INTRODUCTION

In December 1995 the Tasmanian Government presented an Interim Submission to the Human Rights and Equal Opportunity Commission's National Inquiry into the Separation of Aboriginal Children from their Families.

The Tasmanian Government recognises that past legislation, practices and policies have adversely affected Aboriginal people. This has had implications to Aboriginal people in Tasmania over successive generations.

Issues raised by the Commission at the December 1995 hearing in Hobart indicated that more research was necessary to gain an understanding of the extent to which past legislation, practices and policies resulted in the separation of Tasmanian Aboriginal children from their families.

Subsequently, research for the Tasmanian Government Submission has concentrated on the identification of policies, practices and laws from the Second World War period to the present that provided for, or had as their consequence, the separation of Aboriginal children from their families.

Significant effort has been expended in investigating specific areas of social welfare, education, police and juvenile justice as methods of separation. Conclusions regarding the extent to which such policies, practices and laws were used as a means to achieve assimilation according to the Commonwealth definition are presented.

It is important to note at the outset that the language used in this submission quotes the files, letters, and reports of an earlier time, with values and attitudes which people find offensive today. However, any retrospective evaluation of such details should not overlook or simplify their original intent.

The Future

The Tasmanian Government Submission provides a basis for future research and historical analysis extending beyond Government records.

This Inquiry should serve to mandate that child protection, child welfare and youth justice legislation must take account of the child and his/her family's culture, values and traditions. Services should ensure that vulnerable children are protected, and at the same time provide help in ways that are culturally appropriate, accessible and acceptable in terms of assessment, modes of intervention and definitions of care.

Following the Recommendations of this National Inquiry, a critical emphasis must be placed upon child protection and child welfare systems, and corresponding education must focus on the child and the family. In designing, providing and funding protective and care services, all States must listen to Aboriginal communities and update practices and procedures. By doing this Governments will be more responsive to the issues that are important to this generation of children and young people, and families and communities who are at risk of being caught in the child welfare or youth justice system.

The timing of the Inquiry fits the Tasmanian Government's commitment to develop new legislation covering child welfare and juvenile justice. The report and HREOC's recommendations will be influential in shaping and implementing the Tasmanian legislation.

Access to Records

In 1991 the Royal Commission into Aboriginal Deaths in Custody noted that 'Aboriginal people have a unique history of being ordered, controlled and monitored by the State. For each individual there are files maintained by agents of the State .... to a degree that few non-Aboriginal peoples lives would be recorded. Not infrequently the files contain false or misleading information; all too often the files disclose not merely the recorded life history of the Aboriginal person but also the prejudices, ignorance and paternalism of those making the record.'[1]

The Tasmanian Government awaits the outcome of the Privacy Commissioner's investigation into access to personal and family records, and fully supports the further application of Recommendation 53 of the Royal Commission into Aboriginal Deaths in Custody. This recommendation specifically endorses access to government archival records of Aboriginal family and community histories in order to assist Aboriginal people to re-establish community and family links.

1 Royal Commission into Aboriginal Deaths in Custody: National Report - Overview and Recommendations 1991, p 4.

SUMMARY OF RESULTS

Aboriginal specific legislation

Historically, Tasmania has enacted only two pieces of Aboriginal specific legislation. The *Cape Barren Island Reserve Acts* of 1912 and 1945 were implemented by the Government to separate the Tasmanian Aborigines from mainstream society through partition. The creation of a Reserve on Cape Barren Island provided an opportunity for residents to apply for licences for homestead and/or agricultural blocks, under specific conditions.

The *Cape Barren Island Reserve Act 1945* was essentially the same as the 1912 Act but lessees had to reapply for new 5 year licences, and more rigorous conditions were enforced. The Act expired in 1951 with land not granted under a lease reverting to the Crown.

Assimilation

From 1937 the Commonwealth policy towards indigenous people developed on the basis that "full blood" Aboriginal people would slowly die out and they should be provided with little care while they did so; and that the "mixed blood" would gradually be bred out. When these expectations proved ill founded, another policy was tried, that of assimilation: 'the whole aim ... was to assimilate the Aboriginal people by encouraging them to accept Western culture and lifestyle, give up their culture, become culturally absorbed and indistinguishable, other than physically, from the dominant group.'[2]

A conference of Commonwealth and State Ministers was called in 1963 to address the issue of Aboriginal welfare. The meaning of the Commonwealth policy of assimilation was explicitly stated:

> "all Aborigines and part-Aborigines will attain the same manner of living as other Australians and live as members of a single Australian community enjoying the same rights and privileges, accepting the same responsibilities, observing the same customs and influenced by the same beliefs, hopes and loyalties as other Australians.'[3]

At the 1968 meeting of Commonwealth and State Ministers for Aboriginal Affairs, the goal of the Commonwealth policy of assimilation via new funding programs was again clearly stated: 'Our ultimate objective is ... the assimilation of Aboriginal Australians as fully effective members of a single Australian society.[4]

The Australian Aboriginal Affairs Council, for the purposes of Commonwealth assistance to the States, had previously defined an Aboriginal as 'a person of aboriginal or part aboriginal descent who says he is and is accepted by the

2 *ibid,* 8.

3 Aboriginal Welfare, Conference of Commonwealth and State Ministers, 1963. Chief Secretary's Correspondence Files (CSCF), PCS/1/578 Section 183/8/63.

4 *id.*

community in which he lives as such.'[5] The Director of Social Welfare noted in correspondence to the Chief Secretary that 'by definition our Cape Barren Islanders qualify'.[6]

At the Commonwealth level, "assimilation" of Aboriginals was attempted through two mechanisms:

1. Children with one non-Aboriginal parent were removed from their families and educated for integration into mainstream society; and

2. The separation of families and adult members from their community and subsequent integration into mainstream society.

Tasmania's application of the above mechanisms and interpretation of assimilation is the subject of this submission and is briefly outlined below:

1. Assimilation through separation of Aboriginal children

In the Tasmanian context, preliminary findings presented in the Interim Submission indicated that 'there is no doubt that past laws, practices and policies did result in the separation of Aborigines ... from their families.'[7] It was also concluded that 'some separations were done by compulsion (through legal action), duress or undue influence'.[8]

Extensive research has indicated that in Tasmania there was no legislation specific to the Aboriginal community that provided for the separation of Aboriginal children from their parents or community.

The policy of assimilation was officially contemplated by the Tasmanian Government when the Commonwealth assimilation programs commenced in the 1960s.

Mainstream child welfare legislation, that provided for the separation of children in the post war period, applied to all members of the Tasmanian community. Children were taken into State care for reasons of neglect, because they were uncontrolled, in need of protection or guilty of an offence.

The removal of Aboriginal children occurred within the Tasmanian legal framework, in accordance with welfare policies and practices existing at the time. How much the idea of assimilation influenced the practical administration of mainstream legislation and policy as it related to the Aboriginal community cannot easily be quantified.

It is difficult to comprehensively assess the impact of such policies, practices and laws for the period under study. However, given the often poor economic circumstances of Aboriginal people in Tasmania at that time, particularly on

5 *id.*
6 *id.*
7 Tasmanian Government Interim Submission 1995, p 4.
8 *id*

Cape Barren Island, these actions did have a marked impact on this community. Disadvantaged groups are less able to manage or influence the prevailing social system, and are more vulnerable to State intervention and State control. Even so, the Cape Barren Island community had a marked sense of political and cultural identity, as noted by historians such as Reynolds and Ryan.

Education as a method of separation

In the process of this National Inquiry, education has been identified as a method by which separation of Aboriginal children from their families was achieved. Prior to the commencement of Commonwealth education programs, the Tasmanian Government considered a number of policy options in the late 1960's to encourage secondary age students from Cape Barren Island and Flinders Island to attend school on the Tasmanian mainland.

These options were:

- Financial assistance from the State Government in the form of special bursaries;
- Financial support to assist the objectives of the Cape Barren Island Committee chaired by Dr J Morris;
- Section 35 voluntary admission to care under the *Child Welfare Act 1960* (that is, voluntary admission of a child as a ward of the State);
- The 1968 interpretation of the *Child Welfare Act 1960* allowing for Government assisted boarding allowance to be paid to Approved Children's Homes for accommodation costs of non-wards of State.

Extensive research of relevant records indicates that some Aboriginal parents agreed to send their children to schools on the Tasmanian mainland either with Government financial assistance, under private patronage or by their own resources. There is evidence that Section 35 of the *Child Welfare Act 1960* was offered to Cape Barren Island parents as a way to fund the costs associated with attending school on the Tasmanian mainland. In all instances the offer was refused.

Potential for duress and undue influence

A search of case records indicates that a small number of admissions to State care occurred from Cape Barren Island and Flinders Island between 1959 and 1969 through the operation of the voluntary admissions under welfare legislation. That is, where the parent or guardian applied to the Minister for the child to be admitted as a ward of the State. Departmental records indicate that in each case, the application was signed by the parent or carer. However, it is possible that factors such as duress and undue influence may have played a role in obtaining their consent. It is not known how many applications were taken and later revoked. As this search was not exhaustive other cases of this type may exist.

In the context of the events on Cape Barren Island from 1900 to the 1970s the positions of authority on the Island, those of the police constable, head teacher (who also had the powers of a police officer), the child welfare office and the visiting health sister, were used to assist in the administration of an assimilation policy.

At this time the Tasmanian Aboriginal population were relatively disempowered. The effect of separation on any individual is traumatic. This is compounded where the subsequent care of the child is with an alternative and unsympathetic cultural group. Lost individual and cultural identity cannot be easily regained. Thus the assertion made in the Interim Submission remains unchanged: 'the separations whether voluntary or not would have a marked and traumatic effect on the children and families involved.'[9]

2. Assimilation through integration of families

While the welfare laws, practices and policies were not intrinsically racial, they operated in a Commonwealth Government framework that promoted assimilation and absorption of all Aborigines into mainstream society. This was complicated by the fact that authorities at the time maintained that all lower socio-economic groups suffered "social deprivation" due to their limited opportunities in mainstream culture. Government officials employed the means they thought necessary to improve the chances of the next generation.

Following World War II, Tasmanian historical documents indicate a shift in State Government thinking from separation through partition to assimilation through integration. In the Tasmanian context, assimilation took the form of active encouragement by the Government for Aboriginal families to relocate throughout Tasmania.

From the late 1960's this policy was underwritten with Commonwealth support and funding. Efforts were directed towards encouraging Cape Barren families to relocate throughout the Tasmanian mainland, facilitated by the development of welfare programs, the practical administration of relevant legislation, and by highlighting the lack of economic opportunity for those who remained on the Island.

Aboriginality in Tasmania

The issue of Aboriginality in Tasmania is critical when considering the terms of reference of this Inquiry. Historical records note that upon the death of Truganini in 1876 there was consistent thought that Tasmanian Aboriginals were extinct. Successive Tasmanian Governments proceeded on the basis that there were no Tasmanian Aboriginals: 'with her death most Europeans considered the Aboriginal problem in Tasmania finished.' [10]

9 *id*

10 L Ryan, The Aboriginal Tasmanians (2nd Edition) (St Leonards: Allen and Unwin) 1996, p 220

Given this attitude, Government record keeping up until the late 1960's appears to have irregularly and inconsistently noted Aboriginality. References such as "Cape Barren Islander" or "half caste" were relatively *ad hoc* and initially related to those who lived on the Bass Strait Islands (Cape Barren Island and Flinders Island). These families were the descendants of Aboriginal women and European sealers who lived on the islands and settled on Cape Barren Island during 1872.[11]

When some of the more recent generations moved to the Tasmanian mainland during the 1960's, the term "Cape Barren Islander" was used to refer collectively to Aboriginal individuals regardless of where they had lived. This has made the collection of relevant details from Government documents very difficult.

In 1912 the Tasmanian Government passed the *Cape Barren Island Reserve Act* which created conditional licences for homestead and agricultural blocks on the Island. An inquiry was held into the future of the Reserve in 1944, and in 1945 the Reserve Act was renewed for five years. A second inquiry was held in 1947 which recommended that the Act not be 're-enacted upon the date of its expiry', that the Reserve should be closed and the 'population gradually [be] absorbed into the rest of the Tasmanian community ... [as they would] in the opinion of the committee eventually become useful citizens'.[12]

Bureaucratic recognition of Tasmanian Aborigines is also evident in Commonwealth government supported programs and services throughout the 1960's, 1970's and 1980's, such as housing programs and education grants. For example, in July 1968 it was reported in the local press that the then Chief Secretary attended the Commonwealth and State Ministers for Aboriginal Affairs meeting in Melbourne because although Tasmania had no 'indigenous Aboriginals' it was felt that the State should take part in 'the endeavour to deal with a matter of national importance and ... because the interests of Bass Strait Islanders must be preserved.'[13] This does indicate a tacit recognition of the Tasmanian Aboriginal community by the Tasmanian Government at that time.

Since the late 1960's it has been a slow process for Governments and the general Tasmanian community to accept the Commonwealth definition of Aboriginality. Throughout the 1970's the Tasmanian education curriculum utilised outdated text books that perpetuated the belief that Tasmanian Aborigines were extinct.[14]

A range of views held by the wider Tasmanian community denied Aboriginal status to Aboriginal Tasmanians, according to the absence of specific physical characteristics, lack of "full blood" status, and Anglo-Celtic stereotypes of what

11 *ibid,* 222-227.

12 Report of Joint Committee of both Houses of Parliament. Conditions in Flinders Island Municipality 1948, p 4

13 CSCF PCS/1/578 Section 183/8/68, 11 July 1968.

14 K Randriamahefa, Aborigines in Tasmanian Schools, Research Study No.44, Education Department of Tasmania, Research Branch, Hobart 1979, p 50.

constituted Aboriginal behaviour. The belief that Tasmanian Aboriginals were extinct was maintained through the education system and reinforced the widely held view 'that a person of mixed ancestry does not have the right to identify more strongly with one ethnic group than the other.'[15]

This position on Aborigines in Tasmania was not seriously challenged until the early 1970's, despite the evolution of the Commonwealth definition of Aboriginality in 1968 after the critical 1967 referendum. Following the referendum of May 1967, the Commonwealth Government and the States agreed to 'joint powers and responsibilities for the advancement of Aboriginal people.'[16]

During the 1980's in Tasmania more people claimed Aboriginal heritage and identified as Aboriginal. The increasing number of people identifying as Aboriginal was attributed to increasing pride in Tasmanian Aboriginal history and culture; the development and preservation of Aboriginal genealogical records; an improving tolerance in the community; the development of Aboriginal programs and Aboriginal groups to which individuals could relate; and an increased awareness of rights at that time.[17]

There has been increasing State Government willingness to involve the Tasmanian Aboriginal Centre and the Aboriginal community in the development of policy and the implementation of programs that directly impact on Aboriginal people. Increasing participation in the development of Government programs and service guidelines has provided the opportunity for self management and nurtured a co-operative relationship between the Aboriginal community and Government service providers.

In Tasmania, efforts to promote self-determination and recognise contemporary Aboriginal culture have made significant progress in recent years. In December 1993, the then-Premier the Honourable Ray Groom, MHA officially and publicly stated that Tasmania would work to give 'full and proper recognition of [Tasmania's] Aboriginal people and their heritage and culture.'[18]

This statement heralded the transfer of significant sites to Aboriginal ownership in the *Aboriginal Lands Act 1995*, and a proposed *Historical Cultural Heritage Bill*. Moreover, the *Living Marine Resources Management Act 1995* include specific recognition of hunting and gathering rights for Tasmanian Aborigines, and an inclusion in the current *Coroners Act 1995* allows the Aboriginal community to take care of their ancient dead.

15 *id.*

16 CSCF, 11 July 1968.

17 Tasmanian Aboriginal Persons, A Welfare Perspective, Department of Social Welfare 1980. 3/1/6 folio 44-48. Northern Regional Office (it is likely that this paper was written by Dennis Daniels, then Director, Department of Social Welfare.)

18 A Step Towards Full Recognition and Appreciation, 16 December 1993. Paper from the Premier of Tasmania, the Hon. Ray Groom.

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TERM OF REFERENCE (A)

Provide a chronology of any relevant past laws, practices and policies which provided for, or had as their consequence, the separation of Aboriginal and Torres Strait Islander children from their families by compulsion, duress or undue influence, through the child welfare, juvenile justice or any other relevant system.

1.1 Chronology of relevant past laws, policies and practices.

In addition to the list below **Appendix 1** provides a list of statutes that existed in the period between 1867 and 1918.

LAWS	POLICIES	PRACTICES
Welfare/Justice[1]		
• *Infants' Welfare Act 1935* • *Child Welfare Act 1960* • *Child Protection Act 1974*	• Report of Joint Committee of both Houses of Parliament. Conditions in Flinders Island Municipality 1948 • 1968 change in policy to allow the State to fund non-wards accomodation in Approved Children's Homes • Progress Report to the Australian Aboriginal Affairs Council, Chief Secretary, 1973 • Committee for Aboriginal Social Welfare 1979 • Social Welfare Administrators Report, Tasmanian Section, 1983	• 1928-1980 Special Constable (School Principal) • Social Welfare Officers Procedures Manual 1966 • Housing/Relocation scheme, 1968 • Child Welfare Manual 1982 • Family Services Operational Manual 1993 • Child Protection Manual 1993

1 Welfare/justice legislation prior to 1935 has not been addressed in this Submission.

LAWS	POLICIES	PRACTICES
Adoption		
• *Adoption of Children Act 1920* • *Adoption of Children Act 1960* • *Adoption of Children Act 1968* • *Adoption of Children Act 1988*	• ACT 1965 Ordinance served as model for uniform national adoption legislation • Aboriginal Adoption and Fostering Policy Guidelines 1977 • Aboriginal fostering and adoption - review of principles, policies and practices, 1983	
Education[2]		
Education Act 1932	• Report of Joint Committee of both Houses of Parliament. Conditions in Flinders Island Municipality 1948 • Aboriginal Welfare Conference of Commonwealth and State Ministers, 1963 • Aboriginal Welfare Conference of Commonwealth and State Ministers, 1966 • Progress Report to the Australian Aboriginal Affairs Council, Chief Secretary, 1973 • Tasmanian Aboriginal Education Consultative Committee, 1979	• Bursaries and Scholarships for Cape Barren Island children • Housing/Relocation scheme, 1968
Land[3]		
• *The Cape Barren Island Reserve Act, 1912* • *The Cape Barren Island Reserve Act, 1934* • *The Cape Barren Island Reserve Act, 1945*		

2 Education legislation prior to 1935 has not been addressed in this Submission.

3 Related legislation prior to 1912 has not been addressed in this Submission.

TERM OF REFERENCE (A)

Identify and describe the relevant past laws, practices and policies which provided for, or had as their consequence, the separation of Aboriginal and Torres Strait Islander children from their families by compulsion, duress or undue influence.

1.2 Description of relevant past laws, practices and policies.

1900 - 1950's

Welfare Legislation

Adoption Act 1920 (11 Geo. V No. 5) (Reprint 1954)

Under the *Adoption Act 1920*, adoption could be conducted privately. Records were held by the Registrar General in Hobart or the registrar of births and deaths in Launceston.

Section 2A provided that all the powers and functions conferred on a police magistrate would be exercised by the Registrar General and the district registrar.

Sections 3 & 4 provided that written applications for adoption could be made to a police magistrate.

Under section 5(1) the police magistrate, before making an adoption order, must be satisfied that:

- the person to be adopted is a child (under 21)
- person proposing to adopt is of good repute
- the welfare and interests of the child are promoted by the adoption
- and that consents required are duly signed.

The written consent of the parents or legal guardian was required. However, if the child was a child of the State then the consent of the Director of Social Services was required.

Section 5(1A) enabled the police magistrate to make the order without consent if it was impractical to obtain it.

Under section 9 the police magistrate could vary, reverse or discharge an order of adoption.

Regulations to the Act prescribed the mode of registering and the keeping of a register of all adoption orders.

Infants' Welfare Act 1935

The *Infants' Welfare Act 1935* **(Appendix 2)** was the first statute that consolidated the law "relating to the welfare of children and the protection of infant life".

Section 37 provided that a parent, near relative or person of good repute could apply to the Minister for the child to become a child of the State. If the Minister approved the application the child was admitted into the care of the Department of Social Services.

Section 38 provided that if the Justice believed that the child was neglected or uncontrollable, on the oath of an officer of the Department or a Police officer, a warrant could be issued for the apprehension of the child.

Section 40 provided that if the Justice suspected a child was being ill-treated or neglected, on the oath of any person of good repute, a warrant could be issued for the apprehension of the child. The person authorised to remove the child was permitted to use force to enter the house or place to remove the child.

Section 41 provided that if a person authorised by the Director or Police officer had reason to believe that the child was neglected or uncontrollable that person could apprehend the child without a warrant.

Section 42 provided that pending the hearing for a child, a court or justice may order that the child be detained in a receiving home, placed in charge of some respectable person, placed in charge of a married probation officer, kept in gaol or admitted to bail.

Section 43 provided that if a person who had actual care and custody of the child believed the child was uncontrollable that person could apply for the child to be committed to an institution.

Section 45 provided that if the children's court found that a child is neglected or uncontrollable, it may commit the child to the care of the Department, to an institution, or release the child on probation upon such terms and conditions and for such a period that the court may think fit.

The Act provided for **juvenile justice** procedures to be welfare oriented.

Section 46 provided that where a child had been convicted of an offence, not indictable, the children's court may commit the child to the care of the Department, to an institution, adjudge the child to pay a penalty (not greater than five pounds), or where the child is 14 and over, sentence the child to no longer than 3 months.

Section 49 provided that if a child, over 14, defaulted on payment of a penalty, damages or costs then the child could be imprisoned for 3 days to 1 month.

Section 51 provided that where a child was 14 or under and was charged with an indictable offence (other than murder or attempt to murder, rape, manslaughter, or wounding with intent to do grievous bodily harm) the children's court could commit the child to care of the Department, an institution or be adjudged to pay a penalty.

Section 52 provided that where a child was over 14 and was charged with an indictable offence (other than murder or attempt to murder, rape, manslaughter, or wounding with intent to do grievous bodily harm) the children's court could commit the child to the care of the Department, an institution or sentence the child.

Education Act 1932

Under the *Education Act 1932* schooling was made compulsory for children over the age of seven years and under fourteen years. Section 8(1) of the Act stated that 'parents of every child over the age of seven years and under the age of fourteen years shall cause such child to attend at a primary State school during the whole of each school-day in every week in every year, except where such a child is exempted or excused'. The Act listed reasons that were "just cause" for exemption, including 'that there is no school within a radius of three miles ... and no conveyance provided by the Minister'.

Under Section 9(1) 'no person, being the parent of any child over the age of seven and under the age of fourteen years, shall neglect to send such child to school as and when required by this Act.' Under the Act, the child may have been considered a neglected child for the purposes of the *Infants' Welfare Act 1935* and later under the *Child Welfare Act 1960* if the child was a habitual truant from day school or if the parents had been convicted, at least twice, of neglecting to cause the child to attend school. While Education Department correspondence indicates that charges against parents were initiated, an extensive search of past records failed to locate any specific files on the enforcement of this section. Extensive research of relevant files have failed to reveal any cases where children were removed from their families under this provision.

Although there was only a primary school on Cape Barren Island, the older children would likely have been regarded as exempt under Section 7A(2)(e) from attending post-primary (high) school at the nearest facility (Flinders Island or Launceston). A child was exempt if he resided 'at a distance of or exceeding three miles, by the nearest practicable route, from any such school and no conveyance [is] provided by the Minister'.

The Cape Barren Island teachers were mostly primary trained and they continued to provide a primary curriculum to all students enrolled at the school, including those staying on beyond Grade 6. The teachers also aimed to provide something relevant and useful to all the students in the Island context, including the establishment of a school garden.

In 1946 the age of commencing school was lowered from seven to six, and the school leaving age was increased from 14 to 16 years. In 1954 the requirement for parents to enrol the child at a primary State school was amended to include enrolment in a post-primary school.[4] The Act did not specifically require parents to enrol children in secondary schooling until 1964, by which time the value of continued education had been recognised. Before this time, the goal for many families was employment for their young people, not further education at the end of primary schooling. So, where a child of 13 may have been fairly comfortable in a primary setting, a young person 15 would have been less so.

4 *Education Act 1943 (7 Geo. VI No. 46).*

Domestic Assistance Service Act 1947 (11 Geo. VI No. 30)[5]

The *Domestic Assistance Service Act 1947* **(Appendix 11)**provides for the establishment of a domestic assistance service and authorises the making of grants to associations providing domestic assistance.

Section 2 gives the Minister the power to establish a domestic assistance service, that is, persons available for domestic and other work in homes, in cases where:

- the mother or woman in charge of the home is incapacitated;
- a member of the household requires special care; or
- the lack of domestic assistance is the cause of hardship.

Section 3 provides that hostels may be established for:

- the accommodation of persons engaged in performance of domestic or other work;
- those persons undergoing training; and
- accommodation and care for children in the cases outlined above.

Section 4 provides that the Minister may grant financial assistance to approved associations who provide domestic assistance.

Regulations to the Act prescribe:

- the rates of contributions to associations;
- enrolment and training of women and girls for domestic assistance in homes;
- payments to be made by house holders for the provision of domestic assistance; and
- terms and conditions of employment of domestic assistance.

[A discussion of the application of this Act can be found in the information regarding welfare policy and procedure in the 1970 - 1990s.]

Welfare Policy and Procedure

During the period of 1900 to 1950 instructions for social welfare policy and practice were issued as memorandum and kept on Departmental files for reference.[6] Welfare policy and procedure was not formally consolidated and fully documented until 1966. This is discussed later in the submission.

5 Reprint as at 1 Oct 1979.

6 See File 2/2/1, Department of Community and Health Services (DCHS).

Historical Context: 1900 to 1950's

For the purposes of this Inquiry Tasmania's submission concentrates on the Tasmanian Aborigines from Cape Barren Island from 1900 onwards. In the period prior to 1940 the only records that relate specifically to Tasmanian Aboriginal people deal mainly with those that lived on the Bass Strait Islands (Cape Barren Island and Flinders Island). These families were the descendants of Aboriginal women and European sealers who lived throughout the Furneaux islands and had settled on Cape Barren Island by the end of 1872.[7] A study of the history of Aboriginal communities in Tasmania prior to or since that date in the North, the North-West or the South has not been undertaken.

Lord's Report 1908

In 1881 6,000 acres of some of the best land on Cape Barren Island had been set aside for a "half-caste" reserve.[8] In January 1908 Cape Barren Island was incorporated with the new Flinders Island Municipality. The Cape Barren Island community refused to pay rates and taxes on the grounds that they had not been consulted about the establishment of the council and were not represented on it. The Attorney General appointed the Commissioner of Police, JEC Lord to report to Parliament on 'the state of the Islands, the condition and mode of living of the half-castes, the existing methods of regulating the reserves, and suggesting lines for future administration'.[9] The report led to the introduction of the *Cape Barren Reserve Act 1912* and became the basis of all succeeding reports until 1978.[10]

The report revealed three very different attitudes to the "problem" of the reserve on Cape Barren Island. 'The Flinders Island Council believed that the reserve should be thrown open to selection, with the Islanders having first option.'[11] Most Islanders were not in the position financially to be able to purchase land and they 'believed that the reserve should be granted to them outright, with the muttonbird industry reserved for their exclusive use.'[12] Lord had held a meeting with the Cape Barren Islanders who presented a list of grievances from the community. The list included the request that an Act be 'passed which would give the half-castes some definite right to the reserve; also to determine those who have an actual right to live on it.'[13]

Lord 'believed that the Islanders should "earn" legal security by taking out short-term homestead and agricultural leases, pursuing agriculture, and improving the land, and after a period of time they would become eligible for long-term leases.[14]

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7 L Ryan, 1996, p 222-227.

8 Report of Joint Committee of both Houses of Parliament. Conditions in Flinders Island Municipality 1948, p 4

9 GEC Lord, 'Furneaux Islands: Report upon the state of the Islands, the Condition and Mode of living of the Half-castes, the existing methods of regulating the reserves, and suggesting lines for future administration.' 1908.

10 L Ryan, The Aboriginal Tasmanians (2nd Edition) (St Leonards: Allen and Unwin) 1996, p 239

11 *ibid*, 240.

12 *ibid.*

13 GEC Lord, 1908, p 8

14 L Ryan, 1996, p 240

The attempt to transform the Islanders into agriculturalists began before 1900. It is pertinent to note that there was perhaps little understanding '... that the Islanders' relationship to the land rested on their Aboriginal heritage, their pursuit of muttonbirding, and their descent from a sealing community. Agriculture had never been a significant part of their existence.'[15]

One of the issues Lord highlighted was that there had been virtually no 'improvement or cultivation [on the reserve] had been effected. No single individual ... had any right or inducement to improve for his own benefit.'[16] Lord recommended that steps be taken to subdivide the Reserve to enable some ownership and thus encourage land improvement.[17]

Lord noted that the housing was 'mostly paling or weatherboard, unenclosed, and without garden and cultivation of any description'.[18] In relation to the living conditions he noted that there was poverty, dirt and thriftlessness and hinted that consumption was reappearing. If disease was to break out Lord considered that there would probably be an epidemic. The report recommended that most of the houses be condemned and that the Islanders be assisted to rebuild dwellings decently suitable to their requirements, with the provision of materials arranged with a repayment system.[19]

Lord noted that although the reserve had been granted with the best of intentions, it 'has been, and is, a curse, for want of system and regulation. It is a nest of laziness and discontent.'[20] He did not believe the Islanders were 'incapable of sustained work', but rather they required close supervision and instruction.

He noted the extent of debts owing to the local storekeeper, and recommended that their indebtedness be removed and a Government depot be opened through which the community could dispose of produce (eg. muttonbirds) in return for supplies. The report proposed a Government official be placed in charge of the reserve, and recommended that legislation be introduced to prohibit the supply of alcohol to the Islanders, at the community's own request.[21]

The Cape Barren Island Reserve Act 1912

The most substantial reference to Tasmanian Aboriginals in Government legislation during this period is found in the *Cape Barren Island Reserve Act 1912*. The Tasmanian Government instituted the Cape Barren Island Reserve through this Act which operated until 1951.

'The bill made the Minister for Lands responsible for the welfare of the Islanders, while the Secretary of the Department of Lands was to manage and regulate the use and enjoyment of the reserve and to supervise all matters affecting the interests and welfare

15 *ibid*, p. 230.
16 GEC Lord, 1908, p 8
17 *ibid*
18 *ibid*, 9
19 *ibid*
20 *ibid*, 8
21 *ibid*, 10

of the residents.'[22] 'In a briefing note to the Minister, the Secretary for Lands, AE Counsel, explained that the two principal objectives in passing the 1912 act had been to induce the people to take up and make homes on the reserve and to protect them from any dispossession from their allotments except by their own free will.'[23]

The Act made available 99 year leases (which could be cancelled at any time) but not freehold title, and named specific persons who were eligible to apply. Under the Act, individuals could apply for licences to occupy specific homestead and/or agricultural blocks, provided they satisfied the conditions that related to the operation of the licence.

In the case of homestead blocks, the residents had to construct "approved" houses within two years and the licensed occupier was required to continuously reside there for six months of each year. In the case of agricultural blocks, licensed occupiers were to securely fence the block and "satisfactorily" cultivate the block or use it for grazing purposes. The Act also stated that a licensed occupier or lessee could enter into a loan arrangement with the Crown for the provision of building materials, to be repaid over ten years.

Provisions were made under section 28 "to encourage settlement of half-castes in other parts of the State." Licence holders could apply to surrender their land in the Cape Barren Reserve and all other rights under the Act to be issued with a certificate authorising them to occupy crown land (not greater than 50 acres) in any part of Tasmania that was available for selection. There is no record of this provision having been applied in this period, however, the idea was raised in the 1948 Report of conditions in Flinders Island Municipality (refer below).

