INTERIM SUBMISSION

TO THE

HUMAN RIGHTS AND

EQUAL OPPORTUNITY COMMISSION

INQUIRY INTO THE SEPARATION

OF ABORIGINAL

AND TORRES STRAIT ISLANDER

CHILDREN

DECEMBER 1995

TASMANIA

Premier

5 DEC 1995

Sir Ronald Wilson AC, KBE, CMG
President
Human Rights and Equal Opportunity Commission
GPO Box 5218
SYDNEY NSW 2001

Dear Sir Ronald

Please find attached the Tasmanian Government's interim submission to your Inquiry on the Separation of Aboriginal and Torres Strait Islander Children.

A final submission will be presented prior to the completion of the Inquiry. This will expand on detail provided in the attached paper and will address any further specific issues that the Commission may raise.

The Government considers that this is an important Inquiry and looks forward to working with the Commission.

Yours sincerely

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Executive Summary

This paper is an interim submission from the Tasmanian Government that has been researched and written to provide the Human Rights and Equal Opportunity Commission with initial evidence and issues for consideration. When researching for this paper it became evident that further research is necessary to gain a full assessment of the practices and policies that have resulted in the separation of Aboriginal children from their families in the past.

A further detailed submission from the Tasmanian Government will be presented to the Commission prior to completion of the Inquiry. That submission will provide detail on areas that are not addressed in this interim paper and additional detail in other areas. In addition the final submission will address issues that are identified in the Commission's forthcoming hearings in Tasmania and other jurisdictions.

In relation to the situation in Tasmania an understanding of the issue of Aboriginality through the history of the State is critical when considering the terms of reference for this Inquiry.

The last Tasmanian person of full Aboriginal descent was Truganini. After her death in 1876 successive Tasmanian Governments did not have policies, practices and laws dealing with Aborigines because at the time Aborigines were considered to be only persons of full Aboriginal descent. In this sense Tasmanian Governments considered that no Aborigines existed in Tasmania.

This position was maintained until the late 1960's. 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 he felt he should take part in attempts to deal with a matter of national importance and because the interests of Bass Strait Islanders must be preserved"[1]. This position on Aborigines in Tasmania was not seriously challenged until the

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1 Mercury Newspaper 12 July 1968 page 7

evolution of the Commonwealth definition of Aboriginality in 1968 after the critical 1967 referendum. Since the late 1960's it has been a slow process for Governments and the general community to broadly accept a definition of Aboriginal that includes people with less than full Aboriginal ancestry as is the case in current times.

Between Truganini's death and the late 1960's Tasmanian Governments did have policies, practices and laws which related specifically to people that had some Aboriginal ancestry, particularly those that lived on Cape Barren Island. For example, in 1912 the Tasmanian Government passed the "Cape Barren Island Reserve Act". (See Appendix 2). People with Aboriginal ancestry were called "Cape Barren Islanders" (even if they only had a tenuous past link with Cape Barren Island), "half castes" or they were not given a specific title as a group of people. The expression 'people with Aboriginal ancestry' is used through this submission to describe people who are not of full Aboriginal descent but who do have Aboriginal ancestry.

Research for this interim submission and future research for the period to the late 1960's has and will be concentrated on the identification of policies, practices and laws that resulted in the separation of children from their families within this group of people. Given that these people were not described as Aborigines or at times as any other particular class of people it has proven very difficult to collect relevant evidence from Government documents. It has been particularly difficult to collect reliable statistics. Those that have been collated are at Appendices 26 - 29. It is hoped further research will result in additional statistics being outlined in the Government's final submission.

Notwithstanding these difficulties there is no doubt that past laws, practices and policies did result in the separation of Aborigines (as we define them now) from their families. It can also be concluded that some separations were done by compulsion (through legal action), duress or undue influence. As would be expected the separations whether voluntary or not would have had a marked and traumatic effect at times on the children and families involved. It is evident that a major reason for most of the separations was that the authorities of the time perceived that the child was neglected, in

need, uncontrolled or guilty of an offence. There are a small number of quotes from the Government files to indicate that separation was used as a tool to achieve assimilation. However, at this stage of research it is not possible to conclusively state that this was a policy or significant practice of Tasmanian Governments from 1940 on.

It can be concluded that given the poor economic circumstances of people of Aboriginal ancestry, particularly on Cape Barren Island, the policies and practices since 1940 to separate children from their families when they were perceived to be in need or neglected would have had a marked and disproportionate (compared to Tasmanian society as a whole) impact on these people.

