaged a "strong autonomous central Unit function" and identified the need to bring together Aboriginal and Health Department perceptions of Aboriginal health needs.

Feedback from Aboriginal communities indicated scepticism about the strength of the Department's commitment to Aboriginal Health through implementation of the Last Report, and the OAH structure needed to demonstrate a strong intent to place a priority on bringing Aboriginal health standard up to those of non-Aboriginal Australia. The Minister approved the development of the Branch, which was established in March 1994.

The Aboriginal Health Branch of the NSW Health Department is responsible for advising the Minister for Health on Aboriginal health issues and for the coordination of policies and programs designed to improve the health status of Aboriginal people. A number of reports guide the work of the Aboriginal Health Branch, most notably:

- The National Aboriginal Health Strategy (Attachment 69);
- The Report of the Royal Commission into Aboriginal Deaths in Custody;
- The Report of the New South Wales Task Force on Aboriginal Health 1990, commonly known as The Last Report; and
- The Review of Hospital Casualty Services in Aboriginal health, known commonly as the Hospital Casualty Review (Attachment 66).

The Aboriginal Health Branch is divided into two sections:

1. The Health Care Section, which is responsible for working with Areas and Districts to improve the provision of health services to Aboriginal people; and
2. The Health Status Section, which is responsible for oversighting the funding of Aboriginal community controlled health services and for the development of health promotion projects designed to encourage healthy lifestyles.

The Branch also has a Professional Development Officer who will be working with Areas and Districts to develop a strategy designed to enhance the skills of Aboriginal Health Workers employed across the NSW Health System.

The Aboriginal Health Branch is committed to working in partnership with Aboriginal communities and empowering them to participate in the development and management of strategies and programs which will, in the long run, assist in ensuring that the Aboriginal people of NSW attain the same health status as the general population.

a

Aboriginal Health Strategic Plans

In early 1994, Area/District Health Services were requested to develop Aboriginal Health Strategic Plans. As of 1995, all District Health Services and some AHSs have submitted draft plans, with finalised plans to be submitted by June 1996. A draft Aboriginal Health Policy Protocol has been developed. It is anticipated that the working party for the development of the Policy will be established by the end of May 1995. The working Party will include representation from the Aboriginal Health Resource Co-operative (AHRC), Area/District Health Services and other expertise as required.

Aboriginal Family Health Strategy

The NSW Health Department, in partnership with the NSW AHRC, has prepared an Aboriginal Family Health Strategy. An allocation of \$1.2m in recurrent funding has been approved by the Minister. The Strategy focuses on the delivery of sexual assault and family violence services for Aboriginal people.

Current initiatives

Partnership with the Aboriginal Community

The NSW Health Department continues to foster a partnership approach to Aboriginal health with the NSW Aboriginal community, Aboriginal community controlled health organisations and the AHRC. The NSW Health goals and strategies, including family health were developed under this principle.

National Aboriginal Health Strategy (NAHS)

Aboriginal health continues to develop strategies to implement major recommendations of the NAHS. The Federal Government's recent evaluation of the NAHS has not clearly defined future direction. The Department awaits consultation from the Federal Department of Human Services and Health.

The NSW Health Department as Chair of the State Tripartite Forum on Aboriginal health continues to develop strategies to implement major recommendations of the NAHS. The Federal Government's recent evaluation of the NAHS has not clearly defined future direction. The Department awaits consultation from the Federal Department of Human Services and Health.

Aboriginal Capital Works Program

The Department is continuing the implementation of the Aboriginal Capital Works Program which includes the construction of Community Health Posts. To date 3 have been completed and a further 5 are well underway for construction. The total cost of the program is \$3.2m.

Review of Programs provided to Aboriginal Community Controlled Health Organisations

A review of the Aboriginal Non-Government Organisation Program, conducted by independent consultants, was completed in November 1994. The recommendations of the review which have received broad support, provide a new direction for this important program.

Most mental health services are under-utilised by Aboriginal people. Aboriginal people have been saying for a long time that Aboriginal people need to be employed in mainstream health services and that training and education in mental health needs to be made available to Aboriginal people.

An Aboriginal Mental Health Strategy is in development and a number of Aboriginal Mental Health Workers are to be employed to ensure that all Aboriginal people not only have access to services, but receive quality treatment for mental health problems.

b

*Mental health for
Aboriginal People*

A number of strategic approaches are being taken including cultural awareness, holistic service delivery, admission, discharge, case review, recruitment and resource planning.

The Department of Health suggests that there is an urgent need for a rapid response to provide assessment and counselling programs in line with recommendations such as those of the national consultancy report, *Ways Forward*.

These include:

- Education about trauma and grief;
- Assessments of distress and disorder amongst Aboriginal people;
- Acknowledgment, recognition and practice which enable Aboriginal people to fulfil their particular cultural requirements about death and dying;
- Prevention policies to prevent undue trauma and loss for Aboriginal people and special sensitivity to the high background level of trauma and loss that are part of their experience;
- A general availability of counselling services to help Aboriginal people deal with their experiences of grief and trauma;
- Critical incident debriefing at times of catastrophic events which affect Aboriginal communities;
- The development of special Aboriginal Places of Healing, for example in National Parks and other relevant places of the land. These places of healing should be developed with supportive programs with appropriate centres in each state; and
- Support for reunion and shared grieving, and extension of support for organisations such as Link-Up (NSW).

There is also an urgent need for biophysical research to investigate the extent of health effects of these separations and to determine effectiveness of support, counselling, intervention and any other program or policy requirements.

Membership is open to Aboriginal community controlled health services and Aboriginal community controlled health committees throughout NSW and applications for membership can be made through the AHRC Secretariat.

The NSW AHRC was established following the Report by the NSW Task Force on Aboriginal Health (1982-83). The Report recommended that a committee be set up to enable Aboriginal people to have "a greater measure of control over Aboriginal health resources which affect them".

A working party has been set up to develop specific policy and programs in response to the Inquiry needs and as a basis for future programs to be continued by communities.

Data on Aboriginality and mental health needs of Aboriginal and Torres Strait Islander people will be included in the Centre for Mental Health's strategies.

In June 1993, the NSW Tripartite Forum on Aboriginal Health, which includes representatives of the NSW AHRC, supported the establishment of a bilateral agreement on Aboriginal health between the Commonwealth and NSW Governments. This is consistent with the *National Commitment to Improved Outcomes in the Delivery of Programs and Services to Aboriginal and Torres Strait Islander Peoples*. The Forum's support was conditional on the participation of the NSW AHRC in the development of the agreement.

The Department has established a small Working Group comprising representatives of the NSW AHRC, the Aboriginal and Torres Strait Islander Commission, the Commonwealth Department of Human Services and Health, and the Office of Aboriginal Affairs to commence discussions on a bilateral agreement. The Partnership Forum is discussing a draft framework on a Bilateral Agreement with the Commonwealth Department of Human Services and Health.

The NSW AHRC is a statewide forum of Aboriginal community controlled health services and has an advisory capacity on Aboriginal health. Policy is determined at general meetings (usually two per year) and conveyed to the Ministers for Health and Aboriginal Affairs at State and Federal levels.

The NSW AHRC Executive is elected at the AGM by the 12 regions and meet at least four times per year. The AHRC is not a funding body but has played a role in advising governments on health needs, priorities and programs.

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The NSW AHRC was established following the Report by the NSW Task Force on Aboriginal Health (1982-83). The Report recommended that a committee be set up to enable Aboriginal people to have "a greater measure of control over Aboriginal health resources which affect them."

A Partnership Agreement between NSW Health and the NSW AHRC, the peak body for Aboriginal Medical Services, was established in June 1995. The Partnership will operate in relation to policy, planning and broad resource allocation relating to Aboriginal health in NSW.