Failure to comply with any licence conditions resulted in cancellation of the licence and forfeit of the block and all improvements. Failure to meet loan repayments also resulted in forfeiture. If conditions of the licence were successfully met after 3 years, the licencee could apply for a 99 year rent free lease. Other restrictions included the prohibition of alcohol on Cape Barren Island itself, and that any persons over 21 who were not licensed occupiers or lessees were to leave the Reserve or be charged with trespassing.

From Lord's report the Government was aware that the Cape Barren Islanders were being exploited by the white residents in the area who charged them high prices for goods and in return paid very little for any stock and muttonbirds. Under the 1912 Act creditors were rendered unable to recover the large debts owed by the Cape Barren Islanders to the local store keepers. However, the storekeepers refused to further supply goods on credit, the result being a rather precarious subsistence for the community.[24]

'By 1922 only a few Islanders had qualified for a ninety-nine year lease, few had repaid housing loans, and most had failed to fence their agricultural blocks. ... no assistance

22 L Ryan, 1996, p 240

23 L Ryan, 1996, p 243

24 A Morgan (1985) Aboriginal Education in the Furneaux Islands (1798 - 1986): a study of Aboriginal race policy, curriculum and teacher/ community relations, with specific reference to Cape Barren Island (unpublished Masters of Education thesis), 1985, p 69.

had been provided with cattle or grasses - in contrast to the help received by new settlers on Flinders Island.'[25]

Select Committee Report on the Furneaux Island Half-Castes, 1924

In 1924 a Select Committee was appointed to report on the 'Furneaux Islands Half-Castes' [including Cape Barren Island] and the 'best means of dealing with the half-caste problem'.[26] The major issues of concern in the 1920s were poverty, high unemployment, a lack of involvement in agriculture, the community's debt to local storekeepers (about 3,000 pounds in 1922) and the insecure state of the birding industry.[27]

The report by the Select Committee recommended that the provisions of the *Cape Barren Island Reserve Act 1912* be more rigorously enforced, that there be no variation to the 99 year leasehold system and that the practice of subleasing should cease in order to encourage a spirit of responsibility' and the improvement of holdings.[28]

The report deemed that the problems on the Reserve could be rectified by more adequate supervision, and supported the notion of appointing a white supervisor. Since the death of the Bailiff the administration of the provisions, especially in relation to non-compliance, had not been enforced. The report also recommended that 'no additional mutton-birding licences should be granted to other than half-castes'.[29]

The report recommended that a committee of residents from the Reserve be elected to encourage local interest and responsibility. No such committee was established, and the Inquiry failed to reach any acceptable solution.

In the same year the Director of Public Health drew attention to the insanitary conditions of the Cape Barren Island Reserve, but neither the Flinders Island Council or the State Department of Public Health would take action because the Islanders were in arrears with their local taxes, dog licences, and leasehold payments. The Council's medical officer was subsidised by the Department of Public Health to treat those Islanders classified as "indigent" who had a leasehold on the Reserve. However, it is noted that 'in 1930 he refused to attend the confinement of one of the Islanders ... because of confusion over her indigent status. As a result her baby died.' [30]

AW Burbury Report, 1929

In 1929 a lawyer from the Attorney General's Department, AW Burbury, was asked to investigate conditions on the Cape Barren Island Reserve. Burbury had recently returned from observing the Pitcairn Islanders at Norfolk Island. Burbury wrote a most perceptive report on the crowded living conditions of the Cape Barren Islanders and their outlook on life. He noted that the Islanders regarded themselves as having been 'supplanted and exploited by white men', and that the Act 'has given them the belief that

25 EA Counsel (Secretary, Department of Lands) 'Report on the Management of the Half Castes at Cape Barren Island, 1922, as cited in L Ryan, 1996, p 243.

26 Report of Select Committee: Furneaux Island Half-Castes, 1924.

27 A Morgan, 1985, p 69.

28 *ibid* p.3.

29 *id.*

30 Flinders Council Minute Book, 5 July 1930, as cited in L Ryan, 1996, p 244-245.

they have a claim on the State and that it was passed in recognition of their claim that their country has been taken away from them by the whites.'[31]

While Burbury was of the opinion that this view was justified in recognition of their claim, he felt that the Reserve was bound to fail because 'success could only have been achieved under [the provisions of the Act] by a thrifty and hard-working tenantry who would develop and improve the land.' Burbury indicated that the *Cape Barren Island Reserve Act* was responsible for the failure of the Islanders to achieve economic independence, and the evident poverty and malnutrition could be attributed in part to 'white' exploitation of the birding industry.[32] He recommended that the government should acquire the whole of the island as a reserve, for the land provided under the Act (2,428 hectares) was inadequate for any economic pursuit.[33]

In relation to financial responsibility, Burbury recommended that the Federal Government be approached to assume this role, since it had more direct experience with Aboriginal problems in the Northern Territory. Similarly, he suggested that a missionary society assume religious responsibility for the Islanders themselves. Failing this, the management of the reserve should be transferred to a "competent supervisor" whose duty would be to improve the land. Finally, in the report Burbury also recommended an inquiry into the mutton bird industry, and the children should be encouraged to leave the Reserve once they had finished school.[34]

As a result of Burbury's report, mission organisations were invited to investigate the conditions of the Cape Barren Island Reserve with the view of taking it over as a mission. However the Australian Board of Missions refused to assume any responsibility for the Reserve since the Cape Barren Islanders were not "fullbloods". Instead the Reverend JS Needham, the chairman of the Australian Board of Missions, advised the government that 'the Islanders should become part of the general community, for they had been too restive and ungrateful of previous attempts to help them.'[35]

Initial Conference of Commonwealth and State Aboriginal Authorities, 1937

At the 1937 Conference of Commonwealth and State Aboriginal Authorities (Tasmania was absent), specific national objectives in relation to the Aboriginal population were explicitly stated. In the final document a section headed *"Destiny of Race"* stated 'That this conference believes that the destiny of the natives of Aboriginal origin, but not of full blood, lies in their ultimate absorption by the people of the Commonwealth, and it therefore recommends that all efforts be directed to that end.'[36] This effectively defined the Commonwealth's objectives in relation to indigenous people for the next forty years. In contrast, successive Tasmanian Governments proceeded on the basis that there were no Tasmanian Aboriginals because it was believed that the last was Truganini who died in 1876.

31 L Ryan, p. 245.
32 A Morgan, 1985, p 69.
33 *ibid,* p. 246.
34 *id.*
35 L Ryan, p. 246.
36 Initial Conference of Commonwealth and State Aboriginal Authorities 12-13 April 1937, Canberra.

The Cape Barren Island Reserve Act 1945

An Inquiry was held into the future of the Cape Barren Island Reserve in 1944, and in 1945 the Act was renewed for five years. The *Cape Barren Reserve Act 1945* repealed the 1912 Act. It served to consolidate and amend the law relating to the Reserve. Essentially it was the same as the 1912 Act but lessees had to reapply for new 5 year licences, and more rigorous conditions were enforced. Lessees were to effect permanent and substantial improvements to the land from the commencement of the 5 year licence, to the satisfaction of the Commissioner. Also, the licencee or their family had to reside on the lease for a minimum of nine months of the year.

A separate requirement included secure fencing and continuous cultivation or grazing during this period. Loan arrangements similar to those in the original Act were available for the provision of building materials, to be repaid within five years. If the conditions of the licence were successfully met following the full term of the lease, the leaseholder is entitled to a grant of the land freehold. However, this right lapsed at the expiration of the sixth year after the commencement of the lease. The Act expired in 1951 with land not granted under a lease reverting to the Crown.

Report of Joint Committee of both Houses of Parliament: Conditions in Flinders Island Municipality 1948

The Government in Tasmania appeared somewhat slower to respond to the Commonwealth assimilation mandate. A second inquiry into the conditions on the Cape Barren Island Reserve was not held until 1947 and recommended in 1948 that the Reserve should be closed and the 'population gradually [be] absorbed into the rest of the Tasmanian community ... [as they would] in the opinion of the committee eventually become useful citizens'.[37]

The Report of Joint Committee of Both Houses of Parliament on the Conditions in Flinders Island Municipality in 1948 recommended that:

> 'the Government offer every encouragement to half-caste families to leave the Reserve and settle in Tasmania, the objective being a gradual but eventually total absorption of the half-castes into the white population. It is suggested that incentives such as homes and employment be offered to families in various parts of the State as an inducement for them to leave the Reserve.'[38]

The decision by the Commonwealth statistician after the 1944 Census of Aborigines not to include Aborigines who were less than "octoroon" had placed the status of the Cape Barren Islanders as an Aboriginal people in doubt. If they were not Aboriginal then there was no need for a special Reserve. The Cape Barren Islanders had been defined as white people, after having been defined as non-white for the previous seventy years.[39]

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37 Report of Joint Committee of both Houses of Parliament. Conditions in Flinders Island Municipality 1948, p 4

38 *ibid,* p. 5.

39 L Ryan, p. 247.

The 1948 Report indicated a shift in thinking towards assimilation of Cape Barren Island families into the wider Tasmanian community, rather than their separation from mainstream society through partition. During this period efforts were directed towards encouraging families to relocate from Cape Barren Island to the Tasmanian mainland, through housing and employment schemes, and by highlighting the lack of opportunity for those who remained on the Island. These attitudes influenced the development and practical administration of legislation and programs over the next decade.

The Report makes a number of references to the value of the land in the Flinders Island Municipality. Generally "The Flinders Island Municipality...is an important and fertile part of the State of Tasmania. Because of its isolation possibly there has been in the past a tendency to overlook its claims for aid for advancement in proportion to the aid given other parts of Tasmania..." and "The settlers in the Municipality are industrious and constantly are endeavouring to develop the potentialities which undoubtedly exist within the boundaries of the Municipality." [40] In addition, there was one comment specific to Cape Barren Island, that is, "The Reserve is a valuable property, and comprises some of the best land on the Island."[41]

Reference is made in the 1948 report to the comparatively high rate of tuberculosis and to undernourished children who received very little vegetables and practically no milk. One of the reasons for this was that many of the foodstuffs from the Health Department did not arrive in edible form.[42]

Education on Cape Barren Island prior to the 1950's

The Tasmanian Education Department operated a school on Cape Barren Island since the 1830's, and the teacher often commanded considerable status and responsibility within the Island community. Usually the number of students was relatively small, and generally a single teacher provided the range of lessons, with his wife taking charge of the infants (frequently without any formal teacher training).

In 1924 a Select Committee of Enquiry into the Furneaux Islands recommended to the Tasmanian House of Representatives that subjects of a "practical" nature be given prominence in the Cape Barren Island school curriculum.[43] By 1948 the Report of Joint Committee of Both Houses of Parliament on the Conditions in Flinders Island Municipality recommended that the school curriculum be revised to include 'special tuition in the arts and crafts suitable for the half-caste children and by the institution of school agricultural plots designed to give the half-caste children an interest in agriculture.'[44] The same broad curriculum was applied on Cape Barren Island as elsewhere in Tasmania, and these changes were intended as temporary measures in order to allow the children 'every opportunity to learn now how to make a living in the outside world' and would continue only until the families had left the Island.[45]

40 1948 Report, p. 3.
41 ibid, p. 4.
42 A Morgan, 1985, p 162.
43 ibid, p 160-161.
44 Report of Joint Committee of both Houses of Parliament, p. 5.
45 *ibid,* p. 4.

1950's - 1970's

Welfare Legislation

Child Welfare Act 1960[46] *(No 48 of 1960)*

The *Child Welfare Act 1960* **(Appendix 8)** was a consolidating and amending Act in respect of children.[47] Section 2 repealed the *Infants' Welfare Act 1935.* The Act operates on the general principle that 'an erring child shall be treated not as a criminal but as a child who is or may have been misguided or misdirected and the care, custody and discipline of each ward of the State shall approximate as nearly as may be to that which should be given to it by its parents.'[48]

Section 7 provides that the Director, with the approval of the Minister, could appoint honorary child welfare officers and invest them with the same functions as other officers under the Act. This was to provide for child welfare officers in remote areas where Departmental officers were unable to visit frequently. In 1966 there was one honorary child welfare officer appointed on Flinders Island.[49]

Section 31(1) provides eight subsections which describe the term 'neglected child'. In practice the number of subsections used has declined to just two (subsections (a) and (b)).

Section 31(1)(a) has two elements. "The subsection is not satisfied unless the ingredients of both elements are met...The first relates to the parent or guardian in the sense that such person is unfit to exercise care and guardianship or in fact does not exercise proper care and guardianship. The second...is that, as a matter of fact the child is in need of care or protection, in order to secure that he is properly cared for or that he is prevented from falling into bad associations or from being exposed to moral danger."[50] Once it is established that the child is neglected within the meaning of the Act the magistrate must consider which order authorised by the Act (refer to section 34), is in the best interest of the child.[51]

Section 31(1)(b) provides that a child is neglected when the child is beyond the control of the parents or guardians with whom he or she is living.

Section 31(2) provides that proper care and guardianship is deemed not to be exercised if the child is not provided with necessary food, lodging, clothing, medical aid or nursing or if the child is neglected, ill-treated, or exposed by the parent or guardian.

Section 32 provides that if the Justice believes on the oath of the Director, a child welfare officer or a Police officer that a child is neglected, then the Justice can issue a summons requiring a person having charge or custody of the child to bring the child before the children's court or issue a warrant authorising the child welfare officer or police officer to bring the child before the children's court.

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46 Reprint as at 1 October 1977.
47 J Everett, *O v L* [1981 Tas. R. 67] at 73.
48 Department of Community Welfare, Procedural Manual for Child Welfare Officers, 1966, p 4.
49 *ibid,* p. 37-38.
50 J Everett, *Re P (Infants)* (1982) 8 Fam LR 547 at 549.
51 J Zeeman, *S v Sandra Yvonne Abbott* B54/1992 1 at 7.

Section 33 provides that a person having care or custody of a child who considers that the child is beyond his/her control, may bring the child before a children's court.

Section 34(1) provides that if the children's court considers that the child is **neglected** or **beyond control**, it may make an order declaring the child a ward of the State, make a supervision order and/or make an order for the parent/guardian to enter into recognisance.

Section 34(3) provides that where the parents/guardians have entered into recognisance to provide proper care and control for the child, and this recognisance is forfeited, options available to the court on application by the Director, include those available under section 34(1).

Section 35 provides that a parent, guardian, relative or a person of good repute having care or custody of the child can apply to the Minister for the child to be made a ward of the State. If the Minister approves the application then the child is admitted as a ward of the State under the Director's charge.

Section 37 makes provision for the Director to apply to the children's court where the conditions of a supervision order are not observed. The justice may issue a warrant authorising the child welfare officer, the probation officer or a police officer to bring the child before the court. The children's court may then alter the supervision order or make an order declaring the child a ward of State.

The Act also makes provision for **juvenile justice** issues to be dealt with according to welfare principles.

Section 19 allows for a child to be apprehended without a warrant, and if the Justice believes that it is in the best interests of the child to be removed, the child can be placed in an institution or in charge of someone suitable until dealt with by the children's court.

Section 21 places restrictions on the punishment of children. A child under 16 can not be imprisoned for any offence. Where a child has attained the age of 16 the court can impose a term of imprisonment of no more than 2 years. A child under 14 can not be ordered to pay a penalty exceeding $20 for any offence. Where a child has attained the age of 14 a penalty of no more than $200 may be imposed if the child is guilty of an offence that if it were committed by an adult would be punishable by imprisonment.

Section 23 provides that where a child has been found guilty of an offence, the court may impose a penalty, make a supervision order or order the child to be a ward of State.

Section 27(1) provides that where a child is charged with an indictable offence (other than murder or attempt to murder, rape, manslaughter, or wounding with intent to do grievous bodily harm) the court may determine the matter according to powers available under section 23, for example, order the child to be a ward of State.

Section 28(2) provides that where a child is convicted but judgement is not arrested, the court may commit the child to the custody of the Director to appear and receive judgement at some future sitting.

Section 29 provides that where the child is on remand or committed to trial but not released on bail, the court may commit the child to the care of the Director to be detained.

Adoption of Children Act 1960 (No. 83 of 1960)

This Act amended the *Adoption of Children Act 1920.* Section 2A which allowed the Registrar-General to exercise the functions of a police magistrate, that is approve adoption orders, was repealed. A new provision, section 5(1)(1AA), provided that the consent of a person to the making of an order of adoption may be given either conditionally or subject to conditions with respect to the religious persuasion in which the child is to be brought up.

Adoption of Children Act 1968 (No. 33 of 1968)

To overcome the abuses of former times adoption of children has been recognised as a serious subject and subject to safeguards and government supervision.[52]

During the 1960's the principle of uniformity of legislation between the States was promoted by the Commonwealth and State Attorney-Generals. The Australian Capital Territory passed the *Adoption of Children Ordinance 1965* which served as a model Act for all the States.[53] Subsequently, Tasmania passed the *Adoption of Children Act 1968* which repealed the *Adoption of Children Act 1920* and the *Adoption of Children Act 1960.*

However, there were significant differences between the various States and Territories in the mode of implementing the agreed principles.

Under the Act the police magistrate had jurisdiction to make adoption orders. This may be compared to the 1920 Act where the Registrar-General could exercise the powers of the police magistrate.

Section 11 provided that the welfare and interests of the child concerned were paramount.

Section 15 provided that before an adoption order could be made the court must be satisfied that:

- the Director of the Department of Social Welfare had made a report regarding the proposed adoption;
- and if through a private adoption agency the principal officer had made a report;
- the applicants were of good repute and were fit and proper persons to fulfil the responsibilities of parents;
- the applicants were suitable to adopt the child having regard to religious upbringing or convictions of the child and any wishes by a parent or guardian with respect to the religious upbringing of the child;
- the welfare and interests of the child would be promoted by the adoption; and
- a medical report had been received by the court relating to the physical and mental condition of the child.

52 H A Finlay, Family Law in Australia 3rd edition, Butterworths 1983, p. 393.

53 *ibid*, p. 392.

The process of adoption was under the supervision of the courts with the assistance of the Department of Social Welfare. It was an offence to circumvent the Department in the adoption process except where the adoption is by relatives or the adoption is arranged by an approved private adoption agency.

Section 16 provided that no adoption order shall be made without the consent of any person whose consent is required, such a the parent or guardian of the child and any person with whom the child is residing. Persons whose consent is required must be given notice of the proposed adoption. The court had a discretionary power to dispense with the requirement of notice.

Section 21 described those person required to give consent. Section 23 allowed consent to be revoked within a 30 day period from the date on which it was given.

Section 18 provided that where the court had refused an application for an adoption order, the court could make such order for the care and custody of the child as it thinks fit, for example, declare the child to be a ward of the State within the meaning of the *Child Welfare Act 1960*.

Welfare Policy and Procedure

In 1966 welfare records were consolidated and formalised in the Procedural Manual for social welfare officers in the (then) Department of Social Welfare. At that time, the Department was organised into two Divisions:

1. The *Child Welfare Division*, concerned with measures to safeguard the welfare of children generally, to provide for children placed in guardianship or custody of the Director, and to control and re-educate children who have come under the notice of Children's Courts because of delinquency.

2. The *Relief Division*, concerned with the financial and other assistance of persons in necessitous circumstances.

The Procedural Manual provided specific advice and protocol on matters ranging from Departmental administrative arrangements, staffing, and relevant legislation, to children in care, case history recording, wards of the State, foster homes, and adoption.

Chapter 15, Preventative Work, notes that 'Officers should appreciate that they have no legal "powers" in [child welfare] cases, and must endeavour to gain the confidence and co-operation of the folk with whom they are working.'[54] However, the Manual noted that 'a complaint that a child is neglected or uncontrolled may be initiated either by the Police or by a Child Welfare Officer' under Sections 31 - 34 of the *Child Welfare Act 1960* (the 'Act').[55]

In cases where children have been made wards of the State, the Procedural Manual notes the difficult task given the Department in providing satisfactorily for the needs of a child

54 Procedural Manual 1966 p.79.

55 *ibid*, p. 81.

deprived of normal parental care. It notes specifically that 'the Department is always reluctant to break the link between child and parent, and the discerning C.W.O. [Child Welfare Officer] will normally want to persist in an attempt to keep the family together, long after other authorities have accepted that there is no alternative but the removal of the child from home.'[56]

Under Sections 10(6) and 47(4) of the Act the Department was obliged to regularly visit children in State care and review their circumstances. This directive formalised case management practices in Tasmania, as children were to be visited a minimum of once every three months.[57]

Where a child is made a ward, and remains in the family home, the Manual notes that the Act 'is framed to give the Department the widest possible discretion' and permits it 'to act promptly, without further reference to a Court, if matters [in the home] do not improve.'[58]

Chapter 22 details Wards in Foster Homes, and notes the commonly held view at that time: 'In common with most authorities concerned with the placement of children deprived of normal parental care, the Department regards the fostering of children in its care, as most likely to meet the emotional needs of the child satisfactorily, provided the home is carefully selected, chosen with a view to any special needs of the particular child, and adequately supervised when the child has been placed in it.'[59]

In the selection of prospective foster homes, no explicit direction was given to consider the cultural or ethnic background of the child. A successful foster home was considered to be one in which the child is accepted as a member of the family, and the Manual notes that placements with relatives as foster-parents were to be encouraged. It was also recognised that it would normally be to the advantage of the child to maintain contacts with parents wherever possible and even more so with siblings who may be placed elsewhere. Where necessary, parents were required to obtain a permit before visiting their children and details of such visits were to be noted on the child's file.

While Government policy of this period was to place children who were removed from their families with relatives where possible, there was little consideration for cultural background. During this time many Cape Barren Island children were placed with non-Aboriginal foster carers on the Tasmanian mainland.[60]

During the 1960's social attitudes towards disadvantaged groups influenced some foster carers in discouraging the children in their care from having contact with their families during this period. This attitude was present for children from all socially disadvantaged families. In the case of Aboriginal children, it was compounded by a lack of appreciation for Aboriginal culture within the general community.[61]

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56 *ibid,* p. 99.
57 *ibid,* p. 104.
58 *ibid,* p. 99.
59 *ibid,* p. 103.
60 Tasmanian Government Submission: Case Studies.
61 *ibid.*

Children were taken into care because of their circumstances and/or poverty in accordance with the welfare practices and policies of the time.

In 1962 officers from the Department of Social Welfare visiting the Bass Strait Islands were chiefly concerned with safeguarding the children living there, but from time to time it was necessary to take children into care.[62]

Police Policy and Procedure

In the past Aboriginality was recorded on Police files as a physical descriptor: comments such as "half caste" or "native" were noted in the category of "distinguishing marks". Police procedural manuals prior to 1982 do not specify particular action to be taken when dealing with persons of Aboriginal origin.[63] These factors have made a retrospective evaluation of Police records, procedures and practices in relation to this Inquiry very difficult.

The manner in which the Police performed its statutory functions under the *Infants' Welfare Act 1935* and the *Child Welfare Act 1960*[64] varied due to many factors. They included the availability of Child Welfare Officers, police women, distance and time constraints, and legislative requirements. Prior to Liaison Officers being appointed to the Child Protection Board (during the 1980's) and the development of a close relationship between Police and welfare authorities, the involvement of Police was often instrumental.[65]

If a Police Officer became aware of a neglected or uncontrolled child the following action would be taken under the *Child Welfare Act 1960*:

- an application would be made by the police officer to the justice for the child to be taken into care on the grounds of neglect;
- a parent or guardian could approach the magistrate directly for the child to be taken into care where the child is beyond his/her control;
- the child is taken to court voluntarily or under warrant;
- the justice or magistrate made an order or finding;
- the child is either returned home, taken to an institution and/or made a ward of the State.

Prior to Police Standing Orders being implemented in 1958, Circular Memorandums were issued as the need arose. A Circular Memorandum issued in 1945 and reissued in 1951 stated that 'in all cases where minors are being charged that the parents be acquainted with the fact before that case is dealt with by a Constable.'[66] This was formalised in 1958 with the issue of Tasmania Police Standing Orders, with the specific

62 Report from Director of Social Services to Chief Secretary July 1968 Folio 214 File 3/1/6 1962-1968.
63 Tasmania Police Standing Orders and Reference Manuals 1982, General Procedures Manual, Section 144.
64 Repealed the *Infants' Welfare Act 1935.*
65 DP&C File 4065 Document 29360 (Tasmania Police)
66 Circular Memorandums and Instructions, Tasmania Police circa 1945, p 2.

request that Police were to 'assist the Social Services Department in making enquiries where it is impracticable for the officers of such a Department to do so.'[67] The Standing Orders also noted that a child apprehended as neglected or uncontrolled shall be taken before a children's court within 24 hours of apprehension (paragraph 14). The 1958 Standing Orders operated until 1974.

Role of Special Constable (head teacher)

From 1928 until 1980 the Cape Barren Island head teacher was appointed as the Special Constable. The powers of the Special Constable were outlined in Section 26 of the *Police Regulation Act 1898*, which states that they 'have and exercise all powers, authorities and privileges and be liable to all such duties and responsibilities, as any other constable' appointed in Tasmania. In this sense the office bearer was authorised to act as a Police officer and had the power to implement administrative or judicial procedures for the removal of a child in cases of neglect. In 1956 the schoolteacher outlined the nature of the additional duties, including the reporting of any cases of vagrancy or neglect of children to Whitemark.[68]

Under the Tasmanian Police Reference and General Instruction Book for 1939, paragraph 16 notes that 'any person authorised by the Director in that behalf, or any police officer, of or above the rank of senior constable, may without warrant apprehend a child' for reasons including neglect or being uncontrolled. Moreover, it was not necessary for the warrant to even name the child (paragraph 15) or for the warrant to be in the possession of the Police officer or authorised person at the time of apprehension.[69]

[Standing Orders implemented in 1974 operated until 1982, and state that specific details of neglect must be noted when the complaint is lodged, as defined under the *Child Welfare Act 1960*.[70] Current Standing Orders were implemented in 1982, and maintain the previous instructions implemented in 1974 in relation to complaints of neglect. A separate section is devoted to detailing the operations of the Child Protection Units established within the Department of Police at that time.[71] The 1982 Standing Orders still operate but are currently under review.]

There are recorded examples from the early 1970's where consultation between police and parents/guardians did take place which avoided court appearances. However there are also examples from around the same time where Police were advised by the Child Welfare Department to institute neglect proceedings before attempting consultation with parents/guardians, permissible under Sections 32 or 37 of the Act.[72]

67 Tasmania Police Standing Orders, 1958, p 36 paragraph 20
68 Morgan, p. 170.
69 Tasmania Police Reference and General Instruction Book 1939, p65, paragraphs 15, 16 & 24.
70 Tasmania Police Standing Orders and Instructions, 1974, Order 46.
71 Tasmania Police Standing Orders and Reference Manuals 1982, General Procedures Manual, Section 142.
72 DP&C File 4065 Document 29360 (Tasmania Police).

Adoption Policy and Procedure

After the Second World War there was an increasing involvement of the Department of Social Welfare in the adoption process, and a Catholic Private Adoption Agency was formed in 1960.[73]

Some adoptions were still conducted privately, and doctors, lawyers, ministers of religion, relatives or friends could apply to a magistrate regarding the adoption of a child. Consent was often given within 24 hours, and it was the magistrate's decision as to whether a report on the adoptive parents was required prior to the decision.[74]

For those adoptions arranged by the Department of Social Welfare, Child Welfare Officers provided reports on adoptive parents, counselling for birth parents, considered matching, and collected information on the child's biological heritage and ethnicity. This marked the beginning of "intelligent" adoption practice.[75]

Following the introduction of the *Adoption of Children Act 1968* the Director of Social Welfare became guardian of all children offered for adoption. Once the new Act was in place, arrangements for adoption by non-relatives could only be made by the Department of Social Welfare or the Catholic Private Adoption Agency, the only approved agency in Tasmania.[76]

The provisions for adoption detailed in the 1966 Child Welfare Procedural Manual recognised that 'parents have a right to nominate a particular religion in which they wish their child to be brought up in'. The "matching" of babies with suitable applicants was carried out at Head Office, in Hobart.[77] Such provisions formalised parental input and informed consent in the process of adoption.

73 DP&C, File 4065, Document 30578 (Department of Community and Health Services).
74 *ibid.*
75 *ibid.*
76 *ibid.*
77 Procedural Manual 1966, p 162-4.

Historical Context: 1950's to 1970

In the late 1950's the Tasmanian Government again moved towards assessing what could be done to solve the Cape Barren Island "problem". Media reports at the time noted a lack of milk suitable for babies at the local store and reported poverty stricken Islanders with under-nourished and starving children. There are a number of file reports from 1957 to 1961 noting concerns raised by media and individuals, and that the Islanders required urgent Government assistance because of delayed boats, the way the store operated, and the misuse of monies on alcohol.[78]

The so-called "problems" on Cape Barren Island had persisted for decades. Various Governments thought that the only real solution was to close down the school, relocate the Islanders and so disseminate the community. In correspondence to the Director of the Department of Social Welfare in 1957 from the then Premier of Tasmania, the Honourable Mr Cosgrove, the Premier notes that 'I feel that segregation in such a remote area is a major factor in preventing these unfortunate persons from leading normal lives, and feel that the only solution to the problem is their systematic removal and absorption into the Tasmanian community.'[79]

In 1958 Sister Hudson applied for government assistance to resume the provision of lunches for school children on Cape Barren Island. The Director of Education refused any subsidy for fear that free meals would 'only tend to keep these people on the island'. He further stated that 'the general opinion of Government officials is that there is no need for the half-caste population to remain on the island and that there are many reasons why it would seem desirable for them to disperse.'[80]

Surveys were undertaken by the Health Department in 1956 and 1960 to investigate the children's lack of motivation and unsatisfactory progress throughout their schooling.[81] The Health Department's chief nutritionist, JF Howeler, confirmed that their poor performance was linked with nutritional deficiencies. As a result of the surveys and Howeler's report the Cape Barren Island school children were given food supplements in the form of peanuts, powdered milk, cheese and oranges by the Health Department, Education Department and the Save the Children Fund.[82]

Commonwealth Department of Labour and National Service Employment Scheme, 1959

In 1959 the Chief Secretary noted in a memo to the Director of State Social Services that 'it has been ascertained that the Commonwealth Department of Labour and National Service has endeavoured to move in the direction of a scheme for assimilating the young half-castes on the Tasmanian mainland by providing employment.'[83] The Commonwealth sought to work with Tasmanian authorities in order to examine 'the

78 Chief Secretary's Correspondence Files(CSCF), PCS/1/578 Section 183/26/57

79 Memo to Director of Social Services from the Premier (July 1957)
Chief Secretary's Correspondence Files(CSCF), PCS/1/578 Section 183/26/57

80 Correspondence from Director of Education to Sr AM Hudson, 18 July 1958.

81 A Morgan, 1985, p177

82 *id*

83 Memo to the Director of State Social Services from the Chief Secretary (March 1959).

desirability of pursuing a policy of assimilation as proposed by the Commonwealth Department.'[84]

BC Hill Report for the Department of Social Services, 1959

Another Inquiry into the conditions on Cape Barren Island was ordered in 1959 'to investigate the whole half-caste problem .... with a view to examining the possibility of pursuing the policy of assimilation as proposed by the Commonwealth Department [of Labour and National Service].'[85] An officer of the Department of Social Services, Mr BC Hill conducted a survey of the living conditions of the Cape Barren Islanders in 1959, and presented a series of recommendations. He reported that the standard of housing was in the main better than those on Flinders Island, and attributed most of the problems experienced by the Cape Barren Island community to their isolation and lack of opportunity: 'the life to which they are exposed encourages the more negative aspects of their character.'[86]

However, Hill was of the firm view that 'to attempt to speed up what seems to be the inevitable assimilation of the island people into the Tasmanian population would .... be an unwarranted interference in their rights as citizens.'[87] In this instance Hill was specifically referring to a group of elderly women whom he thought 'could manage quite well if it were not for their generosity to relatives who arrived on the island in straitened circumstances and to whom they give food and shelter.'[88] Hill perceived that a natural form of assimilation had been steadily taking place over the years without any conscious effort by the Government to hasten the trend.

