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by

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As with all issues in the Reports and Proceedings series, the views expressed in this number do not necessarily represent any official position on the part of the Centre. The Reports and Proceedings are produced to make available the research findings of the individual authors, and to promote the development of ideas and discussion about major areas of concern in the field of Social Welfare.

FOREWORD

Among the many areas of Social Welfare research that the Social Welfare Research Centre has engaged in since it became established five years ago, welfare issues related specifically to Australian Aborigines have received relatively little attention. This omission has not been due to any lack of concern at the Centre in welfare issues concerning the Aboriginal population but rather to the difficulty of allocating the limited resources of the Centre to all areas of welfare.

Richard Chisholm's research monograph is, in fact, the first of the Centre's publications concerned exclusively with social policy and social welfare issues related to the Aboriginal population and especially to Aboriginal children. The source of data for the study comes from the State of New South Wales, but the issues raised in the study clearly extend beyond the boundaries of that State, to Australia as a whole.

The particular value of Richard Chisholm's study lies not only in the depth of perception and analysis but also in that it clearly and forcefully demonstrates the importance of historical perspective in the understanding of current issues and problems encountered in the provision of welfare services to the Aboriginal community. Past policies and practices weigh heavily on current endeavours, affecting reciprocal attitudes, responses, and relationships between the policy makers and service providers on the one hand and the Aboriginal population on the other. Even with the progress achieved in that relationship over recent years, current problems are far from being solved.

We are indeed fortunate to have been able to assist in Richard Chisholm's study, and we are certain that the readers will find this report of considerable interest and offering a great deal of food for thought.

Adam Jamrozik
Acting Director
Social Welfare Research Centre.

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INTRODUCTION

This is a study of Aboriginal child welfare. The main focus is on New South Wales, but the issues confront people in all parts of Australia.

Is there such a thing as Aboriginal child welfare? Should there be? The initial response of many people might be that laws and policies should not in any way distinguish between Aboriginal and other children. Laws and policies which make any such distinction between children of different races seem contrary to current notions of equality. Should we not be striving towards a child welfare system in which it makes no difference whether a child is black or white?

The purpose of this study is to show that whether this is the right goal for child welfare is a remarkably complex question. Many Aboriginal people believe that it is not. They yearn for a future in which they, as Aboriginal people,have control over their destiny and the right to pass on to their children what it is to be Aboriginal. Many have bitter memories of attempts by white people to "assimilate" them, and of the use of child welfare laws to take their children away; away from their homes and communities, and often more than that away from their identity as Aboriginal people. For them, laws and policies based on simple notions of equality and non-discrimination mean a society in which the original invasion and theft of their land become legitimated through the gradual disappearance of any identifiable Aboriginal identity. Aboriginal concerns about their children and the child welfare system, as much as about land rights, touch on wider claims to justice.

This study, then, attempts to consider Aboriginal child welfare in the light of these wider issues.

Chapter 1 explores the painful history of Aboriginal child welfare in New South Wales. The Aborigines Protection Board and Aborigines Welfare Board, which were abolished only in 1969, administered a separate system of Aboriginal child welfare based explicitly on policies involving the eventual disappearance of Aboriginal people. Despite the major changes that have occurred since those times, their bitter legacy must be understood by anyone attempting to deal constructively with issues of Aboriginal child welfare

today.

Chapter 2 considers Aboriginal perspectives on child welfare; these must be the starting point for any programme which seeks to recognise Aboriginal aspirations.

Chapter 3 examines a variety of recent policies and practices developed by the New South Wales Department of Youth and Community Services ("the Department"). This chapter presents the results of some limited empirical research on the admission of Aboriginal state wards, on the work of a particular community welfare officer of the Department, and on non-Aboriginal foster parents of Aboriginal children.

Chapter 4 discusses these policies and practices (and also recent work of State Social Welfare Administrators to develop a uniform policy on Aboriginal fostering and adoption). Do the new policies reflect the Aboriginal perspectives identified in Chapter 2? To what extent do they translate into the child welfare area current governmental policy for Aboriginal "self-determination"? What are the appropriate directions for the future?

For a non-Aboriginal researcher, research in Aboriginal affairs bristles with difficulties[1]. Aboriginal people have come to resent being merely the subjects of research. If the research has no usefulness in forming policy, then its Aboriginal subjects may feel they have been the object of idle curiosity. If it is relevant to the formation of policy, it can reinforce the claim of non-Aboriginal people to be the "experts" on Aboriginal affairs, since they, and not Aboriginal people themselves, have the information produced by the research.

Again, any serious researcher would want to take account of Aboriginal views and perceptions. But it is notoriously difficult for outsiders to get such things right. Even well informed outsiders, having profoundly different life experiences, are unlikely to present the matter in quite the way it would appear to Aboriginal people. Thus there is always the risk that the researcher will unwittingly become part of the problem, being yet another white person holding forth on what Aboriginal people want and need.

On such a minefield it is difficult not to stumble, and readers are entitled to know something of the origins and approach of this study, so that

they can form their own views on its value.

I first became involved in Aboriginal affairs in 1970, being a founding member of the Aboriginal Legal Service[2]. Within a few years the governing body of the Service had become all-Aboriginal, and it received funding to employ solicitors, rather than having to rely, as it originally did, on the voluntary efforts of the lawyers and others who were involved at the start. I had little further contact with Aboriginal Affairs until 1981, when I invited some Aboriginal people to speak to students at the University of New South Wales in a course on children and the law. I was later asked to speak at a meeting of Aboriginal people to discuss what was then the Community Welfare Bill 1981 (N.S.W.)[3]. I was stimulated by that meeting, and by the encouragement of several Aboriginal and non-Aboriginal friends, to do some research on Aboriginal child welfare, and much of the research was carried out in 1982, when I had a period of study leave.

One part of the research consisted of visits to several Aboriginal communities on the North Coast, the South Coast, and in the North Western region of the State. (I prefer not to identify the communities lest some of what I have written could be traced to individuals). These visits were made possible through the Aboriginal Legal Service Ltd. which provided me with a letter of introduction. They enabled me to learn at first hand something of the circumstances of Aboriginal life, and of the concerns of Aboriginal people relating to child welfare. I spent much of these visits with officers of Aboriginal organisations, and with Aboriginal people employed in government service (with the Department or, say, the Health Commission), I also spoke with other Aboriginal people in the communities, who told me of their personal involvement with the child welfare system, and, inevitably, tragic stories of the old days of the Aboriginal Protection and Welfare Boards. I spent some time too with officers of the Department of Youth and Community Services and other departments, such as Health and Education.

I learned something of developments in other parts of Australia through visits to Victoria and South Australia, and on two occasions — Adelaide in 1982 and Townsville in 1984 — met with delegates to the national body of Aboriginal Child Care Agencies. In addition to these visits, I spent many hours in Sydney talking with Aboriginal people working in the child care area, including staff at the Aboriginal Children's Service, at the Department's specialist Aboriginal centre "Gullama", and at its Head Office. I also spoke

with the Department's Aboriginal community workers, and Aboriginal people working with the Aboriginal Children's Research Project. Those sections of this study that discuss Aboriginal viewpoints are based on all these discussions as well as the written sources cited.

The Aboriginal Children's Research Project was based on a model of research which emphasised a considerable degree of Aboriginal control, and had what was described as an "action/research" orientation[4]. Other recent studies in Aboriginal affairs have had similar characteristics[5]. To some extent, this study was also based on such ideas. Several papers were written for the use of Aboriginal organisations, and representations were made in particular cases: these included a report to a children's court on behalf of a child, a submission to the Housing Commission seeking housing for an Aboriginal mother who would otherwide have lost her child, involvement in a case conference (described in Chapter 3) and the writing of several papers for Aboriginal child care organisations. The ideas, and various drafts which were later incorporated into this study, were discussed frequently with Aboriginal people privately and at several seminars at which Aboriginal people were well represented. Thus although this project has not been under Aboriginal control, there has been considerable collaboration with Aboriginal people throughout, in an effort to reduce the inevitable distortion of Aboriginal perspectives that occurs when an outsider writes about them. Nevertheless, I accept full responsibility for the result. I hope that Aboriginal people as well as non-Aborigines find this study useful, but this is of course a matter for them.

The study also includes some less "impressionistic" empirical research. With the co-operation of the Department, a survey was made of all children admitted as state wards over a twelve-month period. Information was based on returns from the Department's Regional Offices. A second study was based on a visit to a particular community welfare office of the Department: an analysis was made, based on interviews and a study of the files, of all Aboriginal children who were wards of that particular office at the time. It is not known, of course, how representative were these cases, but they provide some insight into the range of issues that arise with Aboriginal children, and give some indication of the translation into practice of some recent policies of the Department. Finally, again with the help of the Department which identified the sample, a study was made of a group of non-Aboriginal foster parents who had Aboriginal foster children, examining their attitudes and experiences. All

these are discussed in chapter 3.

Nevertheless, the study does not draw primarily on statistical material. The essential concern is with the development of appropriate laws and policies for Aboriginal child welfare. Unfortunately, we do not have a reliable data base for much that we would like to know. For example, we do not know the rate of breakdowns in foster placements of Aboriginal children, and cannot systematically compare, for example, the "success" of placements with Aboriginal and non-Aboriginal families. The collection of such information is a very complex research task, for notions like "breakdown", let alone "success" prove to be elusive and value laden. Is it a "breakdown" of a placement if the child returns to members of the extended family? Is it a "successful" placement if an Aboriginal boy develops into an aggressive person who succeeds in the non-Aboriginal community but looks down on his Aboriginal relatives? Is it a "failed" placement if an Aboriginal girl returns to her community and, say, bears a child outside wedlock at the age of 17? No amount of statistical information can allow us to escape from the uncomfortable fact that evaluation of such matters may depend very much on whether one adopts the values of the Aboriginal or the non-Aboriginal community.

Limitations of space have prevented the inclusion in this report of some of the research material produced in the course of the study. In particular, a comparison of the rates of recorded offending by Aboriginal juveniles in two Aboriginal communities, and a detailed study of adoption law, have been omitted. In addition, some issues have inevitably been treated briefly, or not at all.

Something must be said about the sense in which "Aboriginal child" is used in this report. The term refers to any person under 18 years having Aboriginal descent. This is a wide definition, for it includes some children who may have little or no contact with the Aboriginal community, and may not identify as Aboriginal. (The term Aboriginal should be understood to include Torres Strait Islanders; in a study which is primarily concerned with New South Wales, it is unnecessary to discuss this aspect further). It is adopted here mainly for two reasons. First, because the report deals with issues that are potentially relevant to all Aboriginal children so defined. Consider a child of an Aboriginal father and a white mother, adopted into a white family. It is a very difficult question whether any legal or other measures based on the child's Aboriginality should apply to such a child. Certainly

many Aboriginal people would argue that such children have a right to continued recognition of their Aboriginality, and this right should be recognised by laws and welfare policies. The wide definition serves the purpose of including such difficult cases into the debate. Whether in the end particular legal or other provisions should apply to all children having some Aboriginal descent is a very difficult issue which should be the subject of detailed consideration by Aboriginal and non-Aboriginal people concerned with child welfare; it would therefore be wrong to include such children from consideration by adopting a narrow definition.