The Partnership Agreement is critical to ensuring that the public health system and Aboriginal community controlled medical services work collaboratively to improve the

c

*Aboriginal Health
Bilateral Agreement
between State and
Commonwealth
Governments*

d

*NSW Aboriginal
Health Resource
Cooperative (AHRC)*

e

*Aboriginal Health
Partnership*

	<p>health of Aboriginal people. The Partnership Agreement is fundamental in acknowledging the importance of self-determination for Aboriginal people.</p> <p>NSW Health is committed to ensuring that the Partnership is replicated at the local level within each Area and District Health Service. Accordingly, Aboriginal people are to be involved in the development and implementation of Area/District Aboriginal Health Strategic Plans.</p>
<p><i>Guiding Principles</i></p>	<p>f</p> <p>The Partnership Agreement incorporates the following Guiding Principles:</p> <ol style="list-style-type: none"> 1. This Partnership should adhere to the principles espoused in the National Aboriginal Health Strategy (NAHS). In particular, the principles of Aboriginal self-determination, a Partnership approach and the importance of intersectoral collaboration are emphasised. 2. The aim of the Partnership is to ensure that the expertise of Aboriginal communities is brought to health care processes. 3. The Aboriginal Health Resources Cooperative Ltd (AHRC) and the NSW Government through its Health Portfolio, are equal members of this Partnership. 4. The role of the Partnership is to advise the Minister on agreed positions relating to Aboriginal Health policy, strategic planning and broad resource allocation issues. 5. The role of the Partnership in relation to health policy should encompass national policy issues. 6. The role of the Partnership should not interfere with Aboriginal community control, but rather enhance the role of the Department of Health in health service provision.
<p><i>Future directions</i></p>	<p>g</p> <p>As Aboriginal people and Aboriginal communities become more empowered, non-Aboriginal people and services will also become more aware of Aboriginal issues, needs and culture. The NSW public health system, both at the Central Office level and the Area and District Health Service level, is to work with Aboriginal communities to provide appropriate services for Aboriginal people. This is evidenced by the Minister for Health's endorsement of a policy of working in partnership with Aboriginal communities and by Area and Districts who plan services with Aboriginal communities.</p>
<p><i>Aboriginal Health Personnel, New South Wales</i></p>	<p>h</p> <p>The restructuring of the Office of Aboriginal Health and the Aboriginal Health Promotion Unit into the Aboriginal Health Branch resulted from a review completed by Perkins and Associates in 1994.</p> <p>Aboriginal Health Coordinator Positions</p> <p>There are six Aboriginal Health Coordinator positions located at Wagga, Lismore, Bathurst, Moree, Dubbo, and Wollongong. Significant upgrading of previous positions</p>

and the establishment of three new positions at Newcastle, Central Sydney and Western Sydney has taken place. Clarification of locations and boundaries is presently under way.

The primary role of Aboriginal Health Coordinators is to coordinate and assist in the implementation of Aboriginal health programs and the National Aboriginal Health Strategy objectives. This is to be actioned through the Partnership Principle.

This is a joint NSW Health/DAA initiative which focuses on the provision of adequate housing and associated health infrastructure in Aboriginal communities in NSW. Three pilots are being developed in consultation with Aboriginal communities. Relevant State, Commonwealth and Aboriginal agencies are also involved in the pilot projects.

i

*Aboriginal
Environmental
Health
Infrastructure
Project*

ABORIGINAL AFFAIRS IN NSW

9.1

Historic Perspective

NSW Government initiatives prior to 1981 were aimed at implementing the policy of assimilation. Administration of the *Aborigines Protection Act*, (1909-1963) was by the Aborigines Protection Board and by the Aborigines Welfare Board until 1969. With the *Aborigines Act 1969*, the Directorate of Aboriginal Affairs (1969-1975) was created within the Premier's Department. In 1969, the Federal Government assumed responsibility for Aboriginal Affairs.

In 1973, the Federal Parliament passed the *Aboriginal Affairs (Arrangements with the States) Act* which effectively gave back to the States responsibility for Aboriginal housing, health, education and so forth. In NSW, these functions were mainstreamed into the responsibilities of those Government instrumentalities with primary responsibilities for service delivery.

a

Select Committee Reports 1978

The Select Committee of the NSW Legislative Assembly on Aborigines (1978) published two reports. The first report recommended that the Government recognise land rights and prior Aboriginal ownership of the land. The second report made a number of recommendations concerning social and economic policies relating to Aboriginal people. The major thrust of both reports was that the policies of assimilation had failed, and that Government policies must be aimed at self-determination.

The select Committee reports led to fundamental changes in the administration of Aboriginal affairs in NSW including the enactment of the *Aboriginal Land Rights Act* in 1983, and the creation of a Ministry of Aboriginal Affairs.

b

NSW Ministry of Aboriginal Affairs 1981

The NSW Ministry of Aboriginal Affairs was established in October 1981 following the first report of the Select Committee. The objectives of the Ministry were:

- The development of policies and programs for Aboriginal community development.
- The promotion of Aboriginal self management and self sufficiency.
- The investigation of actions necessary for the advancement of Aboriginal people in NSW.
- Liaison with the Commonwealth especially the Department of Aboriginal Affairs on

matters relating to Aboriginal people; and

- The promotion of understanding and respect for Aboriginal culture.



Pat O'Shane, "Knocker" Ebsworth and Wynne Allen (Ministry for Aboriginal Affairs)
at the Parliament House launch of the Wangkumara Language Project, 1985

Essentially the role of the Ministry was to provide policy advice to the Minister and cooperation with other Government Departments in the determination and implementation of policy. However, the Ministry was also responsible for major initiatives including the enactment of the *Aboriginal Land Rights Act*, which attempted to implement the philosophy of self-determination.

In 1989 the Federal Parliament passed the *Aboriginal and Torres Strait Islander Commission Act* which was founded on a similar philosophy.

The Ministry was abolished on 15 April 1988 and its functions and staff transferred to the Premier's Department as the Bureau of Aboriginal Affairs.

At the time of the transfer, the new Bureau acquired additional responsibilities with respect to the development of policy options and proposals for Aboriginal Affairs including assessment of the *Aboriginal Land Rights Act* (leading to the 1990 amendments) and assisting with the consultation program with Aboriginal people across the State.

In October 1988, the Bureau underwent a restructure aimed at allowing it to better implement the Government's policy of mainstreaming services to Aboriginal people, and abolishing the *Aboriginal Land Rights Acts*. However, following the release of the report *NSW Land Rights Act, 1983 - Recommendations for Change* it was decided not to abolish the Act, and a further restructure followed in December 1989. The bureau became

c

*Bureau/Office of
Aboriginal Affairs
1988*

known as the Office of Aboriginal Affairs.

In 1989, the Government set up the NSW Aboriginal Affairs Coordinating Committee, chaired by the Director-General of the Office of Aboriginal Affairs. The purpose of the Committee was to facilitate the exchange of information between Departments and ensure that services provided to Aboriginal people were appropriate and effective.

In December 1992, the Council for Australian Governments endorsed the *National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal People and Torres Strait Islanders*. The Office of Aboriginal Affairs took the role of assisting line agencies to implement the National Commitment, and established the NSW Coordinating Committee for Services Provided to Aborigines (chaired by the Director-General) to achieve more effective and efficient Government agency outcomes.

d

*Office of Aboriginal
Affairs 1993*

In July 1993, the Office of Aboriginal Affairs was transferred from the Premier's Department and became a separate agency responsible to the Minister for Aboriginal Affairs.

e

*Department of
Aboriginal Affairs
1994*

The then Government of NSW replaced the Office of Aboriginal Affairs with the Department of Aboriginal Affairs in March 1994, upgrading the role of the Director-General. Major initiatives relating to the role of Government in Aboriginal Affairs undertaken during the current Government's first year in office include:

- Creation of a Chief Executive Officer's Group in 1995 to assist in the better coordination of policy development and implementation relating to Aboriginal Affairs. This replaced the NSW Aboriginal Affairs Coordinating Committee; and
- Establishment of a Cabinet Committee on Aboriginal Affairs.

f

*Ministerial Council
on Aboriginal and
Torres Strait
Islander Affairs*

The Ministerial Council on Aboriginal and Torres Strait Islander Affairs was established in 1994 by the Federal Government to replace the Australian Aboriginal Affairs Council. The Ministerial Council comprises the Ministers of the Commonwealth, States and Territories responsible for Aboriginal and Torres Strait Islander Affairs. The Ministerial Council is a forum in which matters of current interest are discussed arising out of Commonwealth Government decisions or generated by the Council or one of its members.