Hill believed that the quality of life for Cape Barren Islanders could only be improved through providing the children with the training, opportunity and advantages available to the average child. He opposed the closing of the school, but rather advocated that the school 'could strive towards giving the children the learning and experiences lacking in their home environment'.[89] His impression was that the majority of the Islander children were quite bright, but that 'the bareness of the home from which they come would not help them, regardless of their intelligence, when at school.'[90]

Although Hill noted that cases of neglect of children should be dealt with in the normal manner, in his opinion it was doubtful whether any action could be taken against any Cape Barren family. However, Hill did also note that in instances where a parent was unable to adequately care for a child, 'application [by the Director] under Section 37, Children's Welfare Act, could be made to the Minister.'[91] Hill also made references to the community's own way of dealing with this when he noted that parents should be able to make alternative arrangements if they were 'unable to give their children adequate care, training, and by example instil industrious habits so that they develop satisfactory skills

84 *ibid.*
85 CSCF Files, PCS/1/578 Section 183/1/59.
86 BC Hill Report on the Living Conditions of the Cape Barren Islanders, 1959, p 4.
87 *ibid*, 1.
88 *ibid*, 1.
89 *ibid*, 3(a).
90 *id.*
91 *ibid*, 6. Note this is a reference to the *Infants' Welfare Act 1935.*

and aptitudes, enabling them to hold their own in society away from the island.'[92] The Aboriginal culture has always, and continues to, share the care of their children.

As a result of Hill's report, steps were taken to 'further the interests of certain families wishing to leave the island' and look after children who were in need of more adequate care. Welfare processes were implemented where an officer from the Department of Social Services regularly visited the Island, and Police were asked to investigate suspected cases of child neglect.[93]

Food shortages and threatened store closure, 1960

In his 1959 report Hill had noted that the population, whilst not starving, was malnourished and cited a shortage of milk suitable for babies. This was in part due to the lack of credit at the Cape Barren Island shop as well as a lack of money. At this time the Islanders petitioned the State Government to 'take steps to relieve the shortage of food on [the] Island'.[94] There was a threat that the only store on the Island would have to close due to lack of financial resources. This was compounded by the State Government's refusal to secure financial assistance for the proprietor.

The Islanders wrote on a number of occasions to Mr Lance Barnard, of the House of Representatives in the Commonwealth Parliament to gain support for their cause.[95] However, the Premier maintained that while the Islanders were free to choose, the policy of the Social Services Department would be adhered to: those families willing to leave the island would be assisted in finding accommodation and employment on the mainland.[96] This position is confirmed in the inclusion of the Tasmanian policy at the Commonwealth Native Welfare Conference of 1961.[97]

In 1960 a 16,000 hectare cattle run was established on Cape Barren Island which included some of the land from the old reserve. The owner of the cattle run offered attractive prices to Cape Barren Islanders for their land and some, unable to find regular work, and concerned for the future of their children, sold up and went to Launceston.[98]

Child Welfare Officer's Report, 1961

In 1961 a child welfare officer visited Cape Barren Island and made a report to the Director of Social Welfare. The Report notes that 'there does not appear to be any likelihood in the immediate future for further section 35 admissions being effective as a method of assimilation of children. Firstly, there appears to be a close bond between children and parents and they are naturally reluctant to let them go.' Further comment

92 *id.*
93 Memo from the Director of Social Services to the Chief Secretary, 1959.
94 CSCF, PCS/1/578 Section 183/1/60.
95 *id.*
96 *id.*
97 *id.*
98 Ryan, 1996, p249.

is made by the District Welfare Officer that the level of child care on the Island had improved since interest was shown by the Department.'[99]

The welfare officer also notes that 'the people have been influenced to resist any suggestion of admission [of children to State care] by Sister Perkins', who was employed as the District Nurse by the Health Department.[100] The child welfare officer clearly believed that Sister Perkins had effectively communicated her distrust of the Department to the Islanders. 'Two islanders referred to Sister Perkins attitude and a third stated definitely that she had told the people not to let me into their homes because "he had come to take the children".'[101] The welfare officer commented that Sister Perkins was openly antagonistic to him, and 'she refused to discuss problems of the islanders - in fact refuses to see that there is a problem. Her reference to this Department as "child snatchers" typifies her attitude. She was very rude indeed.'[102]

The officer visited homes of the Islanders and discussed the prospect of relocation to the Tasmanian mainland. Of the homes visited, 'six do not want to leave [and] four will leave under certain circumstances'.[103] The report notes that 'for the process of assimilation to be given a reasonable chance of success it seems essential that these families be properly housed', and the suggestion is made that 'the matter be taken up with the Housing Division with a view to having homes made available to families willing to come to Tasmania.'[104] However, the District Welfare Officer notes further that a possible complication will arise as 'some are not eligible for a Housing home because they own their own home on [Cape Barren Island].'[105]

A survey of employment was also taken while the officer was on the Island. The report notes that 'the total number receiving benefits from Commonwealth Social Services Department ... was twenty one males and two females.'[106] The comment is made that the 'young people have only had primary education' but 'there is a reluctance by some parents to send their children leaving school to work off the island'.[107] The Child Welfare Officer believed that the reason for this was because it would have reduced the income of the household if the children left to work on the mainland, rather than staying on the island and receiving unemployment benefits.[108]

Three Islander families living on Flinders Island were also contacted. It was noted that 'all of these live in sub standard conditions, although they are in regular employment. The problem there is accommodation. This appears to be partly due to the fact that owners of [more adequate] dwellings are reluctant to allow these people into them.'[109]

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99 Report from Child Welfare Officer to Director of Social Welfare 1961 (Folio 129, File 3/1/6 1959-62), 20 October 1961.

100 *id.*

101 *id.*

102 *id.*

103 *id.*

104 *id.*

105 *id.*

106 *id.*

107 *id.*

108 *id.*

109 *id.*

The welfare officer notes that the provision of adequate accommodation would do much to raise the standard of living above that on Cape Barren Island.[110]

Prospects of employment on Cape Barren Island were also addressed, including the possible re-opening of the tin mine, the gathering of Yacca Gum, and potential development of the tourism industry. The officer notes that 'it seems desirable that some form of industry should be introduced, if only to avoid a further deterioration in their attitude to work, particularly amongst youngsters leaving school.'[111] While three islanders were "working" their properties, they 'appeared content to let a few sheep feed on whatever grass survives'.[112] One of the men owns a tractor, plough, harrow and pea mower, but claimed 'he cannot afford oil for his tractor.'[113]

On reflection, the Child Welfare Officer notes that 'at present many of them are obviously completely satisfied with their present way of life. Their island is their home. There seems little prospect of improvement in the conditions of those that remain unless work of some kind is introduced.'[114]

Sunshine Home

During the early 1960's students from Cape Barren Island enjoyed holidays at the Sunshine Home, located in the riverside suburb of Bellerive, in Hobart. The Sunshine Home was a holiday home for disadvantaged children. Eligibility would appear to be contingent on being "needy"; this term is widely used, but not defined. During their holiday the children received help from specialist Departmental branches, such as guidance and speech therapy. At the time visits to the Home were regarded as desirable holidays and there are no reports indicating reluctance by participants. In 1961 a letter sent home with Cape Barren Island students seeking parental permission noted that those children who were not selected would have an opportunity in 1962.[115]

Aboriginal Welfare, Conference of Commonwealth and State Ministers, 1963.

A conference of Commonwealth and State Ministers was called in 1963 to address the issue of Aboriginal welfare. The meaning of the policy of assimilation was explicitly stated thus:

> "all Aborigines and part-Aborigines will attain the same manner of living as other Australians and live as members of a single Australian community enjoying the same rights and privileges, accepting the same responsibilities, observing the same customs and influenced by the same beliefs, hopes and loyalties as other Australians.' Under this policy 'any special measures taken for Aborigines and part-Aborigines are regarded as temporary measures, not based on race, but intended to meet their need for special care and assistance, to protect them from any ill effects of sudden change and to assist them to make the transition from one

110 *id.*
111 *id.*
112 *id.*
113 *id.*
114 *id.*
115 DP&C, File 4065, Document 32923 (Department of Education, Community and Cultural Development), Appendix 13 & 14.

stage to another in such a way as will be favourable to their social, economic and political advancement.'[116]

The 1991 Royal Commission into Aboriginal Deaths in Custody stated that in retrospect 'the whole aim ... was to assimilate the Aboriginal people by encouraging them to accept Western culture and lifestyle, give up their culture, become culturally absorbed and indistinguishable, other than physically, from the dominant group.'[117]

Proposed placement scheme 1965

In 1965 a scheme for the placement of children off Cape Barren Island was proposed. In a letter to the Director of Social Welfare, the Chief Secretary requested that church people be approached to develop a program 'in the South of the State such as Reverend Ezzy has developed for children from the Northern Territory in the north of the State'. It is understood that a Tasmanian mission had an arrangement for holiday and long term placements in northern Tasmania for Aboriginal children from the Northern Territory. However, the proposal was rejected by the Director of Social Welfare because 'unlike the children from the Mission [they] have neither been abandoned or removed from parental care ... [and that] with schemes such as hostelling or fostering school children or apprentices from the island, the long term answer must conform to the generally accepted principle of social welfare, of trying to keep families together rather than to break them up.'[118]

Survey of Cape Barren Island by Minister for Agriculture, 1965

In 1965 the Minister for Agriculture and the Chief Secretary visited Cape Barren Island. A public meeting was held on Cape Barren Island where the Minister and Chief Secretary discussed problems arising from the isolation of the community. Residents regarded the need for development of the island as a challenge, and as an avenue to provide employment. The mineral potential was being explored by Utah Mining at the time, but they believed that long range development lay in the field of agriculture. However, the Minister for Agriculture predicted the future development of the Straits Islands as a tourist mecca.[119]

The Minister and Chief Secretary conducted an aerial inspection of rural settlers development in Cape Barren and adjacent islands. Settlers requested immediate Government assistance in providing roads to some areas where the only regular access was by aeroplane. Further discussions were held with the Chairman of the Marine Board regarding the development of Lady Barron, and rural development of the island was discussed with the Flinders Island Supervisor of Closer Settlement.[120]

116 Aboriginal Welfare, Conference of Commonwealth and State Ministers, 1963. CSCF, PCS/1/578 Section 183/8/63.

117 Royal Commission into Aboriginal Deaths in Custody: National Report - Overview and Recommendations 1991, p8

118 Correspondence between Director of Social Welfare and the Chief Secretary 1965 (File 3/1/6 1962-1968)

119 CSCF, PCS/1/578 Section 183/8/65, handwritten press release for Examiner, Mercury and ABC.

120 *id.*

Commonwealth Referendum, 1967

Following the referendum of May 1967, the Commonwealth Government and the States agreed to 'joint powers and responsibilities for the advancement of Aboriginal people.'[121] While Tasmania 'had no indigenous aboriginals [it was felt that the State] should participate in the endeavour to deal with what was a matter of national importance; and ... because the interests of the Bass Strait Islanders must be preserved.'[122] The Commonwealth proposed a specific funding program in the areas of health, education and housing, to be used specifically for Aboriginal welfare.[123]

Education Policy

The Tasmanian Government has always recognised its responsibility to provide Tasmanian children with appropriate education irrespective of where they lived. Although correspondence schooling was provided in Tasmania from 1932, this option was not taken up by many students from Flinders or Cape Barren Island. Generally the Cape Barren Island School provided the same basic primary curriculum as other Tasmanian schools. However the Education Department permitted the Cape Barren Island School to have different term dates to accommodate the annual mutton bird season. The children of birders based in Launceston schools were also permitted to apply to be absent for the season. [This provision was changed in 1984 to bring the school into alignment with all other Tasmanian school terms. However, the provision for Aboriginal children to be absent for the mutton bird season remains, and school work is provided by the teacher to be completed during this absence.][124]

Up until 1964, entry to secondary school was selective, on the basis of an 'Ability Test' that was first introduced around 1933.[125] Prior to the 1960's, secondary education was not the norm for most children in Tasmania and distance education was not a preferred option for many families. The goal for many families in Tasmania was employment for their young people, not further education at the end of primary schooling.[126] In 1964 entry to secondary education in Tasmania was made compulsory, assessment by the entry exam was abolished and a comprehensive high school curriculum was introduced.[127]

Children from Cape Barren Island were free to attend the Flinders Island Area School for secondary education if their parents had wished. However, Flinders Island secondary pupils were not offered a full secondary curriculum as at mainland schools; rather, the courses emphasised home arts, technical subjects and experiential learning on a school farm. Also transport costs to and from Flinders Island were not well subsidised, there was no provision for hostel accommodation, and the advantages provided by the social and urban context of Launceston outweighed that of Flinders Island.

121 CSCF, PCS/1/578 Section 183/8/68, 12 July 1968.
122 *ibid,* 11 July 1968.
123 *ibid,* 11 July 1968.
124 DP&C, File 4065, Document 32923 (Department of Education, Community and Cultural Development), Appendix 16.
125 *ibid,* Appendix 20.
126 *ibid,* 9.
127 *ibid,* Appendix 28.

The prevailing view of educationalists in the 1960's was a theory of deficit: children who came from homes which were geographically isolated, economically poor, or culturally different from the mainstream were disadvantaged by their difference.[128] As paraphrased by Hill in 1959, the dominant opinion in the field of education for the next decade was that children who were denied 'the 101 things the average child sees, hears and handles ... are at a disadvantage in coping with the ordinary school syllabus.'[129]

Educational experts argued that an inferior family environment inhibited the development of general intelligence and hence school learning, by resulting in 'linguistic and cognitive impairment, poor motivation, and defective self image and self confidence'.[130] It was thought that children on Cape Barren Island suffered from experiential deficit (as distinct from cultural deficit) via their relative non-exposure to media communications and technology, and lacked any real general knowledge of the outside world.[131] In retrospect this represents a typically Anglo-Celtic world view, and there was no attempt to recognise a culturally distinct community in the curriculum.

When it came time for the children to consider high school there were many advantages for them in attending on the mainland and being exposed to a "wider social experience" at the same time. However, there can be no doubt that even parents on Flinders Island would have preferred full high school classes to be established locally; requests were still being received by the Education Department in 1975. The Department's reply essentially was that student numbers did not make the provision of a full secondary curriculum viable: the Area School curriculum generally suited students staying on the island, and "academic pupils" were well-supported to attend high schools in Launceston.[132]

Education Department "pilot scheme", 1960

Departmental correspondence refers to a "pilot scheme" proposed in 1960 to provide an opportunity for one or two boys from Cape Barren Island to attend the Hagley Farm School in 1961. Correspondence indicates however, that while the Head Teacher at Cape Barren Island school at the time was supportive of the idea, he doubted whether any of the older boys would 'have a good attitude towards his work, be free from colour-consciousness and be certain to mix happily with boys not natives of Cape Barren.'[133] An absence of further records would seem to indicate that this scheme was never pursued.

Education Department Special Bursaries Scheme, 1960's

Under the *Education Act 1932* there was provision for the Education Department to offer bursaries for children living in remote locations to attend schools in urban centres. 'Junior Bursaries were intended to contribute towards books and clothing on entry to High School; Senior Bursaries were for education beyond the fourth year of High

128 Lippmann, L (1994), p 137.

129 BC Hill, p. 4.

130 Glazer and Moynihan (1963) cited in H Bell (1990) 'Models of Cross-Cultural Education and their application to Aboriginal Education' in Australian Journal of Adult and Community Education, Vol 30, No 1 April 1990, p 31.

131 Morgan, A..

132 DP&C, File 4065, Document 32923 (Department of Education, Community and Cultural Development), Appendix 26 & 27.

133 *ibid,* Appendix 32.

School.'[134] Under the Bursaries Scheme, students from isolated areas were provided with hostel accommodation and substantial financial assistance without a means test so that they could reside in an urban centre and attend school there. In 1962, applicants for junior bursaries were given an assessment test to determine their eligibility.[135] There would appear to have been a deliberate government policy in the 1960's to redress inequitable access to secondary schooling arising from distance and isolation. This policy was applied to all "country students" and was consistent with emerging 'social justice principles' of the time.[136] Concerns about country students limited social contacts and the lack of employment prospects prompted many Tasmanian parents living in country areas to consider sending their children "to the city" to study. By this time community attitudes had changed and the value of a comprehensive secondary education was generally accepted.[137]

Bursaries for Cape Barren Island children, 1965

In 1965 the Tasmanian Government began exploring the possibilities of 'providing scholarships, and adequate hostelling, for the most suitable [Cape Barren Island children], to induce them to seek secondary education in Tasmania. The idea being to eventually work towards apprenticeships for the children.'[138] The Chief Secretary was concerned that the 'future of the children seems to be tragic' and concluded that the field of education would be the most effective means of providing assistance.[139] He requested that the Minister for Education explore 'the extent to which assistance is given to [Cape Barren Island] children attending school in Tasmania proper; and, perhaps; if it is considered possible to evolve a scheme whereby the average Island child of primary school age, through his parents, could be encouraged to attend school, say in Hobart or Launceston, be hostelled, and so go on to receive a High School education.'[140] The Chief Secretary was also investigating 'the possibilities of assistance to them through the apprenticeship age range.'[141]

Initially there was 'a negative response to the offer of hostelling' but it was concluded that in 1966 there was 'no pupil who could be considered suitable.'[142] However, records indicate that between 1966 and 1968 the Education Department formalised this scheme and offered "special" bursaries to 'enable selected pupils from Cape Barren Island to attend schools in Northern Tasmania'.[143] The scheme aimed to expose the children to the 'social advantages involved [in living on the mainland], but also to enable Cape Barren Island children to avail themselves of the educational advantages.'[144] A number of bursaries were offered each year to children on Cape Barren Island, and included the

134 *ibid,* 14.
135 *ibid,* Appendix 20.
136 *ibid,* 10.
137 *ibid,* 10, 14.
138 CSCF, PCS/1/578 Section 183/8/65, 5 October 1965.
139 *ibid,* 10 September 1965.
140 *id.*
141 *id.*
142 CSCF, PCS/1/578 Section 183/8/66, 1 March 1966.
143 DP&C File 4065, Document 32923 (Department of Education, Community and Cultural Development), Appendix 33 & 39.
144 *ibid,* Appendix 34.

costs of schooling, clothing, books, accommodation and sundries for the children to board on the mainland in order to receive a secondary education.

In 1968 it is noted that the number of special bursaries 'rose to four', and that the results were 'sufficiently encouraging to justify it's continuance and expansion.'[145] Unfortunately unexplained discrepancies between school registers, Departmental records and individual school histories make it very difficult to verify which students received a specific type of assistance at any given time.

The Cape Barren Island Committee, late 1950's-1967

The Cape Barren Island Committee was a sub-committee of the Church in Life organisation that encouraged and sponsored children from the island to attend school on the Tasmanian mainland. The Committee was a benevolent group chaired by Dr John Morris, and Mrs Molly Mallet was the liaison person for the Cape Barren Islander community. Mrs Mallet was a Cape Barren Islander who lived in Launceston and acted as an intermediary between parents, the schools and the Committee. The Committee travelled to the Island to discuss the program with parents, who were very supportive of the idea. Eligibility criteria are not specified except that the children had "academic potential". Unfortunately no written record of scholarship recipients under Dr Morris's scheme is extant, but in 1968 records indicate that there were four children sponsored by the Committee: two at primary school, one at high school and one at Hagley Farm School, and the possibility of another one or two attending schools under the same private arrangements in the following year.[146]

At the Committee's request the State Government would seem to have provided funds towards the operation of the grants scheme, and the Committee also raised moneys through public subscription. Children were returned to the Island on a long weekend in every term and for school holidays. If any child was unhappy, their return to Cape Barren Island was facilitated. Similarly, if parents expressed a desire to live on the mainland while their children attended school, the committee organised housing for them.[147]

Other Scholarships and Bursaries, 1966-67

Records also indicate that a once-only bursary was awarded by the Ladies Guild of St Barnabas Church of England on Lady Barron in 1967. The recipient was an Aboriginal student studying at Flinders Island Area School, who subsequently attended a private school in Hobart under their patronage. Similarly, the local Country Women's Association commenced an annual bursary for a student continuing studies off Cape Barren Island in approximately 1966. In 1995 this scholarship was still being offered. Details of recipients were not available at the time of writing.[148]

145 *id.*
146 *ibid,* Appendix 19.
147 *ibid,* 12-13.
148 *ibid,* Appendix 37.

Commonwealth Secondary Scholarships, 1965

In a national effort to encourage more students to complete senior secondary education, the Commonwealth Government began offering Secondary Scholarships to support students in their fifth and sixth years of secondary education in 1965. In 1967 general Matriculation and Schools Board Allowances, both subject to a means test, were introduced by the Tasmanian Education Department. At this time "isolation allowances" requiring no means test (known from 1968 as Matriculation Boarding Allowances) were also introduced for country students. This would be matched by the Commonwealth Senior Secondary Scholarship scheme introduced in 1973. Cape Barren Island does not seem to have been singled out in this process, as the major concern for the Education Department was in providing the opportunity for Island children to attend secondary school, rather than senior secondary level.[149]

Proposed closure of Cape Barren Island School, 1966

In March 1966 the Deputy Director of the Department of Social Welfare, BC Hill noted that 'a transfer of one or two large families, with school age children, off Cape Barren, could have an adverse effect upon those remaining. There may not be sufficient children to warrant the continuance of the school.'[150] However, Hill revised this opinion after visiting the Island in May 1966. He noted that while no criticism of the present situation was implied, 'if the school population [was] reduced, the remaining children could only receive a better education because of the closer attention the teacher would be able to give to individuals.'[151]

A deputation from the Church in Life Movement approached the Minister for Education later in 1966 to propose (among other matters) the closure of the Cape Barren Island school and the establishment of a Special Advisory Committee to assist the Government make decisions and plans for the Island. The proposal recommended the provision of special bursaries 'for all children of school age', or that they be enabled 'in some other manner' to obtain their education on the mainland. Although accommodation in hostels or approved homes was recommended, the proposal stressed that 'as far as possible family units should be kept as close together as possible'. The deputation recognised that not all parents would let their children leave the island, especially in the case of those of 'a more tender age', and proposed that correspondence courses be provided in these cases. However, the proposal stressed that 'every effort should be made to get the children onto the Mainland of Tasmania by the age of 10 or 11 years.'[152]

The proposal was seriously considered by the Director of Education, principally because of difficulties being experienced in providing adequate staffing and curriculum options, and in maintaining and upgrading the school on Cape Barren Island.[153]

The Chief Secretary, Mr Miller made his views clear in correspondence to the Minister for Education and a statement from his Department which asserted the following points:

149 *ibid,* 15-16, Appendix 39.
150 CSCF, PCS/1/578 Section 183/8/66, 1 March 1966.
151 *ibid,* 12 May 1966.
152 *ibid,* 22 November 1966.
153 *ibid,* 8 December 1966.

- that school closure was not desirable, and correspondence schooling was no substitute as no parental backing was possible;
- a Special Advisory Committee was not necessary as the Islanders 'should not in any way feel coerced [to leave] nor should there be any suggestion of enforced separation from their children through the pressure of educational needs';
- the provision of quality housing on the mainland and the family happiness that this engendered would flow back to Cape Barren Island and be a persuasive factor on those who remained on the Island.[154]

In addition, the Chief Secretary's Department added that 'education does not seem to be highly regarded by Island families [therefore, unless fully established on the mainland, families may be] drawn back to the Island by the twin attractions of the [mutton] birding season and freedom from school attendance.'[155] The Cape Barren community also successfully protested against closure of the school, as is evident in media reports at that time. The proposal was eventually rejected, as the school was not closed and there are no Education Department records of the Advisory Committee being established.[156]

1968 - Inclusion of non-wards to care of Department for Social Welfare

The Department for Social Welfare also became directly involved in assisting Cape Barren Island children to access secondary education in the late 1960's. Under the *Child Welfare Act 1960* (the 'Act) 'it was possible to have a child made a ward of the State by private agreement (that is, voluntary admission to care under Section 35), for purposes of financial support for education. This arrangement was made with the understanding that the Department meet all costs (schooling, clothing, books, accommodation and sundries) and that the child would spend all school holidays at home. However, extensive searches of departmental records in the researching of case studies has failed to reveal any cases where this option was taken up by Cape Barren Island families.[157]

In 1969 three Cape Barren Island children were to be accommodated in approved children's homes for the purposes of education, with the consent of their parents. Financial assistance was sought from the Government on behalf of the families by Dr J Morris. Officers of the Department of Social Welfare approached the parents 'with a view to completion of voluntary applications to have the children admitted as wards of the State. However, the parents of all three children declined to make the applications, which of course have implications beyond the matter of financial assistance.'[158]

However, in order to allow more children from Cape Barren Island to access secondary education provisions[159] of the Act were used, from 1 July 1968, 'to make provision for the Department [of Social Welfare] to make board payments for children who were not Wards

154 *ibid,* 9 December 1966.

155 *id.*

156 DP&C File 4065, Document 32923 (Department of Education, Community and Cultural Development).

157 DCHS, File 3/1/6 November 1968 to January 1970. Folio 57.

158 *ibid,* Folio 57-58 November 1968 to January 1970.

159 The following provisions may have been interpreted to enable the provision of accommodation and money to non-wards of State. Section 9 enables the Governor to establish institutions for the accommodation, care and maintenance of wards of State and of such other children for whom it may be necessary to provide accommodation. Section 11 provides that the Minister shall pay managers of an approved children's home in respect of each child of State or child maintained therein.

of the State but who were placed in Approved Children's Homes so that they could attend secondary schools'.[160] Normally this applied where children were directly placed by other Government Departments (for example, the Education Department), 'provided the parents [were] not in a position to support the children financially'.[161] It was understood that parents would meet all other costs (clothing, medical, educational and travel expenses).[162]

No details regarding the motivation behind this interpretation of the Act have been located. It is understood that it was purely an administrative change that made it easier for children who lived in remote areas to attend school in urban centres with financial support from the Government. The change does not appear in the Regulations of the Act until 1987 where reference is made to the amount for weekly payments to be made to persons with whom wards of State and non-wards of State are boarded out temporarily in approved children's homes. This was expanded upon in 1988.[163]

Government correspondence between the Director for Social Welfare and the Chief Secretary notes that the placements of individual children from Cape Barren Island to attend school could be made under either proposal: by Section 35 (admittance to State care) or by the 1 July 1968 mechanism (meeting their costs in Approved Children's Homes). In either case, all arrangements were made on the understanding that children would return home for holidays and long weekends.[164]

However, extensive searches of departmental records in the researching of case studies have failed to reveal any cases of children from Cape Barren Island attending school on the Tasmanian mainland under the "voluntary wardship" arrangement.[165] The Director of Social Welfare noted in correspondence that 'the Social Welfare Department has also demonstrated it's readiness to accept children as wards of State by private agreement, Section 35 Child Welfare Act, 1960, or by taking appropriate action through the Children's Court in Neglect cases. The Section 35 provision where by parental request a child may become a ward of State, has not been popular with parents of Cape Barren, possibly because of influences operating on the island outside the scope of this Department's administration.'[166]

A report to the Australian Aboriginal Affairs council in 1970 notes that for the year 1969 three children attending State High Schools had been placed by the Education Department in approved children's homes and their upkeep was being paid by the Social Welfare Department.[167] In the opinion of the Director, 'the Social Welfare Department

160 Correspondence from Director, Social Welfare to Director General of Education, 1 April 1969 (DCHS File 3/1/6 November 1968 to January 1970 Folio 57-58).

161 DCHS, File 3/1/6, Folio 57-58 November 1968 to January 1970.

162 *id.*

163 DP&C, File 4065, Document 32923 (Department of Education, Community and Cultural Development), Appendix 15.

164 DCHS File 3/1/6 Folio 95 1968-70.

165 DCHS, File 3/1/6, Folio 57-58 November 1968 to January 1970.

166 DCHS, File 3/1/6, Folio 57-58 November 1968 to January 1970 Folio 95 - 1 April 1969.

167 DCHS, File 3/1/6, Folio 57-58 November 1968 to January 1970; CSCF, PCS/1/578 Section 183/8/70, 5 March 1970.

sees little reason why this scheme could not be extended to more children, at primary and secondary level, without recourse to Commonwealth funds.'[168]

The Committee for Further Education of Cape Barren Children, 1968

In November 1968 Dr John Morris, of the Church in Life Movement, wrote to the Commonwealth Minister for Aboriginal Affairs on behalf of the Committee for Further Education of Cape Barren Children, regarding the development of Commonwealth scholarships for Aborigines. This Committee formed in July 1966, 'with the approval of the State Government Departments of Education and Social Services and [had] arranged for the education of four Cape Barren Island children', two in 1967 and two in 1968.[169] Previously this Committee had been known as the Cape Barren Island Committee, a benevolent committee that offered scholarships and bursaries funded from private sources and State Government contributions for Cape Barren Island children in the late 1950's until the middle of the 1960's.

In his letter to the Minister for Aboriginal Affairs, Dr Morris comments that 'there are three children ... ready to come [to Launceston for schooling] in 1969' and he requested that 'the children under our aegis be given the benefit of [Commonwealth] scholarships.'[170] Morris noted that 'the placement in a [private] home has not been as successful as in the boarding school situation' and comments that other Independent Boarding Schools in Launceston had expressed interest in the proposal.[171]

Commonwealth Aboriginal Study & Secondary Grants Schemes, 1969 & 1970

The Commonwealth Aboriginal Study Grants Scheme was introduced in 1969, and the Commonwealth Aboriginal Secondary Grants Scheme was introduced in 1970. These schemes made provision to cover all educational costs, including living arrangements for Aboriginal students and allowed for the families to exercise some autonomy. It would seem that Dr Morris' request was successful, as is noted that in 1970 there were 5 Tasmanian Aboriginal students in receipt of Commonwealth grants studying on the Tasmanian mainland; by 1974 this had risen to 257. However it is not known what proportion of these students were from Cape Barren Island.[172]

Housing/Relocation Scheme

The health and well being of Cape Barren Islanders and Flinders Island residents deteriorated at the time of the Second World War up until the 1970's. Documentation also shows that while families with Aboriginal ancestry on the Islands were eligible for relief payments because of the lack of opportunities for employment, sometimes they experienced difficulty in obtaining payment.[173]

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168 DCHS File 3/1/6, Folio 57-58 November 1968 to January 1970.
169 CSCF, PCS/1/578 Section 183/8/68, 19 November 1968.
170 *id.*
171 *id.*
172 DP&C File 4065, Document 32923 (Department of Education, Community and Cultural Development), Appendix 40.
173 Morgan, A p. 78-79

The Teacher's Observation Book for 1964 notes that 'with the lack of opportunity on the island it is pleasing to see the gradual exodus of the population from the island and the consequent decrease in school enrolment.'[174] A series of poor muttonbird seasons, unemployment, and the fact that no money had been spent on the island since 1944 induced many Islanders to leave.[175]

Following the agreement of the Commonwealth policy of assimilation at the Conference of Commonwealth and State Ministers for Aboriginal Welfare in 1963, the Tasmanian Government proposed a scheme whereby Cape Barren Islanders who wished to relocate to the Tasmanian mainland would receive direct assistance with housing and employment. By 1965 'some parents on the Island were taking advantage of assistance from the Education Department to enable their children to attend High Schools in Launceston [the Chief Secretary believed that] Government policy should aim at housing and employment for the families on the Mainland of Tasmania, where there are better opportunities.'[176]

Cabinet was of the opinion that 'the Housing Department should provide the required homes, rentals [were] to be met from the funds of the Department of Social Welfare or the subsidies item in [Treasury's] ... Estimates until the lessees can themselves reasonably be expected to pay.'[177] A Committee comprised of representatives from the Departments of Housing, Treasury and Social Welfare would consider 'the location of the houses and the degree and form of supervision of the families which would be necessary.'[178]

Once it was established that suitable houses were available, the Department of Social Welfare were to travel to Cape Barren Island to 'undertake a survey of the families in order to select the top priority family desirous of resettlement'.[179] The Government considered that the Islanders who wished to relocate should want 'to enhance the future of their children by transferring to those areas of denser population in Tasmania where work and educational opportunities were more favourable.'[180]

The Director of Social Welfare expressed some concern relating to the proposed funding of the scheme, and the ability of the Islanders to meet rental costs. Also, the Department considered that this proposal was 'a retrograde step in terms of racial policy to single out the Islanders for special housing assistance'[181], and it was preferable that any scheme should apply to other "problem families" in Tasmania as well.