The second reason for adopting such a wide definition of "Aboriginal child" is that this seemed to be the definition adopted, or taken for granted, by all the Aboriginal people with whom I spoke. Many Aboriginal people deeply resent previous attempts by the legislature to define them in ways that reflect the purposes of the law makers, but may have no meaning for Aboriginal people themselves. In particular, definition according to the extent of Aboriginal descent overlooks the fact that this factor may have very little correlation with how far an individual identifies as Aboriginal. Appearance is equally misleading, and would be far too impressionistic and offensive to be workable as a definition for legal or other purposes. In the case of adults, a generally accepted definition has been worked out for administrative purposes[6]. It involves three components: some Aboriginal descent, self-identification as Aboriginal, and acceptance as such by other Aboriginal people. Despite its circularity, this definition seems to be quite workable in practice, and acceptable to both Aboriginal and non-Aboriginal people.

Unfortunately, this definition cannot be readily adapted to children, for in many cases, especially with younger children, the question of identification is what has to be determined. The appropriate definition of "Aboriginal child" for particular purposes is a matter of great difficulty, especially in New South Wales where there are very few if any children of full Aboriginal descent. It is one of the matters on which there needs to be detailed consultation and co-operation with Aboriginal people before a decision is taken. It may be that different definitions will be appropriate for different legal rules and welfare policies. The problem of definition has received surprisingly little treatment in the literature. Perhaps this is because until general policy issues are resolved — and these matters are the focus of this report — there will be no basis on which to prefer one definition to another. The most appropriate definition of "Aboriginal child" for legal and other purposes, therefore, must

be added to the large list of issues not fully canvassed in this study.

I hope, nevertheless, that the present discussion may shed some light on the nature of the choices that face those who would improve child welfare laws and policies relating to Aboriginal children. In particular, I hope that the study will help Aboriginal and non-Aboriginal people understand each other's positions better as they try to work to promote the welfare of Aboriginal children. The need for such understanding is vividly illustrated by the following incident, in which an obviously sincere initiative by the Department aroused a great deal of anger among Aboriginal people.

On Saturday 4 February 1984 the Sydney Morning Herald ran a front page story entitled ABORIGINAL CHILDREN ADVERTISED LIKE DOGS. An advertisement had been placed by the Department of Youth and Community Services in certain country newspapers seeking adoptive parents for three Aboriginal children. The advertisement read (in part):-

> M, 6, and J, 5, are brothers of Aboriginal descent. They need a strong loving family where the present children are teenagers or older. M likes to swim, ride his bike and is a good runner. He is often in trouble and he needs to be constantly reminded of the house rules. He is a slow learner and he can be a very tiring and sometimes aggressive little boy. J is a bright, good looking boy and he also loves to run and be outside. He gets on much better with older children than does M.. ..

The advertisements brought an outcry from the Aboriginal community. According to the Herald, several Aboriginal organisations complained that the children were advertised "like dogs of the week". The Tharawal Aboriginal Welfare Centre at Campbelltown was reported as describing the advertisement as "an obscene form of colonialism". Later the advertisements were to be condemned by a national organisation of Aboriginal Child Care Organisations.

Departmental representatives protested their innocence, apparently in vain. The advertisements had been placed in 14 country newspapers circulating in areas where there was a large Aboriginal population with a view to finding Aboriginal families for the children. Departmental staff must have been bewildered by the Aboriginal reaction. The Department was, after all, actively seeking to place the children with Aboriginal families in accordance with Aboriginal demands that the child welfare system should not be used to separate

Aboriginal children from their own people.

Such misunderstandings continue to bedevil Aboriginal child welfare, even when the welfare authorities are making real efforts to adapt their policies to the needs and wishes of Aboriginal people. The resulting tensions can work to the detriment of Aboriginal children, for they undermine the effort of many people, black and white, to create a system of Aboriginal child welfare that is appropriate to the situation of Aboriginal children in the 1980s and beyond. This study is intended to be part of that effort.

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Finally, I am grateful to the Social Welfare Research Centre and the Faculty of Law at the University of New South Wales for various forms of support for the study and to the University itself for granting a period of leave during which most of the research was carried out.

CHAPTER 1

HISTORICAL BACKGROUND

1. INTRODUCTION

We start with an Aboriginal woman, Margaret Tucker, recalling a conversation from the early years of this century[7]:-

> I overheard my grandmother talking with my mother about the so-called Aborigines Protection Board, which had the policy of taking all the girls who reached the age of twelve or thirteen to the Domestic Training Homes for Aboriginal Girls at Cootamundra. Neglected boys and girls were also taken there. The boys were to be trained as stockmen and in other farm work, but they could have learned this on the stations and farms around, without being taken from their parents. Our Aboriginal families lived in constant fear, especially the parents....

Margaret remembered that conversation some time later, when she was back "home", at Moonahculla Reserve. She was at school. It was 1917, and she was aged 13. The children were excited to hear the "unmistakable sound of a motor car", then a rare and newsworthy occurrence. Some of the children dared to look through the window when the teacher was called outside, and saw a policeman talking with Mr and Mrs Hill, who ran the school. Then Mr Hill told all the children to leave the school, except for Margaret and two other girls. The rest of the story may be told in Mrs Tucker's own words:

> I had forgotten about Brungle and the gang of men representing the Aborigines Protection Board who had visited when we were staying there. But then it came to me in a rush! But I didn't believe for a moment that my mother would let us go. She would put a stop to it! All the children who had been dismissed must have run home and told their parents what was happening at school. When I looked out that schoolroom door, every Moonahculla Aboriginal mother — some with babies in arms — and a sprinkling of elderly men were standing in groups. Most of the younger men were away working on homesteads and sheep stations or farms. Then I started to cry. There were forty or fifty of our people standing silently grieving for us. They knew something treacherous was going on, something to break our way of life. They could not see ahead to the white man's world. We simply accepted the whites as a superior race. Around that particular part of Australia, I feel we were fortunate in having a kindly lot of white station owners.

Then suddenly that little group were all talking at once, some in the language, some in English, but all with a hopelessness knowing they would not have the last say. Some looked very angry, others had tears running down their cheeks. Then Mr Hill demanded that we three girls leave immediately with the police.....As we hung onto our mother she said fiercely, 'They are my children and they are not going away with you.'

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

'Mrs Clements', he said, 'I'll have to use this if you do not let us take these children now.'

Thinking that policeman would shoot Mother, because she was trying to stop him, we screamed, 'We'll go with him Mum, we'll go.' I cannot forget any detail of that moment, it stands out as though it were yesterday. I cannot ever see kittens taken from their mother cat without remembering that scene. It is just on sixty years ago...

Then the policeman sprang another shock. He said he had to go to the hospital to pick up Geraldine, who was to be taken as well. The horror on my mother's face and her heartbroken cry! I tried to reason why all this was happening to us, and tried not to think.

All my mother could say was, 'Oh, no, not my baby, please let me have her. I will look after her.'

As that policeman walked up the hospital path to get my little sister, May and Myrtle and I sobbed quietly. Mother got out of the car and stood waiting with a hopeless look. Her tears had run dry I guess. I thought to myself, I will gladly go, if they will only leave Geraldine with Mother.

'Mrs Clements, you can have your little girl. She left the hospital this morning,' said the policeman.

Mother simply took that policeman's hand and kissed it and said, 'Thank you, thank you.'

Then we were taken to the police station, where the policeman no doubt had to report. Mother followed him, thinking she could beg once more for us, only to rush out when she heard the car start up. My last memory of her for many years was her waving pathetically, as we waved back and called out goodbye to her, but we were too far away for her to hear us.

I heard years later how after watching us go out of her life, she wandered away from the police station three miles along the road leading out of the town to Moonahculla. She was worn out, with no food or money, her apron still on.

> She wandered off the road to rest in the long grass under a tree. That is where old Uncle and Aunt found her the next day. They had arrived back with Geraldine from the Deniliquin hospital and they were at once surrounded by our people at Moonahculla, who told them the whole story. Some immediately offered the loan of a fresh horse to go back and find Mother. They found our mother still moaning and crying. They heard the sounds and thought it was an animal in pain. Uncle stopped the horse and got out of the buggy to investigate. Auntie heard him talking in the language. She got down and rushed to old Uncle's side. Mother was half demented and ill. They gave her water and tried to feed her, but she couldn't eat. She was not interested in anything for weeks and wouldn't let Geraldine out of her sight. She slowly got better, but I believe for months after, at the sight of a policeman's white helmet coming round the bend of the river, she would grab her little girl and escape into the bush, as did all the Aboriginal people who had children....

What can explain such cruelty? The irony is that is was administered by people whose powers stemmed from a responsibility to protect and promote the welfare of Aboriginal people. Such experiences have profoundly affected Aboriginal people, and still today cast a shadow over attempts by non-Aboriginal people to intervene in Aboriginal affairs, especially where children are concerned. Aboriginal people cannot, and white people should not, forget a past which has so tragically soured black and white relations. The first task of those who wish to work constructively for the advancement of Aboriginal children is to learn from the history of Aboriginal child welfare in New South Wales.

2. THE ORIGINS OF ABORIGINAL CHILD WELFARE IN NEW SOUTH WALES: 1788-1883

The story of Aboriginal child welfare in New South Wales must largely focus on the work of the Aborigines Protection Board (later to become the Aborigines Welfare Board), which functioned from 1883 to 1969. There were some significant early attempts by the Europeans to intervene in the lives of Aboriginal children. Some individuals would take Aboriginal children into their homes for the purpose of educating them (and, it seems, making use of their services). There were also early attempts to provide institutional care, notably "the Native Institution" at Parramatta, which existed from 1814 to 1829[8].

These early efforts at "civilizing" the children appear to have been largely failures. Although the children impressed with their ability to learn

quickly, the experience of institutionalised learning did not bring about an adoption of European values and life styles in preference to Aboriginal. Nevertheless, they may have had considerable importance as models for later attempts by the European authorities to implement their policies through work on Aboriginal children. Ironically, too, the failure of the initiatives, which today might be explained as Aboriginal resistance to the threatened loss of their culture, may have reinforced the stereotype "that Aborigines were inferior, unable to learn, and were fit only to fade away before the progress of civilization"[9].

The creation of the Aborigines Protection Board in 1883 emerges from a growing perception in the nineteenth century of the damage done to Aboriginal people by the European occupation, and from an unquestioning sense of the superiority of the British culture and Christian religion.

A House of Commons Select Committee in 1836 had considered Aborigines to be "barbarous"; "the least-instructed portion of the human race in all the arts of human life". In addition, "intercourse with Europeans has cast over their original debasement a yet deeper shade of wretchedness"[10]. It recommended the appointment of "Protectors of Aborigines", but was not very specific about their role.

As to children, the Committee had merely reported that

> The education of the young will of course be amongst the foremost of the cares of the missionaries; and the Protectors should render every assistance in their power in advancing this all important part of any general scheme of improvement.

A more detailed view of the role of the Protector was given by the Rev. John Dunmore Lang, whose evidence to the Committee captured the spirit of the system of Aboriginal child welfare later to be established under the name of "protection" for Aborigines. Lang spoke of the duty of the government

> to educate their offspring, and thereby, if possible, to wean them from the habitudes of savage life[11].

The first Protector, significantly the Commissioner of Police, was appointed in 1881, to be replaced in 1883 by the Board for the Protection of Aborigines (here referred to as "the Board")[12]. The Minute establishing the

Board did not set out its objectives or strategies in detail.

The Aborigines Protection Board was duly established in June 1883, with no clear guidelines and no legislative base. It was to administer a separate system of Aboriginal child welfare until 1940, and in its reincarnation as the Aborigines Welfare Board, from 1940 to 1969.