RESPONSE TO THE TERMS OF REFERENCE

TERMS OF REFERENCE (a)

"trace the past laws, practices and policies which resulted in the separation of Aboriginal and Torres Strait Islander children from their families by compulsion, duress or undue influence, and the effect of those laws, practices and policies;"

Legislation

Adoption Act 1920 (Appendix 4)

Infants' Welfare Act 1935 (Appendix 8)

Section 37 - as for Section 35 Child Welfare Act 1960

Section 42 - as for Section 32 Child Welfare Act 1960

Section 43 - as for Section 33 Child Welfare Act 1960

Domestic Services Act 1947 (Appendix 7)

Makes provision for domestic assistance and respite care for mothers who are incapacitated through ill health.

Child Welfare Act 1960 (Appendix 9)

Section 35 - On application of a parent, guardian, or relative of a child, or a person of good repute having the care and custody of a child, the Director may, with the approval of the Minister, admit the child as a ward of the state.

Section 32 - provisions for a child who is neglected, ill treated or abandoned to be brought before a Children's Court.

Section 33 - Provision for a child who is beyond the control of his/her parents/guardians to be brought before the Children's Court.

Adoption of Children Act 1968 (Appendix 5)

Child Protection Act 1974 (Appendix 10)

Section 10 - Provision for the Child Protection Board to make an application to the Children's Court for the protection of a child who

has suffered maltreatment or who is at risk of maltreatment for up to 30 days.

Section 11 - Provision for the Child Protection Board to make application to the Children's Court under the Child Welfare Act 1960 to procure state custody or guardianship.

Adoption Act 1988 - Adoption of Children (Appendix 6)

The Adoption Act 1988 makes reference to the rights of relinquishing parents to have their wishes regarded in relation to religion and ethnicity of the placement family.

Policies and Practices for the period: 1940s to 1960s

There are very few specific Tasmanian Government records or files on the welfare of Cape Barren Islanders or people with Aboriginal ancestry prior to 1937 when the Commonwealth and State Aboriginal Authorities (Tasmania was absent) agreed to a policy of assimilation for half caste Aborigines[2] . Thus this analysis commences from 1940.

As noted in the Executive Summary the last Tasmanian with full Aboriginal ancestry died in 1876. In the period from 1940 the few records that do exist that relate specifically to people of Aboriginal ancestry deal mainly with those that lived on Cape Barren or Flinders Island or had some association with the Islands. These people tended to be referred to as half castes or Cape Barren Islanders.

Prior to 1940 the only substantial reference found to date that refers to these people is the "Cape Barren Island Reserve Act" (see Appendix 2) which was passed by the Tasmanian Government in 1912. This Act created licenses for homestead and agricultural blocks with some conditions associated with the licence e.g. alcohol was

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2 Initial Conference of Commonwealth and State Aboriginal Authorities 12-3 April 1937 Canberra.
From the conference's 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".

restricted and residents were required to continuously reside in their houses for six months of each year.

It is well documented that the health and well being of Cape Barren Island and Flinders Island residents deteriorated during and post the Second World War and that malnutrition and health problems existed on the Islands well into the late 1970s, particularly for Cape Barren Islanders who were totally dependent on outside supplies.[3]

The Government's response to the health and welfare needs of the Cape Barren Islanders, who also resided on Flinders Island, ranged from provision of milk for infants and of local and mainland medical services. There was also consideration given to closing the reserve and moving people away. The State Government held an inquiry into the future of the Cape Barren Island Reserve in 1944 and in 1945 renewed the Reserve Act for only 5 years.

The resulting Cape Barren Island Reserve Act 1945 (see Appendix 3) was an Act to consolidate and amend the law relating to the Reserve. It was essentially the same as the 1912 Act but some conditions on licenses are more rigorous. For example, the licensee and family had to reside on their lease for no less than nine months in a year.

A Tasmanian parliamentary select committee in 1947 inquired into the conditions on the Reserve. It recommended that the Reserve should still be closed in 1951. The following sections of the Committee's report[4] are relevant. (See Appendix 23).

Section 15 stated "After giving long and careful consideration to the half-caste problem the committee reached the conclusion that the Reserve in the interests of the inhabitants and the State, ultimately must be closed, and its population gradually absorbed into the rest of the Tasmanian community."