The Director-General of the Department of Aboriginal Affairs is a member of the Standing Committee of Officials. The Standing Committee comprises the Chief Executive Officers of State, Territory and Commonwealth bodies responsible for Aboriginal Affairs as well as the Chairperson of the NSW Aboriginal Land Council.

The NSW Government policy on Aboriginal Affairs is based on the philosophy of self-determination and will promote Aboriginal esteem in both Aboriginal and non-Aboriginal communities.

Implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody is a top priority for the New South Wales Government and is administered by the Cabinet Committee on Aboriginal Affairs.

The NSW Government encourages Aboriginal involvement in the formulation of policies to reflect Aboriginal needs within its Social Justice programs. Land Rights and service improvements are the cornerstone of the Government's policies.

The NSW Government provides the major services needed by Aboriginal communities - education, health, housing and community services. In each area, it is clear that the most significant needs of Aboriginal people are not being met or properly coordinated. The NSW Government will address these concerns. It has a commitment to review the role of Aboriginal Units within each portfolio area. It will continue to work towards the goal of having two percent of public sector employees being Aboriginal employees.

The role and function of Aboriginal Units is not uniform across departments. In order to fulfill the NSW Government plans, it is necessary to undertake an analysis of previous evaluations of Units and of the perceived rationale for the Unit within departments. This shall be undertaken in the context of the *National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal People and Torres Strait Islanders* (endorsed by COAG in 1992 and reaffirmed by the current Government) and the Government's Social Justice Strategy.

Aboriginal people have historically been the most disadvantaged group within the NSW community. The Government is taking a coordinated "whole of Government" approach to Aboriginal Affairs with a new Cabinet Committee on Aboriginal Affairs and a new Department of Aboriginal Affairs reporting to the Deputy Premier. This approach aims to reduce the inequity experienced by Aboriginal people in the delivery of, and access to, basic services such as health, education and housing. Resources are also being provided to assist self management and increase the involvement of Aboriginal people in decision making and policy forums.

Improving Aboriginal health will be a major focus of the Government. The health needs of Aboriginal communities will be more effectively met through the implementation of the major recommendations of the National Aboriginal Health Strategy. Health strategies and programs will be developed for the major health issues facing Aboriginal people, including hearing diseases and ear infections and to enhance their health status.

9.2

Current NSW Government Policy

a

NSW Government Social Justice Strategy

A coordinated and staged approach to improving environmental health infrastructure (\$13.5 million over 3 years) in Aboriginal communities is being undertaken. This will involve working with Aboriginal communities and Government agencies to improve environmental health, particularly water supply and sewerage systems as well as providing local communities with the skills necessary to maintain and repair these systems.

An Aboriginal Women's Legal Advisory Service (\$100,000 in 1995-96 and \$200,000 per annum thereafter) is to be established. Funding to enable greater education opportunities for Aboriginal children will also be substantially increased in 1995-96. Sixteen extra Aboriginal Police Liaison officers are being recruited over the next six years with ten being employed in 1995-96.

The backlog of Aboriginal land claims is being reduced. The Government is committed to clearing the outstanding 1,500 claims in the next five years and processing new claims within 12 months of them being lodged.



THE IMPACT OF PAST SEPARATIONS

chapter 10

10.1

Late Recognition of Impacts

The first record in an Annual Report that the Aborigines Welfare Board had taken any note of the disturbing nature of its separation practices was in 1950, (sic):

Relatives of aboriginal children at the two Homes have, from time to time, sought information relating to the Homes and, with a view to satisfying these natural inquiries, the Board has arranged for a series of photographs to be taken of the two homes and aspects of the daily life of the children. These are in the process of being mounted in albums which will be circularised to the various Stations and Reserves so that the aboriginal people may have the opportunity of perusing a pictorial record of the conditions under which the children live while under the Board's care.¹⁴⁹

It is not known whether this gesture to placate Aboriginal families for the loss of their children by circulating photo albums of the Homes actually occurred. This response to Aboriginal families seeking contact with their children appears to have been the one effort made to deal with numerous families' enquires. However, it did not attempt to give any information about individual children or their fate, but to show generally the conditions under which they lived. This does not appear to have become Board practice, and was not mentioned in the following Annual Report.

It appears most likely that this gesture was the idea of an individual staff or Board member, which may or may not have eventuated.

The fact that family and place were important to Aboriginal people was recognised by some officers of the Aborigines Welfare Board. For instance, in its 1952 Annual Report, one Area Welfare Officer reported on:

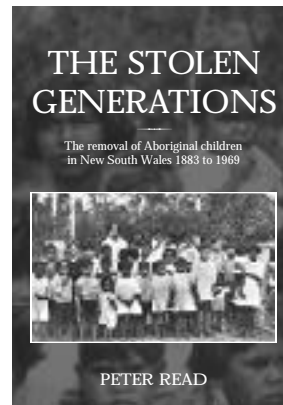
... the determination of those [Aboriginal] families to live in the town of their birth, despite strong prejudice in that town... they cannot bear the thought of leaving relatives, completely severing themselves from old associations... this deference for the past and the determination to stick together... that constitutes the greatest barrier to effective work on the part of the Welfare Officer.¹⁵⁰

The NSW Government recognises that there has been relatively little documented investigation into the impact of the laws, policies and practices which resulted in the removal of Aboriginal and Torres Strait Islander children from their families. However, some of the significant work on the subject has been commissioned by the Department of Community Services.

The Stolen Generations: the Removal of Aboriginal Children in New South Wales 1883 to 1969

This report by Peter Read of ANU was prepared with funding from the NSW Family and Children's Services Agency, part of the Department of Youth and Community Services, and published by the NSW Ministry of Aboriginal Affairs in 1982.

The report was based on archival material and interviews, and remains an important source of material on the separation of children from their families.



Learning from the Past: Aboriginal Perspectives on the effects and implications of welfare policies and practices on Aboriginal families in NSW

In August 1995, the Department of Community Services released the report, *Learning From the Past*, prepared by the Gungil Jindibah Centre, Southern Cross University. The Report by the Department was the result of an Aboriginal History Research Project commissioned as part of Family Week in 1993. This report presents parts of the stories of many people who were removed as children or related to those removed. The stories reflect a profound impact of these practices. *Learning from the Past* tells, through the voices of Aboriginal people, of many of these experiences and provides a picture of the pain many people endured and continue to feel.

Link-Up (NSW) Aboriginal Community Awareness Forums

The Department recently funded Link-Up (NSW) to assist the promotion of the Human Rights and Equal Opportunity Commission National Inquiry to Aboriginal and Torres Strait Islander communities across NSW. Link-Up (NSW) will advise the Department on service models for grief and loss counselling arising from these Inquiry Awareness Forums.

Case studies

Margaret Tucker's autobiography, *If Everyone Cared*, tells of her experience as a thirteen

10.2

Research Initiatives

year old being taken from the school house, initially without her mother's knowledge, by the Station Manager and a policeman. Her story provides insight into the practices of the time and vividly portrays the events of the day she was taken. Her younger sister and cousin were taken at the same time. An even younger sister was not taken, only because she was in hospital and had been discharged with her grandparents before the arrival of the Board officer and the police.

This autobiography tells of the devastation the event caused her mother. Shortly before, her elder sister who had been visiting with her grandmother was taken away by the Aborigines Protection Board, and was not seen again by the family for nine years. According to Margaret Tucker, all the girls on the station were taken to be trained as domestic servants once they were fourteen, as a matter of course, and taken at a younger age without explanation or reason being given if the Station Manager or Board officer so decided. She documents her ill treatment by the family with whom she was placed as a domestic. She was ill fed and ill clad and emotionally abused. Fortunately, her mother did eventually trace her whereabouts and locate her at this placement, after Margaret had sent home drawings indicating her abuse.