3. CREATING INMATES AND APPRENTICES: THE ABORIGINES PROTECTION BOARD 1883-1940

The parliamentary debates of the time refer to the need to take "near-white" children from their mothers and train them in institutions, and to the work of the Aborigines Protection Association, which was apparently showing on its missions at Maloga and Warrangesda that "half-castes" could be trained to be "useful members of society"[13]. The Board's work with Aboriginal children involved systematic efforts to train, civilize, and educate them. Here is a statement from the Board's second report, for the year 1884[14]:

> We have striven to induce parents to sent their children to school, offering every inducement to them to do so, chiefly by providing decent clothing for them and granting a half-ration of food to all who regularly attend.
>
> The results so far are most gratifying: we have received specimens of the children's handwriting, and are informed that they and their parents are proud of their improvement under instruction, and we look forward hopefully to such children being in time reclaimed from the uncivilized and degraded condition in which they have hitherto existed, and taking their place — as they are well fitted by their natural intelligence to do — amongst the industrial classes.

Although the Board was anxious to tackle what it saw as the problem of Aboriginal children, until 1910, as we will see, it had no legislative authority over Aboriginal children as such. Early reports state that some Aboriginal youths were placed in service or "apprenticed"[15], but the number was "comparatively small"[16] and the Board argued for legislation giving it powers enabling it to increase the number[17]. Also some girls were not remaining in their situations and the parents "refused to assert their authority" to make them do so[18]. If children were to be subjected to a different system of education and early socialisation, clearly they would

have to be removed from the influence of their parents and communities. How could this be done? The Board developed two basic strategies: institutionalising children on reserves and elsewhere, and placing them with European families.

Institutions for Aboriginal Children

Rowley has written that white settlement in Australia has meant "the progress of the Aboriginal from tribesman to inmate"[19]. This was especially true for the children. On the larger "stations", such as Warrangesda, the children were removed to dormitories where they ate and slept separately from their parents. This practice, established by the missionaries, and continued by the Board, writes Rowley, was intended

> to break the sequence of indigenous socialisation so as to capture the adherence of the young, and to cast scorn on the sacred life and the ceremonies which remain as the only hold on continuity with the past[20].

The Board's reports show that at Warangesda Aboriginal people protested as early as 1890 about the removal of their children to the station dormitory; and in 1906 they refused to allow their daughters to be placed in the "Girls' Training Home" at the station[21]. Former inmates of these institutions have since published accounts of their experiences, and bitter stories they are, of harsh beatings, confinement in dark rooms, loneliness and sexual abuse by managers and their sons.

A more developed form of intervention, however, was institutional care away from parents and community, and this, too, came about in later years. By 1920 the system was well established. Children under 10 who came into the Board's custody were sent to Bomaderry near Nowra where a Home was managed by the United Aborigines Mission. Girls over 10 went to the Cootamundra Home, fully established in 1912 and staffed by employees of the Board; boys were sent to a Training Home established in 1902; from 1924 it was at the Kinchela station.

Placements in European Homes

The second method of socialising the children away from their parents and Aboriginal identity was the placement of children in European homes. The

Board mainly did this through the system of "apprenticeships", a misleading title for a program in which "the very large proportion of boys became the employees of agriculturalists, while the girls became domestic servants"[22].

At first, the Board initiated the apprenticeship scheme without legal authority, using forms of persuasion that included the withholding of rations. When children, victims of mistreatment in their placements, escaped to their homes, the Board complained that the Aboriginal parents refused to make children return to their employment[23]. In 1910, the Board succeeded in obtaining legislative power to place Aboriginal children in apprenticeships. The Board still complained that it was necessary to obtain parental consent, but used "every endeavour" to apprentice as many children as possible. In the Board's view, the interests of these children neatly coincided with the interests of those who wanted to use their labour("for... various reasons the supply of suitable apprentices is not equal to the demand") and the state's interest in minimising expenditure ("unless the half-castes and quadroon population is to become a burden on the state, they must be made to recognise that all those who are able to do so must leave the reserves and earn their own livelihood"). In a chilling sentence in the 1910 report (from which the above quotations are also taken), the Board shows that these plans were for life:-

> The Board recognise that the only chance these children have is to be taken away from their present environment and properly trained by earnest workers before being apprenticed out, and after once having left the aborigines' reserves they should never be allowed to return to them permanently[24].

Aboriginal Child Welfare under the Protection Board: An Overview

1912 marked the beginning of the Board's systematic intervention into children's lives. The girls' home at Cootamundra, with a capacity of 25, was established[25]. The Board appointed a new officer called a "homefinder". An ironic title indeed: the officer's task was to place girls away from their homes into an institution (Cootamundra) and thence to employment as servants or apprentices with European families.

Subsequent reports praised the homefinder and documented her achievements. In 1913 there were 26 girls at Cootamundra; 46 girls were placed as

apprentices, and some others as general servants[26]. The numbers grew each year: in 1917 there were 150 girls in "situations"[27]; by 1920 there were 200[28] and in 1923 the report refers to "some hundreds" of young Aborigines placed in employment[29].

In 1918 a property at Singleton was purchased and became a boys' home, holding about 30 boys. However, it closed in 1923 and the inmates were transferred to a new "home" at Kinchela Station. These two institutions — Kinchela for boys and Cootamundra for girls — remained active until 1969. Some of the children came to them from another institution, the home at Bomaderry, near Nowra, run by the United Aborigines Mission and still functioning today. Typically, young children stayed at Bomaderry and were transferred to Cootamundra or Kinchela at about ten years of age.

By 1923 the system of Aboriginal child welfare was firmly established. For many Aboriginal children, childhood was very substantially lived in institutions. These were constituted by the dormitories and schools of the stations, and the homes at Kinchela, Cootamundra and Bomaderry. Children living on reserves and in other Aboriginal settlements escaped the residential institutions, but of course had to attend European schools. For many children, institutionalised life was followed by a period of employment, usually as domestic servants in the case of girls, or farm work in the case of boys. The essence of the system was the exposure of Aboriginal children to European control and influence. In its report for 1921, the Board boasted that "it would be difficult to find any child over school age out of employment, or not an inmate of the Board's Homes"[30].

How many children went through the system? No satisfactory figures are available. A Register of wards was kept up until 1928, and an Index of wards up to 1936. These lists show a total of 1,427 wards up to 1936. Annual reports of the Board, however, provide some further information, though it is irregularly recorded.

Relatively detailed information is provided in the first report of the Aborigines Welfare Board, describing the situation in 1940.

The position of Aboriginal children may be summarised as follows: about 3.3%, some 157 children, were either totally institutionalised or were in "apprenticeships" with non-Aboriginal families. Approximately 37% of

children, some 1771, were living on the Board's stations. Life on these stations involved a high level of control and supervision by the white managers and their staff. At least on some stations, the children slept in dormitories at night and attended the station's school by day. They were not totally removed from their families. But the functioning of those families was profoundly affected by the circumstances of station life: economic dependence, loss of land and traditional practices and authority, the absence of able-bodied young men, the confusion of tribal and linguistic identity, and many other factors. For the children too, life was in important ways institutionalised. Nearly 900 children (9%) were living on the Board's reserves or camps, where there were no resident managers but some degree of control by the local police; and only a few, 176, were living what the Board described as "nomadic" lives.

It would be arbitrary and misleading to identify which children were and which were not in the "child welfare" system. In a sense, the Board's policies involved treating all Aborigines as if they were children, needing close control and education. The socialisation of children away from their Aboriginality was a pervasive goal that influenced all the Board's work. It is however useful to see the extent to which Aboriginal children were brought under the control and influence of non-Aborigines. The situation may be represented as follows:

TABLE 1: IMPACT OF BOARD ON ABORIGINAL CHILDREN IN 1940

SITUATION	CHARACTERISTICS	NUMBERS OF CHILDREN
Board's homes[a] at Cootamundra and Kinchela; U.A.M. home at Bomaderry	Fully institutionalised, removed from families and Aboriginal control & culture and community life.	107 (2.3%)
Apprenticeship[a]	Fully removed from families and Aboriginal control and community life; living with non-Aborigines when approx. 14 to 18 years old.	50 (1.1%)
Stations[b]	Highly institutionalised life, under non-Aboriginal control at school and in dormitories; not entirely separated from families & Aboriginal community, but these were in highly dependent and damaging circumstances.	1771 (37%)
Reserves and Camps[b]	Living with Aboriginal families, subject to varying degrees of supervision by police.	885(18.7%)
Nomadic	Presumably largely free of European control and influence.	176 (3.7%)
Other[a]	Unknown. Presumably includes some children in institutional care (institutions for offenders, church homes etc).	1745 (37%)
	Total	4734 (100%)

Adapted from Report of Aborigines Welfare Board for 1940, pp.2-4.

Notes: a. It is assumed that the category "other" on page 2 of the Report includes children in the Board's homes, Bomaderry, and under apprenticeship.

b. The Report gives only the number of children on stations, camps and reserves. The figures given are extrapolations from the adult population figures, showing Aboriginal population divided between stations and reserves/camps in proportions 3/2.

4. ASSIMILATION AND CHILD WELFARE: THE ABORIGINES WELFARE BOARD 1940-1969.

When the Aborigines Protection Board was replaced in 1940 by the Aborigines' Welfare Board, there was new legislation and new rhetoric. The rhetoric was about "assimilation", a policy that was to be enthusiastically and repeatedly embraced through the entire life of the Board; and had in effect been stated earlier by the Protection Board for example in the reference in its report for 1938 to "the ultimate object of assisting the lighter caste Aborigines to merge into the white population"[31].

The report included ten "guiding principles", of which no less than four were specifically concerned with children. The emphasis was to provide them with employment and technical training, and thus to prevent them from "lapsing into a life of idleness". To this end the system was to be supervised "strictly", in the interests of the future welfare of the children concerned. What is important here is what is not said, namely that there might be some other destiny for these children as authentically Aboriginal people. Such a possibility is specifically excluded by the policy, as stated in the first of the guiding principles, "to assimilate the aborigines, particularly those of lighter caste, into the general community". This policy of assimilation was the subject of full-blown rhetoric of transparent racism. Aborigines must "be assisted to raise themselves to a greater sense of their responsibilities" and must "strive to attain the white man's standard"; the white community, for its part, should be "sympathetic to the apparent social deficiencies" of a large part of the Aboriginal population, and they must help their "darker skinned bretheren to a more purposeful view of life"[32].

Although talk of "assimilation" became common only in the late 1930's, the word expresses a set of assumptions and policies that had pervaded the work of the Aborigines' Protection Board since its inception in 1883. As we have seen, the main work of the Board relating to children had been to make them into inmates of institutions, or of European homes as "apprentices". Both of these were firmly based on the assumption that for Aboriginal children "education", "advancement", "welfare" and similar terms were to be understood in European terms. When an Aboriginal child learned English and counting at school, and lost theopportunity to learn traditional Aboriginal languages and to understand and be part of the rich Aboriginal traditions and complex web of kinship and authority, and learned to look to white people for direction

and decisions, this was seen as obviously beneficial to the child.

The work and policies of the Protection Board were, in a way, blind to the Aboriginal culture. For the Board, the choice was between idleness and degradation in Aboriginal communities, or a process of learning what was necessary to become part of the white community — or at least, of the "industrial classes" in the white community. Thus when the Welfare Board took over in 1940 it continued the well-established patterns of institutionalising children and sending them out as apprentices. All this did not apply so much to full-blooded Aborigines. The assumption was that they needed protection until they gradually died out. Consequently, the main thrust of the Board's work was with children of mixed blood — who became an increasing proportion of Aboriginal children — for they were seen as having more capacity to learn the white man's ways, and as having more chance to "pass" as white in the general (that is, non-Aboriginal) community.