On consideration of the scheme, the Director of Housing indicated that he was not in favour of settling Cape Barren families in departmental subdivisions: 'it was not considered by the Director of Housing that islanders could accept the financial obligations involved nor would it be reasonable to house these problem cases in the midst

174 DP&C, File 4065, Document 32923 (Department of Education, Community and Cultural Development), Appendix 17.
175 L Ryan, p. 249.
176 CSCF, PCS/1/578 Section 183/8/65, 13 September 1965.
177 *ibid*, 3 November 1965.
178 *id.*
179 *ibid*, 5 October 1965.
180 *ibid*, 18 October 1965.
181 *ibid*, 1 November 1965.

of the Department's home purchasers.'[182] It was stressed that the houses, all associated costs and the losses through non-payment of rent would have to be financed from special funds outside the Housing Department's present accounts. Also, 'the view was taken that to aid assimilation, such houses should not be concentrated in close proximity, as any close association on re-settlement tends to retard rehabilitation and assimilation.'[183]

While it was agreed that 'a firm offer of suitable housing and guarantee of other essential assistance' would have to be made 'to induce Cape Barren Islanders to vacate their homes', at the end of 1965 only one family 'expressed willingness to leave'.[184]

Other proposals considered at this time to improve the economic viability of Cape Barren Island included the development of a State experimental farm. However, the Minister for Agriculture was of the opinion that the cost would exceed the likely improved capital, and that the difficulties of transport and the consequent adverse affect on net returns were considerable.[185]

BC Hill revisited Cape Barren Island early in 1966 with the offer of housing assistance. He reported that the majority of families visited expressed an eagerness to leave, but that there was 'some difficulty in establishing a clear cut case whereby offering assistance in this direction would bring some guarantee of positive results. It is highly probable that a family could be selected as the most dependable to find that at the last moment they had changed their minds.'[186]

The Chief Secretary responded to this "diffidence" by the Cape Barren Islanders by recommending that 'the purchase of a home or homes at this stage would be an undue financial risk and it may be preferable to offer a family or families rental subsidy for a period (with adequate indemnity for [the Government] as guarantors) together with the provision of their assistance for reasonable transport costs and assistance with work placement.'[187]

By June 1966 three families had been assisted by the Government to leave the Island, however in review it was found that only one required specific assistance to enable the payment of rent. Two families were assisted to relocate in the north of the state, and one family in the south. At that time it was 'officially known that no other families [wished] to leave the Island', however it was anticipated that the example of those who had been assisted to move would encourage the remaining families to reconsider.[188] The further decrease in the school population meant that it was possible for the teacher to 'individualise instruction to a greater extent, particularly in the basic subjects.'[189]

182 *ibid,* 16 December 1965.
183 *ibid,* 16 December 1965.
184 *ibid,* 16 December 1965.
185 *ibid,* 23 December 1965.
186 CSFC, PCS/1/578 Section 183/6/66, 1 March 1966.
187 *ibid,* 8 March 1966.
188 *ibid,* 17 June 1966.
189 DP&C, File 4065, Document 32923 (Department of Education, Community and Cultural Development), Appendix 17.

Report on the Future Development of Flinders Island, 1968

At the beginning of 1968 the Flinders Island Council called for Parliament to appoint another Select Committee to examine the future development of Cape Barren Island.'[190] As a result the 'Report of the Committee appointed by the State Government to Examine Several Matters Concerned with the Future Development of Flinders Island' was presented to both Houses of Parliament in April 1968. The terms of reference included Cape Barren Island, and the Committee recommended that 'every effort should be made by the Government to encourage development of Cape Barren Island. This could take the form of investigations into potential land development, and by adopting a policy of attractive upset prices at Crown land auctions ... to attract development'.[191]

Aboriginal Affairs Conference, 1968

The Chief Secretary, BK Miller, attended the meeting of Commonwealth and State ministers for Aboriginal Affairs in July 1968. Following the referendum of May 1967, the Commonwealth Government and the States agreed to 'joint powers and responsibilities for the advancement of Aboriginal people.'[192] The Tasmanian Government recognised this as a useful means of gaining funds to relocate the remaining Cape Barren Islanders to the mainland, 'even though the Bass Strait Islanders were by no means regarded as aboriginals in the general sense of the word'.[193] While the Tasmanian Government refused to recognise the Aboriginal ancestry of the Cape Barren Islanders, it was used to gain finance to house them on the Tasmanian mainland.[194]

As a result of the conference, the Commonwealth proposed to assist State policies by provision of funds in three specific areas: health, education and housing. These funds were to be additional to the normal annual allocations, and used specifically for additional Aboriginal welfare.[195] The Commonwealth called for detailed proposals from the various States, and proposed to 'indicate to each State the way in which we think we can best assist and the funds available for such assistance.'[196] Also included in the funding program was a separate fund 'for special assistance, including capital funds, for potentially viable enterprises to be established for or by Aboriginals either individually or collectively.'[197]

The Commonwealth was very clear regarding the goal of the funding program:

> 'Our ultimate objective is ... the assimilation of Aboriginal Australians as fully effective members of a single Australian society. ... without destroying Aboriginal culture, we want to help our Aboriginals to become an integral part of the rest of

190 L Ryan, p. 250.
191 CSCF, PCS/1/578 Section 183/8/68, 23 April 1968.
192 *ibid,* 12 July 1968.
193 *id.*
194 L Ryan, p. 250.
195 CSCF, PCS/1/578 Section 183/8/68,12 July 1968; 18 July 1968.
196 *ibid,* 12 July 1968.
197 *id.*

the Australian people, and we want the Aboriginals themselves to have a voice in the pace at which this process occurs.'[198]

Tasmania requested funds for the provision of housing 'to assist the integration and positive social development of those people in Tasmania who are of Cape Barren Island descent.'[199] The Aboriginal Affairs Council, for the purposes of Commonwealth assistance to the States, had previously defined an Aboriginal as 'a person of aboriginal or part aboriginal descent who says he is and is accepted by the community in which he lives as such.'[200] In correspondence to the Chief Secretary, the Director of Social Welfare noted that 'by definition our Cape Barren Islanders qualify'.[201] He also stressed that if 15 to 20 "conventional type" houses were acquired on the mainland, and suitable welfare support was provided, 'the Cape Barren Island problem which has been with us for well over a hundred years would virtually disappear in a decade.'[202] In the same correspondence, the Director noted that there were several cases where children currently in State care could be returned to their parents if better housing was acquired.

The Commonwealth granted Tasmania $25,000 for housing in August 1968, and the State proceeded with the previous plans developed in 1965. The money was to be kept as a separate fund and managed by the Departments of Treasury and Housing.[203] The Director of Housing maintained his initial objections relating to the perceived inability of Islanders to 'accept the financial obligations involved in the purchase or rental of a Housing Department home' and whether it was appropriate to house 'these problem cases in Housing Department sub-divisions as neighbours of selected and approved home purchasers.'[204]

However, the Housing Department was already engaged in a separate program for the 'provision of housing to problem families unable to meet the demands of occupying a Departmental home on an estate amongst selected tenants or home purchaser.'[205] It was envisaged that the Housing Department would 'purchase and service four or five suitable houses, not within Housing Department estates but in suburban areas adjacent to employment, school and social welfare opportunities and access.'[206] The Deputy Director of the Department of Social Welfare, BC Hill, was sensitive to the need to progress the matter discreetly, and noted that 'the allocation of these houses to appropriate families be accomplished without any fanfare of publicity through media of press or television.'[207] By December 1968 rising costs indicated that a maximum of three houses could be bought with the amount available.[208]

198 *id.*
199 *ibid,* 18 July 1968.
200 *id.*
201 *id.*
202 *id.*
203 *ibid,* 16 September 1968.
204 *ibid,* 18 September 1968.
205 *ibid,* 16 September 1968.
206 *id.*
207 *ibid,* 18 September 1968.
208 *ibid,* 11 December 1968.

Additional funds were sought to extend the educational bursaries that enabled Cape Barren Island children to attend school on mainland Tasmania. This issue has been addressed separately, above.

In correspondence to the Chief Secretary, the Director of Social Welfare, GC Smith, stressed that 'the islanders' problems are not aboriginal or racial. Their problems are mainly associated with the isolation of Cape Barren and it's lack of opportunities.'[209] The Director was concerned that the Cape Barren Islanders would regard the special funding provisions received on their behalf from the Commonwealth as implying equal status with mainland Aborigines.[210]

Employment Program to Assist Aborigines, 1969

In 1969 the Commonwealth Department of Labour and National Service implemented a special program to provide employment assistance for Aborigines, which included a subsidy for employers who provided long term work training.[211] By April 1970 three adolescents were being trained under the scheme and assisted with living away from home allowances.[212]

Commonwealth Financial Support, 1969/70

The Commonwealth granted Tasmania $39,000 in 1969/70 which exceeded the previous allocation. This grant was comprised of $25,000 for housing, $7,000 for a medical-social worker for Cape Barren Island, and $7,000 for education ($4,000 for 8 bursaries and $3,000 for a vehicle for the head master of the school to transport the children).[213]

With this grant, the Commonwealth indicated that 'while our major objective is to assist in the housing of Aborigines near employment opportunities, we nevertheless recognise the right of all citizens to live where they wish. We would therefore be opposed to our grant being used in such a way as to force the movement of all Aborigines from the Cape Barren region if some of them wish to remain there.'[214] The Tasmanian Government concurred with this view, and the Premier maintained that 'it is the view of my Government to ensure that those who wish to remain on Cape barren Island should be given help and encouragement to raise their living standards to those comparable with the accepted standards in a normal modern community.'[215]

Abschol, 1969-72

The Tasmanian branch of Abschol, an organisation providing scholarships to Aborigines to Australian universities, visited Cape Barren in 1969. This organisation had 'campaigned vigorously for redevelopment of Cape Barren Island, rather than an attempted forced assimilation of the Islanders into the mainland society.'[216] They

209 CSCF, Section 183/3/69, 1 April 1969.
210 *id.*
211 *ibid,* 11 June 1969.
212 CSCF, Section 183/8/70, 5 March 1970.
213 CSCF Section 183/3/69, 22 September 1969.
214 *id.*
215 *ibid, 8* October 1969.
216 *ibid,* 2 October 1969.

carried out their own feasibility study of the economic potential of the island and tried to raise finance for its economic recovery.

Abschol persuaded the University of Tasmania Students Representative Council to pass a motion deploring the Tasmanian government's failure to support economic development on the Island. A survey of the Islanders revealed that they 'overwhelmingly want to remain on Cape Barren and moreover want the island redeveloped with sympathetic Government financial assistance so that there is an economic base for an Islander community to flourish there.'[217] A petition was circulated affirming the residents of Cape Barren Island's desire to stay on the island.[218]

In August 1971 Abschol organised a conference of Cape Barren Islanders, and the two hundred Islanders who attended from all over Tasmania and the Furneaux Islands found that nearly two thousand of their people were scattered across Tasmania and Australia.[219] 'The opening day was marred by discord as the resident Islanders accused their mainland relatives of disloyalty, the Islanders seeing themselves as the ones suffering hardship. Those that resided on the mainland, particularly in urban areas, however, saw themselves suffering discrimination as half-castes in a non-Aboriginal community.'[220] By the second day the atmosphere improved as families recognised relationships and began to pick up the threads of kinship networks.

'This conference, which is still large in the memories of those who attended, set the pattern for future meetings of Aboriginal persons for some time to come. ... The most significant resolution was that "we do not wish the Tasmanian Government to attempt to dilute and breed out our people and cultural heritage." Here was the most forceful assertion of Tasmanian Aboriginality to date.'[221]

In June 1972 Abschol called for an inquiry into Aboriginal affairs in Tasmania, including what was described as the social welfare policy of forced removal of Aboriginal children from their families. The Social Welfare Department, in its reply to the Minister, denied that there was any discrimination against Aboriginal families and challenged the Abschol statements as based on unsubstantiated hearsay.[222]

Agriculture Survey of Cape Barren Island, 1969

An agricultural survey of Cape Barren Island was conducted in 1969, in order to assess what potential the island had for development. The Department of Agriculture reported that 'soils and vegetation do not impress as being suitable for economic development .... [and] the conclusion must be reached that these are poor soils, requiring special fertiliser treatment, and even then their performance is somewhat doubtful.' [223]

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217 *id.*
218 L Ryan, p. 251.
219 *ibid*, p 253.
220 D Daniels, The Assertion of Tasmanian Aboriginality: From the 1967 Referendum to Mabo, unpublished Masters of Humanities thesis, 1995, p 14.
221 *ibid.*
222 *ibid.*
223 CSCF Section 183/3/69, 14 November 1969.

However, the evaluation of the economic aspects of agricultural development provides more pertinent information regarding the status of the Island infrastructure: 'there are no roads of any consequence, port facilities are poor, shipping services are irregular and transport charges high. All of these factors, coupled with the marginal quality of most of the land, make it unlikely that much of the Island could be economically developed.'[224] This apparent lack of Government support highlights appeals by the Islanders for some Government investment to secure their future.

Cape Barren Island population, 1969

By October 1969 there were 60 Cape Barren Islanders actually living on the Island itself. The group consisted of 31 adults and 29 children, with eight of these children away at secondary school on the Tasmanian mainland. There were 8 family groups with dependent children, with average number of children being 5. There were 8 households with adult members only. [225]

224 *ibid.*

225 CSCF Section 183/8/70, 5 March 1970.

1970 - 1990's

Welfare Legislation

Child Protection Act 1974 (as amended by No 53 1978)

Specific legislation relating to child protection was implemented in 1974 **(Appendix 9)**.

Section 3A provides that if the Child Protection Board considers there is a substantial risk of a child suffering injury from cruel treatment or that the child has suffered such treatment, the Board may remove the child to a place of safety.

Section 8 provides that mandatory reporting, of incidences where a child has suffered injury through cruel treatment, applies to prescribed classes of professional persons. The provision applies to medical practitioners, registered nurses, social workers, probation officers and teachers.

Section 9(3) provides if a Justice believes that a child has suffered injury as a result of cruel treatment and that the requirement to take the child for treatment will not be or has not been complied with the justice may issue a warrant authorising a police officer to remove the child and take him or her to a place of safety. The Police officer may enter the premises by force, if need be, search the premises and remove the child.

Section 10(1) provides that if on an application by the Child Protection Board, the Magistrate is satisfied that a child has suffered injury as a result of cruel treatment, the Magistrate may order that the child be taken to a place of safety or use powers under the *Child Welfare Act 1960* as if the child was neglected. This includes making an order declaring the child a ward of the State.

Adoption of Children Act 1988

The *Adoption of Children Act 1988* repealed the *Adoption of Children Act 1968.* Provisions of the Act and associated policies and practices are discussed in term of reference (d).

Welfare Policy and Procedure

1982 Child Welfare Manual

The Manual is a statement of guiding principles and priorities for the provision of fieldwork services. Section 12 is a guide for recording the case history of clients.

Section 15A of the Manual states that preventative work is an important aspect of the Department's work. Cases where this approach would apply are: children reported as neglected, where the circumstances do not justify a complaint in court; children reported for minor delinquency; children whose parents seek the Department's aid.

Section 15B states that contact with families is an extremely important aspect of the Department's work because it embodies the essence of the community welfare approach and it aims to increase the resources of the individual, the family and the community for

self-help. Such a process requires participation in decision making, development of skills, linking people with resources and self-help groups to help them become more independent and to solve their own problems. This process involves a contract between the client and the Child Welfare Officer that outlines each other's goals.

Section 19 provides guidance on case management. Officers are advised to use the skills and knowledge of the basic casework principles. The concepts of confidentiality, acceptance, self determination and self responsibility assume particular importance.

Section 20 refers to the admission of a child as a ward by application under section 35 of the *Child Welfare Act 1960*. It states that whilst legal guardianship is transferred to the Director it is normal practice of the Department to continue to consult with the child's parents over the management of care of the child.

Section 27 refers to placement and management of young offenders. In this section there is no explicit direction to consider the cultural or ethnic background of the child.

The Department considers that the best interests of both the individual and the community are met by a positive and supportive approach designed to promote self-value and responsibility, as well as developing opportunities for the individual to adopt a more socially acceptable way of life. Incarcerating a young person in an institution should not be undertaken unless there are no other reasonable and practicable alternatives.

The success of an institutional placement will be governed by the quality and frequency of communication between the Child Welfare Officer, the staff of the institution, the young person and his/her family.

Draft Fieldwork Services Manual, 1989

In all aspects of the Department's work, emphasis is given to the importance of the family and the role of the family in child care and development.

When considering the possibilities of placement the ethnic grouping of children is an important consideration in the matching process. The ethnic identity and connections of the child must be protected. As far as possible children should be placed in foster family of a similar ethnic grouping. A reference is made to Aboriginal Placement but an elaboration of this cannot be located in the Manual itself.[226]

It is departmental policy to develop the identity of the child in a shared care situation, or the identity of a foster child, as a recognition of their need to be accepted in their own right and to maintain their identification with their natural family as well as their cultural and ethnic heritage.

It is important that the natural parents visit the child in shared care/foster care.

226 Department for Community Welfare, December 1989 Draft Fieldwork Services Manual p.172.

Residential Domestic Assistance Program - Domestic Assistance Services Act 1947

The Residential Domestic Assistance program is directed towards supplementing family functioning by providing short term and emergency care for children in a family's home or departmentally approved 'Hostels' during times when parents are temporarily unable to care for them. Day to day care of the child is shared but guardianship remains with the parents.

This program may be used to avert family breakdown, prevent children coming into the authority of the Department, and as an alternative to any form of institutional care.

Originally the Act was used to employ housekeepers who would go into houses to maintain the domestic duties whilst the mother was temporarily unable to care for her children. The Act is now interpreted to include situations of stress, potential family breakdown and neglect.

For approximately the last 25 years the focus has been on placing children with carers rather than employing carers to temporarily move into the children's home.

Parents retain the right to contribute towards the costs of care and are particularly encouraged to continue normal outlay on clothing, pocket monies, recreation and leisure costs.[227]

Relatives Allowance

Financial and other support is available where relatives have undertaken the permanent care of the children orphaned, abandoned or otherwise not able to be cared for by the natural parent(s). Relatives' Allowances are not paid where relatives have children in care temporarily.

An exhaustive search of records has not been undertaken, but examples of the application of this provision in 1989 include cases where Aboriginal children are being cared for by extended family members. In some instances this arrangement has been at the specific request of the children involved. Assistance is provided via Relatives Allowance to meet the additional costs of care, where the parent is unable to contribute financially. The need for respite for the carer is also co-ordinated, where the parent is able to share the responsibility. Arrangements are conducted in consultation with the Tasmanian Aboriginal Centre, where the family agrees to this involvement.[228]

1993 Family Services Operational Manual

The Aboriginal Child Placement Principle is outlined in this Manual. When a child is to be placed outside his/her natural family the order of priority for placement should be:

- ***a member of the child's extended family***
- ***other members of the child's Aboriginal Community who have the correct relationship with the child in accordance with Aboriginal customary law.***

227 Department for Community Welfare, December 1989 Draft Fieldwork Services Manual Chapter 17, pgs. 200-203.

228 Department of Community and Health Services, file 3/1/8c Northern Regional Office.

- ***other Aboriginal families living in close proximity.***

This principle was accepted by all States at the 1986 Social Welfare Minister's Conference.

A commitment was also made to provide resources and administrative support to the Aboriginal community to assist in the implementation of the Placement Principle and to engage in community work.[229]

1993 Child Protection Manual

The 1993 Child Protection Manual clarifies the role of the Child Protection Officer in relation to modern social welfare policy and practice. Part Three of the Manual details legal intervention procedures involved when a child has to be removed from his or her caregivers. The Child Protection Officer is authorised 'to intervene legally to ensure a child's immediate protection from further maltreatment where there is credible evidence of maltreatment and the child's future safety cannot be guaranteed.'[230] The Manual outlines the basic principles of child protection; defines practice criteria and the ancillary powers given under a warrant; hospital protocol; transfer guidelines, case management options; and cases requiring further legal intervention.

As a preventative measure, when the Child Protection Officer is satisfied that a child has suffered or is at substantial risk of suffering maltreatment and is in need of protection, the Child Protection Officer can request a caregiver to agree to a 120 hour assessment of the child.

229 Community and Health Services, Family Services Operational Manual, July 1993, p. 134

230 Child Protection Manual 1993, Part 3: Legal Intervention, p 82.

Historical Context 1970 - 1990's

Commonwealth funds for Aboriginal Enterprises, 1969-70

In 1969 Tasmania considered the possibility of gaining some Commonwealth capital funds set aside for Aboriginal Enterprises, for the 'development of some worthwhile economic venture for those island people that will inevitably remain on Cape Barren.'[231] The Government was aware of rumours that the Islander's efforts in mutton birding were easily circumvented and that they were sometimes exploited by people or firms that had the trading monopoly. It was hoped that the Islanders could form their own co-operative and make application to the Commonwealth Fund for assistance.[232]

At the end of 1969 no Cape Barren Islander had made application within the terms of the *Aboriginal Enterprises (Assistance) Act 1968* to engage in a business enterprise, despite general awareness.[233] By July 1970 four loans had been granted to Cape Barren Island men, and a farm management consultant was being engaged by the Office of Aboriginal Affairs to assist with plans.[234]

Report to the Australian Aboriginal Affairs Council, 1970

In a Report to the Australian Aboriginal Affairs Council (AAAC) in 1970 the Tasmanian Government stated that in addition to the people of Cape Barren Island it was estimated that there were possibly 600 people of Cape Barren Island extraction in Tasmania, 'the majority of [whom] present no social problems.'[235] At this time it was also noted that of the 827 Wards of the State, 20 children (2.4%) were identified as Cape Barren Island children.[236]

Commonwealth Financial Support, 1969-70

The Commonwealth granted Tasmania $39,000 in 1970/71 which matched the previous year's allocation. This grant was comprised of another $25,000 for housing, $7,000 for health (to be used for a "community advisor"), and $7,000 for education (comprising $1,000 for the employment of a teacher's assistant at the infants and pre-school level; $1,000 for speech therapy, guidance, educational advisory visits, and educational excursions; $1,000 for educational equipment; and $4,000 for boarding and other costs associated with High School Education).[237]

An additional $5,000 was provided by the Commonwealth for Special Works and Regional Projects, 'to stimulate employment opportunities on the Furneaux Group'.[238] Proposed

231 CSCF Section 183/8/68, 26 September 1968.
232 *id.*
233 CSCF Section 183/8/70, 5 March 1970.
234 *ibid,* 24 July 1970.
235 *ibid,* 5 March 1970.
236 Australian Aboriginal Affairs Council: Tasmanian Progress Report 1969
237 CSCF Section 183/8/70, 3 July 1970.
238 *ibid,* 10 September 1970.

initiatives included regravelling of the airstrip, and exploratory drilling to determine mining possibilities had also commenced.[239]

Cape Barren Island "community development officer", 1970-71

Initially the Health Department intended to appoint a "medical social worker" with the funding obtained from the Commonwealth in 1969/70 allocation. This officer's activities would centre on Cape Barren Island 'to do preparatory work with a view to overcoming social inadequacy so Islanders could more successfully transfer to more competitive but rewarding areas.'[240] After difficulty in filling the position, the Government renamed the position in April 1970 and advertised for a "resettlement officer", to be located in Launceston, whose function would be to 'advise and encourage families on Cape Barren Island to re-settle on the Tasmanian mainland in housing provided by Commonwealth funds and to assist such families generally with their social welfare.'[241] By mid-1971 the resettlement officer's title was changed to "community development officer", who was to be located on Cape Barren Island to assist in its redevelopment.

Development of the Tasmanian Aboriginal Centre

In 1970 the Tasmanian Government was becoming aware of the Cape Barren Islanders being 'encouraged in ideas of leadership and community development from amongst their own people.'[242] Also, the 'activities of a local group on Flinders Island have directed interest to the Wybalenna site which has historical associations with the extinct Tasmanian Aboriginal people.'[243]

The Aboriginal population in Tasmania increased from 2,903 in 1976 to 8,948 in 1991.[244] In 1974 the Tasmanian Aboriginal Centre (TAC) employed a staff of six, by 1991 this would increase to approximately 25. Staff are employed on a range of projects including legal and medical services, programs for child care and street kids, educational and cultural programs and research for the Royal Commission on Aboriginal Deaths in Custody. In 1992 the TAC would purchase a major building in Elizabeth Street in Hobart, and lease or purchase buildings in Launceston and Burnie in order to increase it's presence there.[245]

Progress Report to the Australian Aboriginal Affairs Council, Chief Secretary, 1973

In 1973 the Chief Secretary of the Tasmanian Government presented a Progress Report to the Australian Aboriginal Affairs Council. The report stated the "customary viewpoint" of the Tasmanian population that 'those citizens of Aboriginal origin are not regarded as a separate group of people. .... The State Government provides various

239 *id.*
240 *ibid,* 5 March 1970.
241 L Ryan, p. 251.
242 CSFC 183/8/70, 10 September 1970.
243 *ibid,* 5 March 1970.
244 Australian Bureau of Statistics 1991 Census
245 L Ryan, p. 288.

services, available through normal Departmental sources, to all citizens in Tasmania, irrespective of racial background.'[246]

However, the report noted that the number of people identifying as Aboriginal was increasing, and that some were now eligible for assistance under the various Commonwealth Aboriginal Advancement Schemes. While the Tasmanian Government 'recognised that many people of Aboriginal descent have special problems' it was considered 'definitely advantageous' to continue accepting Commonwealth funds to deal with the issues as there was 'no direct allocation of State funds for Aboriginal Welfare in Tasmania'.[247] Additional Commonwealth funds allowed the appointment of a Child Welfare Officer for a period of 3 years to do intensive work with the Cape Barren Island community. At this time the Department of Community Welfare gave an undertaking to the AAAC that social work services would be increased for Cape Barren Island people living in Tasmania.

Housing and assistance issues

Up until 1973 there was no Aboriginal involvement in Aboriginal housing issues in Tasmania. The State Department of Housing received limited funds from the Commonwealth Government to house Aboriginal people and the allocation of those houses was at the discretion of an officer of the State Welfare Department. With the formation of the Tasmanian Aboriginal Centre in 1973 greater Aboriginal participation became possible. A 1974 document notes that financial assistance received from the Australian Government Department of Aboriginal Affairs, for housing and economic enterprises for Aboriginal Tasmanians had a positive result: 'Approximately 50 families have been housed, some 8 or 9 fishermen have their own vessels and other individuals have been able to embark upon business enterprises on their own account.'[248] In 1975 the Tasmanian Aboriginal Centre established a Housing Committee in conjunction with the Housing Department to allocate Aboriginal houses as they became available.[249]

Aboriginal Homemaker Scheme 1974

The Aboriginal Homemaker Scheme was a preventative scheme funded from budget surplus under the Federal Aboriginal Affairs program. The scheme was established in 1974 under the direction of the Department of Social Welfare and run by Aboriginal women for Aboriginal families, to help prevent children being separated long term from their families. The Tasmanian State Department of Social Welfare obtained funds from the Department of Aboriginal Affairs to operate the Aboriginal Homemaker Service as a pilot program in 1974. Due to the success of the program it was expanded by the State to cover non-Aboriginal families. Federal funding for the Aboriginal program was discontinued in 1978 as the Australian Government stepped up the process of encouraging absorption of Aboriginal programs within existing services, and the program became a generalist one in 1979. In 1980 the Tasmanian Aboriginal Centre successfully

246 Progress Report to the Australian Aboriginal Affairs Council, Chief Secretary, 1973, p 2.
247 *id.*
248 Deputy Director, Department of Social Welfare, BC Hill, 1974 (File 3/1/6 1973-74).
249 Sculthorpe, H Tasmanian Aborigines: A Perspective for the 1980's, (Hobart: Tasmanian Aboriginal Centre) 1980, p 80-81.

submitted for a Commonwealth Family Support grant under a Family Aid Program to continue the service specifically for Aboriginal families.[250]

From the success of the Homemaker scheme it was evident that programs with direct Aboriginal involvement were essential. The 1977 Conference of the Council of Social Welfare Ministers recognised the value of the aim of achieving greater participation by Aboriginal people in services affecting them. In 1979 Commonwealth funds were made available for the employment of Aboriginal liaison officers in State Departments. These positions contributed greatly to the working relationship between the Government and the Aboriginal Community during the 1980's, and encouraged the Aboriginal Community to have a say in programs run for and by them.

Commonwealth Funding for Aboriginal Education, 1976

In 1976 the Tasmanian Department of Education was receiving $30,000 annually from the Commonwealth Department of Aboriginal Affairs. These funds were used for equipment and excursions for Cape Barren Island pupils; the provision of Adult Education classes on Cape Barren Island; aid to Aboriginal primary school students in cases of need (for books and uniforms); and part-time remedial assistance for Aboriginal children. In the same year correspondence from the Schools Commission also indicates that there was a Special Projects Program that funded projects relating to Aboriginal education. It is not apparent whether Tasmania successfully gained any funding from this source.[251]

Private Placements in Approved Children's Homes, 1977

In June 1977 State Cabinet approved a scheme 'to enable supplementary payments to be made to Approved Children's Homes, in respect of children placed privately by parents or relatives, who are unable to afford maintenance commensurate with current allowances for State Wards.'[252] The scheme was due to commence on 1 July 1977 and the Director of Social Welfare hoped it would benefit parents and children alike, and 'alleviate the necessity for Wardship in many cases.'[253]

Aboriginal Adoption and Fostering Policy Guidelines 1977

While the Commonwealth accepted that adoption and fostering were the preserve of the State Governments, by the mid 1970's it believed that special consideration should be given to the guidelines for adoption and fostering policy for Aboriginal children **(Appendix 3)**. In November 1977 the Commonwealth sought agreement from the relevant State agencies and released the Aboriginal Adoption and Fostering Policy Guidelines through the Department of Aboriginal Affairs. The paper notes that

> 'The first and most important principle governing Aboriginal adoption and fostering policy should be that the removal of an Aboriginal child from his/her family or community environment should be a last resort. .... There is no reason to believe

250 *ibid,* 91.
251 DP&C, File 4065, Document 32923 (Department of Education, Community and Cultural Development), Appendix 47.
252 DCHS file 2/2/1 dated 7 June 1977 Northern Regional Office.
253 *ibid.*

that Aboriginal children will necessarily benefit from being removed from parents despite the living conditions; they could be ultimately penalised by it.'[254]

Preventative measures recommended to support the Aboriginal child in the family/community environment included the recognition of Aboriginal customs, marriage laws and community structure; and a review of existing welfare practices and services to ensure they complement and reinforce "self-help" fostering practices. Priorities were developed for family support programs, with the development and support of Aboriginal-managed service organisations to integrate Government-administered family welfare programs with the work of Aboriginal organisations.