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3 Health and Nutrition Reports (Health Department 1953 to 1961)
Reports from Bailiff to Director Social Services (File 3/1/6 1943 -54)
Requests from Health Sister for Milk 1943 to 62, and 1970 (Files 3/1/6)
Reports from Bethel Mission 1944 to 54 (Files 3/1/6)
Reports from Headmaster Cape Barren Island 1952 to 68 (Files 3/1/6)

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

Section 17 stated "It was made apparent to the committee that ultimately the Government, must review existing concession[5] under the Cape Barren Island Reserve Act, to the half-castes who, if absorbed gradually into other parts of the State, would in the opinion of the committee eventually become useful citizens. This has been the case with a number of the half-castes who already live in Launceston".

Section 19, III stated "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 a total absorption of the half-castes into 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".

While there is no specific record of children being separated by the Government from their families specifically due to the fact that they had Aboriginal ancestry in the period from 1937 to 1970, there is mention of children being taken into care because of their circumstances. Documentation shows that families with Aboriginal ancestry on the Islands from time to time experienced difficulty in obtaining relief payments, particularly single women responsible for the care of children. It is also evident that what was considered to be inadequate housing and living conditions led to the removal of some children.

Information forwarded to the Director of Social Welfare in 1961 by child welfare officers notes: "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!" The report also notes the influence of the attitude of the health sister on Cape Barren Island. "Sister Perkins attitude to me was openly antagonistic. Her reference

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5 It is understood 'existing concession' refers to the licences of the time.

to this Department (Social Services) as "child snatchers" typifies her attitude. She was very rude indeed." [6]

It is noted in 1962 that officers (from the Department of Social Welfare) visiting the Islands, were chiefly concerned to safeguard the children living there but from time to time it had been necessary to take children into care. It is noted in 1968 that some parents (Cape Barren Island) with children in care of the State could have their children returned if housing was adequate. [7]

The Director of Social Welfare in 1965 rejected a proposed scheme for the placement of children off Cape Barren Island as a response to a letter from the Chief Secretary requesting that the Director approach church people to 'evolve an approach by church people in the South of the State such as the Reverend Ezzy has developed for children from the Northern Territory in the north of the State.' (Holiday and long term placements in northern Tasmania of Aboriginal children from the Northern Territory understood to have been arranged with a mission). The Director of Social Welfare states in his response 'It seems doubtful whether the same kind of scheme could be used to assist children on Cape Barren Island, for the children there are living with their parents, and unlike the children from the Mission have been neither abandoned or removed from parental care. On the information I have, it seems unlikely that parents on the Island would willingly allow their children to leave home. They would possibly allow the children to go for a holiday, as they do from time to time to the Education Department holiday home at Bellerive'. The Director's response continues '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'. [8]

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

7 Correspondence from Director Social Services to Chief Secretary July 68 (Folio 214 3/1/6 1962-68)

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

The Government's policy in this period was to assist people from Cape Barren Island to relocate and resettle on the mainland of Tasmania. It was felt that if 15 to 20 houses were acquired on the mainland 'the Cape Barren Island problem which has been with us for well over a hundred years would virtually disappear in a decade ..... adequate housing may lead to the return of children to their parents'.[9]

Under the Commonwealth definition Cape Barren Island people would qualify as Aborigines for Commonwealth funding to rehouse people from the Islands would alleviate the need for State funds for ongoing medical, educational, welfare and other services to the Island.

While the Government policy of this period was to place children who were removed from their families with relatives where possible, information on personal files indicates that the majority of Cape Barren Island children in State care were placed with non Aboriginal foster carers. It was further considered that the successful foster home was one in which the child is accepted as a member of the family, and 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. (Department of Community Welfare Procedural Manual 1966. (See Appendix 12).

Information from personal files indicates that the Government and the non Aboriginal community's attitude towards Cape Barren Island people may have influenced foster carers in discouraging children in care from having contact with their families during this period. However it is also evident that this attitude was present for non Aboriginal children from socially disadvantaged families.[10]

In 1968 it was acknowledged by the Government that there were Aborigines who had been completely absorbed into the Tasmanian community and were not known to the Department of Social Welfare. The State acknowledged in a report to Australian Aboriginal Affairs

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9 Report from Director of Social Welfare to Chief Secretary July 1968 Folio 114 File 3/1/6 1968-70

10 Personal files on children in care contain regular reports on contact with family and foster parents attitudes to the placement.

Council (AAAC) in 1969 that in addition to the people of Cape Barren Island there were possibly 600 Aborigines in Tasmania and the majority of them were not in need of Government assistance.[11] At this time it was also noted that of the 827 Wards of the State there were 20 children who were identified as Cape Barren Island children. Following this acknowledgement Commonwealth grants were accepted for housing programs for people of Cape Barren Island extraction.