During the whole period the Board's two homes remained relatively full; figures published in the Annual Reports show an average of about 40 in both Kinchela and Cootamundra. The apprenticeship system, however, steadily declined. In 1940 there were 10 boys and 40 girls in apprenticeships[33]; in 1948 there were 12 boys and 14 girls[34] and the total number of wards who were apprentices varied between 18 and 35 through the 1940's and early 1960's[35].

Boarding-Out

A new development, however, was the system of "boarding-out" Aboriginal children, which was authorised by an amendment in 1943[36].

At first, the Board spoke of fostering those children who were 'temperamentally unsuited' to institutional life[37]. By 1953, however, foster care had become the preferred option:

> The best substitute for its own home is a foster home, with competent and sympathetic foster parents. Failing this, the only alternative is a Home under management of the Board's own officers[38].

To what sort of foster homes were these children sent? In some years, the reports speak of children being boarded-out with families on Aboriginal reserves or stations, or in "private homes off reserves"[39]; others speak of

"approved Aboriginal families"[40]. Perhaps all these children — there were a dozen or so each year — were placed with Aboriginal families, because we do not hear of any placements with non-Aboriginal families until 1956, when the reports suggests that the idea of placing the children with white families was introduced for the first time:

> Efforts were made late in 1955 to secure foster homes for these children amongst white people. Furthermore, this was regarded as being a positive step in implementing the Board's policy of assimilation...[41].

The report states that over thirty Aboriginal children were placed with white foster parents, and after a trial period of six months the scheme "has proved an unqualified success". In the following year, the report is less specific: "quite a number" of Aboriginal children were "happily placed in the homes of these people"[42]. Curiously, the subject is not mentioned in later reports, which neither disclose the race of the foster parents nor discuss further efforts to recruit white foster parents to continue the program which had been declared such an "unqualified success" in 1955-56.

Was the boarding-out of Aboriginal children in the 1940's and later an expression of the assimilation policy? Surely it was. The placing of Aboriginal children with white families in the mid-1950's was indeed the classic example of assimilation in action: the children were to grow up to become part of the white community. The placements with Aboriginal families are, on the face of it, not an expression of assimilation policies. However, there is nothing in the report to indicate that these children were placed with Aboriginal families in preference to white families. The latter possibly was not canvassed at all in the reports until the 1955 experiment. In this light, and in the light of the fact that the children were placed with families "approved" by the Board — presumably those families who most conformed to the Board's image of what Aboriginal people should be like — the boarding-out of Aboriginal children fits easily enough into the Board's overall policy of assimilation.

Other Aspects of the Board's Administration

In addition to what would today be recognised as "child welfare", the Board was involved in other aspects of the lives of Aboriginal people. Two are of considerable significance to children, but can be mentioned only briefly here.

First, the Board had maintained a considerable interest in the question of education of Aboriginal children. The Protection Board has seen education as a measure for assisting Aboriginal people to take their place with the "industrial classes", and had urged that Aboriginal children be admitted to ordinary schools[43]. This approach was continued by the Welfare Board, which on this matter was opposed to the interests of many white parents, who did not want Aborigines in ordinary schools, and whose voice appeared to carry weight with the Education Department[44]. The policy of admitting Aboriginal children to public schools on the basis of equality seems to have been established only in 1949[45]. In this instance, the policy of assimilation coincided with the removal of explicit discrimination against Aboriginal people. At the same time it precluded any recognition of a more fundamental notion of equality, under which Aboriginal children would have access to a system of education that educated them to take their place as full members of the Aboriginal community, as well as having the skills and knowledge to make their way in a society largely dominated by non-Aboriginal people and culture.

Second, the Board handled money belonging to Aboriginal people. Wages due to Aboriginal apprentices were paid to the Board, to be held in trust for the apprentices. Similarly, when the Child Endowment scheme was introduced (first by the New South Wales government in 1927 and later by the Commonwealth in 1941), Aborigines were entitled to payment on the same basis as other people, the money was apparently paid to the Board and administered by it[46]. We have already seen that the Board had in early times used its power to control rations to coerce Aboriginal people into giving up their children. Similarly, the control of Child Endowment payments was used as a weapon in the battle to "assimilate" Aboriginal people. The express intention was to ensure that the money was used for the benefit of the children: the Board wrote in 1939 that it had become evident that "many Aborigines were not expending their endowment money in the manner for which it was intended". In certain cases, however, the Board approved direct payments to Aboriginal families "on receipt of satisfactory reports", with "the object of encouraging the better class and more responsible families to regard themselves as units of the general community and to develop their sense of responsibility in this regard"[47]. It would be difficult to find a clearer example of paternalistic measures calculated, under the guise of assisting people, to ensure their continuing dependence on white authorities and to undermine their dignity and traditional patterns of authority.

Conclusion: A Policy and Its Limits

The policy of assimilation, therefore, largely governed the work of the Aborigines Welfare Board since 1940, and represented a set of policies and assumptions that had also directed the work of the Protection Board in earlier decades. It should also be recognised, however, that the policy of assimilation had to be applied within constraints, and it cannot alone account for all the Board's actions. On some points, the Board sought to implement a view of children's welfare which was independent of assimilation policies. Thus some reports argued that there should be a home for infants because it was not good to have children of widely differing ages brought together in the homes of Cootamundra and Kinchela[48]. Again, in the 1950 report there is an expression of the undesirability of breaking up Aboriginal families, and a sympathetic response to requests of relatives to have information and photographs of their children who were in the care of the Board[49]. Perhaps more important, after 1940 there is an increasing trend for the work with children and young people to be influenced by ideas from the general child welfare area. Thus "boarding-out" starts in the 1940's as an option for children unsuitable to institutional life[50]; within a few years it has become the preferred alternative, reflecting a shift of opinion in child welfare thinking generally[51]. Another theme of the later reports is that intervention is a "last resort" and once intervention has occurred, it should so far as possible replicate the child's natural family. The following quotation, from the 1953 report, reflects child welfare orthodoxy of the day:

> These Sections of the Act are designed to provide for the destitute child, or one who is neglected to such an extent as to make removal from its own home necessary. Such action is not taken unless and until all efforts to rehabilitate the home have proved unsuccessful. This is an important part of the work of Welfare Officers.
>
> The Board recognises the generally accepted principle that a child's natural heritage is to be brought up in its own home, under the care of its natural parents. There is no wholly satisfactory substitute for this. Unfortunately, some parents, despite all efforts on their behalf, prove themselves incapable or unsuitable to be entrusted with this important duty, and the Board is forced to take the necessary action for the removal of the child[52].

The wholesale removal of child aimed at by the Protection Board was of course quite inconsistent with ordinary principles of child welfare practice, as stated in this passage. In the later decades of the Welfare Board's life,

it seems that the emphasis shifted from the total removal of children to attempts to change their behaviour in less drastic ways, in the hope that they would influence their own people towards assimilation. Thus the Reports of the Board show that some children were dealt with in ways other than institutional care or foster care. We hear of a few being returned to their parents, and a few being placed in denominational homes. Unfortunately, the Reports are erratic in the amount of information they contain, although some reasonably consistent figures are given from the late 1940's to the early 1960's, when such information tends to give way to glossy photographs. It might be useful to set out the details for a typical year, 1949[53]:

TABLE 2: ABORIGINAL WARDS (1949)

The Courts committed twenty-six children to the care of the Board during the year. The children were placed as follows:

Kinchela Boys' Training Home	12
Cootamundra Girls' Training Home	5
Boarded-out with approved Aboriginal families	8
Admitted to denominational institution	1

Two children were discharged from the care of the Child Welfare Department and transferred to the control of the Board. They were placed in employment as apprentices.

Two children were committed to the care of the Child Welfare Department for offences whilst at the Board's Home. The Board assumed control of nine children under Section 11D(1)(a) of the Aborigines Protection Act. They were placed as follows:

Admitted to Kinchela	4
Admitted to Cootamundra	1
Admitted to Bomaderry	3
Boarded-out with approved Aboriginal family	1

Five wards were released from the Board's control and returned to the care of their parents.

The tables published from 1951 to 1962 provide an overview of the placement of Aboriginal wards. Again by way of illustration, the report for 1955 includes the following table[54]:

TABLE 3: PLACEMENT OF WARDS AT END OF YEAR

	1952-53	1953-54	1954-55
Kinchela Boys' Home	57	54	45
Cootamundra Girls' Home	51	41	47
Denominational Homes	8	11	15
Boarded-out with foster parents	49	62	69
In employment under Reg. conditions	18	23	29
Otherwise placed	—	3	16
Total of Aboriginal wards	183	194	215*

*There appears to be an addition error in the original document.

5. THE LEGAL FRAMEWORK OF ABORIGINAL CHILD WELFARE, 1883-1969

Modern critics of the Aboriginal child welfare system would have agreed with members of the Board on one matter: the importance of law. The Board frequently urged that it should be given extensive legal powers to implement its policies. Aboriginal people today are similarly urging reforms in child welfare laws to give them a measure of control over their children's lives. It is therefore important to examine the legal framework for the early system of Aboriginal child welfare law in New South Wales, although it will not be possible here to give a detailed account.

The first Act, the Aborigines Protection Act 1909, included among the duties of the Board the duty "to provide for the custody maintenance and education of the children of Aborigines"[55], but did not give it any special powers over Aboriginal children as such. In practice however, the Board had considerable actual powers to influence children, due to its control over rations and its more general legal powers, especially to remove Aboriginal people from reserves for "misconduct"[56]. The Act did, however, give the Board power to bind Aboriginal children as apprentices[57]. The apprenticeships were to be "in accordance with and subject to" the Apprentice Act 1901, which provided some protections for apprentices, including the judicial resolution of disputes with their masters, and restrictions on hours of work. It is likely that the

legislation also incorporated the principle that the consent of both parents and apprentice was necessary; whatever doubts there might be on this fundamental point, the Board appeared to assume that it needed the consent of both, and it argued that it should have greater powers[58].

The plea for greater powers was successful, and an amending Act[59] in 1915 removed the Aboriginal apprenticeship system from the general law relating to apprentices. The Board was empowered to arrange apprenticeships "on such terms and conditions as it may think under the circumstances of the case to be desirable"[60]. It probably had power to create apprenticeships with consent of neither the child nor the parents, and certainly had powers to commit any unwilling apprentice to an institution[61]. The children's wages were paid to the Board. The regime thus created effectively placed these Aboriginal children in the total power of the Board, undermined the authority of their parents, and permitted the children to be exploited as a source of unpaid labour. And exploitation there certainly was, as documented in the work of Heather Goodall,[62] whose history of this aspect of Aboriginal affairs in New South Wales presents a tragic history of official neglect and incompetence, and the most blatant economic financial and sexual exploitation of these unfortunate children, coupled with a separation from their families and communities that proved often permanent, and always heart-breaking for both the children and their families.