While adoption of Aboriginal children was also to be subject to specific guidelines, there were very few Tasmanian Aboriginal children offered for adoption at this time. Records indicate that in the 22 years between 1970 and 1992 only nine (9) Aboriginal children known to the Department of Community and Health Services have been placed for adoption in Tasmania. This includes adoptions arranged through the Catholic Private Adoption Agency. Between May 1992 and May 1996 three (3) Aboriginal children have been adopted in Tasmania by non-relatives giving a total of twelve (12) Aboriginal children for the 25 year period.

Aboriginal Affairs Study Group, 1978

In early 1978 the Tasmanian Government established an Aboriginal Affairs Study Group, consisting of public servants, a consultant and representatives of the Tasmanian Aboriginal Centre, to investigate land rights, the mutton bird industry, and social development of the Tasmanian Aboriginal community.[255] In 1981 the Group developed draft legislation recognising sites of traditional Aboriginal significance. 'At a key point in the Study Group's deliberations, the TAC withdrew, claiming that the chair had not only tried to create divisions within the Aboriginal community but had also refused to acknowledge historical continuity between the present day Tasmanian Aboriginal community, whom he called "hybrids", and their ancestors like Truganini, whom he claimed were "parlevars".'[256] This was Tasmania's first attempt at land rights legislation, however the issue was never addressed due to the Franklin River environmental issue.[257]

Committee for Aboriginal Social Welfare, 1979

In 1979 the Tasmanian Government had established a committee within the Department of Community Welfare to consider the social welfare problems of the Tasmanian Aboriginal community. This committee was convened by the Deputy Director of the Department (Mr BC Hill), and representatives from Probation and Parole, Homemaker Services, and the Tasmanian Aboriginal Centre. It was Departmental policy at this time 'to consult with the Aboriginal sub-committee at any stage where it appears necessary to

254 Aboriginal Adoption and Fostering Policy Guidelines 1977, p 1
255 L Ryan, p. 266-267.
256 *ibid.*
257 *ibid.*

take Aboriginal children into the care of the Department, to see what assistance is forthcoming from the Aboriginal community itself.'[258]

Tasmanian Aboriginal Education Consultative Committee, 1979

In 1979 Tasmanian Aboriginal Education Consultative Committee was established. A research study was undertaken for the Tasmanian Department of Education in 1979 'to obtain a general overview of Aboriginal education in Tasmania and to thus establish a basis for determining the future objectives and appropriate policies and strategies for the Tasmanian Education Department.'[259] In retrospect the results are not surprising: the study found that the educational outcomes of Tasmanian Aboriginal children reflected national trends of low achievement. For the children in the survey, issues such as absenteeism, motivation, participation, peer acceptance, concentration and competition were reported as common problems by teachers.

This research also found that the Tasmanian education curriculum utilised outdated text books that perpetuated the belief that Tasmanian Aborigines were extinct. This reinforced the widely held view 'that a person of mixed ancestry does not have the right to identify more strongly with one ethnic group than the other.'[260] This position on Aborigines in Tasmania was not seriously challenged until the 1970's, despite the evolution of the Commonwealth definition of Aboriginality in 1968 after the critical 1967 referendum when the Commonwealth Government and the States agreed to 'joint powers and responsibilities for the advancement of Aboriginal people.'[261]

The Tasmanian Aboriginal Education Consultative Committee appointed in 1979 were subsequently dismissed, and a new Committee was appointed by the Government.

Tasmanian Aboriginal Persons, A Welfare Perspective, 1980

In 1980, the Australian Aboriginal Affairs Council Meeting of Ministers was held in Hobart. A paper presented at the Meeting, "Tasmanian Aboriginal Persons, A Welfare Perspective"[262], formally addressed the nature of Aboriginality in the Tasmanian context:

> 'There is a significant number of persons in this State who desire to be recognised and identified as Tasmanian Aboriginals. In the past there has been a great deal of ambivalence, even negativism, within government agencies and the community at large concerning the aboriginality of this group. Until recently in our educational and historical literature, the existence of Tasmanian aboriginals was denied. Yet

258 Correspondence from the Director of Social Services to the Minister for Community Welfare and Child Care, 1979.

259 Randriamahefa, Aborigines in Tasmanian Schools, Research Study No.44, Education Department of Tasmania, Research Branch, Hobart. 1979, p 3.

260 *ibid,* p. 50.

261 *ibid,* 12 July 1968.

262 Tasmanian Aboriginal Persons, A Welfare Perspective, Department of Social Welfare, 1980. 3/1/6H folio 44-48. Northern Regional Office (it is likely that this paper was written by Dennis Daniels, then Director, Department of Social Welfare)

within our society there is a group of people who have been discriminated against socially, because of their obvious aboriginality.'[263]

'The Australian Government recognises an individual as an Australian Aboriginal if that person is a descendant of an Australian Aboriginal, identifies with Aboriginals and their culture, and is accepted as an Aboriginal by the Aboriginal community. It accepts that in this State there are Aboriginal persons since it is clear that there are persons who are of Tasmanian Aboriginal descent, who have links, however tenuous, with Tasmanian Aboriginal Culture (a culture they, as a group, are endeavouring to preserve and to restore), and who wish to be recognised and identified as Tasmanian Aboriginals.'[264]

The paper indicated the increasing number of people identifying as Aboriginal, and attributed this "willingness to be counted" to an increasing pride in Tasmanian Aboriginal history and culture; the development and preservation of genealogical records; an improving tolerance in the community; Aboriginal programs and Aboriginal groups to which individuals could relate; and an increased awareness of rights.[265]

Also outlined in the paper were the nationally agreed policy guidelines developed in 1977 in relation to fostering and adoption of Aboriginal children; Aboriginal delinquency and Aboriginals in corrective institutions; and Aboriginal participation in the planning and delivery of welfare services.[266]

The Department was interested in developing the concept of Aboriginal participation in the planning and delivery of welfare services. The document proposed several principles for consideration:[267]

(i) Aboriginal participation is desirable in the policy making, planning and design of, as well as the management and delivery of welfare services affecting Aboriginal people, including preventative programmes.

(ii) Participation is a complementary development to the encouragement and support of Aboriginal co-ordinating, liaisons and advisory agencies at State level.

(iii) Participation requires some emphasis on welfare worker training for Aboriginals.

The Department already employed an Aboriginal Child Welfare Officer, and the paper proposed appointing honorary Child Welfare Officers within the Aboriginal community to deal with Aboriginal cases. In addition, case consultation with Aboriginal representatives (with client approval) was suggested, along with support to Aboriginal agencies providing a specialised service (eg. child care). Opportunities for Aboriginals to enter the welfare services as permanent officers was also proposed, with the

263 *ibid.*
264 *ibid.*
265 *ibid.*
266 *ibid.*
267 *ibid.*

establishment of a committee to advise on the welfare needs of the Aboriginal community.[268]

By 1980 the Social Welfare Department also employed a State Aboriginal Liaison Officer whose role was to liaise on Aboriginal Affairs across Government Departments, especially Housing, Health and Education; to be the Social Welfare Department's representative on various Aboriginal Committees within the respective Departments; to convene and chair the Social welfare Department's Advisory Committee on Aboriginal Welfare; to work with Aboriginal groups and to provide advice on Aboriginal Affairs to the Government.

Welfare Assistance for Cultural Activities, 1981-82

In 1981 the State Aboriginal Liaison Officer, J Everett, forwarded a submission to the Director of Social Welfare requesting the provision of assistance to Aboriginal families, specifically those on Cape Barren Island, in order to support their participation in the major Aboriginal cultural activity of muttonbirding.[269]

The viability of the muttonbird industry was being compromised due to the lack of available muttonbird workers. Increasingly, many Aboriginal muttonbirders and their families were foregoing employment on the muttonbird islands simply to retain unemployment benefits. The associated difficulty in securing welfare services for the family in the absence of the breadwinner had also contributed to the self denial of the employment opportunity.[270]

Prior to 1981 family welfare support had been provided by the State Department of Social Welfare. In situations 'where the bread-winner leaves his family each year to go muttonbirding and is unprepared or unable to support his family during his absence', women left to care for children had received income assistance as deserted wives or a supporting parents benefit.[271] In 1981 the responsibility was redesignated to the Commonwealth Department of Social Security, but no legal mechanism existed within the Social Security Act to provide additional assistance as under the previous scheme.[272]

In the submission, Everett also outlined a specific long term proposal to realise Aboriginal self-management and self-sufficiency in the muttonbird industry, by providing its own support services for families requiring welfare assistance during the bird season. The proposal recommended that Trefoil Island Aboriginal Corporation (T.I.A.C.) be approached to implement a Welfare Trust on a dollar for dollar basis with the Commonwealth. The T.I.A.C. was funded by the Commonwealth through the Aboriginal Development Commission. The Welfare Trust would be partly funded by contributions by "birders", and would ultimately mean that many families could be directly assisted by the Aboriginal community, in line with the Commonwealth policy of self-determination, management and sufficiency.[273]

268 *ibid.*
269 DCHS file 5/8/1b dated 13 April 1981 (located at the Northern Regional Office)
270 DCHS file 5/8/1b dated 1 April 1981 (located at the Northern Regional Office)
271 DCHS file 5/8/1b dated 13 April 1981 (located at the Northern Regional Office)
272 DCHS file 3/1/2 dated 16 March 1982 (located at the Northern Regional Office)
273 *ibid.*

The Director of Social Welfare, DW Daniels, endorsed the proposition and forwarded the submission to the Minister for Community Welfare and Child Care, who also approved the recommendation. Daniels noted that 'this will be one of the first demonstrable steps that given access to resources and self-determination, aboriginals will be able to move away from dependence on statutory welfare services.'[274]

In February 1982, the Regional Officer (North) wrote to the Director of Social Welfare recommending that applicants be visited on Cape Barren Island to assess their circumstances, and 'hopefully Mr Everett or another representative of the C.B.I. people could also visit to ensure a proper understanding of each applicants situation.'[275]

In March 1982 correspondence was again forwarded from the Director of Social Welfare, DW Daniels, to the succeeding Minister for Community Welfare and Child Care. The submission noted that muttonbirding was [and is] a major cultural activity of the Tasmanian Aborigines, and was concentrated on the islands of the Furneaux Group in Eastern Bass Strait.[276]

'As many muttonbirders are on unemployment benefits for the greater part of the year, come birding time the breadwinner would go birding, leaving his family to seek financial assistance from Dept. of Social Security. This must happen because the birders are not paid until the season ends, and his family is in a destitute situation.'[277] The submission stressed that 'the family has been dependant on unemployment benefits for most of the year and the "Nestegg" which can be made from the season is the only opportunity that family has to gain some small luxuries on an island which is isolated.'[278]

The submission noted that the Family Assistance Programme had been established to provide assistance for families in crisis situations, and should be made available to Cape Barren Island families without the expectation of repayment.[279]

Review of State and Territory principles, policies and practices in relation to Aboriginal fostering and adoption 1983

By 1983 the Working Party of the Standing Committee of Social Welfare Administrators presented a review of State and Territory principles, policies and practices in relation to Aboriginal fostering and adoption **(Appendix 4)**. The recommendations included specific directives for each State and Territory to determine its policy and procedures in consultation with appropriate Aboriginal communities and organisations, in order to implement Aboriginal placement principles, and move towards a cohesive approach.

The report recommended that all State and Territory Welfare Departments adopt the definition of an Aboriginal (or Torres Strait Islander) as 'a person of Aboriginal (or Torres

274 DCHS file 5/8/1 dated 13 April 1981 (located at the Northern Regional Office).
275 DCHS file 5/8/1D dated 23 February 1982 (located at the Northern Regional Office).
276 DCHS file 3/1/2 dated 16 March 1982 (located at the Northern Regional Office).
277 *ibid*
278 *ibid.*
279 *ibid.*

Strait Islander) descent who identifies as an Aboriginal (or Torres Strait Islander) and who is accepted as such by the Aboriginal (or Torres Strait Islander) community.'[280]

Social Welfare Administrators Report, Tasmanian Section, 1983

In the Tasmanian section of a report by the Social Welfare Administrators in the same year (1983), it is noted that 'it is the Department's practice to consult with representatives of the Aboriginal Community in relation to the provision of welfare services for Aboriginal people.'[281] The policy noted specifically that 'in every case of an Aboriginal child entering the care of the Department, the Aboriginal community should be consulted and, where practicable, placement is made with an Aboriginal family.'[282] The Department also added that 'some gap between policy and practice is due to a lack of resources within Aboriginal groups themselves.'[283] The report also stated that at that time, the Tasmanian Child Welfare legislation did not make any specific reference to, or provision for, Aboriginal people.[284]

Aboriginality in the Tasmanian Education system, 1984

In 1984 the Education Department issued a circular memorandum requesting that all schools and secondary colleges commence collection of statistics relating to the Aboriginality of students. The definition of an Aboriginal or Torres Strait Islander was provided by the Australian Education Council as 'a person:

(a) of Aboriginal or Torres Strait Islander descent;
(b) who identifies as an Aboriginal or Torres Strait Islander; and
(c) who is accepted as such by the community in which he lives.'[285]

Implementation of the Aboriginal Child Placement Principles, 1984

From 1984 to 1986 the implementation of the Aboriginal Child Placement Principles faced a number of difficulties including an inability to find sufficient numbers of Aboriginal carers. Due to the relatively small size of the Aboriginal community in Tasmania, there were also difficulties in maintaining case confidentiality and guardianship protocols. Following the agreement by all States to implement these principles further efforts were made to develop Aboriginal Foster Care services and to increase the number of Aboriginal foster carers with the Department of Community Welfare.

In 1988 it was noted that the 'shared care' (i.e. sharing the care of children between relatives, families and the Department of Community Welfare) of Aboriginal children is only successful where Aboriginal people are actively involved in all aspects of planning and service delivery; that there are usually shortages of 'suitable' Aboriginal carers; and

280 Review of State and Territory principles, policies and practices in relation to Aboriginal fostering and adoption, Working Party of the Standing Committee of Social Welfare Administrators 1983.
281 Social Welfare Administrators Report, Tasmanian Section, 1983, p 18.
282 *id.*
283 *id.*
284 *id.*
285 DP&C, File 4065, Document 32923 (Department of Education, Community and Cultural Development), Appendix 41.

that many Aboriginal shared care values sit uneasily in existing legislative provisions and white Australian shared care values. [286]

In 1991 the Tasmanian Aboriginal Centre acknowledged that the Department of Community Welfare and the Child Protection Board endeavoured to always place children within the Aboriginal community and that workers in the Aboriginal Family Support Program had a good working relationship with staff from Department of Community and Health services.[287]

Aboriginal Lands Bill, 1991

In early 1991 an Aboriginal Lands Bill was introduced by the Tasmanian Labor Government into the House of Assembly. It made provision for 21 areas of Crown land totalling 53,000 hectares to be handed back to the Tasmanian Aboriginal Lands Council. The Liberal Party opposed this on the grounds that their policy was for equal rights for all Tasmanians.[288]

Aboriginal Lands Act 1995

The *Aboriginal Lands Act 1995* commenced operation on 6 December 1995. The Act transfers to Aboriginal ownership 12 crown land sites which have historical, cultural, social and economic significance to the Aboriginal community. The area covered in total by this land is approximately 4570 hectares.

Although all the sites are of special significance to the Aboriginal people, there were particular reasons for transferring a number of them , including:

- The fact that around one third of the sites are muttonbird islands. This recognises the importance of muttonbirding as a cultural activity, as well as a source of food, for the Tasmanian Aboriginal community.
- The existence of important artwork at three of the sites
- The potential for cultural tourism at a number of the sites .

The land is vested in perpetuity in the Aboriginal Land Council of Tasmania. This statutory body manages the sites on behalf of the Aboriginal community.

The Act is one of the most historical and culturally significant pieces of legislation to be introduced into the Parliament, a fact reflected in the bipartisan support it received during its passage through both Houses.

It signals a commitment to the reconciliation process with the Aboriginal community and is a major step towards full recognition and appreciation of the contribution made by the Aboriginal people.

286 Memorandum from Acting Director of Community Welfare to Regional Managers 1988 (File 3/1/6F com 1986).

287 Correspondence from Tasmanian Aboriginal Centre to DCHS, Folio 42, File 3/1/6G com 90, 24 April 1991.

288 L Ryan, p. 285.

TERM OF REFERENCE (A)

dentify and describe the effects of relevant past laws, practices and policies which provided for, or had as their consequence, the separation of Aboriginal and Torres Strait Islander children from their families by compulsion, duress or undue influence.

1.3 The effects of relevant past laws, practices and policies that provided for the separation of children from their families.

Mainstream child welfare legislation provided for the separation of children from their families in the post war period. This legislation was supported by social welfare policies and practices, and applied to all members of the Tasmanian community. The removal of Aboriginal children occurred within this framework. Children were taken into State care for reasons of neglect, because they were uncontrolled, in need of protection or guilty of an offence.

Under the welfare legislation it was possible for the parent or guardian to voluntarily apply to the Minister for the child to be admitted as a ward of the State. While Departmental records indicate that in each known case the application was signed by the parent or carer, it is possible that factors such as duress and undue influence may have played a role in obtaining their consent.

In the context of the events on Cape Barren Island from 1900 to the 1970s the positions of authority on the Island, those of the police constable, head teacher (who also had the powers of a police officer), the child welfare office and the visiting health sister, were used to assist in the administration of an assimilation policy.

At this time the Tasmanian Aboriginal population were relatively disempowered. Given the often poor economic circumstances of Aboriginal people in Tasmania at that time, particularly on Cape Barren Island, these actions did have a marked impact on this community. Disadvantaged groups are less able to manage or influence the prevailing social system, and are more vulnerable to State intervention and State control.

The effect of separation on any individual is traumatic. This is compounded where the subsequent care of the child is with an alternative and unsympathetic cultural group. It is difficult to comprehensively assess the impact of such policies, practices and laws for the period under study. Lost individual and cultural identity cannot be easily regained. Thus the assertion made in the Interim Submission remains unchanged: 'the separations whether voluntary or not would have a marked and traumatic effect on the children and families involved.'[289]

289 Tasmanian Government Interim Submission 1995, p 4.

Tasmanian children in State care

Since the mid 1970's, the number of Tasmanian children who were taken into State care, by judicial or administrative means has been steadily declining, with a considerable decrease in recent years. This reflects changing welfare policy and practice, in line with the Department of Family Services aim of supporting the family structure.

From the early 1960's to the mid 1980's, the primary reason for discharge from wardship was attainment of the age of majority (18th birthday) or no need for further care. The other reason for discharge from wardship, adoption, also featured. On average 23% of wards were adopted each year from 1964 to 1980.[290]

Where Tasmanian wards of the State were placed

Foster care has been the major source of care for children taken into State guardianship since the *Infant's Welfare Act 1935*. Children's homes have been in existence since the turn of this Century and under the *Child Welfare Act 1960* have been registered as Approved Children's Homes. There are currently four (4) Approved Children's Homes in Tasmania.

Tasmanian Aboriginal children were accommodated in Children's Homes in the North and the South of the State, with families in Launceston and with foster families. The majority of Aboriginal children from Cape Barren Island appear to have been placed in the North.

The Department of Community and Health Services also maintained a number of institutions: Weroona, Westwinds, Wybra Hall (all closed in late 1970's to mid 1980's) and Ashley Youth Detention Centre (currently operating). It is known that some Cape Barren children were accommodated in institutions.

Incomplete time series figures have been included (**Table 1**) for the total number of Tasmanian wards of State as at 30 June for each year (unless stated otherwise). **Table 1(a)** presents specific details for the years 1991-92 to 1995-96, including new wards and new Aboriginal wards by reason for admission (for care and protection, beyond control, transferred from interstate, and youth justice).

The number of new wardships declared and the number of wards discharged in specific years is also included, where known.

The number of Aboriginal wards of State is also included, where known, in total and as a percentage of the total number of Tasmanian wards for specific years.

The number of new Aboriginal wards declared and the number of Aboriginal wards discharged for specific years are also included where known.

290 Tasmania Yearbook 1972-1993 (ABS) for 1965-1981.

Pathways into Care: Tasmanian Aboriginal Wards of State (refer Table 2)

Records of Tasmanian Aboriginal wards of State are inconsistent due to methods of classification prior to data collection at a particular point in time. Some discrepancies in the number of Aboriginal children in State care are directly related to the irregular collection of data for reporting (for example, to the Commonwealth), and the lack of a nationally agreed definition of Aboriginality until 1971.

The nature of Aboriginality and Aboriginal self-identification in the Tasmanian context also proves problematic for the purposes of data collection. For example, in 1971 a total of 671 Tasmanians identified in the census as Aboriginal. In 1976 this increased to 2,942 and in 1986 the total number who identified was 6,716. By 1991 the population identifying as Aboriginal had reached 8,885.

As the proportion of the Tasmanian population declaring Aboriginality increases, the number of Aboriginal wards of State as a proportion of the total ward population must be viewed in the context of the total Aboriginal population. It is conceivable that previous annual figures for wards of State have included children who have subsequently identified as Aboriginal. As such, it is difficult to accurately estimate the number of Aboriginal children in State care at any one time, and the results should be interpreted with due caution.

Table 2 provides an Overview of figures for specific years where total figures were available for Tasmanian Aboriginal wards of State. The results for 1969 were included in the Tasmanian Progress Report to the Australian Aboriginal Affairs Council (AAAC) Conference in that year. The figures for 1975 were collected following a request from Minister for Housing and Social Welfare. For 1983 and 1989, the results were collected from regions by inter-office memo, however the purpose for this has not been clarified. In 1990-91 the Child Welfare Information System was implemented, and since 1991 the figures for Aboriginal wards of state have been routinely collected and reported.

When reviewing these figures it should be noted that the tables record wards of State in the year specified, by reason for admission, not new admissions for that year. After 1969, each of the selected years will include some children counted in the previous cohort, depending on age at admission and age at discharge.

Aboriginal Wards of State: 1969 (refer Table 3)

In 1969 there were a total of 847 Tasmanian wards of State. By 30 June of that year a total of 112 Tasmanian children had been declared wards, and 163 children had been discharged from wardship. It is not known what percentage of those declared or those discharged were Aboriginal children.

In a report to the Australian Aboriginal Affairs Council in 1969, Tasmania reported that 'the Social Welfare Department bears the total cost of maintaining some twenty island children who are wards of State.'[291] Aboriginal children comprised 2.4% (20 children) of all Tasmanian wards.

291 AAAC Report, 1969, p 2.

Of the twenty (20) Aboriginal wards of State for 1969:

- Research undertaken for the case studies has provided background information on twelve (12) of the children.
- Eight (8) files could not be located, primarily due to insufficient identifying information, such as birth date, first name and parents names, in order to confirm identity.
- Average age at admission of the twelve was 5.3 years of age.
- 92% (11) were admitted for reasons of neglect, with age at admission ranging from 1 year to 12 years old and average age at admission 5.5 years.
- One child was voluntarily admitted to wardship (under Section 35 of the *Child Welfare Act 1960*).
- None of the twelve (12) children identified were admitted for youth justice, being beyond control or for child protection. (The *Child Protection Act* was legislated in 1974.)
- At the time of reporting in 1969, all twelve (12) children had been placed in foster care with non-Aboriginal families on the Tasmanian mainland.

Aboriginal Wards of State: 1975 (refer Table 4)

In 1975 there were 936 Tasmanian wards of the State, of whom 2.7% (25) were Aboriginal children. For the 12 months ending 30 June 1975, 140 children had been declared wards, and 184 children had been discharged from wardship. It is not known what percentage of those declared or those discharged were Aboriginal children.

Of the group of Aboriginal wards of State:

- Seventeen (17) of the 25 came into care by Court order as neglected children.
- Two (2) were declared wards due to being uncontrolled.
- Two (2) were declared wards for juvenile justice (delinquency).
- Four (4) were admitted to wardship through voluntary applications by their parents.
- Age at admission was not noted on the report, and was not collected when researching for this cohort.

Placement details for the twenty-five children note that:

- 68% (17 children) were living in foster homes, including relatives.
- 20% (5 children) were living in approved Children's Homes provided by the voluntary sector.
- 8% (2 children) were living in Departmental Homes (believed to be institutions and Receiving Homes).
- One child was accommodated in a temporary Receiving Home (now classified as a Family Group Home) at the time.

Aboriginal Wards of State: 1983 (refer Table 5)

The total number of wards of State in 1983 was 551, and Aboriginal wards comprised 6.4% (35) of this total. In 1983 a list of Aboriginal wards of State was compiled for inclusion in a report to the Director for Community Services.[292] The list recorded thirty five (35) children, a few of whom were included in the 1969 and 1975 cohorts.

Of the thirty five (35) Aboriginal wards:

- Seven (7) files were not located, due to insufficient identifying information such as birth date, first name and parents names, in order to confirm identity.
- Background information has been compiled on the remaining twenty eight (28).

Of the twenty eight (28) Aboriginal children:

- Age at admission was known for twenty six (26) of the twenty eight children: the average age at admission for this group was 6 years of age.
- 75% (21 children) were admitted for reasons of neglect, with age at admission ranging from 4 months to 12 years old.
- Of this group, two (2) children were admitted to wardship outside Tasmania.
- One of the children in the group achieved the age of majority (18 years) in 1983 and was included in the total as the person were still a ward at the time of reporting.
- Age at admission for reasons of neglect was known in 19 of the 21 cases. Average age of admission for the 19 children admitted for neglect was 5 years.
- One child was voluntarily admitted to wardship (under Section 35 of the *Child Welfare Act 1960*).
- Four (4) children were declared wards for youth justice (age range 11 to 15 years, average age 13.8 years)
- Two (2) were declared wards for being beyond control.
- There were no cases declared wards for child protection.
- In ten (10) cases, placement details are unknown.
- Eight (8) children had been placed in foster homes.
- Two (2) children were placed in Group Homes.
- Seven (7) children were placed in Approved Children's Homes.
- Six (6) had been placed with their parents.
- One (1) was placed with relatives.
- One (1) child was accommodated in an Institution.

292 DCHS File 3/1/6/A Folio 114-116

Aboriginal Wards of State: 1989 (refer Table 6)

By 30 June 1989, there were 383 wards of State. Of this total, 10.9% (42 children) were Aboriginal. It is not known what percentage of children were discharged from wardship or declared wards, nor how many of those declared or discharged were Aboriginal children.

Of the forty two (42) Aboriginal wards of State in 1989

- Three (3) voluntary admissions under Section 35 of the *Child Welfare Act 1960*.
- Reason for admission is not known for the remaining 39 children. Details on this cohort were recorded on an interoffice memo, which was discovered late in the research process. Further research could not be undertaken in time.
- Age at admission was noted on the report, and a profile of age distribution indicates that

  46% (18 children) were under 5 years of age,

  33% (13 children) were aged between 5 and 10 years, and

  21% (8 children) were aged between 11 and 17 years.

Placement details were only known for seven (7) of the forty two (42) Aboriginal children.

- Three (3) remained with their families.
- Three (3) were placed in foster homes
- One (1) was placed in a group home.

Tasmanian Wards of State: 1994

By 30 June 1994, there were 339 Tasmanian wards of State. During 1993-94 an additional 39 children were declared wards of State (not including youth justice cases). Half of these cases (20 children, 51%) were admitted to wardship for reasons of neglect. Of the remaining nineteen (19) children, six (6) were made wards because they were uncontrolled, seven (7) for child protection, and six (6) by voluntary admission by their parents or guardians.[293]

Of the thirty nine (39) declared in 1994, seven (7) were Aboriginal children. Reasons for admission of the Aboriginal children are not known.

In the same year 71 children were discharged from wardship for the following reasons:[294]

- 37 had attained the age of 18;
- 32 were discharged by Ministerial Approval (28 of whom were re-established with their natural families);
- 1 was adopted;
- 1 is deceased.

It is not known what percentage of those discharged were Aboriginal.

293 DCHS Annual Report 1993-94, p 94

294 *ibid.*

Aboriginal Wards of State: 1995 (refer Table 7)

In 1995 there were a total of 331 Tasmanian wards of State, of whom thirty five (35) were Aboriginal children (as at 12 October 1995). By 30 June 1995, 48 children had been declared wards, and 38 children had been discharged from wardship. Of those declared, 5 were Aboriginal children. It is not known what percentage of those discharged were Aboriginal.

Background information has been compiled on all 35 Aboriginal wards of State in 1995.

- Age at admission was known for all cases: the average age at admission was 8.6 years of age.
- 49% (17) were admitted for reasons of neglect, with age at admission ranging from 1 to 14 years old.
- Average age of admission for Aboriginal children admitted for neglect was 7.5 years.
- Six (6) had been voluntarily admitted to wardship (under Section 35 of the *Child Welfare Act 1960*) by 31 June 1995, with an average age at admission of 6.2 years, and ages ranging between 2 and 10 years of age.
- One (1) child was declared a ward for youth justice.
- Five (5) were declared wards for being beyond control (age range 9 to 14 years, average age at admission 11.8 years).
- Six (6) cases were declared wards for child protection, with an average age at admission 10.7 years (age range 4 to 17 years).
- Eleven (11) children were placed in foster homes.
- Ten (10) children had been placed in Approved Children's Homes.
- Eight (8) were living independently.
- Three (3) were living with family.
- One (1) child was living with relatives.
- One (1) child was living in a Group Home.
- One (1) child was in an institution.

Aboriginal Children and Youth Justice: 1993-94

In 1993-94 Aboriginal young people accounted for 5 (7%) of all young people admitted to the Ashley Youth Detention Centre for young offenders.[295]

In 1994-95 this figure rose slightly to 11 (14%).[296]

In 1993-94 a total of 131 young people were supervised by Youth Justice Officers.[297]

Aboriginal young people accounting for 14 (11%) of all young people on the community justice caseload.[298]

295 *ibid.*, p 88.
296 *ibid.*.
297 *id.*
298 *id.*

Table 1: Children in State Care, Tasmania 1965-1995

YEAR	WARDS OF STATE (as at 30 June for each year)[299]	New Wardships vs (Discharges)[300]	Aboriginal Wards of State: Reported Total	Aboriginal Wards as % of Total
1965	771	103 (136)		
1966	771	76 (130)		
1967	784	90 (123)		
1968	827	100 (122)		
1969	847	112 (163)	20 [301]	2.4%
1970	880	102 (141)		
1971	920	110 (130)		
Commonwealth definition of Aboriginality				
1972	937	115 (152)		
1973	927	116 (176)		
1974	939	118 (172)		
Child Protection Act 1974				
1975	936	140 (184)	25 [302]	2.7%
1976	866	73 (174)		
1977	793	60 (173)		
1978	721	58 (146)		
1979	674	70 (129)		
1980	636	77 (134)		
1981				
1982	549			
1983	551		35 [303]	6.4%
1984	547			
1985	505			
1986				
1987	480			
1988	450			
1989	383		42 [304]	
1990				
1991	376	74	41 [305]	10.9%

299 Tasmania Yearbook 1972-1993 (ABS) for 1965-1991; DCHS Annual Report 1993-94 for 1992 & 1993.
300 *id.*
301 Australian Aboriginal Affairs Council (AAAC) Conference 1969 - Tasmania Progress Report.
302 DCHS File 3/1/6 File note dated .8 August 1975.
303 DCHS File 3/1/6 File note dated 15 August 1983
304 DCHS Annual Report 1989-90
305 Figures supplied by Senior Program Officer, Youth Justice, DCHS

Table 1(a): New Wards by Reason for Wardship by Aboriginality.[306]

Year	New Wards - *care and protection*	New Aboriginal Wards - *care and protection*	Percentage of New Aboriginal Wards of all New Wards *(care and protection)*	New Wards - beyond control	New Aboriginal Wards - beyond control	Percentage of New Aboriginal Wards of all New Wards *(beyond control)*	Interstate Wards *transferred and admitted by Section 35*	New Wards - *Youth Justice*	New Aboriginal Wards - *Youth Justice* (initially*)	**Total New Wards**	**Total New Aboriginal Wards**	Incidence of Aboriginal children in the total Ward population
1991-92	50	5	10%	13	1	7.6%	5	10	Nil	**78**	6 of 78 *7.7%*	42 of 387 *10.9%*
1992-93	40	4	10%	3	1	33%	2	8	Nil	**53**	5 of 53 *9.4%*	32 of 353 *9.1%*
1993-94	27	7	25.9%	6	Nil	Nil	4	2	Nil	**39**	7 of 39 *17.9%*	35 of 359 *10.3%*
1994-95	38	8	21%	9	Nil	Nil	2	Nil	Nil	**49**	8 of 49 *16.3%*	35 of 334 *10.6%*
1995-96	53	2	3.7%	Nil	Nil	Nil	Nil	5	Nil	**58**	2 of 58 *3.4%*	34 of 357 *9.5%*

- Children declared for care and protection reasons are declared under Section 34 of the Child Welfare Act 1960.
- Children declared for beyond control reasons are declared under Section 34 of the Child Welfare Act 1960
- Children declared for youth justice reasons are declared under Section 28 of the Child Welfare Act.
- The data base indicates the initial reason for Wardship only. Therefore in the period 1991-92 to 1995-96 no Aboriginal children were declared Wards initially as a result of offending. Some children under Wardship for care and protection or beyond control reasons may be redeclared Wards as a result of offending or be placed on a youth justice legal order as a result of offending. There are currently four Aboriginal Wards of State on the Youth Justice caseload.