10.3

Nature of the impacts

A recent report examining Aboriginal Mental Health¹⁵¹ identifies trauma, loss and grief as major problems adversely affecting mental health. These problems were seen as having many causes, but principal among them were the ongoing effects of separation of children and parents, both by past policies of separation and current policies which have repeated these processes.

In a case control comparison, there was a very strong relationship between childhood disruptions, (separations from biological parents) and mental health problems. The Odds Ratio (O.R.) for neglect was 3.0, the O.R. for institutionalisation was 1.7, the O.R. for both neglect and institutionalisation was 9.4.

A South Australian study¹⁵² reported on mental and behavioural problems in an urban Aboriginal population of 530 people. They reported a 35% rate of psychiatric disorder. 31% of the total population studied had been separated from their parents by the age of 14 years. Separation, institutionalisation, absence of a father and traditional teachings in the first fourteen years correlated significantly with suicide attempts which were at much higher rates than the general population. Evidence from a variety of sources points to ongoing separations and related psychological trauma. Aboriginal children are several times more likely to be placed in foster care than non-Aboriginal and Torres Strait Islander children. The rate of incarceration of young Aboriginal people may be up to 25 times the rate of non-Aboriginal young people. In NSW the figures were that young Aboriginal people were 1.2% of the population and 25% of those detained.

A summary of the apparent impacts is briefly presented below. Other useful reference points are *The Stolen Generations*, *Learning from the Past*, and *Ways Forward* by the Department of Health.

Loss of self esteem, dignity, self concept and culture

Having grown up in a system that tried to wipe away their Aboriginality, separated children could still not hope to be seen as European by the European community they had been “groomed” to enter. Separated children could feel caught between two cultures, ignorant of the old and unaccepted by the new. However, “[N]o amount of ‘white’ behaviour can overcome skin-colour, or restore dignity to one’s self-concept”.¹⁵³

Psychological effects of Institutionalisation

Research carried out in Victoria in 1987 by the Victorian Aboriginal Medical Service found that 65% of its psychiatric clients had been separated from a parent in childhood, while 47% had been separated from both parents. It also found that 27% had been institutionalised as children.¹⁵⁴

Researchers on *Learning from the Past* in NSW were told of a large number of people whose experience of institutionalisation began with their placement as wards or foster children. The perception of the inmates who participated in interviews confirmed that there were numerous Aboriginal people in gaols who “still don’t know who their real families are... they’re lost”.¹⁵⁵

Cause of mental health problems

Aboriginal Medical and Health Services and Aboriginal organisations were surveyed and reported that trauma and grief related to separations were amongst the most frequent problems, both as a cause and as actual problems for Aboriginal mental health.¹⁵⁶

Separation is likely to have had profound adverse effects on the mental health and well being of Aboriginal and Torres Strait Islander people. While it is recognised that grief per se is a normal process, the situations created by past practices and described by Aboriginal people are likely to have resulted in traumatic consequences such as Post Traumatic Stress Disorder and other psychiatric morbidity. There were consequences not just for individuals but for communities.

The adverse outcomes are profound and likely to have been further aggravated by lack of availability of proper recognition and care services that were culturally appropriate and ongoing, and the additional negative impacts of disadvantage, racism and poor physical health. These outcomes reflect effects similar to those described in massive trauma with other circumstances and non-Aboriginal and Torres Strait Islander

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*Personal impacts
on the children*

populations.¹⁵⁷

A Victorian study¹⁵⁸ examined psychological distress amongst urban Aboriginal people and found the level of psychiatric distress was 54% with a further 16% having significant distress (at least 10 psychiatric symptoms). Depression was the most common disorder. 49% had been separated from both parents in childhood and a further 19% from one parent. 20% had been brought up in children's homes and 10% adopted or fostered by non-Aboriginal parents. When the presence of such psychological distress was assessed over time, it was found that, amongst other factors, having been reared by a main care giver who was non-Aboriginal significantly increased the risk through the study period. On the other hand, having grown up with their Aboriginal family, having learned their Aboriginal identity early in life and having regularly visited their traditional country was protective for mental health.

Silence

There is a large group of people who were put into institutions as children who will not talk about their experiences at all. This is an indication of trauma.

Alcoholism

In many communities where a large number of ex-institution people or ex-wards live, alcoholism is a profound problem. Studies have shown that trauma may lead to self-medicating with alcohol. It is highly likely that the high level of traumatisation contributes at least in part to alcohol abuse in Aboriginal communities.¹⁵⁹

A detailed psychological study of the Kalgoorlie fringe dwellers found:

Significant numbers of Aborigines suffer from unresolved psychological trauma. One manifestation of this is the widespread incidence of pathological behaviours, such as alcoholism and depressive disorders. The fringe dwellers of Kalgoorlie have high rates of alcoholism, violence and early mortality... almost ninety per cent have suffered the experience of forcible removal... Many of these people are afflicted with ongoing 'flashbacks' or unresolved intrusive imagery from the past which centre around events such as hiding from the police, being taken away from families, or deaths of family members... Intrusive imagery constitutes... the single greatest source of anxiety, depression... which then leads to avoidance / blocking out with alcohol/drugs.¹⁶⁰

Loss of Parenting Skills

One of the pervasive, prevalent and far reaching consequences of these separations was the impact on parenting capacity. Separations have affected the children taken and their

children, because traditional parenting skills were not handed down, particularly by those parents and grandparents who were once institutionalised. This lack of parenting skills has affected children who in turn may themselves lack parenting skills unless adequately supported. It may in part explain high levels of child abuse and, particularly, neglect reported in Aboriginal populations (AIHW 1993). There is a strong view from researchers that such a loss of parenting skills is a prevalent and major problem.

An evaluation of child protection services with Aboriginal clients by the Department of Community Services highlighted the different standard of care in some Aboriginal families. This has been recognised in child protection practice in the Department as a key issue in many neglect cases.¹⁶¹

*Forced removal of children, in combination with cultural dispossession, has had an impact wider than depleted parenting skills. Among its other tragic legacies has been a range of family dysfunctions including family violence, sexual abuse of children and alcoholism... family violence... including spouse abuse as well as violence between adult relatives, neglect and sexual abuse of children and elder abuse.*¹⁶²

Intergenerational transmission of disadvantage and crime

People who were removed from their families as children continue to suffer in their adult family life because their own children have an increased likelihood of coming into contact with the juvenile justice system.

Beresford and Omaji report:

*There is widespread acknowledgment among Aborigines, and those who work closely with them, that a significant number of Aboriginal youth who are in regular trouble with the law come from a family background in which the parents and/or grandparents were forcibly removed from their families as children.*¹⁶³

Potential effects on physical health

There is a growing body of evidence from a range of fields, concerning the effects of stressors such as those leading to psychological trauma, on physical health. This includes the impact of depression on immune function, the combination of stress to sudden and often premature deaths and the poor health of those profoundly traumatised. A 1988 health study¹⁶⁴ in a small rural town in NSW found social factors, stress and stress related factors, such as separations, rather than diet, contributed to adverse health outcomes.

High death rates and premature death add to the trauma and grief suffered, and aggravate past grief, distress and psychological trauma related to these past separations.

*Impact on families
whose children
were removed*

b

Substance Abuse

Studies in other fields have shown that trauma may lead to heightened physiological arousal and secondary substance abuse, perhaps in some attempt to dampen this and self-medicate. It is highly likely that the high level of traumatisation contributes at least in part to substance abuse in Aboriginal populations.

It appears that there has been little research into the plight of the mothers, fathers, sisters and brothers and other relatives of children who were removed. Case histories indicate that one "went into a state of shock from which she never really recovered".¹⁶⁵ The manner in which children were taken compounded the shock and trauma of losing the children. Some children were taken direct from school without their parents knowing, without opportunities to say adequate farewells. Many were unable to find out any information about where their children were sent, and never saw them again. Sometimes when children later returned to the families they resented their parents as if they had been responsible for allowing their removal.