The 1915 Act went further. Apart from its provisions regarding apprenticeships, it gave the Board power to "assume full control and custody of the child of any aborigine, if after due inquiry it is satsified that such a course is in the interests of the moral or physical welfare of such a child"[63]. Thus was created a separate system of child welfare for Aboriginal people, which gave to an administrative body, not a court, the power to remove a child from his or her parents, on the basis of the Board's view of the child's welfare. Such a power in the case of white children could be exercised only by a court. There was provision for an appeal by the parents, but no appeals seem to be recorded. An appeal would have posed enormous problems to Aboriginal parents in the absence of legal aid or any familiarity with court procedures. In addition, it is difficult to see a court readily overturning the judgment of the relevant statutory body on what was for the welfare of an Aboriginal child. It is likely that the legislation also excluded the jurisdiction of the Supreme Court to act in the interests of children[64]; an academic point, since the prospect of Aboriginal parents approaching

the Supreme Court on such a matter must have been remote in the extreme.

This simple and repressive regime lasted until 1940, when amending legislation[65] incorporated many of the provisions of the "white" child welfare system set out in the Child Welfare Act 1930. However, there remained a separate system for Aboriginal child welfare under the control of the Board until 1969, when the system and the Board were abolished, and Aboriginal wards of the Board were handed over to the Child Welfare Department.

6. THE INVISIBLE CHILDREN: ABORIGINAL CHILD WELFARE 1969-1980

There is almost no published information on the subject between 1969, when the Board was abolished, and about 1980, when the New South Wales government launched the Aboriginal Children's Research Project. During this period, the prevailing wisdom was that it was wrong to treat Aboriginal children in any way differently from other children. It was no accident but a logical consequence of this view that no separate statistics were kept on Aboriginal children in the child welfare system, and there was, broadly speaking, no distinctive approach towards the welfare of Aboriginal children[66].

Largely as a result of this policy, those who in recent years have been concerned to work on formulating appropriate policies for the delivery of child welfare services to Aboriginal children have had to start from scratch. A chief task of the Aboriginal Children's Research Project was simply to discover how many Aboriginal children were in the child welfare system and what was happening to them. The work of this project, and recent initiatives by both Aboriginal people and government departments, brings us into the present period, to be considered in Chapter 4.

7. CONCLUSIONS

It is appropriate to identify the main themes of the story, and their effect on the way Aboriginal people see the present system.

First, the system was separate. For the greater part of the post-contact period, Aborigines have been subjected to a system that dealt with their children separately from other children. Only when the Board was abolished, in 1969, was there one legal system for all children. Today, as we will see, Aboriginal people are claiming that the child welfare system

should distinguish between Aboriginal and non-Aboriginal children, and that Aboriginal people should have greater control of child welfare law and policy as it affects their children. Some people, however, argue that any legal distinction between Aboriginal children and other children would be wrong: it would be discriminatory, and would create a type of "apartheid" in Australia. The present point, however, is that such an argument is seen by many Aboriginal people, in the light of the history of Aboriginal child welfare, as hypocritical. People active in Aboriginal child welfare have said to me on several occasions that the whites had a separate system for Aborigines when it suited them, and cannot now resist Aboriginal demands for greater control by arguing that a separate system violates fundamental principles of justice.

Second, the system largely involved the use of legal authority and other forms of power of a highly discretionary kind. The authorities used their powers, not according to a set of rules, but on the basis of their own views of what was best. For many years, without any legal authority, the Board's officers used deprivation of rations and other non-legal measures to "induce" parents and children to comply with their wishes. In some cases, they simply kidnapped the children. Even where such injustices did not occur, the impact of the system on the Aboriginal people must have been seen by them as the exercise of naked power. They had very little knowledge of ways to challenge the authorities (and there may have been few, if any, effective ways), they had no access to appropriate legal services, and they would have realistically feared reprisals had they resisted the authorities. Aboriginal accounts associate one emotion above all with the child welfare system: fear. This perception of the system as a system of uncontrolled power (whether exercised benevolently or maliciously) profoundly affects discussion about how far child welfare is and ought to be governed by law. In this area, the historical legacy is that the law's function is merely to provide another basis for the exercise of power by whites in authority over Aborigines.

Many proposals for reform involve questions of due process of law, procedural rights for Aboriginal parents, and opportunities for Aboriginal organisations to play a part in the system. For these to work, it may be necessary for Aboriginal people to have confidence in the capacity of the legal system to work fairly. Such a perception of the law is so contrary to the accumulated experience of the child welfare system and to the recollections of many living Aboriginal people, that it will not come easily. This lesson

was brought home to me very clearly, when, at the outset of this research, I was asked to speak to a seminar arranged by Aboriginal organisations on the Community Welfare Bill. Ignorant of Aboriginal feeling on the matter, I launched into an explanation of the various rights that the Bill would give to Aboriginal parents (as well as other parents). All this did not go down well at all: the people at the seminar expressed great suspicion of the procedural rights created by the Bill, and passed motions rejecting it altogether, claiming that it failed to give Aboriginal people any autonomy. This hostile reaction, which mystified me at the time, is entirely understandable in the light of the history of Aboriginal child welfare in New South Wales. (It also reflected, as I came to learn later, a shrewd assessment of the legislation)[67].

Third, the system was explicitly based on a rejection of the validity of Aboriginal culture and child-rearing. The welfare of the children was identified with the life style and religious beliefs of European Australians. Thus, the operation of the system constantly undermined the work of Aboriginal parents and communities for the children's development. All childrearing practices probably assume some notion of what adults ought to be like, some developmental ideal or set of ideals[68]. It is clear that the system of child welfare was not based on any authentic notion of Aboriginal adulthood: it sought to transform Aboriginal children into European adults as far as possible, and largely measured its "success" by the extent to which this had been achieved. The lack of such an ideal was of course influenced by the prevailing European assumption that Aborigines were a dying race.

In this respect too, Aboriginal people today retain a fear and suspicion of child welfare. They have no experience of a child welfare system which can intervene in the lives of children and enhance their development <u>as Aboriginal people</u>. Departmental officers today frequently state that it is now recognised as bad practice to impose European notions of child-rearing on Aboriginal people. In the light of the history, however, it may take some time for this message to be understood, and believed, by a people so long subjected to the type of system described above.

Fourth, there was of course no Aboriginal involvement in the system. Being European, being interested, and being Christian were seen as the main qualifications for making decisions about Aboriginal people's children. There was no policy of developing the skills or autonomy of Aboriginal people and

organisations so that they could share in the planning or administration of the child welfare system.

As a result, Aboriginal communities do not have a tradition of active involvement in the official child welfare system. Indeed, they have a tradition of resistance to it[69]. (Of course, they have a long experience in attending to their children's welfare in their own communities and according to their own traditions and values). At least until recently, they have not been used to working with Europeans in this area, nor used to exercising power, being trusted, or administering funds. They have limited experience in the very difficult task of combining some kind of bureaucratic or other form of organisation with the highly individualised and personal work associated with child welfare. Consequently, we may expect that there is much work to be done in the development of Aboriginal participation and control in the child welfare area, both in the creation and support of authentic Aboriginal structures and initiatives, and in the joint working between them and the existing and long-established European structures, notably the Department of Youth and Community Services. It is necessary to keep the history in mind when trying to understand the difficulties and potentialities of such developments.

Fifth, the policies and practices of the child welfare system reflected then current policies and assumptions about Aborigines and their fate. Indeed, the two Boards responsible for Aboriginal child welfare were also responsible for Aboriginal people in general. Child welfare, like all aspects of Aboriginal affairs, was profoundly affected by the determination of the Europeans that there would be no recognition of Aboriginal laws or title to land, and no compensation for its loss. Of course, what happens to children is always linked with the nature and aspirations of the society they live in. The child welfare tradition in New South Wales was shaped at a time when there was no recognition of Aboriginal claims to land and autonomy. Today, most governments in Australia, and certainly the federal Labor government and the Labor government in New South Wales, affirm the need for some kind of land rights for Aboriginal people, and some kind of autonomy ("self-determination"). It is inevitable that these wider policies will shape Aboriginal child welfare in the future, as opposite policies have shaped it in the past.

Aboriginal people, like American and Canadian Indians, have argued that the European child welfare system has been destructive to their

communities and to the children themselves. They have seen the system as deliberately designed to destroy their identity. They have accused the white man of carrying out "cultural genocide" through the child welfare systems.

It may not be quite fair to say that the system set out to destroy Aboriginal communities. The Europeans designing and administering the system probably saw themselves as simply doing what was best for the children. But the Aboriginal people are surely right in saying that the effect of what they did was, on the whole, destructive of Aboriginal culture and communities. The system may therefore be regarded as a form of what has been called "institutional racism". It was based on the assumption that Aborigines were an inferior race, and its effects were destructive to the Aboriginal people, whether or not there was any personal malice on the part of the individuals administering the system.

Up to 1969, therefore, the system of Aboriginal child welfare could be accurately described as "black children: white welfare". From 1969, however, the child welfare law has not formally distinguished between Aboriginal and other children. And in recent years there have been a variety of important changes in the administration of the law and in governmental services and policies. How important are these changes? Is it still possible to describe the system as "black children: white welfare"? What is the direction of the changes? What policies should be adopted for the future? These questions are addressed in the remainder of this report.

CHAPTER 2

ABORIGINAL PERSPECTIVES

1. FOUR THEMES

Until quite recently, government policy was based essentially on what white people thought (or said they thought) was good for Aborigines. Today there is a greater recognition of the dangers of paternalism for many disadvantaged or oppressed groups. Nearly all the rhetoric in Aboriginal affairs is now based on the need to respect Aboriginal perspectives.

In child welfare, many practical issues of law and policy depend on whose perspective is adopted. A simple example is the definition of "family". The child welfare legislation recognises the family by exempting fostering arrangements with "relatives" from the need to be licensed[70]. For this purpose, however, "relative" is defined in a way that fails to include many people who would be considered "relatives" in Aboriginal communities, where the extended family is of considerable significance in child care.

It would be simplistic to attempt to state "the Aboriginal viewpoint". Aboriginal people naturally have different views, and different levels of understanding of the issues. There are political differences among Aboriginal people as there are in all other groups, and different Aboriginal communities may wish to adopt different proposals to handle child welfare issues.

At the same time, there is little room for doubt about the main directions of Aboriginal thought in this area. Aboriginal views are represented in the records of conferences, in other writings, and in the actions and policies of Aboriginal organisations. These sources reveal some persistent and clear perspectives and demands, which are the subject of this chapter. Those most central to the present discussion are

(i) A powerful adverse reaction to the early child welfare laws;

(ii) A desire to preserve and promote distinctive Aboriginal patterns of child care;

(iii) A determination to participate actively in child welfare, rather than merely be subjected to it; and

(iv) An identification of children's welfare with that of their communities.

These themes will be considered in order.

(i) Reaction to Early Child Welfare Laws and Practices

Early child welfare laws and practices have already been described, and something has been said about Aboriginal responses (see above, Chapter 1). The consistent theme of the evidence is that the system was seen as alien, hostile and destructive to Aboriginal children and communities. It was alien because it was based on non-Aboriginal laws, and administered by non-Aborigines according to values and practices that represented the culture of the invaders, not that of the indigenous people. In its identification of children who were in trouble or in need of care and in its response to them, it violated Aboriginal patterns of child care and social organisation. Perhaps above all, it was alien because it was so obviously part of the system of authority that oppressed Aboriginal adults and children alike.

The child welfare system was hostile because it was used as a means of oppression and manipulation. The threat of taking the children away was used to manipulate Aboriginal parents, and the manner of taking the children caused vast distress to both the children and their families.