306 Department of Community and Health Services Annual Reports 1991-1996, Child Welfare Information Systems.

Table 2: Overview

Year	1969	1975	1983	1989	1995
Aboriginal Wards	**20**	**25**	**35**	**42**	**35**
Reason for Admission:					
Neglect	11	17	19		17
Youth Justice		2	4		1
Beyond Control		2	2		5
Child Protection					6
Voluntary	1	4	1	3	6
Unknown	8		9	39	
Average Age at Admission	5.3	*Unknown*	6	6.7	8.6

Note: These figures reflect wards of State in the year specified, by reason for admission, not new admissions for that year. After 1969, each of the selected years will include some children counted in the previous cohort, depending on age at admission and age at discharge.

Table 3: 1969

		Average Age at Admission	Age Range
Aboriginal Wards	**20**		
Reason for Admission:			
Neglect	11	5.5	1 to 12
Youth Justice			
Beyond Control			
Child Protection	n/a	n/a	n/a
Voluntary	1		
Unknown - file not found	8		
Average Age at Admission	5.3		
Placement (in 1969)			
Parents			
Relatives			
Foster Home	12		
Group Home			
Approved Children's Home			
Independent			
Institution			
Unknown	8		
TOTAL	20		

Table 4: 1975

		Average Age at Admission	Age Range
Aboriginal Wards	**25**	*Unknown*	*Unknown*
Reason for Admission:			
Neglect	17		
Youth Justice	2		
Beyond Control	2		
Child Protection			
Voluntary	4		
Unknown - file not found			
Average Age at Admission	*Unknown*		
Placement (in 1975)			*Notes*
Parents			
Relatives			
Foster Home	17		*including relatives*
Group Home	1		*temporary Receiving Home*
Approved Children's Home	5		*Provided by the voluntary sector*
Independent			
Institution (Departmental Homes)	2		*Departmental Homes and institutions were classified together*
Unknown			
TOTAL	**25**		

Table 5: 1983

		Average Age at Admission	Age Range
Aboriginal Wards	**35**		
Reason for Admission:			
Neglect	21	5	4 mths to 12yrs (Age unknown: 2; Declared interstate: 2)
Youth Justice	4	13.8	11 to 15
Beyond Control	2		
Child Protection			
Voluntary	1		
Unknown - file not found	7		
Average Age at Admission	6		4 months to 15 years
Placement (in 1983)		*Notes*	
Parents	6		
Relatives	1		
Foster Home	8		
Group Home	2		
Approved Children's Home	7		
Independent			
Institution	1		
Unknown	10		
TOTAL	**35**		

Table 6: 1989

		Average Age at Admission	Age Range
Aboriginal Wards	**42**		
Reason for Admission:		*Unknown*	*Unknown*
Neglect			
Youth Justice			
Beyond Control			
Child Protection			
Voluntary	3		2 to 7
Unknown	39	6.7	6 mths to 17 years (stated on report)
Average Age at Admission	• 46% (18 children) were under 5 years old; • 33% (13 children) were aged 5 to 10 years, • 21% (8 children) were aged 11 to 17 years		
Placement (in 1989)		*Notes*	
Parents	3		
Relatives			
Foster Home	3		
Group Home	1		
Approved Children's Home			
Independent			
Institution			
Unknown	35		
TOTAL	**42**		

Table 7: 1995

		Average Age at Admission	Age Range
Aboriginal Wards	**35**		
Reason for Admission:			
Neglect	17	7.5	1 to 14
Youth Justice	1		
Beyond Control	5	11.8	9 to 14
Child Protection	6	10.7	4 to 17
Voluntary	6	6.2	2 to 10
Average Age at Admission	8.6		
Placement (1995)			
Parents	3		
Relatives	1		
Foster Home	11		
Group Home	1		
Approved Children's Home	10		
Independent	8		
Institution	1		
TOTAL	**35**		

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TERM OF REFERENCE (B)

Outline the current laws, policies, programs, administrative structures and practices relating to services and procedures (such as, but not limited to, counselling facilities) which are available to Aboriginal and Torres Strait Islander people which are directed to assisting families and individuals who have been affected by the separation under compulsion, duress or undue influence of any Aboriginal or Torres Strait Islander children from their families.

Outline the current laws, policies, programs, administrative structures and practices intended to assist Aboriginal and Torres Strait Islander people in accessing individual and family records with a view to reunifying families.

2.1 Policies, programs and administrative structures for reunifying families

Archives Act 1983

The *Archives Act 1983* provides for the control of records of all State and local government organisations. The Act requires that the Heads of these organisations preserve all records in their custody until they are dealt with in accordance with the disposal provisions of the Act. The Act stipulates that records over 25 years old should, with a few defined exceptions, be made available to the Archives Office. Neither the Act nor the regulations under it provide specific guidelines or standards for the storage of records other than those of abolished or amalgamated agencies. Archives Office staff have a statutory power to inspect records and report on their preservation, storage and general management. Heads of Agencies are obliged to "take all reasonable steps" to implement any advice.[1]

Access to all records transferred to the Archives Office is unrestricted unless a restriction is placed on the records, or part of them, at the time of transfer, by the transferring agency. The Act contains guidelines for agencies to assist in determining whether any particular records should be restricted, including the unreasonable disclosure of personal affairs. Provisions are also made for restrictions to vary for different categories of people as well as for various periods of time. There is also an option for the determination of access in any particular case to be delegated to the State Archivist rather than a blanket period of time. All restrictions lapse 75 years after the making of the record.[2]

Freedom of Information Act 1991

The Tasmanian *Freedom of Information Act 1991* gives members of the public the right to obtain information held by Ministers, State Government agencies, Councils, and other government related bodies (including 'prescribed authorities') unless the information is exempt information. The application of FOI principles requires the balancing of the fundamental right of public access to information held by government versus the need to ensure proper operation of government and the protection of individual and commercial

1 Department of Premier and Cabinet (DP&C) File 4065, Document 25787 (Archives Office of Tasmania)
2 *id.*

privacy. Tasmania is generally considered to have one of the best and most open FOI Acts in Australia.[3]

Under the legislation an individual has the right to access personal affairs information relating to the applicant. The Act however, also recognises that everyone has a right to personal privacy. The Act has an exemption which prevents the unreasonable disclosure of information relating to the personal affairs of another person. This means that if someone requests information about the personal affairs of another party, this other party will be consulted if at all possible to seek his/her views on whether such information should be released. This other party is notified and has the right to appeal against a decision to release his/her personal affairs information to another prior to any information being released.[4]

This latter right is detailed in Section 30 of the Act and reinforces a commitment to the protection of individual personal privacy. The operation of Section 30 is applied on a "case by case" basis as each case has its own individual set of facts and circumstances to which the general FOI principles must be applied and balanced against the protection of the personal privacy of a person.[5]

Decisions upon requests for information (including decisions affecting the personal privacy of third parties) can be made by the 'principal officer' of an agency (ie. Head of a department) or a Minister. However, it is usual for a principal officer to approve an officer of the agency to be an 'authorised' FOI officer for all the agency's FOI activities.[6]

If an adverse decision is made by an authorised officer (rather than by the Minister or Head of Agency), a person may seek a review of this decision (known as "internal review") by first applying to the principal officer. If dissatisfied with this internal review the applicant then has the right to apply for an "external review" of that decision which in Tasmania is conducted by the Ombudsman. The Ombudsman may reconsider the request as if it were an original application.[7]

An individual is required to complete only one form in order to request access to information contained in their own personal files or may simply write a letter mentioning that they are seeking this information via the *FOI Act 1991* and send it to the agency they believe has the information being sought.[8]

Charges are reduced for personal information whereby the first $50 is waived (which equates to the first two hours of work being free whether for time spent searching or supervising or copying or a combination of these). Many requests of this nature can usually be processed in two hours and thus not attract a charge. The maximum charge for personal information is $100. The total charge may be waived or reduced in cases of financial hardship and there is no charge for amendment of personal information.[9]

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3 DP&C File 4065, Document 32763 (FOI Unit).
4 *id.*
5 *id.*
6 *id.*
7 *id.*
8 *id.*
9 *id.*

Note: the Department of Community and Health Services does not require requests for access to personal information to be submitted according to Tasmanian FOI legislation.[10]

Adoption Act 1988

Under the *Adoption Act 1988* the voluntary sharing of information is facilitated. Upon reaching the age of 18, adoptees generally have certain rights to obtain their original birth certificate. The law in this area attempts to find a balance between the rights of individuals to obtain information about themselves, and their birth relatives and the rights of people who wish to prevent others from having access to this information. In Tasmania, adult adoptees are entitled to a certified copy of their original birth certificate, provided that they have obtained a certificate showing that they have received counselling (Section 80).[11]

Adult adoptees may obtain information about themselves, including information from which the identity of birth parents or relatives may be obtained (but not their whereabouts) (Section 82.2). This does not require the relevant authority or written agreement of the birth parents or relatives concerned. Where the information involves medical or psychiatric matters, the direct communication of which is thought to be prejudicial, the relevant authority may disclose it to a legally-qualified medical practitioner nominated by the applicant and approved by the relevant authority rather than directly to the applicant (Section 76).[12]

Similarly, birth parents may obtain information from which the adoptive parents may be identified or the adoptee's whereabouts ascertained only if the adoptee has died or agreed in writing (Section 84 and 72). Where the adoptee is under 18 years of age, the birth parent may not obtain information unless the relevant authority has considered any wishes expressed by the adoptee and has obtained the written agreement of each living adoptive parent (Section 83). Where the information involves medical or psychiatric matters, the direct communication of which is thought to be prejudicial, the relevant authority may disclose it to a legally-qualified medical practitioner nominated by the applicant and approved by the relevant authority rather than directly to the applicant (Section 76).[13]

Adoptive parents may obtain information about the adoptee, but information from which the identity of birth parents or relatives may be revealed cannot be given unless the relevant authority has obtained the agreement in writing of the birth parents or relatives concerned, or they are dead (Section 86 and 72). The consent of the adoptee is not required, but the relevant authority must notify the adoptee of its intention to give the information (Section 86). Where the information involves medical or psychiatric matters, the direct communication of which is thought to be prejudicial, the relevant authority may disclose it to a legally-qualified medical practitioner nominated by the applicant and approved by the relevant authority rather than directly to the applicant (Section 76).[14]

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10 DP&C, File 4065, Document 26907 (Department of Community and Health Services).

11 *The Laws of Australia*, Vol 17, Family Law, The Law Book Company Ltd 1995 Sydney, Chapter 17.9, pages 71, 73.

12 *ibid* p.75.

13 *ibid*, p.77.

14 *ibid*, p.79.

Both adoptees and birth parents have certain rights to restrict the supply of information, or to prevent contact being made with them, or both. The consent of a living adult adoptee is required before birth parents may obtain information from which the adoptive parents may be identified or the adoptee's whereabouts ascertained. (Section 84 and 72) Where the adoptee is under 18 years of age, the birth parents may not obtain the information unless the relevant authority has considered any wishes expressed by the adoptee and has obtained the written agreement of each living adoptive parent (Section 83). The written consent of birth parents or birth relatives is also required before adult adoptees may obtain information from which the identity of that birth parent or relative may be revealed (Section 82 and 72).[15]

An Adoption Information Register has been established in accordance with Section 90 of the Act, to co-ordinate requests for information, register an individual's consent to disclosure of adoption information, and to facilitate the meeting of adoptees and birth parents.

The Adoption Information Service has also been established (Section 89) within the Department of Community and Health Services to provide the opportunity for those separated by adoption to obtain information from adoption and court records and to locate their family of origin. The service receives applications for information, co-ordinates the provision of counselling, and facilitates the provision of information in accordance with the Act to a person whose name is entered in the Adoption Information Register.

All adoption records, including court reports, are in the possession of and under the control of the Secretary of Community and Health Services, and are only available to nominated individuals on application as specified under the Act (Section 71).

Access to Documents held by the Department of Community and Health Services

The majority of files relevant to Aboriginal and Torres Strait Islander people affected by separation are held by the current Department of Community and Health Services, previously known as Departments of Community Services and Community Welfare. The Department supports the principles expressed in Recommendation 53 of the Royal Commission into Aboriginal Deaths in Custody, that Aboriginal people are provided access to files which will assist the process of enabling them to re-establish community and family links with those people from whom they were separated as a result of past policies of government.

The current Department has developed a specific policy on Privacy and Access to Personal Information, the *Client Information Guidelines, Working Draft 1996.* **(See Appendices 5 and 6)** This policy details the nature of information kept on files; the status of the client; guidelines for professional staff practice; storage and security of information; guidelines for disclosure of information; guidelines for transmission of information; guidelines for access to files; the child as client; implications for third parties; denial of access; and implications for practice in all areas mentioned.[16]

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15 *ibid,* p.80, 82.

16 DP&C, File 4065, Document 26907 (Department of Community and Health Services).

The Child, Family and Community Support Program (CFCS) is the specific section within the Department of Community and Health Services that assists in access to personal records. The CFCS Program has maintained a long standing policy of the rights of clients to access identifying personal information without cost and with professional counselling and support services at the time of the disclosure. In this context, the Department of Community and Health Services does not require requests for access to personal information to be submitted according to Tasmanian Freedom of Information legislation. Current policy in the Department of Community and Health Services is to suggest that a support person be involved when an individual first views their file.[17]

Censorship of details

In relation to censorship of distressing details, current policy in the Department of Community and Health Services is that there should be no censorship of information relating to the person who is the subject of the file, however "distressing". Judgements about the most appropriate way of editing third party information or explaining sensitive information are complicated, and are made on a case by case basis.[18]

The process of access to personal information is also complicated by the fact that the inclusion of personal information is not confined to 'personal' files. Some general administrative files contain personal information, and a general reclassification of files is not a practical option. At this stage a case by case approach is taken, and files are searched more broadly where information appears to be lacking, or more details are requested by the client. Access restrictions in relation to general files containing personal information are the same as for personal files containing the same kind of information.[19]

Third party details

In relation to third party details, currently the Department complies with Freedom of Information guidelines. An authorised staff member edits file details where unreasonable disclosure may result in the identification of a third party. As interpretations of "reasonable" or "unreasonable" disclosure are a matter of judgement, it is possible that practice may vary between officers. A specific condition of appointment to the Department states that confidentiality of information be maintained at all times. All files are vetted by a Senior Officer of the Department prior to access by the client. It is routine procedure that all deletions are noted and explanation provided to the client at the time of disclosure. Third party references that may be edited include foster parent assessments, personal and subjective comments recorded on file relating to foster parents, carers and their family members, and comments and disclosures by other persons given in confidence.[20]

Requests for Information

Requests to the Regional offices of the Department of Community and Health Services, or to Corporate Office (Hobart) via the Child, Family and Community Support Program are accepted either from individuals or from an individual's advocate (eg. legal representative

17 *id.*
18 *id.*
19 *id.*
20 Client Information Guidelines Working Draft 1996, Child Family and Community Support Guidelines.

who has that person's written permission). In June 1995 the Aboriginal Legal Service, through the Tasmanian Aboriginal Centre offered to assist Aboriginal people to access their personal files. As of June 31 1996, four (4) people had accepted this offer.[21]

Usually copies of the amended files are marked confidential and sent to the individual via the Tasmanian Aboriginal Legal Centre for viewing, or accessed through the Department of Community and Health Services. While there is no formal, documented process for reviewing or appealing decisions regarding the editing of information held on files, any person with a concern can contact the manager of that area. If agreement cannot be achieved, the individual is able to apply for access to their personal files under FOI legislation. Similarly, access to third party details is possible with the consent of the third parties involved. Failing this, the individual is still free to apply for access under FOI legislation.[22]

Viewing the records

Records can be viewed within the Department of Community and Health Services with appropriate supervision provided by the service. Applicants are provided with an opportunity to receive personal counselling from Departmental Officers, interpreter services and advocacy services while accessing their personal information. If there is concern that access to the information may adversely affect the client in any way, it is recommended that the client access the information through a person of their choice (for example, a doctor, social worker or Aboriginal community member), and post access support is provided.[23]

Over the years Aboriginal people have independently accessed their personal histories, however the Department of Community and Health Services has no record of numbers.[24]

It should be noted that a person's Aboriginal status was rarely if ever recorded on case files. [25]

The Department of Community and Health Services also holds additional historic and administrative files that relate to the Cape Barren Island community and Aboriginal issues. Some of the files hold personal information about individuals, families and the community. **(See Appendix 7)** Naturally, these files are of interest to the Tasmanian Aboriginal community, but as yet they have not been accessed by any community representatives. A specific process to provide appropriate access will be considered by the Department of Community and Health Services in consultation with the Aboriginal community in 1996-97.[26]

Access to Adoption Documents

Adoptions in Tasmania are currently co-ordinated by the Department of Community and Health Services. The Department manages personal adoption files relating to the

21 DP&C, File 4065, Document 26907 (Department of Community and Health Services).
22 *id.*
23 *id.*.
24 *id.*
25 *id.*
26 *id.*

adoptions facilitated by the Department from 1920 to 1968, and adoption records from 1968 to the present. All files are in excellent condition and maintained in a locked vault in the Corporate Office, Hobart. Access is managed through the State Co-ordinator of Records in the Department of Community and Health Services. Records of adoption dating from 1920 to 1968 are held by the Registrar of Births, Deaths and Marriages.[27]

Records indicate that in the 25 years between 1970 and 1996 only ten (10) Aboriginal children known to the Department of Community and Health Services have been placed for adoption in Tasmania. This includes adoptions arranged through the Catholic Private Adoption Agency. Three (3) Aboriginal children have been adopted in Tasmania by *non-relatives* during the period between the introduction of the Adoption Act 1988 and May 1992.[28]

Specific statistics prior to the early 1980's are difficult to obtain and complex to verify. It is noted that Aboriginality, particularly Aboriginal paternity, was not always disclosed by the relinquishing mother when arrangements for adoption were made. There is rarely any information about racial background or Aboriginality on the records of adoptions prior to 1969. In most cases the only way to obtain such information is by an adopted person making contact with his or her birth family. [29]

The Adoption Information Service was established in July 1989 in conjunction with the Adoption Information Register, within the Department of Community and Health Services. These services provide the opportunity for those separated by adoption to obtain information from adoption and court records and to locate their family of origin.

The Service receives applications for information, records this request on the Adoption Information Register, co-ordinates the provision of appropriate counselling, and facilitates the provision of information in accordance with the Act. Depending on circumstances, information is made available to adult adoptees, birth and adoptive parents and natural relatives of adopted people.[30] The Adoption Information Register also records an individual's consent to disclosure of adoption information, and facilitates the meeting of adoptees and birth parents.

27 *id.*

28 The notion of adoption includes adoption by relatives, non-relatives, and inter-country adoptions.

29 DP&C, File 4065, Document 26907 (Department of Community and Health Services).

30 Department of Community and Health Services Annual Report (DCHS) 1993-94.

Access to Documents held by the Department of Police

Many Police documents are highly sensitive, including those relating to individuals from Flinders Island and Cape Barren Island and the Tasmanian Aboriginal community. For this reason public access is not freely available, and generally individuals only have access to Police files in relation to matters such as prior convictions. The FOI Act does permit access to matters on application. However, individuals may access their prior convictions record once a year free of charge, without an FOI application.

Individuals do approach the Department about various matters including family history. Information is given as fully as possible, upholding privacy and confidentiality provisions where required. Assistance in relation to enquiries arising from the Inquiry will be provided on a 'case by case' basis through the Aboriginal Liaison Officer. If desired, the FOI Act can also be used to access files.[31] Written permission is required from the Commissioner of Police to research most material held at Archives dependent on the Commissioner's prior written determination.

Several recording systems operate within the Police Department's Information Bureau. The "tab jacket" system is microfilmed and contains copies of fact forms, odd records and memorandums. The "cardveyor system" consists of an old card record system, of which some have been microfilmed. Computer records have been kept since 1982, and records from the previous systems are updated onto the current system if a person re-offends. Both the "tab jacket" and the "cardveyor" system rely on names for retrieval, where the computer system requires a name or modus operandi.[32]

Police information on Aboriginality

Historically, information on Aboriginality has not been routinely recorded on Tasmanian Police forms, and is still only a secondary consideration. Only two documents presently include race as a question, namely the 'Fact Form' and the 'Prisoner Admission and Assessment Form'. Police Officers are required to enter the race of a person on the Fact Form. The Police Information Bureau presently enters the information into a database which includes a table of nine categories. The categories are: White, Aboriginal, Asian, Indian, Pacific Islander, Black, Arabic, Maori, Part Aboriginal, Not Known.[33]

The Prisoner Admission and Assessment Form requires a watch-house keeper to note four special considerations, in accordance with the Tasmanian Government's support of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody.[34] The four special considerations are:

(a) First time in cell for offence;
(b) Aboriginal or Torres Strait Islander;
(c) Highly intoxicated; and
(d) Exhibiting self-harm behaviour.

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31 DP&C, File 4065, Document 29360 (Tasmania Police).
32 *id.*
33 *id.*
34 *id.*

The form notes that prisoners falling into one of these categories require constant attention or high frequency inspections.[35]

Access to Documents held by the Archives Office of Tasmania

All historical (ie. non-current) files held by the Department of Community and Health Services are currently in the process of being transferred to the Archives Office of Tasmania, including personal files on wards and ex-wards, and children on legal orders. Relevant records already held by the Archives Office of Tasmania include various correspondence files relating to the custody and welfare of children (1889 to 1981) and duplicate copies of case files of the Child Welfare Division (1950-1970). All such files remain under the control of the Department of Community and Health Services, although physically held by the Archives Office of Tasmania, and access is via the Department of Community and Health Services.[36]

Records held in the Archives Office are stored in the most effective way to ensure both their optimum preservation and retrieval. The Archives Office's records retrieval systems are generally effective although on occasions the identification of a record is less straight-forward as it relies on the indexes and registers created at the time by the records creating agency.[37]

Access to all records transferred to the Archives Office is unrestricted unless a restriction is placed on the records, or part of them, at the time of transfer, by the transferring agency. Current restrictions on personal records created by the Department of Community and Health Services is 75 years after the creation of the record.[38]

Access to Documents held by the Department of Education, Community and Cultural Development

Non-current permanent records created by the Department of Education, Community and Cultural Development are stored with the Archives Office of Tasmania; current departmental records are located in the Records Services Unit in Hobart, other departmental branches, and with the Department of Administrative Services.[39]

The Central Office has operated a Concord computerised Records Management System since 1988. The system allows file titles to be searched via powerful free text searching strategies. Other branches operate their own systems using a variety of database applications all created within the last five years. Files that have been transferred to the Archives Office of Tasmania operate on a book and card indexing system. Within the Concord system, files are linked as related. Files are not linked across branches within the Agency, nor between the Department and other Agencies.[40]

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35 *id.*

36 DP&C, File 4065, Document 25787 (Archives Office of Tasmania).

37 *ibid.*

38 *ibid.*

39 DP&C, File 4065, Document 32923 (Department of Education, Community and Cultural Development), page 19.

40 *ibid,* 21.

Files held by the Department's offices in Hobart have restricted access by file security levels. Each individual file has a security level and if this level is greater than the borrower's security level access to that information is denied. Non-current permanent records transferred to the Archives Office have varying levels of access restrictions, determined by the Department, taking into account the access provisions of the *Archives Act* and the nature of the records (eg. school admission registers and guidance/student support services files). Access by an individual, to their personal record is granted either under the provisions of the FOI legislation or with the permission of the Secretary of the Department depending on how the request is received. Members of the public wishing to view current administrative files, held in the Records Services Unit must apply in writing to the Secretary of the Department.[41]

The retention of school and college records is determined by a Disposal Schedule issued by the Archives Office of Tasmania. Records such as admission registrations, punishment registers, internal examination results, certificates and statements of external assessment (examination records), and evaluation of students upon leaving are defined as permanent records, to be transferred to the Archives Office of Tasmania. Other records are classified as temporary, and are usually destroyed when the reference ceases or two years after reference has ceased.[42]

Requests for Information

Generally any requests for information from the Department of Education, Community and Cultural Development operate under restrictions placed on access to personal information under Section 30 of the *Freedom of Information Act*. At 30 June 1996 there had been approximately 100 Freedom of Information requests, a high proportion of these from individuals seeking access to personal files. There are no known cases of people who have identified themselves as Aboriginal when seeking personal information from their files. However, Departmental policy does not require application via Freedom of Information for access to an individual's own personal files.[43]

In the case of children, the Department does not release information regarding students unless there is written approval to do so from the child's parents. Each case or request for information is treated on its merits and may depend on the child's age. Files containing personal information for students are usually held in the school they are attending. The school office staff and teachers have access to such records.[44]

41 *ibid,* 20.
42 *ibid,* Appendix 48.
43 *ibid,* 22-23.
44 *ibid,* 21-22.

Reference to Aboriginality

Files relating to Aboriginal children currently at school are now held in the Aboriginal Education Unit, where a family or school has requested support from an Aboriginal Home School Liaison Officer in respect of a student. Information on these files is kept to a minimum and a high level of confidentiality is maintained. Information relating to a student may be discussed with School Guidance Staff if there is collaborative involvement in support of the family.[45]

Since 1984 school files have carried designation of Aboriginality where the family have voluntarily indicated this status. The Aboriginal Education Unit refers Aboriginal students to appropriate Commonwealth agencies for further support where necessary.[46]

Access to Documents relating to Juvenile Justice cases

Personal information held on files relating to juvenile justice cases is stored and accessed in the same manner as personal file information held by the Department of Community and Health Services, addressed previously (see B - 5).

45 *ibid*, 22.
46 *ibid*, 22-23.

TERM OF REFERENCE (B)

Describe any government and/or government funded services which are available to Aboriginal and Torres Strait Islander people whose families have been effected by the separation under compulsion, duress or undue influence of any Aboriginal and Torres Strait Islander children from their families.

2.3 Government and government-funded services available

Services provided by the Department of Community and Health Services

Currently, the Department of Community and Health Services provides counselling, interpreter services and advocacy services for individuals accessing personal information. Staff providing counselling and support services are professional and have training in cross cultural awareness.[47] The Department conducts an ongoing evaluation of these services.[48]

Adoption

The Adoption Information Service was established in July 1989, and provides the opportunity for those separated by adoption to obtain information from adoption and court records and to locate their family of origin. Depending on circumstances, information is made available to adult adoptees, birth and adoptive parents and natural relatives of adopted people.[49]

Since the Service was established in July 1989 requests for access to information by adopted persons and their families have steadily declined.

Table 1: Requests for Access to Adoption Information 1989 - 1995.

Year	Requests for information [50]	Cases Closed [51]
1989-90	566	104
1990-91	334	196
1991-92	278	143
1992-93	191	80
1993-94	191	177
1994-95	211	55

It is recognised that intense emotions are provoked in the process of obtaining information regarding birth relatives, searching for details, and making contact with family. In relation to an adoptee seeking information regarding their birth parents or birth parents seeking information regarding their child, counselling is mandatory, for residents of Tasmania, before information is given (*Adoption Act 1988*, Section 74, (1)).

47 Client Information Guidelines Working Draft 1996, Child Family and Community Support Guidelines.
48 DP&C, File 4065, Document 26907 (Department of Community and Health Services).
49 DCHS Annual Report 1993-94.
50 DCHS Annual Report s 1991 to 1995.
51 *ibid.*

When an adoptee knows of, or is told by the service of his or her Aboriginal heritage, they are given referral to the appropriate group within their State of residence (for example, a representative from Link Up). The counsellor will make contact on behalf of the adopted person if requested to do so.

Services provided by the Department of Education, Cultural and Community Development

If file material is of a sensitive and/or potentially distressing nature, the Department of Education, Cultural and Community Development ensures the provision of counselling services for individuals prior to and at the time of access.[52]

Services provided by the Department of Police

At this stage, no services such as counselling are provided by the Police Department to individuals accessing personal file information.[53]

52 DP&C File 4065, Document 32923 (Department of Education, Community and Cultural Development), page 23.

53 DP&C File 4065, Document 29360 (Tasmania Police).

TERM OF REFERENCE (B)

Describe any government and/or government funded services which are intended to give Aboriginal and Torres Strait Islander people access to individual and family records to locate and reunify their families or which are otherwise intended to assist Aboriginal and Torres Strait Islander people to locate and reunify their families.

2.4 Government services for accessing records to locate and reunify families

Services provided by the Department of Community and Health Services

The guidelines and conditions of access to identifying personal information held by the Department of Community and Health Services is widely publicised in the general community. The Tasmanian Aboriginal Centre undertook their own publicity program during 1995. Prior to this, publicity for all clients was widely disseminated in association with the *Freedom of Information Act* in 1992. Currently a pamphlet is available for adopted people seeking information on how they can access their own personal information. It is planned to develop a pamphlet during 1996-97 for people separated from their families other than by adoption.[54]

Adoption

Services provided by the Adoption Information Service to adoptees searching for information of their family of origin is very widely publicised. It is recognised that intense emotions are provoked in the process of obtaining information regarding birth relatives, searching for details, and making contact with family. Counselling is mandatory for residents of Tasmania before information is given, and support and assistance services are provided to assist with the feelings that arise during this process.[55]

Services provided by the Archives Office of Tasmania

The Archives Office of Tasmania now provides access to all non-current, non-restricted records and in this sense is a "one stop shop" for research using older records. It is also a source of directional information to "current" records held in agencies.

The Archives Office of Tasmania has produced an extensive guide to inform those wishing to consult original documents for general, academic or genealogical research. It gives the details of the location, opening hours, and suggests other sources for research and study.