Loss and grief are experienced by all parents whose child goes missing, is kidnapped or disappears. When grief is unresolved by total loss of contact, these profound feelings can endure indefinitely.

*Links with Crime
and Imprisonment*

c

The Royal Commission into Aboriginal Deaths in Custody examined the deaths in custody of 99 Aboriginal and Torres Strait Islander people as well as the underlying reasons for the custody levels. Of the 99, only two had completed secondary school and 43 had been separated from their families as children by the state, missions, or other institutions. Their standard of health ranged from poor to very bad. Almost everyone had early and repeated contact with the criminal justice system.

Aboriginal and Torres Strait Islander people are still being incarcerated at a high rate and are still dying in custody. A recent Australian Institute Report, *National Prison Census*, reveals that 9% of male prisoners and 13% of female prisoners are Aboriginal. Yet Aboriginal people comprise only 1.5% of the general population. There are 310 Aboriginal women imprisoned per 100,000 Aboriginal women, while amongst non-Aboriginal women the rate is 15 per 100,000 women. Thus Aboriginal women are over 20 times more likely to be imprisoned as non-Aboriginal women.¹⁶⁶

Although no comprehensive analysis has been done, there is strong evidence that many Aboriginal offenders are people who were separated from their families through past welfare practices. Recently, links have been drawn between the high rate of incarceration of Aboriginal juveniles and adults in prisons and other institutions and past welfare policies.¹⁶⁷

In 1989, this link came under intense scrutiny in the case of Russell Moore (James Savage of the Barkindji people of Victoria) who was sentenced to death in the United States for murder. Peter Read presented a case against the death sentence for Moore related to the injustices of past welfare practices perpetrated against Aboriginal people in Australia, stressing the long term psychological trauma associated with being separated from one's family and culture.

A Case Study from the *Royal Commission into Aboriginal Deaths in Custody* on Aboriginal Inmate, Malcolm Smith, who died in Long Bay Gaol on 5 January 1983, appears typical.

Malcolm first went to an institution when he wagged school, rode on another child's bike, and so was taken from his family and sent 1500 km to a boys' home. He spent the next eight years mainly in despotic institutions of various kinds (which) had left him illiterate and innumerate, unskilled and without experience of normal society. He had been taught a model of human life based not on mutual respect, cooperation, responsibility, initiative, self expression and love, but on dominance and subservience, rigid discipline and conformity, repression and dependence, humiliation and fear, with escape or defiance as the only room for initiative. He had experienced the law as a system which gave him no rights, no representation and consideration, ignored the existence of his family and treated him as having no place outside an institution. Instead of being socialised into the family and kin network so important to Aboriginals, he had been 'socialised' to survive in institutional communities.¹⁶⁸

There are very limited counselling or specific services available to Aboriginal and Torres Strait Islander people directed to assisting families and individuals who have been affected by separation as children. General mental health services have been described as not being aware of or responsive to Aboriginal people's mental health issues generally and to the issues of trauma and grief in particular.¹⁶⁹

Because psychological trauma has potential effects on physical health, some statistical information on the Health of Aboriginal People is provided from Australia's Health 1994.

This information illustrates the low health status of Aboriginal people in comparison with the rest of the community.

Expectation of Life

The life expectancy at birth is much lower for Aboriginal people than for the rest of the community. In 1990-92, the average life expectancy of a newborn Aboriginal boy was up to 18 years less than for a non-Aboriginal boy. For Aboriginal girls, life expectancy is

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Health Status

19.8 years less.

The proportion of newborn Aboriginal boys who could expect to live to age 65 was 45 per cent and for non-Aboriginal boys 81 per cent. 54 per cent of Aboriginal girls could expect to live to 65, compared to 89 per cent of non-Aboriginal girls.

Infant Mortality Rates

Aboriginal infant mortality rates are unacceptably high and in some locations are more than three times the rate for all Australians.

Mortality

Death rates of Aboriginal people greatly exceed the corresponding death rates of all Australians. The ratio is 2.8 for males and 3.3 for females. Table 16 shows age specific death rates and rate ratio by sex, Aboriginal and total Australian populations for 1990 - 1992 (per 1,000 population). The ratio of Aboriginal to total population rates is highest for Aboriginal females in the 24 to 34 year age group.

Table 16 - Mortality rates: Aboriginal and non-Aboriginal people

Age Groups	Aboriginal	Total Australian	Rate Ratio	Aboriginal	Total Australian	Rate Ratio
0	26.8	8.5	3.2	24.9	6.6	3.8
1-4	1.6	0.4	4.0	1.3	0.3	4.3
5-14	0.5	0.2	2.5	0.5	0.1	5.0
15-24	4.0	1.1	3.6	1.6	0.4	4.0
25-34	6.7	1.3	5.2	3.7	0.5	7.4
35-44	11.2	1.8	6.2	5.8	0.9	6.4
45-54	22.3	4.0	5.6	14.8	2.4	6.2
55-64	36.0	12.3	2.9	35.3	6.5	5.4
65-74	61.9	31.5	2.0	64.0	17.1	3.7
75+	138.4	95.3	1.5	130.6	71.9	1.4

Sources: AIHW unpublished data; ABS 1992

Causes of Death

Diseases of the circulatory system, injury and poisoning account for most deaths amongst Aboriginal people. Diabetes is also another major contributor to high mortality

among Aboriginal people.

In Aboriginal males, the death rate from respiratory system diseases was 7.3 times that of all Australian males and among Aboriginal females it was 7.9 times that of all Australian females.

Infectious and parasitic diseases are also much higher among Aboriginal people with the level of mortality being 12.2 times (males) and 13.4 times (females) than other Australians.

Hospital Admission Rates

The standardised hospital admission rate for Aboriginal males is 71 per cent higher than for non-Aboriginal males with the rate for Aboriginal women being 57 per cent higher than non-Aboriginal women.

¹⁴⁹Report of the Aborigines Welfare Board for the Year ending 30th June 1950, p.8 para 73

¹⁵⁰Report of the Aborigines Welfare Board for the Year ending 30th June 1952, p. 11

¹⁵¹Swan & Raphael 1995, Centre for Mental Health, Aboriginal Health Unit, Department of Health

¹⁵²Clayer and Dwakaran-Brown 1991 (See NSW Health preliminary submission to HREOC Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families which has been incorporated into this report). Attachments 60-72

¹⁵³Read, P. *Stolen Generations*, op cit. p.18

¹⁵⁴In *Learning from the Past* op cit., p53, taken from Swan, P. *200 Years of Unfinished Business*, AMS Redfern

¹⁵⁵*Learning from the Past* op cit. p53

¹⁵⁶See NSW Health preliminary submission to HREOC Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families which has been incorporated into this report. Attachments 60-72

¹⁵⁷Wilson and Raphael, 1993. See NSW Health preliminary submission to HREOC Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families which has been incorporated into this report. Attachments 60-72

¹⁵⁸McKendrick et al (1992). See NSW Health preliminary submission to HREOC Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families which has been incorporated into this report. Attachments 60-72

¹⁵⁹Health Department submission to HREOC op cit

¹⁶⁰This Kalgoorlie study by Gordon and Nunn is reported in "Parents are suffering from being taken away: Family Life and Juvenile Crime" in *Rites of Passage Aboriginal Youth Crime and Justice*, by Quentin Beresford and Paul Omaji, Fremantle Arts Centre Press, op cit. p33

¹⁶¹Heilpern, *Evaluation of Departmental Services for Child Protection - Aboriginal Clients*, 1994 op cit., p.105

¹⁶²"Parents are suffering from being taken away: Family Life and Juvenile Crime" in *Rites of Passage: Aboriginal Youth Crime and Justice*, by Quentin Beresford and Paul Omaji, Fremantle Arts Centre Press, p.44

¹⁶³*Ibid.* p33

¹⁶⁴Sibthorpe (1988) *Study of Health in a Small Rural NSW Community*. Health Department submission to HREOC, op cit

¹⁶⁵Read, P. *Stolen Generations*, op cit. p3

¹⁶⁶1991 Women's Conference - *Aboriginal Women & the Legal Service*

¹⁶⁷In *Learning from the Past*, op cit. p52. From Goodall, H. "Saving the Children: Gender and Colonisation of Aboriginal Children in NSW 1788-1990", 1990, *Aboriginal Law Bulletin* 2(44):6-9

¹⁶⁸Whitten JH *Report of the Inquiry into the Death of Malcolm Charles Smith*

¹⁶⁹Swan & Raphael, *Ways Forward*, 1995 Vol. 2, p66-68

SUPPORT FOR SEPARATED FAMILIES

chapter 11

11.1

The overall NSW approach

The Inquiry was asked to report on procedures and services available for Aboriginal and Torres Strait Islanders who were affected by separation. This is taken to include:

- Support for those who were separated from their families as children under compulsion, duress or undue influence;
- Support for families who were affected by such separations;
- Assistance for those who wish to locate and be reunited with their families; and
- Assistance for those who wish to access individual or family records.