It was, in Aboriginal eyes, destructive because it harmed the children, who grew up removed from their own people, and were in many cases exploited and damaged. It was also destructive to the community, because it undermined the authority of parents and elders and threatened the integrity of Aboriginal beliefs and practices relating to child care.

The biographies of Margaret Tucker and others and the work of Peter Read, Heather Goodall, and Carla Hankins show the depth of these feelings and the ample reason for them. It is true, of course, that within this system there were white people who showed kindness, and even sensitivity. It is also true that many of those involved in the system did not intend to oppress Aborigines, but intended to advance the welfare of their children. While Aboriginal accounts sometimes recognise such kindness, it does not seem to have diminished their overall feelings about the system.

In speaking to Aboriginal people, I found no exceptions to the negative

reaction to the child welfare system as practiced by the Aborigines Protection Board and later the Aboriginal Welfare Board. This reaction was sometimes expressed in blazing anger, but more often with a kind of resigned despair. I spoke with one woman on the South Coast who told me how she had been separated from her family as a child and was still searching for her relatives. As she spoke her eyes filled with tears, but she pressed on with the story. She did not say she was angry, and did not have any reforms to propose. She spoke of the work of the Board's officers as one might speak of a natural calamity, and of the loss of her brothers and sisters as one speaks of deaths in the family.

Aboriginal people in New South Wales still have a rich oral tradition. These stories are as real for those who tell them as if they had happened yesterday. They form, as literature can do, part of a framework through which the Aboriginal people see the world and define their place in it. For older people especially, the idea of the child welfare system is inevitably linked with the loss of their children.

I also spoke with people about the present system. From the beginning of the research, I had been struck by the deep resentment and bitterness with which Aboriginal people spoke about the child welfare system. I was therefore surprised to hear very few stories of <u>recent</u> outrages. In some communities there seemed to be a deeply felt suspicion of the child welfare system, yet in many cases this was accompanied by considerable praise for the current work of the Department, or at least some respect for individual officers. It seems that Aboriginal people still feel deeply hurt and outraged by the work of the older child welfare system, and these feelings have persisted even where there may be few recent complaints about the way the system operates.

(ii) <u>A Desire to Preserve and Promote Distinctive Aboriginal Patterns of Child Care</u>

The wish to preserve and promote distinctive Aboriginal patterns of child care is a constant theme, both of comments made to the author during the research and of the writings of Aboriginal people. For example, the workshop on Aboriginal Community and Adoption at the 1976 Australian Conference on Adoption reported:

> Aboriginal values, culture and family life provide a very different context or texture from the dominant society and adoption assumes different meanings against this context. If adoption law and practice is to be responsive to the particular needs of the Aboriginal community, then it must be flexible in its application and be in harmony with their family life, culture and values... There is a widespread misinterpretation of Aboriginal family life by social workers, police and other agency workers who fail to appreciate the support system of the extended family and consider a child to be neglected if his parents are not taking responsibility for him[71].

There a number of published studies of Aboriginal family life and child care practices and values[72]. Most available publications are by non-Aborigines, and some relate to Aboriginal communities rather different from those in New South Wales. The descriptions nevertheless have much in common. The following statement, written by Aileen Mongta, an Aboriginal woman who worked with the Aboriginal Children's Research Project in Sydney, is a valuable summary and is based on knowledge of present conditions in New South Wales:

> Aboriginal Family Life and Child Rearing
>
> While the European presence has had a definite influence on the manner in which Aboriginal people rear their children, it has not altered our essential values and beliefs as we have adapted to the unwanted interference of white Australians. The dispossession of our land has forced changes in our life-styles, and varying environmental and socio-economic factors influence Aboriginal families and their communities.
>
> However, when I say change, I do not mean that we have changed in regards to the strength and proudness of our Aboriginal identity. This has remained.
>
> I would like to briefly point to a few differences between Aboriginal and white families:
>
> i. Aboriginal children are all the responsibility of the whole family: of relatives and of their community and any other Aboriginal community. Child rearing is not confined to the natural parents. It may be Grandparents, Aunts or Uncles, or other relatives. An Aboriginal community is virtually one big family. The interrelationships involved in child rearing are beyond the comprehension of most middle class white people who are accustomed to nuclear family structures.
>
> ii. Aboriginal families are generally much larger than white families. This involves far more complexities in regard to the different relationships between individual family

members. Larger families can also mean that there are fewer parents. Despite adaptions to cope with this, the pressures on parents remain great. This in turn shapes the roles played by other family members and the extended family.

iii. Aboriginal parents may be younger than white counterparts. At the same time, older family members, especially grandparents, may play a more authoritative role, and have a direct parental influence. (This also determines their status in later life).

iv. Aboriginal families develop close ties, not only between individual family members but between the endless numbers of related families. This is why an Aboriginal person can refer to another as their brother or sister, Aunt or Uncle, cousin etc — and mean it.

v. Aboriginal child rearing cannot be discussed without taking into account all other aspects of our lives. White people have child rearing roles and practices which tend to be more definable. White women generally have the major role and while child minding centres are significant, generally speaking child rearing is not a community responsibility. By contrast Aboriginal children are reared not only by the women but just as much by the men, and this pattern is reflected in Aboriginal community responsibilities.

Like all aspects of Aboriginal lifestyle, everything is interwoven, each depends on one another for survival. In child rearing these principles strongly apply, operating in harmony with our cultural values, heritage and identity[73].

This passage makes the contrast between Aboriginal family life and that of "most middle class white people". There are other parts of the non-Aboriginal community which have more in common with the pattern of family life and child rearing described by Ms. Mongta. Among some ethnic groups the extended family is also very important, and among non-Aboriginal families living in poverty some forms of sharing of resources and mutual support may be common. However, the contrast made Ms. Mongta is importantly, because, as Aboriginal people see it, the child welfare system is generally based on principles and practices appropriate to white middle class family life.

Aboriginal people value their own child rearing practices as distinctively theirs. They value the extended family as a continuation of their traditional culture. It is part of their notion of who they are, not simply a practical response to the difficulties of living in poverty. Considerable part of their emphasis in child rearing relates to Aboriginal "identity", a

word whose full implications are difficult for outsiders to understand. The term means, for children, at least two things. First, that the child learns of his or her place within the community; especially the child's standing in relation to a wide set of relatives and links with the place where the community lives. Secondly, it includes very considerable training in coming to terms with the low regard in which Aborigines are often held by whites. Anna-Katrine Eckerman has described this process in a non-metropolitan urban area of South-East Queensland[74]. By teasing and in other ways, children are made continually aware of their Aboriginality. By the time they might be seriously hurt by such remarks, they are accustomed to them, and use them about members of their own group. They have become emphatically "Aboriginal". This is a positive image. Eckerman writes that the child

> is taught that Aborigines have a better sense of humour than Europeans, are more trustworthy, kinder and warmer, readier to share, and are more interested in people... Whether such ideals are actually prevalent in the Aboriginal community is not really important. What is important is that through believing them a child receives comfort and an acceptable self-image to help him should he meet prejudice from Europeans. Thus the Aboriginal group seeks to protect itself against possible slights by instilling defence mechanisms into the child's perception of his environment at an early age...[75]

These brief comments on Aboriginal child rearing values and practices throw some light on two matters to be considered later in this report, namely the view of many Aborigines that white people, however loving and unprejudiced, cannot offer to Aboriginal children what an Aboriginal family can offer, and also the widespread view that because non-Aboriginal child welfare officers do not fully understand the significance and workings of the extended family in Aboriginal society they are not adequately equipped to make placement decisions about children.

(iii) A Desire to Participate Actively in the Child Welfare System

This is the most complex and perhaps the most important of the four themes. Essentially it amounts to a strong desire that Aboriginal people should be actively involved in, and ideally in control of, the programmes and policies that affect the welfare of Aboriginal children. We shall return to these ideas in Chapter 5. For the present, it is enough to make the following observations.

First, it is clear that the desire to participate is a direct expression of Aboriginal people's concern about their children's welfare. It is true, of course, that greater Aboriginal participation in child welfare may have advantages for individual Aboriginal people involved: job opportunities, increased resources for organisations, and so on. Nevertheless, after talking with Aboriginal people involved in various ways with child welfare — as parents, as employees of government departments, as members of Aboriginal organisations — I had no doubt that the Aboriginal people I spoke to sincerely believe that the welfare of their children will be promoted if Aboriginal participation is enhanced.

Second, there is a range of opinion on the appropriate form of participation. For some Aboriginal people, the focus is on a particular issue, such as setting up a home for Aboriginal children in the Bourke Community[76]. However, Aboriginal people closely involved in child welfare issues often expressed more general views about forms of participation. Those involved in Aboriginal organisations tended to be firmly of the view that the most effective form of participation was through such organisations. On the other hand, some Aboriginal employees in government departments strongly argued that they, as Aboriginal individuals working in government, had an important role to play.

In both cases there was strong and weak positions taken. Thus while some people in Aboriginal organisations saw a legitimate role for Aboriginal people employed in government departments, others were somewhat hostile to these positions, and felt that Aboriginal people who wished to be involved in the area should do so through Aboriginal organisations. (This reflects a familiar dilemma for Aboriginal people who have the opportunity to serve on bodies created by government, at the cost of forsaking community organisations and being criticised as having "sold out"). Similarly, while most Aborigines I spoke to in government departments were sympathetic towards Aboriginal organisations, a few were sharply critical of them. Most of the people I spoke to saw the issues in child welfare as part of more general questions about land rights and self-determination for Aboriginal people, and their opinions on child welfare matters seemed to reflect their general position on the political issues facing Aboriginal people.

Third, in many discussions of Aboriginal participation it is stated or assumed that the Aboriginal people involved should be <u>representative</u> of their communities. In discussions about the suitability of individuals for

jobs in relation to child welfare, a constant theme was whether the person concerned understood and was acceptable to the community in question. This was one of the clearest issues on which Aboriginal views seemed to differ from those of non-Aborigines. Non-Aborigines generally assume that individuals have qualities (whether by reason of personality or training) that largely equip them to carry out child welfare work in any setting. Aboriginal people, however, focussed not so much on the personal knowledge and skills of the individuals as on their acceptability to the relevant local community.

There may well be a host of reasons for this difference of emphasis. Aboriginal people tend to see children's welfare as something of a community responsibility. And it was my impression that community organisations in Aboriginal centres have a much wider role than organisations with which non-Aborigines are familiar. Thus in some centres at least, it seemed that the dominant local organisation was responsible for Aboriginal issues generally, regardless of whether it might have been, technically, the local legal service, "cultural centre", or housing association[77]. The leaders in the community are rather naturally seen as those who ought to play a large part in any issues, including child welfare.

On this matter too, however, there tended to be a difference between some Aboriginal people employed in government departments and their counterparts in community organisations. On the few occasions when Aboriginal people employed in government departments criticised the work of Aboriginal organisations they questioned the individual skills and training of those involved. By contrast, when those in the community organisations criticised the departmental employees, the thrust of the criticism was often that they had lost touch with their communities. I should stress that this is an impression based on a far from comprehensive set of discussions, and also that I have drawn attention to critical comments because they illustrate the underlying assumptions about what qualifies individuals for positions in the child welfare area. Criticism was not the norm, and indeed several individuals have moved between employment in Aboriginal agencies and government departments.

Underlying this theme of participation is a persistent sense that under existing laws and practices (even when modified so as to avoid some specific Aboriginal criticisms) Aboriginal people are not in command of their own lives, and their destiny as a people. Until they can gain such a sense of control, they cannot properly attend to the welfare of their children.