During this period it is also recorded that a number of Cape Barren Island children were assisted by a variety of means to leave Cape Barren and Flinders Islands to complete their education in Tasmania. Records show that it was clearly a common practice for secondary students living on Flinders Island and, particularly on Cape Barren Island, to attend school on the mainland. This affected Aboriginal students on Cape Barren Island especially and there is evidence that this also applied to some primary students. [12]

The Government provided Department of Education funding through bursaries and scholarships, some for children who lived in remote areas and others for academic achievement. Beginning in 1967 with Government funding, a specific scheme for Cape Barren Island children to attend primary and secondary school in Northern Tasmania was introduced. The latter scheme provided for air travel, clothing and books, and it is reported that some of the children stayed in private homes in which case an allowance was paid to the carers.

The Department for Social Welfare also became involved in assisting Cape Barren Island children to access secondary education in the late 1960s. Child Welfare legislation was amended in 1968 to make provision for the Department to make board payments for children who were not Wards of State but who were placed in Approved Children's Homes so that they could attend secondary schools. Other children were admitted as Wards of State by private agreement, and through the Court in neglect cases, so that provision could be made to meet the costs of their care. It is recorded that the placements of

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11 Official Tasmanian Government report to the AAAC 1969 folio 249 File 3/1/6 1962-8

12 Official Tasmanian Government report to AAAC 1971 (File 3/1/6 1972-73)

individual children from Cape Barren Island to attend school whether by section 35 (admittance to State care) or by the 1 July 1968 mechanism (meeting their costs in Approved Children's Homes) were all made on the understanding that children would return home for holidays and long weekends. [13]

Anecdotal evidence indicates that for many children the experience of living away from the Islands during the 1960s and 1970s was an unhappy one and that the benefits of accessing further education were diminished because of their alienation from their families and the discrimination they experienced in the education system and in society. [14]

The Commonwealth Aboriginal Secondary Grant Scheme was introduced by the Commonwealth Government in 1970. The scheme made provision to cover all educational costs, including living arrangements for Aboriginal students and allowed for the families to exercise some autonomy. It is recorded that there were 20 Island students in receipt of this grant studying on the Tasmanian mainland in 1970.

Policies and Practices for the period: 1970s to 1980s

Following the Commonwealth's acceptance of some financial responsibility for the welfare of Aborigines, allocation of funds to the States were received in 1973 for the development of educational, medical, social welfare and housing programs, which aimed to meet the needs of socially disadvantaged Aboriginal people. A number of programs were introduced by the Department of Social Welfare as a result of this funding agreement.

With the aid of Commonwealth Grants through the Aboriginal Affairs Act, the Tasmanian Government was able to start to meet housing needs of the Aboriginal community in Tasmania, including the special needs of those people living on the Islands.

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13 Correspondence from the Director for Social Welfare to Chief Secretary (Folio 95 3/1/6 1968-70)

14 This anecdotal evidence has been obtained from Department of Community and Health Services staff involved in counselling sessions that were held with people that were assessing personal files relating to the period when they were in care.

During the early 1970s it was reported that the majority of families housed through the Aboriginal Assistance Scheme had been long term residents of the Tasmanian mainland, who had experienced housing problems and social disadvantage. Those families who had traditional ties and holdings on Cape Barren Island were advised to retain ownership when considering living off the island.

In a 1974 document it is noted that, 'Assistance with Aboriginal housing and economic enterprises for eligible Tasmanians from the Australian Government Department of Aboriginal Affairs has been generous and a positive result has accrued. Approximately 50 families have been housed, some 8 or 9 fishermen now have their own vessels and other individuals have been enabled to embark upon business enterprises on their own account'. [15]

With the assistance of Commonwealth funds, a Child Welfare Officer was appointed in 1973 for a period of 3 years to do intensive case work with the Islanders, and the Department for Community Welfare gave an undertaking to the AAAC that social work services would be increased for Cape Barren Island people living in Tasmania.

A report to the AAAC 1973 notes that while the 'citizens of Aboriginal origin are not regarded as a separate group of people', policy in relation to Aborigines was under review. [16] (See Appendix 21).