There is no legislation specifically relating to the services and procedures currently available to those Aboriginal or Torres Strait Islander people who were affected by the separation from their families under compulsion, duress or undue influence.

It is worth noting that many current Government practices, policies, procedures and services for adult Aboriginal and Torres Strait Islanders generally also serve those who were affected by separation as children, although they are not specifically designed for this group. These include actions that:

- Enhance Aboriginal and Torres Strait Islander self-determination and capacity to address the effects of separations;
- Increase Aboriginal and Torres Strait Islander pride and identity, thus ameliorating the denigration of Aboriginal and Torres Strait Islander culture that occurred under past institutional policies; and
- Improve Aboriginal and Torres Strait Islander health and welfare services which can support individuals affected by separations.

These general reforms are a crucial part of an integrated response to healing the wounds of the past. While this submission does not provide detail on these as the material would be vast, the significant advances in the approach to Aboriginal and Torres Strait Islander legislation, policies and programs provide an important foundation upon which specific

action for families affected by separation can be based.

In NSW, policies and services for those affected by separation have developed significantly in response to the Royal Commission into Aboriginal Deaths in Custody, which revealed that almost half of the 99 Aboriginal people who died in custody had been separated from their families as children by the State, Missions or other Institutions.

The report, *Learning From the Past*, represents the experiences and views of many Aboriginal people whose lives have been terribly damaged by the State's welfare policies and practices.¹⁷⁰ It chronicles practices approaching decades of intervention in the lives of individuals and communities which can never be forgotten or undone.

In 1995, the Department of Community Services published *A New Generation of Services for Aboriginal and Torres Strait Islander People: Our Future* as the basis for consultations currently being conducted by Aboriginal and Torres Strait Islander workers for local communities, staff and interested service providers. In introducing the document, the Minister for Community Services wrote:

I am determined the services provided by the Department of Community Services in the future are appropriate and sensitive to the needs of Aboriginal and Torres Strait Islander children, families and communities. I am optimistic we can, over time, reconcile the legacies of the past and move forward with a new approach to welfare services. This will come through actions, not just words.

I believe that A New Generation of Services: Our Future is a first step in moving forward. It gives greater emphasis to collaboration and empowerment of Aboriginal and Torres Strait Islander families and communities. It gives individuals, groups and communities the mandate to create and maintain change.¹⁷¹

Previously, the issue of Aboriginal children separated from their families had been recognised by the NSW Ministry of Aboriginal Affairs in 1982 by the publication of *The Stolen Generations* by Peter Read.

Link-Up (NSW)

The Department of Community Services provides recurrent funding for Link-Up (NSW) through the Community Services Grants Program. In 1993/94, additional one-off funding for a promotion of Link-Up (NSW) services during Family Week 1993 and some financial assistance for a family reunion for people who were separated was provided.

Link-Up (NSW) is an Aboriginal organisation founded in 1980 to work with Aboriginal

11.2

Recognition

11.3

Support for family reunion

adults who were separated from their families when they were children and raised by non-Aboriginal people in institutions, or by fostering or adoption. This service provides counselling and support to people separated from their families throughout the process of deciding, searching and making contact and being reunited with their family or community. Support is also offered to natural and adoptive parents (Attachment 26).

Link-Up (NSW) has taken the initiative of informing and consulting the Aboriginal community within NSW in regard to this Inquiry. Link-Up (NSW) has responded to the community's request that searches of archival records be carried out immediately, prior to Public Hearings in NSW by raising this issue with the Human Rights and Equal Opportunity Commission.

Post-Adoptive Resource Centre

The Department of Community Services is the key funding body for the Post-Adoption Resource Centre (PARC) which is run under the auspices of the Benevolent Society, located at Paddington. PARC provides a counselling, support and information service for any person or group interested in adoption. PARC maintains data on client numbers, but their data is not collated in a way that identifies cultural or racial background. PARC also conducts information sessions for people interested in post-adoption services.

PARC is not specifically oriented towards Aboriginal and Torres Strait Islander people though there are instances where, in the course of counselling, search or reunion, a PARC client discovers that they are of Aboriginal or Torres Strait Islander background.

PARC also administers a fund for extra searches to be done for people on low incomes. This fund was established by an anonymous donor who expressed a particular interest in helping people who have been in prison or are of Aboriginal or Torres Strait Islander background. However in the four years since it has been operating PARC has assisted less than 10 Aboriginal and Torres Strait Islander people through this fund. PARC does have some liaison with Link-Up (NSW).

The Reunion Information Register

This register was introduced in 1976 to give people and families who have been separated by adoption the opportunity to exchange information and, where appropriate, meet each other.

It is designed to assist adopted persons, former Wards of the State, their birth parents, their brothers and sisters, their birth relatives and other persons who have a genuine interest in an adopted person or birth parent, and who are eligible to have their names placed on the Register. The register works by matching details of applicants, who may register their wishes to make contact or lodge a contact veto. A person must be over the

age of 18 years before registration. Adopted people under the age of 18 may register with the consent of their adoptive parents.

There is no fee for registration if it is made in association with obtaining an original or amended birth certificate (under the provisions of the *Adoption Information Act 1990*). There is a \$50 fee for all other applications.

Fees may be reduced in cases of financial hardship and for people in receipt of Social Security benefits.

The Department of Community Services is developing a step by step guide for individuals needing access to Departmental files for this Inquiry. The guide covers application by people for information for themselves, relatives, extended family, deceased family members and significant others (e.g. foster siblings) and sets out a time frame of three weeks between lodging the application and being contacted by the relevant Departmental officer.

Application can be made at a local Community Services Centre (CSC). Once located, files will be made available for applicants to read at their local CSC. More than one visit to view files is allowed and files can remain at the CSC for up to three months, or longer by application. People viewing files can bring a relative, friend or community worker for support. Departmental staff can provide support and assistance in reading the files as it is recognised that it may be a traumatic experience for some people. Only information concerning the applicant will be made available, and consent must be sought for information on another person. Depending on circumstances and the nature of the information, certain parts of files may be copied, however confidentiality of files will be strongly protected.

Clients who are residents of Departmental disability facilities have full right of access to their files and information kept on them. This information can only be made available to consumers or their guardian or person responsible.

Acknowledgment of Aboriginality in current records

The Department's current computerised records and data systems were introduced in the late 1980s and have been updated and augmented since. Data collection prior to then did not specifically include identification of Aboriginal or Torres Strait Islander background. Therefore the limited data available from that period is not a reliable measure of the number of clients who were Aboriginal or Torres Strait Islanders.

The Client Information System (CIS), now used throughout the Department, does include a field for recording whether the client is Aboriginal or a Torres Strait Islander. It

11.4

Access to records

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*Department of
Community Services*

is not, however, a compulsory field so it may still under-represent Aboriginal and Torres Strait Islander clients. It should be emphasised that workers do not always know the cultural or racial identity of a client. Many Aboriginal and Torres Strait Islander clients do not identify themselves to the Department as being an Aboriginal person or a Torres Strait Islander.

The Department's current Disability Client database identifies the cultural background of the client.