This elusive but fundamental insight is expressed well by Aboriginal people in the documents to be considered in the following section.

(iv) Aboriginal Child Welfare in a Community Context

The fourth theme is that Aboriginal people see child welfare as an aspect of community life, rather than as a distinct and severable issue. This is not surprising, since child welfare problems are largely linked with poverty and Aboriginal communities are generally poor and disadvantaged. For example, in several discussions it was said to me that particular children posed a problem because none of their relatives or other suitable people in the community could afford to take on another mouth to feed. Aboriginal people are very aware of the complex connections between poor health, inadequate housing, unemployment, alcoholism, and problems with children. They know that while these problems remain there are limitations on what can be done about child welfare. At the outset of the research, I spoke with Lyall Munro Jr. about the problem of Aboriginal child welfare (as I then saw it). He was well qualified to speak about it because he had worked as research officer for the Aboriginal Children's Research Project, and as a community leader and Administrator of the Aboriginal Legal Service, he was very experienced in Aboriginal issues. What surprised me was that he spoke only of community problems, and urged me to visit communities and see the conditions for myself (as I duly did). At the time, I was disappointed that he did not focus more precisely on child welfare issues, but it has since become clear that he was forcing me to see that from an Aboriginal point of view it was impossible to separate child welfare from wider issues.

Another slant on this point is that Aboriginal people I spoke to seemed to see children as inveitably a part of a particular community, whose personal destiny was properly linked with that of the community. It was alien to this approach to see a child's "welfare" as being promoted by permanent removal from the community. If the community was poor, then children's welfare had to be assessed against this fact of life. The children were not seen as neglected or disadvantaged in comparison with children who had been removed from the community and placed in foster care elsewhere. This community focus implied that responses to the children's problems should generally happen within the community and be controlled by it. Hence, the perception of children as part of a community is linked with the point made earlier, that for Aboriginal people self-determination mainly refers to progress towards autonomy for communities.

Such talk of Aboriginal "communities" works well enough for country populations such as those at Bourke or Kempsey. It is more difficult to apply to Aboriginal people living in country towns or areas of cities where there is no significant Aboriginal population. It presents problems even in sectors of cities such as Redfern in Sydney, where the people may have come from very different backgrounds, and where the need for employment sometimes fragments families. Such conversations as I had shed little light on this problem. Some people said or implied that the only real chance of establishing or consolidating authentic Aboriginal communities was in rural areas. Despite these difficulties, in all areas to my knowledge there is a clear "community" in the sense of identification as Aboriginal people, and a desire that any response to the needs of children should be such as to reinforce and enhance this sense, rather than undermine it.

Finally, for Aboriginal people the welfare of their children involves an opportunity to develop into authentic Aboriginal adults. Perhaps because Aboriginality has been so threatened since the white invasion, it looms large in Aboriginal communities as a whole. Thus issues such as land rights, the consolidation and growth of Aboriginal culture, and the protection of sacred sites are seen as highly relevant to child welfare. And this is surely correct. Unless the cycle of poverty and depression in Aboriginal communities can be broken, of course the children will be seriously at risk. And unless Aboriginal adults are able to pass on to their children some coherent tradition, some notion of what it is to be Aboriginal, the children will be irreparably damaged.

The general ideas in the above paragraphs can be translated into concrete proposals. Aboriginal people have done this, and in some detail. Both the general concerns of Aboriginal people for their children's welfare and specific proposals about what should be done are "on the record". We now consider two significant Aboriginal statements on child welfare, illustrating the four themes identified in the previous paragraphs.

2. TWO KEY ABORIGINAL STATEMENTS ON CHILD WELFARE ISSUES

There have been a number of conferences, research studies and publications in which Aboriginal people have set out proposals and demands in the area of child welfare. Many of these are not readily accessible, and many are not widely known. However, they are of considerable importance, for

together they not only represent a substantial body of considered Aboriginal opinion, but they embody a coherent position that needs to be considered carefully if child welfare laws and policies are to express some notion of Aboriginal self-determination. For these reasons, it might be useful to summarise the two most important of these statements, namely the First Aboriginal Child Survival Seminar in 1979 and the Report of the Aboriginal Children's Research Project in 1982.

(i) The First Aboriginal Child Survival Seminar, 1979

"The First Aboriginal Child Survival Seminar", was held in Melbourne on 23-25 April 1979, under the auspices of the Victorian Aboriginal Child Care Agency and the Office of Child Care, Canberra[78]. There were 240 individuals at the seminar, representing all States and Territories. They included state officials, workers from a wide variety of Aboriginal organisations and communities, people involved in Aboriginal development programmes of different kinds, and representatives from Churches, tribunals and commissions concerned with the welfare of Aboriginal children[79]. The seminar was privileged to hear an address from Mrs Margaret Tucker, M.B.E., author of the autobiography "If Everybody Cared", and described in the record of the proceedings as "one of the few remaining pioneers of the struggle for basic rights for Aboriginal people in the 1920's and 1930's"[80]. There were also addresses from Mrs Mollie Dyer, a key figure in the creation of the Aboriginal Child Care Agency in Victoria, Graham Atkinson, the first Aboriginal social worker in Australia, Gary Foley, Malcolm Dobbin (Co-Director of the Victorian Aboriginal Health and Dental Service), Dr. Steven Ungar (Assistant Director of the Association on American Indian Affairs), Mrs Marie Coleman, and many others. The seminar passed a series of resolutions which, in the light of the size of the seminar and the quality of the addresses and participants, deserve careful study.

The most striking aspect of the analysis of the problems and the proposed solutions of the seminar was their scope. Problems of Aboriginal children were seen as part of the problems faced by Aboriginal people in general, and the solutions proposed were related to wider issues of Aboriginal self-determination and to other aspects of Aboriginal life, such as housing and education. It is impossible in a reasonably brief space to do justice to the range and depth of the discussion, but some of the key points may be noticed.

On adoption and foster care, the discussion expressed views which have since become familiar. When a family crisis requires short term care, it should be provided by Aboriginal people where possible, while intensive work is done with the family with the aim of the children being returned. When long term care is unavoidable, placement with non-Aboriginal families was not favoured; "rather the alternatives are — Aboriginal family group homes; Aboriginal hostels, or other arrangements most suitable to the individual needs of that particular child"[81]. Reasons for the removal of Aboriginal children in the past included application of inappropriate standards by non-Aboriginal social workers and departmental officers, such as when children left with relatives outside the immediate family were seen as "neglected", or when over-crowding was given as a reason for not placing a child in an Aboriginal home.

Another reason was advanced as well: that "the breakdown of Aboriginal families was structually embedded in the unequal position of Aboriginal people held in Australian society". The need for better foster care and adoption facilities "was seen as a direct consequence of this disadvantageous position". But poverty, as well as being a major factor in family breakdown, could also make it difficult for other Aboriginal families to take on additional child care responsibilities. The criticism was made that

> there are no facilities for income supplement in Queensland, New South Wales or South Australia. Furthermore, in Queensland any payment is denied to relatives of Aboriginal children who are placed in a fostering situation. Such income supplement is especially needed in cases of emergency foster care placement, where a child requires only short term care and where a tight financial situation makes institutionalisation the only option. The ready availability and adequacy of such payments is crucial in the establishment of a successful alternative to institutional care[82].

A deeper critique of traditional welfare services followed:-

> While foster care and adoption were seen as adequate alternatives to the specific problems raised by institutional care, the overall feeling of the Seminar was that welfare responses to Aboriginal family problems were largely band-aid measures. In the light of high unemployment rate amongst Aboriginal people, inadequate housing, health and educational facilities, case-work was revealed as a meagre response compared to community involvement. Most approaches to Aboriginal welfare have been dominated by an attempt to react to the symptoms rather than the root causes of the problems facing Aboriginal families. Case-work as treatment of the individual to adapt to desirable patterns of behaviour, pre-ordained by a white society, was viewed by participants as both paternalistic

> and punitive for Aboriginal children — smacking of institutionalisation. The notion that problems faced at the present time were somehow 'inherent' in the problems Aboriginal people have in adapting to white society was refuted by most participants. Aboriginal people have been saying for some time that they do not wish to adapt to what they perceive to be an alien, consumerist society. How can Aboriginal people be expected, through case-work intervention, to adapt to a system of values which simultaneously represses and rejects them? The reversal of the alienation felt by Aboriginal people and the rebuilding of their culture and social identity were discussed as essential pre-conditions for the reconstraction of a meaningful life for Aboriginal people out of the debris left after the impact of colonisation. This can only be achieved if Aboriginal people are able to determine their own futures and the nature of their relationship to white society. And genuine choice for Aboriginal people would involve the allocation to Aboriginal communities of sufficient resources unimpeded by the strings of white expertise[83].

In relation to Aboriginal juvenile justice, the conference was critical of most state governments for not implementing the recommendations of the National Symposium on the Care and Treatment of Aboriginal juveniles in State Corrective Institutions, 1977, especially those calling for consultation with the Aboriginal community. It also passed a resolution calling for adequate funding of juvenile aid programmes, and Aboriginal Legal Services, and for laws making it compulsory for the authorities to notify guardians, parents, and Aboriginal legal representatives of apprenhensions and court appearances[84]. Two Aboriginal programmes were referred to as examples of what should be done. The Bert Williams Hostel, staffed by Aboriginal people, aimed at "getting young offenders out of corrective institutions as quickly as possible and placing them back in their own community with after-care supports from the Aboriginal staff". The Victorian Aboriginal Youth Support Unit, again Aboriginal staffed, contacted offenders who were in institutions or "at risk", with a view to contacting their families, writing reports for the court, and making recommendations to the court or welfare agencies about the best placements; but its staff of two field workers was hopelessly small to cover the whole of Victoria[85].

Health issues were given considerable prominence. The recommendations stressed the need for such basic services as clean water, and urged increased support for the Aboriginal Medical Services. Education was also seen as central. The conference condemned the current education system "as being the

single most alienating factor in Aboriginal communities"[86]. Resolutions called for a modification of compulsory schooling laws where they clashed with the need to participate in traditional initiation, for bilingual education, and for schools which did not "fit Aboriginal culture into a non-Aboriginal education system which is perpetuating a value structure in complete opposition to traditional values"[87]. The conference also resolved that there should be greater Aboriginal participation in schools, through teachers' aides and the like, and that Aboriginal groups, parents and children be given "a real choice" by making funds available, where this was desired, for separate schools[88].

There was a detailed and constructive critique of the ways in which self-determination could be translated into practice, stressing the need for involvement by local community groups[89]. Funding issues received detailed consideration in this connection. Participants stressed that effective community work required long term and secure funding, both to enable forward planning and to provide opportunities for on-the-job learning. Funding needed to be direct, that is, provided by the federal government to Aboriginal organisations, rather than provided indirectly through State government departments. There was deeply felt resentment against existing funding arrangements:

> The effect of this pursestring method of funding is to create the very real belief in Aboriginal people that they are not trusted or expected to be able to fulfil functions that other white welfare groups are automatically granted the right to fulfil. There is an element of self-fulfilling prophecy in this attitude. When one is expected to fail, one usually does... The history of the successful growth of community based organisations internationally is locked into the growth of self-respect, self-management and self-determination..."[90].

These ideas led to discussion of the sensitive issue of what was called "strategic separatism":

> The issue of strategic separatism is not an easy one. On the other hand it can give rise to the horrors of the 'separate development' policies of South Africa, and on the other it proclaims self-determination for oppressed groups[91].