Examples of this includes educational scholarships and family support services. The number of students in receipt of secondary scholarships had increased dramatically to 114 and a newly formed Aboriginal Information Service was established. [17]

In 1974, an Aboriginal Homemaker Service employing Aboriginal women was established to assist Aboriginal families who were socially disadvantaged to help prevent children being separated long term from their families. This program was funded for 3 years and following the success of the program and the withdrawal of

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15 Deputy Director, Department of Social Welfare. BC Hill, 1974 (File 3/1/6 1973-74)

16 Tasmanian Government official report to AAAC 1973 (File 3/1/6 1973-74)

17 Tasmanian Government official report to AAAC 1973 (File 3/1/6 1973-74)

Commonwealth funds, the program became a generalist one (that is, a program that did not only relate to people with Aboriginal ancestry). The supervisor of the Homemaker Service reported in 1978: 'Compounding the general problem of social and economic deprivation, the Tasmanian Aborigines have a particular problem in that on the one hand their cultural existence is denied. On the other hand Aboriginal children are discriminated against by their white peers and are called such derogatory terms as "Abo" or "nigger"'. And further 'The punitive nature of welfare delivery has tempered in recent years and welfare personnel, recognising the trauma involved for children removed from their familial and cultural environment, are loathe to take such action unless as a last resort'. [18]

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 and Commonwealth funds were made available in 1979 for the employment of Aboriginal liaison officers in State Departments. These positions during the 1980s contributed greatly to the improved working relationship between the Government and the Aboriginal community, and encouraged the Aboriginal community to have a say about programs run by and for the Aboriginal community.

Following the transfer of the Aboriginal Homemaker Service to a generalist service, the Aboriginal Family Support Program sponsored by the Tasmanian Aboriginal Centre received funding in 1979.

At this time the State and Commonwealth Governments started to acknowledge that Aboriginal people required specific policies and services. In 1979 a Tasmanian Aboriginal Education Consultative Committee was established; the Tasmanian Aboriginal Centre sponsored a Youth Project to assist a relatively hard core group of young male offenders; the Australian Department of Aboriginal Affairs, in conjunction with State authorities, developed policy guidelines for the fostering and adoption of Aboriginal children and

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18 Homemaker Service Supervisor report to Director to Community Welfare 1978 (Folio 83 File 3/1/6C 1967-78)

Aboriginals in corrective institutions; and Aboriginal participation in the planning and delivery of welfare services was recommended.

While the policy of the Tasmanian Government in 1983 was to provide services on an equal basis to all Tasmanian citizens, it publicly recognised that where Aborigines had needs of a nature that may have alienated them from access to available services, then such special needs should be met by funding from the Commonwealth Government. In the same year States rejected national uniform legislation to ensure Aboriginal people maintained responsibility and care for those children in need of care and protection as they believed it was sufficient to recognise Aboriginal child placement principles within State legislation. [19]

Following the development of Commonwealth Aboriginal child custody, fostering and adoption guidelines in 1983 there was wide consultation within the Department of Community Welfare and the Aboriginal community. These guidelines were circulated in 1980 and accepted in principle by Tasmania in 1983. (See Appendix 14). The Tasmanian Aboriginal Centre reported 'in recent years the Department for Community Welfare has been more willing to involve Aboriginal people in decisions relating to Aboriginal children' but notes that this was an informal arrangement. [20]

During the late 1980s consideration was given on several occasions by the Department of Community Welfare and the Tasmanian Aboriginal Centre to the development of independent Aboriginal foster care services, including group care, and to increasing the number of Aboriginal Departmental foster carers with the Department of Community Welfare.

During the period 1984 to 1986 the implementation of Aboriginal child placement principles faced a number of difficulties including an inability to find sufficient numbers of Aboriginal carers and a lack of motivation by workers and the community to achieve agreed outcomes. Following the agreement by all States to implement these

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19 Social Welfare Administrators Conference Report 1983 (3/1/6A 1978-85).

20 Correspondence from Tasmanian Aboriginal Centre to Department of Community Welfare (Folio 104 3/1/6A 1978-85)

principles further efforts were made to develop Aboriginal Foster Care services.

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 that many Aboriginal shared care values sit uneasily in existing legislative provisions and white Australian shared care values. [21]

In 1992 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.

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

TERMS OF REFERENCE (b)

"examine the adequacy of and need for any changes in current laws, practices and policies relating to services and procedures currently available to those Aboriginal and Torres Strait Islander peoples who were affected by the separation under compulsion, duress or undue influence of Aboriginal and Torres Strait Islander children from their families, including but not limited to current laws, practices and policies relating to access to individual and family records and to other forms of assistance towards locating and re unifying families;"

The Department of Community and Health Services, and previously the Departments of Community Services and Community Welfare have for many years demonstrated a policy of client rights to access personal information, both through the Access and Information Services of the Adoption program and through the Children and Family Services Program.