Concerns about protection of information

Concerns have been raised in the Department's consultations for the Inquiry about the information collected by the Inquiry. These are best expressed through the following questions:

1. Who will own the information? Will it be held by the Commission? What will happen to it?
2. Who will have access to the information? What research rights will be made available to it?
3. Can Aboriginal people be assured that the personal stories will not be exploited for financial gain or research by academics and the like?

Issues relating to records held by church organisations

The Department would like to draw attention to the fact that, historically, Church organisations have played a significant role in the practices of separating Aboriginal and Torres Strait Islander children from their families in NSW.

As Church organisations are not obliged to respond to the Inquiry, concern has been expressed by Aboriginal people that a significant amount of information may be excluded from the Inquiry.

Availability of past records

From 1939 until the early 70s, the Department did not keep any separate statistics on Aboriginal wards nor does it refer to any special needs of Aboriginal children under its care. It is therefore difficult to determine without going through individual case records the number or proportion of Aboriginal children separated from their parents during this period. However, photographs of residential care facilities in the Department's 1972 Annual Report show an overwhelming majority of the residents appear to be Aboriginal.¹⁷²

Departmental Circular 497 of 3rd September 1973 (Vol. 3, No 35) noted that:

It is not possible at present to readily identify Wards of Aboriginal and Torres Strait Islander descent and... some means of positive identification is desirable. To this end, all Officers-in-Charge... are requested to submit a complete list of all Wards of Aboriginal and Torres Strait Islander descent under supervision in community placements (and)... in residential care.

Department of Housing records are available to clients.

The Department provides funds to allow Aboriginal inmates to obtain original birth certificates. This is a joint project with Link-Up (NSW). Funds are available from the Department of Corrective Services to cover these expenses as required.

Information on records held by the Department of Corrective Services can be obtained by application in writing to the Department's Freedom of Information Unit at Roden Cutler House, 24 Campbell Street, GPO Box 31 Sydney 2000. There is a fee of \$20 or \$10 for those with financial hardship. This fee allows for twenty hours worth of research to locate the information required. On occasions when research takes longer, there is an additional cost of \$30 per hour or \$15 for those with financial hardship.

The Aboriginal and Torres Strait Islander Services Unit of the Department of Corrective Services notes:

- Link-Up has been visiting Aboriginal people in institutions since 1984-85. In this period they had lost three clients who had died in custody. Link-Up (NSW) asked for the support of the Department of Corrective Services through the Aboriginal Task Force.
- Link-Up (NSW) had requested that they be provided with a fortnightly printout containing names and locations of Aboriginal inmates within the NSW Correctional system. This information would be beneficial to the service that Link-Up (NSW) provide to Aboriginal inmates - tracing clients, families of clients etc.
- Link-Up (NSW) also provides a counselling service for inmates who are trying to locate their families, or have just made contact with their natural family.
- Link-Up (NSW) workers have experienced difficulty while interviewing or counselling clients. On many occasions the clients have been transferred midway through counselling stages.
- Link-Up (NSW) would like to have input in any training sessions for employees of the Department to provide an insight into the history and the effects of the removal of Aboriginal children from their natural family.

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Department of Housing

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*Department of
Corrective Services*

d
 Department
 of Health

Due to the increasing number of Aboriginal people in gaols, requests for Link-Up (NSW) services has increased dramatically. Most of the Link-Up (NSW) services requested are to specifically work with inmates wanting to be reunited with their families. However, there are often issues such as clients being institutionalised at an early age that have created a lot of anger, frustration and despair which ultimately lead to mental health problems.

Under the Health Department's Policy, *The Information Privacy Code of Practice*, released in April 1996, individuals have the right to any information held in the health system about them. There are some qualifications (for example if access should severely impair their mental state) but these are very limited.

It should be noted that this right is for access to personal information only. There is no right to access the medical file of a third party (for example a birth parent) without that person's permission.

However, the *Adoption Information Act* seeks to address the problem faced by adoptees seeking information about their birth parents. This legislation is administered by the Department of Community Services.

e
 Archives Authority
 of New South
 Wales

The Archives Authority's purpose is to serve the Government and people of New South Wales by improving the management and accessibility of the State's public records. One of its principal objectives is:

To identify and preserve as State archives all non-current public records which are of permanent value, including records which document government policy, determination and action; or which embody citizens' legal rights and document information about their existence and identity; or which are valuable for research on any aspect of the history of the State, its communities, individuals, lands and built environs.

Major records held

Among the State archives are many records which document Government dealings with Aboriginal people over the last 208 years, including the Correspondence files of the Aborigines Welfare Board, 1949-69. Unfortunately few records of the Aborigines Protection Board have survived from the period 1883 to 1948.

These files (some 192 boxes) constitute the most significant body of archival records documenting NSW Government policy and administration in relation to Aboriginal people in New South Wales during the 20th Century. Since 1987 (when an index was prepared) the files have been in regular use, in most cases by Aboriginal people tracing their family history.

Given the paucity of other material, the files are undoubtedly a source of national

significance in terms of documenting Government dealings with Aboriginal people during the 20th century, and there have been many instances where the files have provided a vital link for people trying to recover their Aboriginal heritage and identity.

Current problems

The Archives Authority is facing a number of problems in attempting to ensure the long-term preservation of this material, including:

- Poor quality of paper/fragility of records;
- Damage through high level of use of original records - up to 200 issues per year; and
- Inadequate resources to provide the specialised reference service for Aboriginal people that these records require.

If preservation work is not undertaken, the Authority will have to look at restricting access to much of the series within the next five years in an attempt to prevent further deterioration.

Proposed copying project

The most cost-effective means of ensuring long-term preservation is to microfilm the records to archival standards. For this type of material (older, frail, "non-standard" archival records) filming can be done at less than one-third the cost of scanning, and the filming is done in such a way as to allow for scanning in the future. Recent advances in microfilm reader-printer technology allow for down loading of film images onto disc, possibly obviating the need for full-scale scanning.

Preliminary estimates indicate that the filming project will cost approximately \$100,000. The Authority is seeking funding to this amount in its 1996/97 Forward Estimates. If this is not successful, the Authority will investigate alternative avenues for obtaining funding. This is a vital project, as it will ensure that Aboriginal people in New South Wales can continue to use these records to re-establish lost links with their families and their cultural heritage.

Access arrangements for Aborigines Welfare Board files

These records have been made available through the Archives Office City Search Room since 1987. Strict access conditions apply to these records, chiefly for privacy reasons (see below). The major practical problems which have arisen in the use of the records have been:

- Delays and problems in gaining letters of permission;
- Difficulties for people travelling to Sydney for research (including cost);

- Lack of familiarity with libraries and archives;
- Lack of trained Aboriginal people to provide assistance/counselling etc; and
- Breaches of privacy (information about an individual disclosed without consultation/permission).

The last point is one of the most important, as it signals one of the fundamental problems with the system - issuing files to individuals (and allowing copies to be made) will inevitably breach privacy in most instances. Files contain sensitive information about persons other than the individual who has permission to view the file.

If this issue is to be taken seriously, there are probably only three options:

- An authorised officer inspects the file before issue to identify all people named in the file (and permission is sought and obtained from these people before the enquirer views the whole file);
- An authorised officer examines the file, and all references to persons other than the applicant are identified, and the file copied and masked; and
- An authorised officer extracts relevant information for the client (i.e. the applicant does not actually see the file).

Whichever option or options are pursued, the work will be labour-intensive and beyond the resources of Archives Office staff. Given the obvious need of mediated access, the best approach would be for an authorised Aboriginal person to oversee access and provide the necessary counselling as required. This could be done in the Archives Office, or in another organisation, such as Link-Up (NSW), using microfilm copies of these files.