Services provided by the Department of Education, Cultural and Community Development

Departmental policy does not require application via FOI for access to an individual's own personal files. A Senior Public Relations Officer in the Department of Education, Cultural and Community Development co-ordinates file provision, supervises access, and

54 DP&C File 4065, Document 26907 (Department of Community and Health Services)
55 *id.*

ensures the provision of counselling services if any of the file material is of a sensitive and/or potentially distressing nature.[56]

Services provided by the Department of Police

Tasmania Police have Aboriginal Liaison Officers who will assist Aboriginal people with access to their personal records, and if needed, co-ordinate FOI requests made by them in relation to family history. Through the appointment of Aboriginal Liaison Officers, the Department co-ordinates service delivery with the Office of Aboriginal Affairs.[57]

56 DP&C File 4065, Document 32923 (Department of Education, Community and Cultural Development), page 23.

57 DP&C File 4065, Document 29360 (Tasmania Police).

TERM OF REFERENCE (B)

Outline any matters relating to the foregoing, including counselling or other services or access to records, which are presently subject of report or consideration by the Government and which are directed to improving services and procedures.

2.5 Government services that are under consideration for improvement

Family Reunification

The Department of Community and Health Services has a commitment to assisting in the establishment of family reunification programs, and has initiated discussions with the Tasmanian Aboriginal Centre. The Department complies with Recommendation 53 of the Royal Commission into Aboriginal Deaths in Custody, in so far as it relates to access to personal files. There are other administrative and historic files (mentioned previously) that contain information relevant to the Aboriginal community, and the Department has completed an archival audit of their contents. **(See Appendix 7)** A copy of the audit will be provided to the Tasmanian Aboriginal Centre. [58]

58 DP&C File 4065, Document 26907 (Department of Community and Health Services)

TERM OF REFERENCE (C)

Examine the principles relevant to determining the justification for compensation for persons or communities affected by such separations.

3.1 Principles of Compensation

The Tasmanian Government does not have a view at this stage in response to this term of reference. There are presently two cases relating to this issue before the courts in the Northern Territory and NSW. The Tasmanian Government anticipates that the final report of the HREOC Inquiry will provide useful discussion and guidance in relation to this term of reference.

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TERM OF REFERENCE (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 into account the principle of self-determination by Aboriginal and Torres Strait Islander peoples.

4.1(a) List of current laws which provide for placement and care:

Child Welfare Act 1960 **(Appendix 8)**

Child Protection Act 1974 **(Appendix 9)**

Adoption of Children Act 1988 **(Appendix 10)**

Domestic Assistance Service Act 1947 **(Appendix 11)**

4.1(b) List of current policies which provide for placement and care:

1. Child Protection - A Practice and Training Guide (1993), Part 3: Legal Intervention **(Appendix 12)**
2. Child and Family Services: Family Services Operational Manual (1993), Child Placement Principles (pp 133-134). **(Appendix 13)**
3. Family Service Operational Manual (1993): **(Appendix 14)**
   - Section 2 Departmental Statutory Cases
   - Section 3 Departmental Non-Statutory Cases
   - Section 9 Clients Rights and Grievance Procedures
   - Section 10 Out of Home Care
4. Adoption Services Staff Manual (1995), (pp 48 plus appendices) **(Appendix 15)**
5. Out of Home Care Standards - National **(Appendix 16)**
6. Supported Accommodation Assistance Program (SAAP) Standards **(Appendix 17)**
7. Youth Justice Practice Manual, (October 1995) **(Appendix 18)**
8. Quality of Care Standards, Australasian Juvenile Justice Administrators, (May 1996) **(Appendix 19)**

4.1 (c) List of current programs which provide for placement and care:

1. Aboriginal Family Support and Care Program - Service Agreement between the Tasmanian Aboriginal Centre and the Department of Community and Health Services, 1993. **(Appendix 20)**
2. Adoption Services **(Appendix 15)**
3. Child Protection Services **(Appendix 12)**
4. Youth Justice - custodial care and rehabilitation services **(Appendix 18)**
5. Supported Accommodation Assistance Program (SAAP) **(Appendix 17)**

4.2 Copies of existing laws, policies and programs.

Copies are provided and tabled as Appendices 8 through 20.

4.3 The effect of current laws, policies and practices affecting the placement of Aboriginal and Torres Strait Islander children.

Family Services (Department of Community and Health Services)

Role of the Family Services Sub-program

The role of the Family Services program is to provide assistance to families to support and care for their children, and to provide care and protection services for children who do not have safe care.

Aboriginal children are over represented in the child welfare system. The Department recognises the special needs of Aboriginal children and families in its policies and practices, and is currently preparing legislation which will embody these principles.

Composition

The Family Services program is provided through a regional structure. Each of the three regions has an Intake and Assessment process, where assessments are made about the degree of risk to a child, the level of support and types of services required by families and children. Referrals are made to support services within or outside the Department and court action is initiated where necessary The Alternate Care process provides appropriate placements for children who live away from home for short or long term periods, and Case Management provides support for families and children where the Department has accepted legal responsibility, or is offering preventative support services.

Responsibilities

The Family Services program ensures that children who have been abused or are at risk of being abused are safe and cared for in an environment which meets their needs. It provides assessment, investigation, referral, placement and case planning services for children and families at risk or those without adequate support. It also provides support services for young people and families which aim to develop, strengthen and preserve family relationships.

Services are also provided to people who care for children with challenging behaviours. Carers are recruited, assessed and trained to provide short term care for children and families and long term care for children whose families can no longer provide care and protection. Ongoing training is provided and carers are reviewed annually.

Functions

- develop policy and standards of practice for those working with children and young people at risk, and their families.
- provide a range of services for children who have been abused, or are at risk of being abused.

- educate the community through awareness campaigns.
- train professionals on the issues and strategies that impact on the reduction of child abuse.
- develop policy and standards of practice for those working with children and young people separated, or at risk of separation, from their families.
- maintain and develop out -of - home services for children and young people who are without appropriate adult care.
- ensure cost effective alternate care options that meet the individual needs of children and young people.

Pathways into Care under Current Legislation

Child Welfare Act 1960

Under the *Child Welfare Act 1960*, children may enter State guardianship pursuant to the following sections:

Section 31 (as a neglected child):

Under this section there are eight sub-sections which may technically be used to bring children into care. Since the introduction of the Act in 1960 the number of sections used in practice has declined to just two:

i. section 31(1)(a) - when a parent or guardian is unfit to exercise care and guardianship or not exercising proper care and guardianship **and** as such the child is in need of care and protection, and

ii. section 31(1)(b) - when the child is beyond the control of the parents or guardians with whom he or she is living.

The remaining sub-sections under section 31 have declined in use primarily because they have become outdated in that they contain moral judgements about parents and guardians and label children as neglected for reasons which are no longer acceptable within the current social, economic or political environment.

Section 33 (children beyond control):

Under this section a person who has custody or care of a child may take application to the court to have the child placed under state guardianship if they consider that the child is beyond his or her control.

Increasingly the Department of Community and Health Services has developed a practice of not prosecuting children who are 'beyond control' under section 31, but instead empower parents in the decision making process. In this context the state does not initiate to remove the child but rather the parents initiate legal action which may result in the child being placed in state care.

Section 35 (provision for guardianship):

Under this section a parent may apply to the Minister to declare the child a ward of the state. This section of the *Child Welfare Act 1960* has significantly declined in use. The Department only accepts an application under this section where it involves the transfer of an interstate ward.

This change in practice, as with the other changes identified above, is the result of changes in principles, philosophies and policies which actively encourage and facilitate family preservation. The Department of Community and Health Services attempts to keep children with their natural families. Even where problems are identified in family functioning, the removal of children by the Department is usually seen as a temporary measure.

The following care orders can be made under the *Child Welfare Act 1960*:

1. An *Interim Order* may be sought if assessment is incomplete or the case management plan has not been finalised. The maximum duration of this order is three months. During this period the child is in the temporary care of the Director of Community Welfare.

2. A *Supervision Order* usually allows the child to remain with his or her guardians. It allows the Department to work with the family and to legally intervene if conditions agreed to in the Order are not met, for example allowing the Children's Services Workers access to the home, engage in counselling. The maximum duration of a Supervision Order is three years.

3. A *Wardship Order* transfers guardianship of the child to the Director of Community Welfare, and remains effective until the child turns eighteen. The child can be discharged at any time before this by the responsible Minister.

The *Child Protection Act 1974* defines maltreatment of a child to have occurred if a person having the care, control or custody of a child causes that child, either by an act of omission or commission, to suffer physical, emotional or sexual abuse, or neglect.

A Departmental practice and training guide for child protection outlines the procedures for legal removal of children in need of care and protection as specified in the *Child Protection Act 1974*.[1]

Section 9 - When 'Making a requirement' a Child Protection Officer requests a caregiver to agree to a 120 hour assessment of the child, where the child is taken to a Child Protection Office Assessment Centre. If the caregiver refuses to comply, the Child Protection Officer can seek a warrant for the removal of the child from parent/caregiver, and the child to be placed in either an assessment centre or a place of safety.

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1 Child Protection - A Practice and Training Guide 1993.

Section 10 - An order pursuant to Section 10(1) and (2) allows the child to be maintained in a place of safety for 30 days under each order, to a maximum of 60 days.

Section 11 - Allows a magistrate to proceed under the *Child Welfare Act 1960* if he or she finds that a child has been abused or neglected. The effect of this is that wardship orders, or interim orders may be made under the Child Welfare Act, once abuse or neglect has been established under the Act.

The Current Situation

Statistical Overview

Although Aborigines make up 3.7% of children under the age of 18 years in Tasmania, they account for 10% of children under guardianship in this state. This trend has remained stable in recent years. The total number of children becoming wards, and the number of Aboriginal children within this total, has remained low in recent years, as a result of changing policies and practices which aim to keep children with their families (refer Table 1).

Table 1: New wards of State, 1991-1996 (Total and Aboriginal)

Year	1991-92	1992-93	1993-94	1994 -95	1995-96
Total Number of Wards declared during that year	78	53	39	49	58
Number of Aboriginal children in this total	6 *7.6%*	5 *9.4%*	7 *17.9%*	8 *10.4%*	2 *3.4%*

Whilst Aboriginal children are supported within families until the point of wardship, they are usually placed in foster homes or approved children's homes when family problems are so serious that wardship has become necessary.

Table 2: Children under Legal Orders as at 30 June 1996[2]

	Care and Protection Orders			Youth Justice		
Placement	Non-Aboriginal	Aboriginal	**Total**	Non-Aboriginal	Aboriginal	Total
Parents & Relatives	78	4	82	53	11	64
Independent & Other Adult	25	6	31	8	1	9
Foster Parent & SCC	184	11	195	9	1	10
Family Group Home	21	0	21	7	0	7
Institution	0	0	0	8	4	12
Gaol	0	0	0	1	0	1
Approved Children's Home	28	10	38	0	0	0
Hospital/Nursing Home	0	0	0	0	0	0
Other Children's Establishment	2	0	2	0	0	0
Shelter	2	0	2	0	0	0
Other Placement/ Unknown	0	0	0	0	0	0
TOTAL	340	31 *8.4%*	**371**	86	17 *16.5%*	**103**

According to the AIHW standards, the Legal Orders used are guardianship orders, remand in custody and remand for observation orders which place children in the temporary custody of the State . Legal supervision orders are where the custody and guardianship of the child remains with the parents.

There may be some double counting as children can be on care and protection orders as well as Youth Justice orders.

As at June 30 1996 there was a total of 48 Aboriginal children living under legal orders. Of these, fifteen (15) were living with parents or relatives, seven (7) were living independently, twenty two (22) were living in foster homes or Approved Children's Homes, and four (4) were in Institutions.

2 Australian Institute of Health and Welfare Series and the Child Welfare Information System (Department of Community and Health Services).

Profiles

Child protection literature has tried unsuccessfully to identify characteristics of families where abuse and neglect will occur. Currently there is a trend in Australia towards describing such families as 'high criticism, low warmth families'.[3] The shortcomings of parents so described are usually linked to other factors such as low income and poor housing. However it is recognised that most impoverished parents provide their children with loving and warm home environments, and so it becomes dangerous to use poverty as a predictor.

There have been various attempts at developing a check list of indicators for potential abuse and neglect. These provide some assistance to child protection officers in determining the level of risk to a child when a notification is received. They include such factors as whether the parent was abused as a child, the degree of social isolation experienced by the family, history of mental illness or depression, whether there is a history of violence, or unrealistic expectations of the child.

Again, the usefulness of these lists is called into question when it becomes apparent that some of the most serious incidents of child abuse occur when there is only one or even no indicator present. The usefulness of the assessment tools is probably in universal services, such as child health, where they can be used to reinforce preventative work.[4]

3 Little, M *Child Protection or Family Support?* Family Matters Australian Institute of Family Studies No 40 Autumn 1995: 18-21.

4 Goddard, C Child Abuse and Child Protection, Churchill Livingston, Melbourne, 1996: 148-150.

Table 3: Incidents of child abuse and neglect - 1 July 1996 (incomplete)[5]

Year 1995-96	Total Number of allegations received on separate incidents of child abuse and neglect	Aboriginal children: Number of allegations received on separate incidents of child abuse and neglect	Non Aboriginal children: *Incidents Investigated Total*	Aboriginal children: *Incidents Investigated Total*	Non Aboriginal children: *Incidents Finalised Total*	Aboriginal children: *Incidents Finalised Totald*	Total cases
Child abuse and neglect	2803 (1141 neglect)	147 5%	2368 84.4%	135 91.8%	1626 60.7%	76 52.4%	
Outcomes substantiated child abuse or neglect					191 incidents 11.7%	9 incidents 11.8%	200
Number of incidents found to place children at risk					163 incidents 10%	9 incidents 11.8%	172
Number of Children declared Wards as a result of substantiated child abuse and neglect					51	2	53

These statistics are incomplete as not all incidents have been lodged on the data base for the month of June 1996.

5 Child Welfare Information System and Institute of Health and Welfare Report on Child Abuse and Neglect Australia 1994-95

Tasmania recorded the lowest rate of substantiated child abuse and neglect nationally for in 1994-95 at 27% compared with the national substantiated rate of 45% for finalised cases. Tasmania's rate of substantiated cases translates to 2.7 per thousand children in the 0-16 population. The national average is 6.1 per thousand with Western Australia the only state to compare at 2.9.

The Institute of Health and Welfare established national counting rules and standards in 1994 however substantiation of cases of child abuse and neglect remains subjective. Different practices across the States and Territories result in variations. Only 4 of the States/Territories record 'children at risk'. Tasmania has a relatively higher notification and investigation rate of alleged incidents of child abuse and neglect per capita. compared with other States and Territories. The substantiation rate for 1995-96 is not a finalised figure. The finalised figure will be influenced by input of outstanding finalised cases into the Child Welfare Information System.

Causes of Over-Representation

Whilst the numbers of Aboriginal children becoming wards in recent years has been very small, over-representation is an issue. This cannot be attributed to single actions, individuals or policies. Many years of disadvantage in areas such as housing, health and unemployment have resulted in disempowerment of Aboriginal families and communities. This has led to over-representation in economic and social poverty, and this is evidenced across many indices of poor health and well-being. In this broader sense, more Aboriginal people have been likely to be "noticed" by Government agencies.

Using non-Aboriginal beliefs and constructs about parenting and standards of care, to assess Aboriginal families, may contribute to more Aboriginal children being seen as "neglected". This can be compounded in specific cases by poor communication between non-Aboriginal workers and Aboriginal families, and by a lack of broader consultation with Aboriginal communities on issues of child protection, neglect and youth justice.

Involvement by the Aboriginal Community

Support and Preventative Work

An extensive review of the Aboriginal Support Program was completed in 1991. In 1993 the Department of Community and Health Services and the Tasmanian Aboriginal Centre formulated a Service Agreement to implement an *'Aboriginal Family Support and Care Program'*.[6] The program has three fundamental principles:

1. Services, programs and policies for Aboriginal people should be controlled by Aborigines to ensure they are culturally relevant and strengthen their capacity to care for their children. Future policy and program development will ensure that the Aboriginal community operates services which have an impact on Aboriginal families and children, and is involved in planning services and policies that are controlled by government agencies.

2. The services, programs and policies will aim to ensure that Aboriginal children are cared for within their own communities, thus preserving the physical, social and spiritual well-being of the child and their sense of belonging to the wider Aboriginal community.

3. The well-being of Aboriginal children and families is inextricably linked to the well-being of the whole Aboriginal community. As such, services and programs provided to Aboriginal families and children need to be considered in the context of Aboriginal community development generally, and not just as child welfare issues.

The program currently includes resources such as:

- a family support service to Aboriginal families under stress
- respite care within the Aboriginal community
- ongoing monitoring and review for improvement
- provision of an advocacy role between the Aboriginal community and relevant government departments (especially the Department of Community and Health Services) and
- the promotion of traditional methods of mutual support and child rearing within the Aboriginal community.

Standards of assessment of services are to be jointly developed with the Aboriginal community.

Case conferences on issues relating to Aboriginal families and children include the participation of the Aboriginal Family Support and Care Program, except where the family requests otherwise.

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6 Aboriginal Family Support and Care Program - Service Agreement between the Tasmanian Aboriginal Centre and the Department of Community and Health Services, 1993.

When an Aboriginal Child Enters Care:

Policy

The Aboriginal Child Placement Principle (ACPP) was accepted by all States at the Social Welfare Minister's Conference in 1986. The Principle states that:

> 'when a child is to be placed outside his/her natural family, the Family Support Worker in the Aboriginal Centre, Family Support and Care Program must be contacted prior to placement. The order for priority of placement should be:
>
> - a member of the child's extended family
> - other members of the child's Aboriginal community who have the correct relationship with the child in accordance with Aboriginal customary law
> - other Aboriginal families living in close proximity.
>
> This order of placement is to be followed, in absence of good cause to the contrary, at all times.'[7]

Current Tasmanian placement principles are outlined in the 1993 Family Services Operational Manual. Placement with relatives and extended family members will be considered and explored as the first option. If this proves unsatisfactory, placement with friends or members of the child's ethnic, religious, cultural, linguistic or tribal background is considered. A third and final option if no alternative can be agreed upon is placement with approved care-givers of the child's cultural background in the child's local area, or close to the child's place of origin is sought. Separate placement principles for Aboriginal children follow the Aboriginal Child Placement Principle, as stated above.[8]

Practice:

When Aboriginal children are placed in state care for either long or short term care, the Aboriginal community is contacted (as noted above, under the Aboriginal Family Support and Care Program) and the Aboriginal Child Placement Principles are followed. Staff from the North, North West and Southern Regions, Ashley Youth Detention Centre report that representatives of the TAC are contacted and consulted with, when an Aboriginal child requires alternative care.

It is routine practice that the child receives Aboriginal representation from the Aboriginal Family Support Program or Legal Service in the assessment, decision making, case management and placement process. Moreover, the

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7 Wilkinson, D (1994) 'Aboriginal Child Placement Principle' Aboriginal Law Bulletin, Vol. 3, No. 71, December 1994: 13-14.

8 Child and Family Services: Family Services Operational Manual, Child Placement Principles 1993: 133-134

assessment and case management of Aboriginal children deemed to be in need of care and protection must be culturally sensitive and in the child's best interests.

Families are encouraged to be actively involved. As part of the agreement with the Tasmanian Aboriginal Centre, formal involvement with the Centre also occurs. The North West, Northern and Southern Regions of the Department of Community and Health Services report that some Aboriginal families reject the active involvement of the Aboriginal community.

If the community is unable to successfully place the child, the Department makes every attempt to place the child with Aboriginal carers where possible. As well as being involved in case planning for Aboriginal children in care, staff at the Tasmanian Aboriginal Centre work with alternative care staff of the Department of Community and Health Services in the areas of carer training and assessment. Both groups work to ensure that wherever possible, Aboriginal children are placed with either family, extended family or Aboriginal carers.

However, it has been reported that there is a difficulty in finding Aboriginal carers for adolescent children and sibling groups, and that a small number of children who have been in long term care remain with non-Aboriginal carers. Nevertheless, the Family Support and Care Program, developed and run by the Tasmanian Aboriginal Centre, has assisted over 200 Aboriginal families in 1994-95 and provided respite care for over 100 children and long term care for 8 Aboriginal children.

In recent correspondence, the Tasmanian Aboriginal Centre raised some regional issues in relation to the program and difficulties reported in reporting arrangements. The Centre reports that communication and co-operation with the Department of Community and Health Services has improved significantly in the South, although some problems exist in the North and North West. The program is currently due for review and it is anticipated that these problems will be successfully addressed.[9]

It is recognised that programs which are administered by the Aboriginal community and supported by the Government across a range of services including education, health, justice, housing, employment, child care and welfare have significantly improved the outcomes for many Aboriginal children and their families.

Since the consistent counting of Aboriginality began in 1990, there has been a small decrease in actual numbers of Aboriginal children under State guardianship in the past 3 years. In 1991 there were 41 Aboriginal wards, as compared to 34 in June 1996. However, while the numbers are decreasing, both the Aboriginal community and the Tasmanian Government remain concerned that they are too high.

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9 Tasmanian Aboriginal Centre correspondence (File HO3769/1).

Proposed Legislative Changes

New legislation for children and their families is being developed through a Joint Parliamentary Select Committee. Preliminary research and some drafting has been completed, but no content has been endorsed.

1. The proposed *Children and Their Families Bill* will be based on the principle of "self-determination".

   The current legislation is based on a "child rescue" model. It favours coercive State intervention. It does not facilitate using the strengths within families or supporting families to care for their children.

   The proposed *Children and Their Families Bill* will be based on the United Nations Convention on the Rights of the Child. Families are seen as responsible for the care of their children. Governments have a responsibility to make resources and support services available to families to help them to meet their responsibilities. **(see Appendix 22)**

   The proposed Act will emphasise identifying the strengths within families and their networks, and on utilising innovative support and intervention services to maintain children in the care of their families. It will stress harnessing family knowledge and resources to make decisions about the most appropriate means of protecting children.

2. It is proposed that the principles included in the Act be:

   A decision or order as to where or with whom an Aboriginal child will reside may not be made without consultation with a recognised Aboriginal organisation.

   In making any decision in relation to an Aboriginal child:

   - there should be regard to any submissions made by or on behalf of a recognised Aboriginal organisation consulted in relation to the child;

   - there should be regard to Aboriginal traditions and cultural values (including kinship rules) as generally expressed by the Aboriginal community; and

   - there should be regard to the general principle that an Aboriginal child should remain within the Aboriginal community.

3. The content of the legislation will include a mandate for family group conferencing. This will empower families and extended families to discuss and decide on solutions to their problems. Family Group Conferences will be chaired by an independent person.

4. A Commissioner for Children will be created under the legislation. The Office of the Commissioner will provide high level, independent advice on policy and practice standards to the Minister and Secretary of the

Department. This will include advice about how policy and practice could best reflect the principle of "self determination".

5. Aboriginal Child Placement Principles will be included and reflected in the legislation. This is in recognition of the need for Aboriginal people to raise their children within their culture.

   The principles direct that if Aboriginal children must be placed away from their parents it should be with people who are traditionally recognised as being responsible for their care. Cultural consistency and family connections are considered to be more important than material standards and consultation with family and other relevant Aboriginal people is essential.

   Aboriginal groups have been invited to participate in the development of new legislation for families and children to ensure that the views of Aboriginal families are reflected.

Youth Justice

Role of the Youth Justice Sub-Program

The Youth Justice area has a key responsibility for the provision of services to Aboriginal young people who offend.

Composition

Youth Justice is a sub-program in the Child Family and Community Support program of the Department of Community and Health Services, and works through three arms:

1. Eight Youth Justice Workers, grouped in Teams in each region, work with young offenders, through advice to the courts, supervision of young people in the community, and other practical assistance.

2. Ashley Youth Detention Centre in the North, with 35 staff, provides custodial care and rehabilitation services to youth.

3. Co-ordination of policy and program development on youth justice matters occurs through two officers in Child Family and Community Support's Corporate Office.

The Youth Justice sub-program has a budget of approximately $1.7 million. The majority of this figure is used to run the Ashley Detention Centre.

Responsibilities

The objective of the Youth Justice program is:

> *"To assist young people in conflict with the law to become law abiding."*

Implementation of this objective occurs through:

1. Providing assessment reports on young offenders to the courts to aid the court to determine the most appropriate disposition.

2. Providing effective supervision and developmental programs to young persons subject to court orders as a result of offending.

3. Providing positive care and custody for young offenders in custodial care.

Youth Justice Workers have a statutory responsibility under the *Child Welfare Act* 1960. This Act provides the legislative base for services for young offenders, and determines the judicial procedures for matters in the Children's Court, sentencing options available, and the requirements of Youth Justice Workers to the Court.

Functions

In practical terms, the types of functions undertaken by Youth Workers, through the regional Youth Justice teams are:

- Where it is consistent with the need to ensure the safety of the public, encourage the justice system to adopt the least restrictive alternative to deal with the unlawful behaviour of young people.

- Where it is consistent with the need to ensure the safety of the public, arrange and provide placements and programs that keep young people who have offended in the community during the course of formal proceedings.

- Before, during and after formal proceedings, involve the young person and their family in all decision-making processes, including

  - provide families with the information they need to contribute to the decision making process;

  - where possible, involve families in decision-making processes;

  - provide support for family decisions; and

  - facilitate access to any resources required by the family to make their decision work.

- To ensure that any sanctions are the least restrictive option:

  - recommend sanctions; and

  - recommend credible community based alternatives to custody, that have been developed in consultation with the community.

This can ensure that the ongoing development of the individual in their family and community is not hindered, and reduce the likelihood of custody for any subsequent offending.

- To encourage the justice system to impose any sanctions in proportion to the severity of the offence, restrict the focus of intervention to matters that relate to the offence.

Pathways into Custody under the *Child Welfare Act* 1960

Custody in the Ashley Youth Detention Centre is the only involuntary placement made in the Youth Justice program. Under Section 42(2)(b) of the *Child Welfare Act 1960*, the Director of the Department has the authority to place non-offenders in Ashley. Since 1991 there have been no placements of Aboriginal non-offenders in Ashley. It is planned to delete this provision under the proposed new legislation - *The Youth Justice Bill* **(Appendix 21)**.

Custody can occur through an administrative or a judicial power.

Judicial power can be exercised under Section 28 (1)(b) of the *Child Welfare Act 1960*. This order enables the court to declare the young person a ward of State and order that the young person be committed to an institution (declare and committal). The Magistrate exercises his discretion on the length of the committal order.

The most common form of administrative detention occurs when a magistrate remands a young person in the custody and charge of the Director (this is known as an RICC Order). The most common response by the Department in this situation is a placement at the Ashley Youth Detention Centre. The Department consults with Magistrates prior to taking this decision and this procedure is described below.

The only other order where an administrative detention decision is sometimes made is a remand for observation order (RFO). This is rare and the Youth Justice Manual discourages placement at Ashley under this order. Where placement is made the procedure is as for a RICC Order.

With regards to the issue of imprisonment of young people, the Child Welfare Act 1960 mandates a sentence of imprisonment to be given by a magistrate sitting in the Children's Court. This power is limited by Section 21 of the Act which states that a young person under the age of 16 years cannot be sentenced to imprisonment. Similarly, the Children's Court cannot make a probation order against a young person unless they have attained the age of 15 years (Section 22).

Procedure to determine a placement under a RICC Order

The *Child Welfare Act 1960* gives the "Director" the power to determine where a young person will be placed when they are remanded in the "care and charge of the Director" or remanded for observation.

In practice there are only two options, the first is for the young person to be placed in the community ideally with their family where this is appropriate and the second is for the young person to be detained at the Ashley Youth Detention Centre.

Under the present Act the decision to detain a young person who is remanded in the custody and charge of the Director, at Ashley, is an administrative rather than a judicial decision. In the past this power has most often been exercised to release young people into the community.

There have been a number of instances where these young people have continued to offend resulting in police frustration and criticism of the Department's judgement by Magistrates.

The Department's position on the issue of detention is that ideally legislation should give this power exclusively to the Courts.

An agreement has been reached with the Magistracy on this issue. The agreement is that when a young person has been remanded in the custody and charge of the Director, the Youth Justice officer is to ask the Magistrate to indicate whether it is his or her preference that the young person be placed at Ashley.

The Department's policy is to respect that preference (ie detain the young person in Ashley) when sufficient criteria are present. These criteria consider risks such as the person not attending court, the seriousness of the offence, harm to others or continued offending. This approach anticipates policy that will be expressed eventually in new legislation.

Where a Magistrate has indicated a preference that a young person be placed at Ashley and the Department believes that insufficient criteria are present to support this, the procedure is for the Department to place the young person in the community and for the Regional Program Manager to write to the Magistrate explaining the reasons for this approach.

Remanded For Observation (RFO)

A remand for observation order is enabled by the provisions of S.24 of the *Child Welfare Act, 1960*, and is made after the young person is found guilty of an offence. The RFO cannot be longer than 3 months. The order is made usually because the court wants more information about the young person before a final order is made. During that time the Youth Justice worker will undertake a more comprehensive assessment that will in some cases include assessment by a psychologist. At the end of the remand period the young person is required to go back to court. At that final appearance the court will be given a comprehensive report detailing the results of further investigations, and observations during the remand period.

The Current Situation

The following describe some of the issues that arise when considering the situation of Aboriginal youth who offend, and highlight some of the issues.

Statistical Overview

Aboriginals make up 3.3% of the population aged 7-16 years. Aboriginal youth comprise approximately 13% of all young people under court-ordered supervision, that is, community based supervision by Youth Justice workers. This figure has been consistent in the 1993-94 and 1994-95 reporting periods.

During 1994, Ashley Youth Detention Centre held a cumulative total of 148 young people in detention. Of this, 29 young people identified as being Aboriginal (19.5% of total young people detained). Again, compared with the percentage of population of young Aboriginals within the total population of young people, it is evident that young Aboriginals are over represented within custodial care.

Of the 24 re admissions to Ashley in 1994-95, six (6 individuals - 25%) were young Aboriginals. This figure is consistent with re-admissions for young Aboriginals in previous years.[10]

Under National comparisons of young Aboriginals in custody undertaken by the Australian Institute of Criminology in 1994, Tasmania compared favourably to most other States, and significantly below the national average.

Table 4: Persons aged 10 - 17 years in Juvenile Corrective Institutions by Age and Aboriginality - Rate per 100,000 relevant population as at 31 March 1994[11]

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUS
Aboriginal	722.5	177.1	371.4	1007.8	792.2	162.7	125.0	n/a	527.4
Non Aboriginal	37.9	13.8	16.3	28.4	34.6	14.5	54.6	33.4	26.1
*n/a = not available									

10 Source: Ashley Youth Detention Centre Data, 1994 - 95

11 Source: "Persons in Juvenile Corrective Institutions" AIC, No. 66 March 1994

Profile of a Young Repeat Offender

A repeat offender is likely to have a history of at least one, and often more, of the following characteristics:

- family breakdown;
- sexual or physical abuse;
- homelessness;
- poor health;
- drug or alcohol abuse;
- unemployment;
- attempt or risk of suicide;
- low socio-economic background; and
- low self esteem, powerlessness and lack of choice.

The social disadvantage that each circumstance may cause, multiplies as the number of characteristics, and their severity, increases. In the case of Aboriginal youth, the element of racism and loss of cultural identity compounds this effect.

Causes of Over-Representation

The Royal Commission into Aboriginal Deaths in Custody stated that,

> *"...the reasons for Aboriginal youth offending...are not explained by a single cause and more often explained by a complex interrelation of factors".*

These factors include the justice system itself and the way it defines criminality, socio-economic disadvantage, the experience of racism, the role of the family and home life and cultural factors.[12]

A New South Wales study[13] cited three primary reasons for the very high levels of Aboriginal over-representation in that State's juvenile justice system. These were:

- a very high apprehension rate (Aboriginal youth were 10-15% more likely to go to court than receive a police caution than non-Aboriginals);
- a relatively small but compounding bias against Aboriginal youth in key police decisions; and

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12 Johnson. E.: *Royal Commission into Aboriginal Death in Custody, National Report, Vol.2;* AGPS, Canberra, 1991: 275.