The Freedom of Information Act, Tasmania 1991 Section 30 and the accompanying Freedom of Information Guidelines set standards for the release of personal information. (See Appendix 11).

The Department of Community and Health Services has developed draft Agency Client Information Guidelines which will be distributed for comment early in 1996. These draft guidelines incorporate much of the policy of the Department of Community and Health Services on Privacy Access to Personal Information developed in 1990. (See Appendix 17). Over the years many Aboriginal people have independently accessed their personal histories however the Department of Community and Health Services has no record of numbers.

The current working policy assists people who have been in the care of, or under, State guardianship to access personal information which is held on file by the Department without making application through the Freedom of Information Act. There is no cost to the applicant. In some situations people request copies of information held on file and this is made available. The general principles on information relating

to third parties in the Freedom of Information Act 1991, Tasmania, are adhered to. (See Appendix 11).

Requests to Department of Community and Health Services Regional Offices or to Corporate Office through the Child, Family and Community Support Program, are accepted either from individuals or from an individual's advocate e.g. legal representative who has that person's written permission. Information held on personal files is often distressing to the person concerned and counselling is made available. There is no record of the number of Aboriginal people who have accessed their personal histories.

In June 1995 the Aboriginal Legal Service in Tasmania offered to assist Aboriginal people to access their personal files. Only two individuals have accepted this offer to date.

People who have been adopted are able to seek information under the Adoption Act 1988 subject to Part VI, Sections 71 to 88. (See Appendix 6) There is provision for relatives to seek information in some circumstances. All parties have to be willing prior to the exchange of personal information. Records indicate that only one Aboriginal child has been adopted since 1980. Specific statistics were not kept prior to this.

The Department holds additional historical and administrative files on Cape Barren Island and Aboriginal issues which are of interest to the Aboriginal community. These files have not been accessed by Aboriginal individuals or the community. Many of the files hold sensitive personal information about individuals, families and the community. No individual, family, community group or organisation has requested historical information to assist with family reunification and no program has been considered for this purpose. A process to provide appropriate access to this information will be considered by the Department of Community Health and Services in consultation with the Aboriginal community in 1996.

TERMS OF REFERENCE (c)

"examine the principles relevant to determining the justification for compensation for persons or communities affected by such separations;"

The Tasmanian Government will address this Term of reference in its final submission.

TERMS 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;"

Current Legislation

Child Welfare Act 1960: (See Appendix 9)

- Section 32 - Neglect proceedings through the Children's Court
- Section 33 - Children Beyond Control - capacity for parents to take action through the Children's Court
- Section 35 - provision for agreement for Director of Community Welfare to assume guardianship

Child Protection Act 1974 (See Appendix 10)

Adoption Act 1988 (See Appendix 6)

The current legislation relating to child protection, child welfare and adoption makes no specific reference to Aboriginal children and their families. The Adoption Act 1988 does make a reference to the rights of relinquishing parents to have their wishes regarded in relation to religion and ethnicity of the placement family.

Proposed changes to child welfare legislation

The Government has completed substantial work on the proposed Children and Their Families and Youth Justice Bills which are to replace the Child Welfare Act 1960 and Child Protection Act 1974. (See Issues Papers at Appendices 24 & 25).

Following wide public consultation about changes to child welfare legislation, the Government agreed in April 1995 to the drafting of new legislation which separates the court functions of child welfare

matters and juvenile offenders and recognises the special needs of Aboriginal children, young people and their families.

The changes are based on the principle that children have a right to grow up safely within their own family and culture, and the Government's responsibility is to assist families in the provision of support services and provide resources to help them meet their responsibilities.

Family conferencing will be introduced as a legally constituted alternative to the court system. The Family Conference approach is based on the belief that most families are capable of drawing on their own strengths and resources and that at times of crisis there is a tendency to exclude families, especially from the decision making process.

The proposed child welfare legislation will allow for the members of the child's family and other significant adults, to be involved in decisions about the ongoing safety and well being of children in need of care and protection as an alternative to the court process for the resolution of protective issues. The Government has further agreed to include reference to the Aboriginal child placement principles (See Appendices 18 & 19) for children who require placement away from their families and to make provision to provide resources in specific circumstances to reduce the incidence of children with special needs entering State care.

In the proposed Youth Justice Legislation family conferencing will become a legal option for dealing with young offenders, in some circumstances. This will provide opportunities for the Aboriginal community to be involved in the Youth Justice system.

The views of the Aboriginal community will be taken into account during the drafting of the Children and Their Families Bill and the Youth Justice Bill and in the development of culturally appropriate procedures and guidelines for the family conferencing process to ensure that the special needs of Aboriginal children, young people and their families are met.