Access arrangements for the restricted records of the former Aborigines Welfare Board

- Researchers MUST have the written approval of the DAA to access any restricted material, e.g. AWB files.
- The letter which may be obtained from the DAA must identify the records which the researcher is permitted to use (e.g. the file number(s) and the location number(s) must be given) and it must also state whether the researcher is permitted to have copies from the file/record.
- The letter and the accompanying Undertaking must be presented when the researcher visits the Search Room. (A copy of the letter and the Undertaking is retained by the Archives Office for its records).
- Access is only given in accordance with any terms/conditions of the letter.
- All researchers accessing the files are asked to apply for a Reader's Ticket which is

issued “on-the-spot”.

- Only ONE file from the AWB correspondence is issued at a time.

Access to Government records generally

The AWB files are an obvious “concentrated” source of relevant information for Aboriginal people. Other relevant records (particularly more recent records) are scattered through a variety of agencies, particularly School Education, Housing, the Courts, Corrective Services and Health.

There appears to be agreement that Aboriginal people find it particularly difficult to research their past through Government agencies. Even with streamlined procedures and greater consistency between and within agencies concerning access to sensitive records, gaining direct access to files and other records will always be complex, given the increasing concerns about privacy, the need for permission from record subjects before access can be granted etc.

Given the fact that most Aboriginal people feel they need a lot of help with research (and many would like staff from a credible organisation like Link-Up (NSW) to do much of the actual research for them), the best long-term arrangement might be for an independent, non-government organisation like Link-Up (NSW) to receive support/funding for Aboriginal research officers to undertake research on behalf of clients. Individuals would still be able to carry out their own research, but having experienced Aboriginal people as accredited researchers would be the best way to “cut the red tape”, and such an arrangement would be popular in Aboriginal communities.

Summary

In summary, the Archives Authority’s priorities in this area are:

- Gaining funding for the copying of the Aborigines Welfare Board Correspondence; and
- Negotiating and implementing improved access arrangements which meet privacy requirements and minimise difficulties for Aboriginal people, with particular emphasis on a system of independent accredited researchers.

At this stage, the NSW Government has not determined principles relevant to the justification of compensation for either persons or communities affected by separations.

Current claim for compensation

Currently the NSW Minister for Community Services and the State of NSW is subject to a

11.5

**Principles for
justification of
compensation**

claim for compensation in which the plaintiff seeks damages from the State in respect of emotional and psychiatric injuries said to have resulted from the State's negligence and/or breach of duty due to her removal from her mother by the Aborigines Welfare Board in 1947.

The action for the claim commenced in January 1993 and was dismissed in August 1993. An appeal was heard by Justices Kirby (President of the Court of Appeal) Priestly and Powell and their judgment was handed down in December 1994. Their decision was to allow the Appeal. The matter is yet to come before the Supreme Court.

The NSW Government has acknowledged the need to redress past practices which have adversely impacted on Aboriginal people, and many Government programs have been developed to respond to particular problems facing Aboriginal people and communities.

¹⁷⁰*Learning from the Past, op cit*

¹⁷¹*A New Generation of Services for Aboriginal and Torres Strait Islander People: Our Future, op cit. p3*

¹⁷²*See also Attachment 26. Ibid. p31-38*

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Children's Protection Act 1902

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Aborigines Protection Amending Act 1915

Child Welfare Act 1939

Aborigines Protection (Amendment) Act 1940

Adoption of Children Act 1965

Aborigines Act 1969

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Children (Care and Protection) Act 1987

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as at 30 September 1995**

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Community Welfare Act 1987 No. 52

Disability Services Act 1993 No. 3

Guardianship Act 1987 no. 257

Home Care Service Act 1988 No. 6

Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987 No. 58

Miscellaneous Acts (Disability Services and Guardianship) Repeal and Amendment Act 1987
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Youth and Community Services Act 1973 No. 90 (subject to repeal)

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Adoption Information Regulation 1991

Centre-based Child Care Services Regulation 1989

Children (Care and Protection - Child Employment) Regulation 1993

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LIST OF ATTACHMENTS

Department of Community Services

(Editor's Note: The following attachments are not included in this publication. However this list of attachments submitted to the National Inquiry has been retained for reference purposes.)

1. *Learning from the Past: Aboriginal perspectives on the effects and implications of welfare policies and practices on Aboriginal families in New South Wales*, The Gungil Jindibah Centre, Southern Cross University, for the Department of Community Services, 1994
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Part 3 contains:

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Part 4 contains:

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Part 5 contains:

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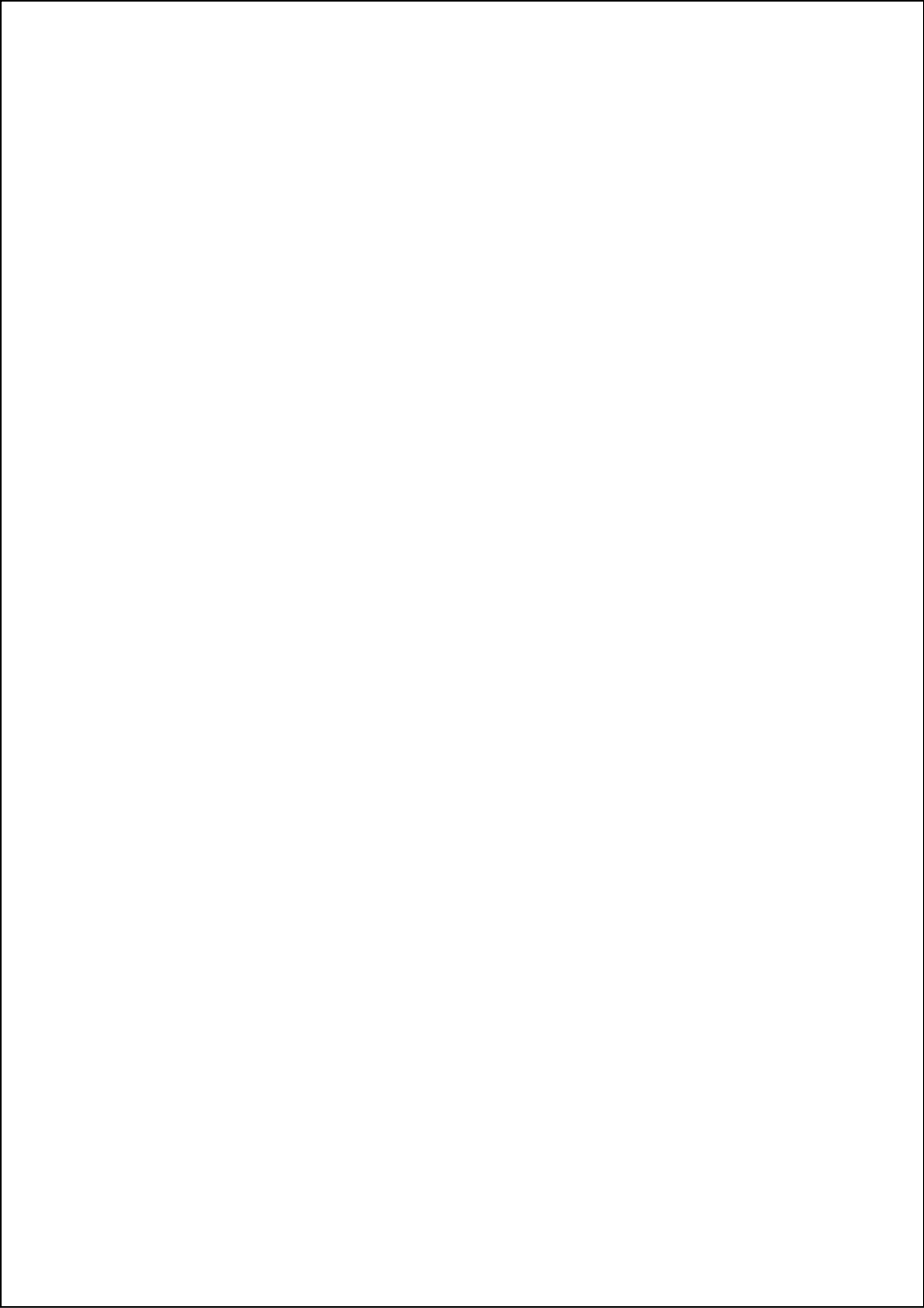
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