13 Luke, G. & Cunneen, C.; *Aboriginal Over-Representation and Discretionary Decisions in the NSW Juvenile Justice System*, Juvenile Justice Council of NSW, January 1995.

- a court sentencing structure that, although apparently equitable, reinforces the previous systemic effects.

Over-representation is compounding because it affects subsequent police and court decisions. For example, while Aboriginal and non-Aboriginal youth offenders with comparative records were treated equally by the courts, Aboriginal youth had longer average criminal histories.

Involvement by the Aboriginal Community

A significant finding of the Royal Commission was that many programs that have been introduced to assist Aboriginal people, have failed because the Aboriginal community was not involved in their development and implementation.

Recommendation 188 requires:

"...that Governments negotiate with appropriate Aboriginal organisations and communities to determine guidelines as to the procedures and processes which should be followed to ensure that the self-determination principle is applied in the design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people".

It is important that all organisations providing a service to young Aboriginals who offend, work together. An example could be co-operation between drug and alcohol services, the Aboriginal Health Service, Youth Justice and affected young people, to co-operate on substance abuse issues.

Communication is a key to increased involvement by, and consultation with, the Aboriginal community, and improved information exchange between Government and Aboriginal community services. Without ongoing processes to enable communication, it is difficult for relevant information to pass between the Aboriginal community and Government.

The lack of a clear and adequate framework for communication between the Aboriginal community and Government can mean that the Aboriginal community are not involved in an appropriate and timely manner. Likewise, those in Government can be unsure about the appropriate way to consult with the Aboriginal community.

Proposed Legislative Changes

The *Children and their Families Bill* **(Appendix 22)** and the *Youth Justice Bill* **(Appendix 21)** are being drafted to replace the *Child Welfare Act* 1960, the *Child Protection Act* 1974 and the *Domestic Assistance Act* 1947.

The aim of the youth Justice Bill is to provide a more appropriate response to youth offending in Tasmania. The *Child Welfare Act* does not adequately differentiate between those young people who have offended and those who require care and protection. The new legislation aims to separate these areas through two Bills.

Principles

The principles underlying the proposed *Youth Justice Bill* include:

- encouraging young people to accept responsibility for what they do;
- focusing on the offence committed rather than the characteristics of the offender;
- promoting the diversion of young people away from the youth justice system;
- focusing on the reintegration of young people into their communities;
- stressing the significant role of families, including extended families and kinship networks; and
- incorporating responses to victims of crime.

New Provisions

The proposed changes for youth justice include:

- Recognising that the majority of young offenders commit minor offences and do not re-offend. Therefore policy will be directed at keeping young people out of court through diversionary mechanisms such as:
  - giving clear police powers enabling informal and formal police cautioning to avoid legal proceedings; and giving Aboriginal Elders the power to give a caution.
  - introducing family conferencing processes to involve families, victims, the police and youth justice in the determination of outcomes . It is noted that a broad definition of 'family' is adopted which can encompass the extended family and kinship networks.
- Broadening the range of sentencing options for young people who do go to court, including community service orders.
- Ensuring that young people have access to due process of law.

Royal Commission into Aboriginal Deaths in Custody

A number of recommendations with an impact on youth justice issues will be addressed by the proposed *Youth Justice Bill*. These include:

72 In responding to truancy, support for students and those responsible for care to address related social and cultural factors.

Although not central to the Youth Justice Program, related issues can be supported through processes in the program. For example, in addressing truancy issues the Education Department may be able to link in with programs or consultation processes that have been developed through a negotiated strategy.

188 Negotiated guidelines for applying the self-determination principle in policies and programs affecting Aboriginal people; and

192 Delivery of programs by Aboriginal organisations where possible; processes to be appropriate to needs; employment of Aboriginal people in management.

A valuable outcome of an agreed Strategy would be established guidelines to facilitate consultation with, and involvement by, the Aboriginal community. Where appropriate, programs should be initiated, driven and implemented by the Aboriginal community, with Youth Justice assistance if required.

196 Advice in plain English or Aboriginal languages of funding programs and processes.

Information exchange is important for all areas of Government as well as the Aboriginal community, including information about the services or programs available, how they are operated and accessed, as well as funding information. There is scope for a co-operative Strategy to include processes to improve information about the broad range of Government and non-Government services, as well as mainstream and specific Aboriginal services.

235 Government agencies to ensure that family, Community groups and specialist Aboriginal agencies are primary advisers on the welfare of Aboriginal juveniles.

The proposed *Youth Justice Bill* enables families and other interested parties to be involved in decisions on the sanctioning of young people through the cautioning and family conferencing process.

Beyond that, a strategy can develop processes to ensure that families and Aboriginal community organisations have a primary role in developing policy and service delivery. Some informal relations do exist between the Youth Justice Teams and Aboriginal organisations. These could be strengthened, for example, through regional consultative forums.

239 A review of Legislative provisions and Police standing orders to favour non-custodial alternatives to the arrest of Aboriginal juveniles.

A basic principle of the proposed *Youth Justice Bill* is that sanctions must be the least restrictive available, proportionate to the crime, and are no greater than that imposed on an adult offender. These principles are already promoted by Youth Justice Workers who recommend community-based alternatives to custody where possible.

The Bill also introduces a range of diversionary options to avoid the involvement of courts. Where a young person does come before the

court, the range of sanctions has been broadened to avoid custody if possible.

The Aboriginal community must be directly involved in the innovative development of diversionary and non-custodial options.

240 Police encouragement to caution rather than arrest; Where possible, police caution to be given in the presence of a parent or other person with care and responsibility for the juvenile; otherwise notify such person of the fact and detail of the caution.

One of the primary changes in the proposed *Youth Justice Bill* will be an emphasis on avoiding arrest through informal and formal cautioning. These changes will implement this recommendation and there is the necessity for community involvement in the design of a cautioning program.

242 Juveniles not to be detained in police lock-ups; specified legislative and administrative steps be taken to avoid this if juvenile detention facilities don't exist.

Through diversion and non-custodial sentencing options the proposed *Youth Justice Bill* will take further steps in trying to avoid custody unless it is considered necessary for public safety.

Protocols are currently being developed within the Youth Justice program outlining procedures for transferring young people to and from Ashley. This issue has been raised with the Tasmanian Aboriginal Centre and their input has been sought.

Strategy

It is considered critical that initiatives developed to deal with the over-representation of Aboriginal young offenders in the criminal justice system are developed by, or in co-operation with, the Aboriginal community.

A strategy could be based on the following principles:

- An Aboriginal young person should not be regarded in isolation or as part of a nuclear family, but seen in the context of their Community.
- The Aboriginal community has traditionally exercised care of its young people.
- The involvement of the Aboriginal community is paramount and processes should be developed to enable appropriate and meaningful involvement by the community.
- The Department of Community and Health Services and the Aboriginal community should jointly develop policies and practices aimed at

reducing the number of Aboriginal young offenders in the criminal justice system.

- The Aboriginal community should implement the initiatives, with Government support as required.

- Government programs and services should co-ordinate with each other and those run by the Aboriginal community, to ensure that the needs of Aboriginal youth are met in an integrated manner.

- Where appropriate, adequately trained and resourced Aboriginal people should be employed within the youth justice system.

- Measures developed for dealing with offending by Aboriginal youth should strengthen family and community ties, and cultural identity.

- An Aboriginal young offender should remain in the community, where it is practicable and consistent with public safety.

- Any strategies to deal with Aboriginal youth who offend should foster the ability of the Aboriginal community to develop their own means of dealing with young offenders, maintain and promote the development of the young person within their family and community, and take the least restrictive form appropriate.

These principles are dealt with broadly under the proposed Youth Justice legislation, which states as part of the general principles of Youth Justice that:

- punishment of a youth is to be appropriate to the age, maturity and cultural background of the youth; and

- a youth's sense of racial, ethnic or cultural identity should not be impaired.

Possible Initiatives

The following are examples of the initiatives that could be developed.

1. Develop community-based alternatives to mainstream sentencing options. Some progress has occurred between the Aboriginal community and Youth Justice Workers on alternative sentencing options however these are based on personal contacts rather than documented programs.

   Alternatives to detention and community service orders could involve supervised work within the Aboriginal community. Activities could include mutton birding or restoration and interpretation of cultural sites. Instead of custody, there is potential for certain community members to be registered as carers of young people. Programs could teach about Aboriginal culture, life skills and vocational training.

2. Initiatives to assist Aboriginal youth on the street could include community-run or community-supported alternatives such as drop-in centres and sporting or cultural programs, support for the development of non-medical detoxification units, and Police taking young people directly home instead of to lock-ups.

3. Developing agreed protocols that determine the community-preferred action at any stage of contact throughout the Youth Justice System. For example this may determine that where a health issue arises, where possible the Youth Justice Worker makes a referral to an Aboriginal-preferred doctor or counsellor.

4. Cultural awareness training should be more widespread within the youth justice system, and, increased community involvement, regular refresher courses or other strategies could be used to ensure appropriate commitment and implementation.

5. Funding conditions could ensure that mainstream non-Government services are accessible by, and responsive to, young Aboriginal people, and that staff are adequately trained to deal with the needs of Aboriginal youth.

Ashley Youth Detention Centre

Ashley has also been the focus of criticism from the Tasmanian Aboriginal Centre (TAC) regarding standards of care. All complaints have been investigated. A review of Ashley has been completed and an implementation plan is scheduled for completion in the near future.

Ashley is the only open detention centre in Australia. This status as an "open facility" is possible by using a secure unit as a part of the service system. The secure unit is used for most new admissions when the risks associated with the young person needs to be assessed. It is also used to manage difficult and dangerous behaviour. In this sense it is used as punishment. A stay in the secure unit follows when a young person absconds from the open section.

The secure unit allows for a safe environment for residents and staff to address offending behaviour and it is an appropriate response for young people who are unable to accept the environment in the Open Section. The Ashley Youth Detention Centre is unique because it operates on the principle of maximum choice and freedom and takes this idea further than any other centre in Australia. This means that most residents use the Open Section most of the time.

The standard of security in the Secure Unit represents the common standard for detention facilities in other states. It is a remarkable achievement to have maintained this approach in Ashley when there are so many pressures in the community calling for a more punitive approach.

When a child is admitted to Ashley the family receives a letter encouraging visits by family and friends to the Centre and inviting active participation in the case management of the young person.

The Australian Institute for Criminology (AIC) recently published some figures that showed the level of over representation of young Aboriginals in Detention Centres in each State. Nationally young Aboriginals are 18 times more likely to be incarcerated than non Aboriginals. In relative terms Tasmania and Victoria had the best results. Young Tasmanian Aboriginals being 11 times more likely to be incarcerated than non Aboriginals.

Table 5: Ashley Youth Detention Centre - Average length of stay (days).[14]

	Aboriginal	non-Aboriginal
1991-92	40	55
1992-93	25	55
1993-94	70	45
1994-95	54	63

14 Ashley Youth Detention Centre Data

Rehabilitation Services

The Ashley Youth Detention Centre offers accredited courses in literacy, numeracy, sculpture, boat restoration, horticulture, ceramics and leather and wood work.

The average occupancy rate for the Centre was 15 during 1994 -95 and the majority of residents attended the Ashley School.

All residents were offered an independent living skills program which was designed to improve access to non Government and Government Services.

Future Directions

The Department of Community and Health Services believes that outcomes for young Aboriginals who offend can only be improved by working collaboratively with the Aboriginal Community to establish a healthy working relationship based on trust and respect. A key characteristic of that relationship should be dialogue.

A set of draft principles to establish an Aboriginal Youth Justice Strategy were suggested to the TAC in July 1995. This proposal was based on the overarching principle of self determination. The Department of Community and Health Services is keen to progress consultations with the Aboriginal community to progress the proposed strategy.

Community consultations regarding the proposed Youth Justice legislation have recently been undertaken statewide. The Aboriginal community via the TAC and Office of Aboriginal Affairs were invited to attend broad community consultations or to arrange specific meetings to discuss the draft. No special consultations have been requested. However, there has been representation from the Aboriginal community at consultations conducted in the North West, Launceston and Hobart.

Adoption

Legislation:

The *Adoption Act 1988* replaced the *Adoption of Children Act 1968*, which was preceded by the *Adoption of Children Act 1920*. Since the introduction of the 1968 Act private adoption arrangements have been prohibited. Adoptions in Tasmania are now arranged only by the Department of Community and Health Services and the Catholic Private Adoption Agency.

The *Adoption Act 1988* contains safeguards aimed to ensure that any consent to adoption is voluntary, informed and given only after the consenting parent understands the nature and effect of an adoption order and has had sufficient opportunity to explore alternatives to adoption. (sections 29, 30, 31, 36; regulation 25)

A consenting parent has the right to have his or her wishes considered in relation to a number of matters, including the race, ethnic background and religion of the adoptive parents with whom the child is placed. A court is not able to make an adoption order unless satisfied that due consideration has been given to these wishes (section 24).

The father of a child has rights equal to those of the mother provided he is legally married to her, has legally established his paternity or establishes this within 30 days of her signing consent to adoption.

A court may make an adoption order only in favour of applicants who satisfy prescribed criteria (section 24). These criteria include having been assessed as possessing the capacity to meet the individual child's particular ethnic or cultural background needs.

A parent considering offering a child for adoption must receive counselling from an approved counsellor and prescribed information about the nature and effect of an adoption order and the alternatives to adoption at least twenty-four hours before signing consent to adoption(section 31).

The Act imposes on the Director for Community Welfare and the principal officer of a private adoption agency the duty to have regard to adoption as a service for the child concerned (section 17) and provides that the welfare and interest of the child concerned is the paramount consideration at all times (section 8).

Policy:

Existing policy on placement of Aboriginal children relinquished for adoption is consistent with the Aboriginal Child Placement Principles as set out in the Family Services Operational Manual (1993). Special consideration is given to the needs of children known to be Aboriginal.

Counselling of parents considering relinquishing their child is a process that may extend over several weeks, the approved counsellor assisting the parent or parents to consider all available choices for the child's future care.

Efforts are made to include both parents in plans for their child's future whenever possible. In the case of an Aboriginal child the approved counsellor would provide opportunity for the parent or parents to consult with representatives of the Aboriginal community as part of the exploration of alternatives to adoption. In this context, however, it should be noted that in any request to make adoption arrangements due regard must be given to privacy, confidentiality and respect for the wishes of the relinquishing parent or parents.

Where the father of a child is not known or his identity is not disclosed the Department carries out checks to ensure that no steps have been taken to establish paternity. These checks are done in all cases, including those where paternity is known, before the Director accepts guardianship of the relinquished child.

If paternity has been established, adoption requires consent from the father of the child. He may consent only after counselling and receiving the prescribed information.

If the father of an ex-nuptial child is identified, but no steps to establish paternity have been taken by the father, the Department will not seek to obtain his views on the proposed adoption.

The Director will not accept guardianship of a child if one parent wishes to offer the child for adoption but the other parent whose consent is required opposes this. Temporary care may be arranged for a child while the dispute between the parents is resolved, but no adoption arrangements would be made. A dispute between the parents could require determination by the Family Court.

If birth parents choose to offer an Aboriginal child for adoption, the preferred choice of placement is with Aboriginal adoptive parents. If this is not possible, the prospective adoptive parents are required to demonstrate an understanding of and respect for Aboriginal culture, together with the capacity to maintain positive links with the child's Aboriginal culture and heritage. This requirement would apply even in cases where parents consenting to adoption did not wish the child's Aboriginality to be made known.

The Department considers knowledge of his or her racial and cultural heritage to be very much part of the welfare and interests of the child on whose behalf adoption arrangements are made.

Assessment is carried out by approved adoption workers employed by the Department of Community and Health Services, by approved independent social workers under contract to the Department, and by approved staff of the Catholic Private Adoption Agency. Workers are required to have specific assessment skills in relevant areas. These include assessment through discussion and exploration of attitudes to and understanding of a child's religious racial and cultural heritage.

In assessing adoptive applicants who have expressed interest in adopting an Aboriginal child the adoption worker may, with the agreement of the applicants, invite a representative of the Aboriginal community to assist in this part of the assessment.

The Adoption Assessment Review Panel may review assessment reports and make recommendations to the Director regarding the suitability of adoptive applicants. The Panel must consist of at least three members. Ms Tanya Harper, currently Co-ordinator, Riawunna, at the University of Tasmania in Launceston , was appointed as a member of the Panel in 1993. Ms Harper would be among the Panel members asked to advise on the suitability of applicants who wished to adopt an Aboriginal child.

Present policy has evolved from policies of the former Department of Community Welfare. In 1983 that policy was stated as giving 'special consideration to Aboriginal people in the delivery of the whole range of Community Welfare Services'.[15]

Placement of Aboriginal Children:

Reliable figures on the number of Aboriginal children placed for adoption in Tasmania are difficult to obtain before the early 1980's. Most records of the privately arranged adoptions which occurred under the 1920 Act do not contain information on racial background.

The Department of Community and Health Services has recorded information on ethnicity since about 1970. Information about the child's descent is also kept as part of the individual case record.

Departmental records show only twelve (12) children known to the Department to be Aboriginal were placed for adoption over the 25 years between 1970 and 1996. This includes adoptions arranged through the Catholic Private Adoption Agency. The adoptions of three of the children referred to were arranged in the Northern Territory, the adoption being finalised in Tasmania.

It is noted that anecdotal reports suggest Aboriginality, and particularly Aboriginal paternity, was not always disclosed by the relinquishing mother when arrangements for adoption were made.

There have been approximately 11,000 adoption orders made in Tasmania since 1920. Approximately 600 of these orders were made after 1981. Of these, 106 were made in the five years from 1990 to 1995. Just under half of these (48) were in respect of children from overseas countries.

Since the introduction of the *Adoption Act 1988,* in May 1992, records show three (3) Aboriginal children adopted in Tasmania by non-relatives. One (1) adoption was arranged by the Catholic Private Adoption Agency, two (2) by

15 Aboriginal Fostering and Adoption, Review of State and Territory Principles, Policy and Practice; Report of the Working Party of the Standing Committee of Social Welfare Administrators, October 1983: 18.

the Department. Of the latter two, one child was adopted by an Aboriginal family, one by a non-Aboriginal family. The child adopted by the non-Aboriginal family was a child with severe intellectual and physical disabilities. The Department, in consultation with the birth parent, sought a special placement to meet the individual needs of this child. The birth parent had support from the Aboriginal community before and after relinquishing the child.

The Adoption Information Service

This service was established in July 1989 with the introduction of Part VI of the *Adoption Act 1988*.

An adopted person who has reached the age of eighteen years may apply to the service for information about his or her adoption and for access to the pre-adoption birth record. This information includes the identity of the birth mother and, when recorded, the birth father.

A birth parent, natural relative or adoptive parent may also apply for information about an adopted person. The written agreement of the adopted person is required before the identity of the adoptee is released.

An adopted person under the age of eighteen may apply for information with the written agreement of the adoptive parents, but may not be given the identity of a birth parent or access to the original birth record without the written agreement of the birth parent concerned.

Approved counsellors in each Region and the Co-ordinator of the Adoption Information Service provide mandatory counselling to Tasmanian residents before information is given. Counsellors are available to all registrants and their families for follow-up counselling and advice.

The Adoption Information Register allows persons affected by an adoption to record their wishes regarding contact and exchange of identifying information.

The Service assists with reunion where this is the wish of the parties concerned.

Statistics on the racial background of persons applying for information about an adoption are not kept.

There is rarely any information about racial background or Aboriginality on the record of adoptions prior to 1969. In most cases the only way to obtain such information is by an adopted person making contact with his or her birth family.

Some adopted people applying for information about their origins have been aware of their Aboriginality. We have dealt with only a very few cases where Aboriginality was recorded but not known to the adoptee. It is suggested that 3 or 4 instances may have occurred from the 2,000 enquiries dealt with by the service in the past seven years.

Where an adoptee knows of, or is told by the service of his or her Aboriginality, they counsellor will refer the client to the appropriate group within the State of residence. The counsellor will make contact on behalf of the adopted person if requested to do so.

The main contact for the Tasmanian Aboriginal Centre in Tasmania is Lenna Newsome. The New South Wales based Aboriginal group Link-Up will assist adoptees in New South Wales and other States who wish to reunite with members of their birth family. Link-Up also provides names and addresses of support groups in States other than New South Wales. Link-Up accepts referrals from the Adoption Information Service at need.

4.5 Reference to a client's Aboriginality in client records administered by public agencies. Methods used to determine the Aboriginality of children. The proportion of Aboriginal children in their client group.

As stated in the Introduction, the issue of Aboriginality in the Tasmanian context is critical when considering the terms of reference of this inquiry. Recording Aboriginality on client records administered by public agencies responsible for child welfare and juvenile justice is not a straight forward matter.

Juvenile Justice

Aboriginality is not routinely recorded on all Police forms, however individuals can be identified within the system as Aboriginality is used as a descriptor on critical forms lodged in the justice process. This only occurs when an individual is arrested or commits a serious crime, necessitating a fact form to be lodged.

For this reason, Aboriginality of children is less likely to be identified through police records systems, as they are more likely to be dealt with under minor offences or welfare legislation. Thus, it is not possible to estimate the proportion of children in this client group via Police records systems.

Child Welfare

Although children are more likely to be dealt with under minor offences or welfare legislation, assessing the Aboriginality of children in care is problematic because Aboriginality is a matter of self-identification. Data bases that do record Aboriginality have the information only where people disclose this identity. Numbers of Wards of State are available from 1966; however the proportion of Aboriginal children within this group has been collected intermittently since 1969. This has been addressed separately under Term of Reference (a) 1.3.

The Tasmanian Aboriginal Community and Recent Government Policy Initiatives

On December 16 1993, the then Liberal Premier the Hon Ray Groom released a statement that announced a number of initiatives in the portfolio area of Aboriginal Affairs. These included recognition of Aboriginal people; the establishment of the Aboriginal Development Unit; the recognition of land as an important issue to be negotiated and an announcement that a Forum would take place to discuss issues that effected the Aboriginal community.

The Forum took place at the Wrest Point Casino on Saturday 21 May 94 and was attended by the Premier, all Cabinet Ministers and the Leader and Deputy Leader for the Government in the Legislative Council. It was a truly historic meeting probably the first ever meeting like this where the entire Cabinet of any Government has sat down with the Aboriginal community to discuss issues of concern.

The Government met with 15 incorporated Aboriginal Organisations which had two representatives each. The focus of the Forum was to co-operatively identify policy issues that can be advanced through negotiations with the Aboriginal community. The meeting helped create a more mutual respect and understanding between Government and the Aboriginal community. It was the beginning of what will be an ongoing and progressive partnership.

Since the December 1993 Statement a number of State Government initiatives have taken place some of these are outlined below.

The Office of Aboriginal Affairs

The Office of Aboriginal Affairs was formed in April 1994 with a mandate to advance Aboriginal Affairs in Tasmania through the provision of quality advice to the Tasmanian Government that will have a significant and lasting impact on Government policies and practices that affect Aboriginal people in Tasmania. The Office of Aboriginal Affairs provides a specialist service to government and community which reaches across all circumstances of Aboriginal society in Tasmania in particular, and including many aspects of Aboriginal affairs on mainland Australia.

The Aboriginal and Torres Strait Islander population in Tasmania is widely distributed and fragmented. Because of their small overall number (estimated to be approx. 10,000) and wide dispersal across the State, there are particular difficulties in identifying the needs of these groups and developing specific services to meet their needs.

To achieve this the Office has set itself a number of fundamental goals which are:-

- to be a primary resource and adviser for Government on all policy issues affecting Aboriginal people.

- through a high level of consultations with the Aboriginal community; accurately represent an Aboriginal view to Government to advance Aboriginal Affairs in Tasmania.

- to assist and advise the Minister for Aboriginal Affairs on the efficient, effective and co-ordinated management of policies, legislation, programs and issues that impact on Aboriginal people.

- to facilitate the development of an environment in which the Aboriginal Community is assisted to achieve self-management and economic independence.

- to promote, greater understanding, appreciation and acceptance of Aboriginal culture and its ongoing contribution to the Tasmanian community.

1996-97 Priorities for the Office of Aboriginal Affairs:

- preparation of the Government's report on progress in implementing the recommendations of the Royal Commission into Aboriginal Deaths in Custody

- review of the Tasmanian State Government Aboriginal and Torres Strait Islander Employment and Career Development Strategy

- review of the *Aboriginal Relics Act 1975*, and development of draft Aboriginal Heritage Legislation

- Implementation of the National Commitment to improved outcomes in the delivery of programs and services for Aboriginal and Torres Strait Islanders which includes the development of policies and strategies to ensure that Aboriginal and Torres Strait Islander people receive services at no less a standard than other Tasmanians

- continuing Aboriginal community consultation and the development of an Aboriginal community profile and a profile on all Government Agencies outlining their services and programs to the Aboriginal community.

- provision of support to the interim Aboriginal Land Council of Tasmania in their administration of the *Aboriginal Lands Act 1995*

- Implementation of decisions taken by the Ministerial Committee on Aboriginal and Torres Strait Islander Affairs that concern Tasmania.

The Aboriginal Relics Act

A discussion paper is being developed to raise issues that the Tasmanian community needs to consider in the process of replacing the 1975 *Aboriginal Relics Act* with an Act which places Aboriginal heritage under the control of the Aboriginal Community.

The *Aboriginal Relics Act* was passed in 1975. It is generally accepted that this legislation is now significantly out of date and no longer adequately

reflects the needs of the people of Tasmania, and especially those of the Aboriginal community.

The object (or purpose) of the new Act would be to provide a law which recognises the importance of Aboriginal cultural heritage. This would also promote self-determination for the Aboriginal community in respect of its cultural heritage and for that purpose to provide for Aboriginal control of the protection, conservation, management, interpretation and research of that heritage, including the conservation of objects/property and places of religious, historic or other cultural significance to Aboriginal people.

Cultural Heritage Unit

The Parks and Wildlife Service Tasmania in conjunction with the Office of Aboriginal Affairs has developed a program for the employment of Aboriginal people in the management of Aboriginal cultural heritage and to assist in the transfer of responsibilities for the management of Aboriginal cultural heritage to the Aboriginal people of Tasmania.

Archives Office and Records

There is a number of records housed in the Archives Office which document the relationships between colonial and State governments and members of the Aboriginal community. For a significant period (c. 1870s to 1970s) a combination of government policy and social attitudes resulted in the creation of records which may have dealt with members of the Aboriginal community, but did not identify them as such.

Records of this kind can often therefore only be identified as dealing with Aboriginal people through research on the records together with a background of additional information which will assist in this identification.

These records are preserved and made available for research in the Archives Office where they are used frequently by people researching their Aboriginal heritage.

Aboriginal Arts Board

The Government recognises the value of the Tasmanian Aboriginal community, in terms of culture and associated art forms that contribute to its socio-economic and political development and acknowledges the right of Aboriginal people to pursue community development as dictated by their own cultural aspirations.

Arts Tasmania has established an Aboriginal Arts Advisory Group to provide advice on appropriate Aboriginal cultural development. The Aboriginal Arts Advisory Group has a membership of six, recommended by the Tasmanian Aboriginal community and drawn from all regions of the State and areas of arts practice. All applications for assistance are referred to the Group prior to consideration by artform panels of the Board and before funding recommendations are considered.

Tasmanian Museum and Art Gallery

As the second oldest museum in the nation, the Tasmanian Museum and Art Gallery collections of Aboriginal and Torres Strait Islander cultural material began in the 1840's with the establishment of the Royal Society of Tasmania. These collections contain a number of important and significant cultural items, for example sections of stone carvings from Mt. Cameron West, collected in the early 1960's and Tasmanian Aboriginal baskets collected on Flinders Island in 1842.

The Tasmanian Museum and Art Gallery provides a positive opportunity to further develop relationships of understanding between contemporary Tasmanian Aboriginal people and the broader community.

The Museum Trustees have adopted in principle the Australia Museum Policy "Previous Possessions New Obligations" which concerns collections of Indigenous Cultural Heritage in museums and have endorsed the concept of Aboriginal community involvement in the development and management of Tasmanian Museum and Art Gallery's Indigenous cultural collections.

The Trustees also appreciate that such involvement depends on the Aboriginal community's wishes and endorsement of the concept through comprehensive consultative processes.

The Government has a role in promoting and protecting Aboriginal and Torres Strait Islander cultures and heritage. Recent advancements include the provision for the Aboriginal community to take care of their ancient dead in the current *Coroners Act 1995*, and the recognition of specific of hunting and gathering rights for Tasmanian Aborigines in the *Living Marine Resources Management Act 1995* **(Appendix 23)**. The Government understands that any advancements can only be achieved in partnership with the Aboriginal Community.

The Aboriginal Lands Act 1995

The *Aboriginal Lands Act 1995* **(Appendix 24)** was passed by the Tasmanian Parliament on 2 November 1995. The legislation commenced operation on 6 December 1995.

The Act is one of the most historical and culturally significant pieces of legislation to be introduced into the Parliament. A fact reflected in the universal support it received during its passage through both Houses. It signalled a commitment to the reconciliation process with the Aboriginal

community and is a major step towards full recognition and appreciation of the contribution made by the Aboriginal people.

The Act transfers to Aboriginal ownership 12 crown land sites which have historical, cultural, social and economic significance to the Aboriginal community.

The land is vested in perpetuity in the Aboriginal Land Council of Tasmania. This statutory body will manage the sites on behalf of the Aboriginal community. It will be democratically elected by the Tasmanian Aboriginal community under a process to be conducted by the Tasmanian Electoral Office. The Council will have eight members elected to represent five regional areas. An interim Council has been appointed to manage Aboriginal lands until elections can be held.

Appendices

Term of Reference A:

Appendix 1 Legislation 1867 - 1918

Appendix 2 Infant Welfare Act 1935 (Act plus Table outlining main provisions)

Appendix 3 Aboriginal Adoption and Fostering Policy Guidelines 1977

Appendix 4 Review of State and Territory principles, policies and practices in relation to Aboriginal fostering and adoption, Working Party of the Standing Committee of Social Welfare Administrators 1983.

Term of Reference B:

Appendix 5 Client Information Guidelines Working Draft 1996

Appendix 6 Child Family and Community Support Guidelines.

Appendix 7 Overview of Department of Community and Health Services "Cape Barren Island files" (3/1/6 series)

Term of Reference D:

4.1(a)

Appendix 8 Child Welfare Act 1960 (Act plus Table outlining main provisions)

Appendix 9 Child Protection Act 1974 (Act plus Table outlining main provisions)

Appendix 10 Adoption of Children Act 1988

Appendix 11 Domestic Assistance Service Act 1947

Appendix 12 Child Protection Manual 1993, Part 3: Legal Intervention

4.1(b)

Appendix 13 Child and Family Services: Family Services Operational Manual (1993), Child Placement Principles

Appendix 14 Family Service Operational Manual (1993):

- Section 2 Departmental Statutory Cases
- Section 3 Departmental Non-Statutory Cases
- Section 9 Clients Rights and Grievance Procedures
- Section 10 Out of Home Care

Appendix 15 Adoption Services Staff Manual (1995)

Appendix 16 National Out of Home Care Standards

Appendix 17 Supported Accommodation Assistance Program (SAAP) Standards

Appendix 18 Youth Justice Practice Manual (October 1995)

Appendix 19 Quality of Care Standards, Australasian Juvenile Justice Administrators (May 1996)

4.1(c)

Appendix 20 Aboriginal Family Support and Care Program - 1993 Service Agreement .

4.3

Appendix 21 Youth Justice Bill 1996 "Community Involvement in Justice" - Consultation Draft

Appendix 22 Children and Their Families - Legislation for the future

4.5

Appendix 23 Living Marine Resources Management Act 1995

Appendix 24 Aboriginal Lands Act 1995