These proposed changes to Tasmanian legislation support the principle of self determination by Aboriginal people.

Current and future practices

Following a lengthy review of the Aboriginal Support Program in 1991 a detailed formal agreement between the Department for Community and Health Services and the Tasmanian Aboriginal Centre (See Appendix 22) established procedural arrangements between the Department and the Aboriginal community in relation to child protection and child welfare services. In 1992 The Tasmanian Aboriginal Centre received increased funding to ensure a State-wide response to Aboriginal children in need of care and protection and/or respite and emergency care through a Family Support and Care program.

This agreement attempts to ensure that the assessment and case management of Aboriginal children deemed to be in need of care and protection is culturally sensitive, in the child's best interest and follows where possible the Aboriginal Child Placement principles. It makes provision for the exchange of information between the Department and the Tasmanian Aboriginal Centre on the circumstances of Aboriginal children who are on the Departments caseload or who are notified to the Department and for the inclusion of Aboriginal advocacy in assessment and case planning.

The North West, Northern and Southern Regions of Department of Community and Health Services report that some Aboriginal families reject the active involvement of the Aboriginal community. Regions further report 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 for some years remain with non Aboriginal carers.

The Family Support and Care Program assisted over 200 Aboriginal families in 1994-95 and provided respite care for 100 Aboriginal children and long term care for 8 Aboriginal children.

While the Tasmanian Aboriginal Centre has raised some regional issues in relation to the program, it 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 in relation to reporting agreements. [22] The program is currently due for review and it is anticipated that these problems will be addressed.

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. In spite of this Tasmania's Aboriginal child population remains over represented in the child welfare system. While Aboriginal children represent an incidence of 3.7% of the under 18 Tasmanian population, they account for 10% of children under guardianship.

This translates to an incidence of ~~7.4%~~ 0.74 in the Aboriginal child population compared with an incidence of ~~2.7%~~ 0.27 in the general child population. 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. (1991 reports 41 Wards compared with 30 as at June 1995). Given the increased numbers of Aboriginal children in the projected 1994 census of Aboriginal people this decrease may be quite significant. [23]

While the numbers are decreasing both the Aboriginal community and Government remain concerned that they are too high. For those children in State care, the Government's policy is to support children's rights to a safe environment in which to develop and their rights to their biological and cultural heritage through the Aboriginal Child Placement Principles. (Family Services Operational Manual 1993 See Appendix 18).

Aboriginal children are also over represented in the criminal justice system as young offenders. 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

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22 Tasmanian Aboriginal Centre correspondence (File HO3769/1)

23 Child Welfare Information System Department of Community and Health Services

explained by a complex interrelation of factors". [24] 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. Over representation within the Youth Justice system is compounding because it effects subsequent police and court decisions.

In 1994/95 18% of the young offenders, 11 male and 1 female, admitted to Ashley Youth Detention Centre were Aboriginal. Three of the young males were admitted twice in that period.

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 development and implementation.

Future strategies will include the involvement of the Aboriginal community in the development of culturally appropriate family conferencing procedures, further negotiations with relevant Aboriginal organisations in the development of an Aboriginal Youth Justice Strategy, continued involvement of the Aboriginal community in the assessment and case planning for children and young offenders and further cultural awareness training for workers.

It is anticipated that these strategies, together with other Government strategies and the proposed changes to legislation, will help to empower the Aboriginal community to accept responsibility and manage the care and protection of Aboriginal children and young offenders.

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24 Royal Commission into Aboriginal Deaths and Custody Volume 2 page 274

CURRENT ADVANCES

The Government has made significant advances in reconciliation with, and understanding of, the Tasmanian Aboriginal community. The Premier has given a public undertaking that the Government would work with the Aboriginal community to build a relationship of trust and understanding to achieve results.

On the 16 December 1993, the Premier released a paper on Tasmanian Aboriginal People entitled "A Step Towards Full Recognition and Appreciation". (See Appendix 20). In it the Government stated that it is time the broader Tasmanian community gave full recognition to the unique contribution Aboriginal people have made, and will continue to make, to our State.

The statement also announced a number of initiatives in the portfolio area of Aboriginal Affairs including: recognition of Aboriginal people; the establishing the Office of Aboriginal Affairs; its intention to host a public Aboriginal Forum; and the recognition of land as an important issue to be negotiated.

A Step Towards Full Recognition and Appreciation marked the first step towards achieving full and proper recognition of Tasmanian Aboriginal People, their heritage and culture.

As a demonstration of the Premiers commitment to the Aboriginal community he created a separate Aboriginal Affairs portfolio and formally became the Minister for Aboriginal Affairs.

In April 1994 the Government established the Office of Aboriginal Affairs within the Department of Premier and Cabinet to manage, co-ordinate, and advance Aboriginal issues. This Office is staffed by Aboriginal people.

The primary function for the Office is 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 has a number of fundamental goals which are:-

1. Be a primary resource and adviser for Government on all policy issues affecting Aboriginal people.

2. Through high level consultations with the Aboriginal community accurately represent an Aboriginal view to Government to advance Aboriginal Affairs in Tasmania.

3. 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.

4. To facilitate the development of an environment in which the Aboriginal community is assisted to achieve self-management and economic independence.

5. To promote, greater understanding, appreciation and acceptance of Aboriginal culture and its ongoing contribution to the Tasmanian community.

The Aboriginal Forum took place at the Wrest Point Casino on Saturday 21 May 1994 and was attended by the Premier, all Cabinet Ministers, the Leader and Deputy Leader for the Government in the Legislative Council. A total of 40 Aboriginal people attended (representing 15 Aboriginal incorporated organisations) ATSIC officials and ATSIC Regional Council committee members.

Consultations took place with all Aboriginal groups and a large number of individual members of the Aboriginal community prior to the Forum in an attempt to identify and develop their issues of concern likely to be raised at the Forum and to outline the Government's intentions in announcing the Forum.

The aim of the Forum was to develop an ongoing dialogue to enable the discussion of a range of issues in a formal but open way. The Forum further developed the Governments understanding of Aboriginal issues in Tasmania. Issues, canvassed included land ownership and management, heritage and culture, economic development, tourism ventures, health and housing, women's issues and Aboriginal deaths in custody.

The focus of the Forum was to co-operatively identify policy issues that can be advanced through negotiations with the Aboriginal community. It was the beginning of an ongoing and progressive partnership.

The forum was a truly historic meeting probably the first ever meeting where the entire Cabinet of any Government has sat down with the Aboriginal community to discuss issues of concern. Certainly the first time any Tasmanian Government has recognised the Tasmanian Aboriginal community in this way.

The discussions were frank and sincere and helped create greater mutual respect and understanding between Government and the Aboriginal community. From the forum discussions, a better understanding of how Government should work together with the Aboriginal community to move forward was gained.

On 31 August 1994 the Premier and Deputy Leader for the Government in the Legislative Council met with approximately 250 members of the Aboriginal Community in Launceston. A working party was elected by the Aboriginal community present at the meeting to continue negotiations with the Government.

The working party met with the Aboriginal community around the State to discuss a number of specific issues particularly the question of the return of land. They then met with the Premier a number of times to put the Aboriginal communities view.

As a result of these discussions the Government, in partnership with the Aboriginal community developed an Aboriginal Lands Bill. The Bill consolidated the advances in understanding and working together made by both the Aboriginal community and Government.

The Aboriginal Lands Bill is one of the most historical and culturally significant pieces of legislation to be introduced into the Tasmanian Parliament. It signalled a commitment to the reconciliation process with the Aboriginal community and is a major step towards full recognition and appreciation.

Further it recognised the special attachment Aboriginal people have to land and it reinforces the legitimacy of Aboriginal culture amongst the Aboriginal and non-Aboriginal community.

The fact that titles to significant pieces of land are being transferred to the Aboriginal community without heated debate and controversy is evidence of a more tolerant and understanding Tasmanian society that existed in the past. It also clearly indicates that the Governments process of reconciliation is having a meaningful impact on Tasmanian society.

The legislation will further promote recognition and reconciliation with the Tasmanian Aboriginal community. The land will be vested in perpetuity to the Aboriginal Land Council of Tasmania which will manage the sites on behalf of the Aboriginal community.

The Aboriginal community will be able to further the needs of their own people by being able to finance specific Aboriginal programs, designed to fulfil their needs both financially and socially.

It will also be of great benefit to Aboriginal families who will have the opportunity to re-establish traditional links with the land which have been disrupted in the past as well as helping to raise awareness and appreciation of Aboriginal culture and giving pride and a legitimacy amongst themselves and the non-Aboriginal community.

Far from being divisive, the passage of the Aboriginal Lands Bill will have a positive, unifying effect within Tasmanian society generally.

This State Government has made a significant start in advancing its relations with the Tasmanian Aboriginal community, building a relationship of trust and understanding that has achieved significant results.