Gary Foley described very clearly his view of the connection between strategic separatism and self-determination:

> ... true liberation of the Aboriginal people comes through the ability of Aboriginal people to determine their own destiny... we have suffered a greater degree of complete destruction of our society. Therefore we need a period of rest - if you like. But we need to rebuild ourselves - our society here, and we need to ultimately establish the alternative society that is necessary for us that wish to be Aboriginal in a predominately white society[92].

Adriana Palamara, Co-ordinator of Aboriginal Services in the Department of Community Welfare Services, drew together many of the threads of the conference in arguing for contributions by government as well as local communities:

> The biggest mistake welfare authorities have made and we are still making in our Aboriginal policy and practice is to view Aborigines as no different to anyone else. Time and again I have had social workers and policy makers say to me 'We don't want to make a special case of Aborigines, we don't want to discriminate by singling Aboriginal children out for special services, we must treat all groups the same'. Our first lesson must be that we learn that we cannot treat unequal groups equally...Aboriginal people will not use existing services until self-confidence and pride are restored through the development of their own familiar services, their own cohesive identity as a group, and as a viable positive society. Aboriginal adolescents have within the wider society too few positive role models to relate to. Everything that is said about Aborigines in the public sphere is negative. What Aboriginal kid wants to be identified as Aboriginal when the media picks up on evictions, alcoholism, illnesses and any number of other manifestations of the social depression of Aboriginal people. When do we hear of the achievements of the community, when do kids hear of the subtle intricacies and sophistication of Aboriginal society both traditional and contemporary? Only by taking initiative together and debunking all the white stereo-types can Aboriginal adolescents then negotiate wider systems and compete with the white community. Community Welfare Departments throughout Australia should carefully consider the introduction of separate and additional services for Aboriginal families and adolescents as a strategic means to achieve the use by Aboriginal people of existing resources.
>
> Community Welfare Departments must back in the first instance initiatives by Aboriginal organisations and community groups to fulfil identified needs. This is in fact by default what the Office of Child Care has done. It has created a new Aboriginal organisation which has had the further spin-off of strengthening and developing Aboriginal extended families in Victoria.
>
> This is what the concept of community development is really all about. In the second instance, however, I believe the State has a responsibility where it has become aware of particular welfare needs in an area and where there is no

> Aboriginal organisation to develop and administer its own project, to itself consult with existing organisations and go ahead and establish through the Regional Offices the necessary service. Once that program is established by the Department it will act to bring people together and form potential management and administration groups who can then potentially take on the scheme. I am quite convinced that there is a parallel and legitimate role for Community Welfare Departments to establish and run services focused on Aboriginal communities as long as they have two provisos:
>
> i) maximum Aboriginal participation and employment in the planning and implementation of the program.
>
> ii) they do not run counter to or in spite of welfare services provided by existing Aboriginal organisations[93].

(ii) The Aboriginal Children's Research Project, 1982

The second statement is the Report of the Aboriginal Children's Research Project, "Aboriginal Children in Substitute Care" in July 1982[94]. This report represents the fruits of a remarkable and sustained research exercise involving intense collaboration between Aboriginal and non-Aboriginal people. The project, which commenced in 1980, was initiated by the Family and Children's Services Agency of New South Wales. The research and writing was carried out initially by Mr Chris Milne and Mr Lyall Munro Jnr, the latter a well-known Aboriginal leader, later to become the Administrator of the Aboriginal Legal Service Pty.Ltd. After the first year, Mr Munro was succeeded by another Aboriginal, Ms Aileen Mongta. Collaboration between Mr Milne and Aboriginal people, however, extended beyond working with these Aboriginal researchers. Closely associated with the project was a group called the "steering committee". Numbering about 30, this group was predominantly Aboriginal, and both at meetings and by consultations with its members during the work had a profound impact on the project[95]. The author was fortunate enough to be present at various meetings associated with the Project, including a long and intense session of the Steering Committee in which some of the recommendations were hammered out. Due to this close involvement with Aboriginal people throughout the project the resulting recommendations have as strong a claim as any such document can reasonably have to represent Aboriginal opinion in New South Wales at the time.

The Recommendations commence with General Principles which it is necessary to set out in full:

RECOMMENDATIONS OF THE STEERING COMMITTEE

These recommendations are based on the premise that no resource is more vital to Aboriginal people than their children.

They are aimed at providing a framework for change. Extensive consultation is required with Aboriginal communities and agencies regarding the implementation of specific proposals.

General Principles

1. The N.S.W. government, the Commonwealth government and other organisations involved in Aboriginal child welfare in N.S.W. recognise and adopt the principle that Aboriginal people have the right to care for all their children, and following from this:

   i. guarantee Aboriginal control over their children
   ii. recognise the Aboriginal extended family as the best environment for Aboriginal children
   iii. return resources to Aboriginal communities for this purpose.

2. In accordance with principle 1, the Department of Youth and Community Services and other non-Aboriginal controlled organisations should not directly provide for the care or detention of Aboriginal children except in special circumstances determined by appropriate Aboriginal organisations.

3. All placement decisions involving Aboriginal children should be in accord with following priorities, in order:

   i. placement with the child's family
   ii. placement with another Aboriginal family in the child's community
   iii. placement with another Aboriginal family
   iv. placement in other Aboriginal controlled care[96].

Fifty-eight recommendations follow. The more important are summarised below, under the headings used in the Report. The numbers in the text refer to the recommendations.

(1) Measures to allow Aboriginal children to remain in their communities

a. Aboriginal Children's Services

Aboriginal families with child-related problems should have the right to assistance through The Aboriginal Children's Service and other Aboriginal organisations (4). Hence, a network of community-based Aboriginal children's services should be developed by the Aboriginal Children's Services and Aboriginal communities; and be funded by Commonwealth and N.S.W. governments, so that all Aboriginal communities will have access to them (5-8).

b. Aboriginal control over Aboriginal Children

The Commonwealth should legislate "to guarantee the rights of Aboriginal children to remain in their communities and to protect them from undue intervention by State government authorities" (11).

New South Wales legislation should be reviewed by "an Aboriginal controlled working party", with the aim of guaranteeing Aboriginal control over Aboriginal children" (9); in the meantime, Aboriginal people nominated by their communities should be appointed to all decision making bodies under the Community Welfare Act 1982 (10).

In particular cases, the Aboriginal Children's Services and the Aboriginal Legal Service should be advised of any court proceedings and have access to the child and the right to participate in the proceedings (12); all child placement decisions should be made with the participation of the A.C.S. or other Aboriginal organisation acceptable to the local community (13); until such participation has occurred, no further steps should be taken and notice of failure of participation should be given to the Aboriginal Children's Service, the Ministry of Aboriginal Affairs and, where appropriate, to the children's court (14).

With the Department's funding the Aboriginal Children's Research Project and the A.C.S. should monitor all Aboriginal children entering substitute care (15).

c. Resources

An Aboriginal Family and Child Welfare Resources Committee should be established to co-ordinate and plan the allocation of all government resources for Aboriginal child and family welfare programmes. The Committee should include representation from 7 Aboriginal organisations (with at least 3 from non-Sydney communities); The Department; Family and Children's Services Agency; Ministry of Aboriginal Affairs; Office of Child Care; and Department of Aboriginal Affairs (1 each). The Ministry of Aboriginal Affairs is to be responsible for the establishment and operation of the committee and the implementation of its decisions, and an annual report is to be published (16).

The Commonwealth/State agreement should be re-negotiated so that there is a clear delineation of responsibilities between the governments over

Aboriginal child welfare; and Aboriginal organisations should be involved in this re-negotiation (17). The Commonwealth should be responsible for income support and "special services", namely day care, family support, and the operations of Aboriginal child care agencies. The State should be responsible for funding Aboriginal-controlled alternative care services (including foster care and residential care) financial support for children in their own families, and preventative programmes; this includes the funding of Aboriginal child care agencies in relation to these programmes and the provision of other state welfare services to Aborigines on a fee for service basis (18)[97].

d. Services by the Department to Aboriginal People

In the long term, the Department's services should be made appropriate and accessible to Aboriginal communities through Aboriginalisation of services by the employment of Aboriginal staff in proportion to Aboriginal clients in the various districts and regions. Offices should "adapt their administration to Aboriginal ways within broad guidelines provided by the Ministry of Aboriginal Affairs and the Public Service Board" (23). In regions where more than 20% of the clients are Aboriginal, there should be an Aboriginal consultant and a Regional Aboriginal Consultative Group (26).

Aboriginal workers in YACS should be enabled to meet regularly, and should participate, through a co-ordinated structure, in all policy formulation relating to Aborigines, in conjunction with the Aboriginal programme officer (24, 25, 27, 29)[98]. They should also be involved in all consultation with Aboriginal communities (28). Aboriginal communities should be involved in the appointment of Aboriginal staff in the Department (30).

Plans for implementation of the above should be drawn up by the Department in conjunction with the Public Service Board, the Counsellor for Equal Opportunity, and the Ministry of Aboriginal Affairs (which should also monitor the implementation of the plan) (31-32).

(2) Children in Substitute Care

a. General

The identification of Aboriginal children currently in care and assessment of their needs should involve Aboriginal workers (33). The Aboriginal Children's Service should be notified of all case conferences (39); the

Department's Aboriginal community welfare workers should be able to participate in all casework involving Aboriginal children (37); and Aboriginal Alternative Care Teams should be established to work from District Offices where there are Aboriginal children (38).

The Aboriginal Children's Research Project should be funded to complete its investigation of Aboriginal children in substitute care (34).

No adoption application involving dispensing with the consent of the parent of an Aboriginal child should proceed without a case review involving the Aboriginal Children's Service or other Aboriginal agencies (40).

Aboriginal wards should meet with their brothers and sisters, and other relatives, within specified times, subject to assessment by Aboriginal workers; all cases where this has not happened should be reported to Aboriginal Children's Service and the Ministry of Aboriginal Affairs (41).

b. Young Offenders

The Department should fund and, with Aboriginal agencies, develop Aboriginal controlled community based preventative/alternative care programmes (43). Aboriginal management committees should oversee the use of remand centres which handle significant numbers of Aboriginal children (44). The New South Wales Aboriginal Education Consultative Group should be requested to review all programmes for Aboriginal children in all the Department's residential homes and institutions (46).

In the interim, the policy guidelines of the Department of Aboriginal Affairs on the care and treatment of Aboriginal juveniles in State Corrective Institutions should be implemented immediately (45)[99].

c. Other Forms of Substitute Care

Government funding and licensing of non-government child care agencies should be consistent with the general principles set out above (46). More specifically, non-departmental substitute care agencies having Aboriginal children should receive government funds only subject to annual reviews of the quality of service by the Aboriginal Children's Service or other appropriate Aboriginal organisations; maintaining records of Aboriginal children in care and (with the consent of parents) notifying regional Aboriginal child care

agencies of Aboriginal children entering their care; and approval by the proposed Aboriginal Family and Child Welfare Resources Committee (see below) (48).

(3) Information

The Department should develop a modern and comprehensive information system on persons in substitute care and Aboriginal children should be identified in it (49-50)[100].

An Aboriginal Information Unit should be established in the Department to index and catalogue all information on Aboriginal children now or formerly in care and then to keep it up to date, liaise with Aboriginal communities, and meet requests for information (52).

Aboriginal families and organisations should have access to information about their children presently or formerly in the Department's care (51-53); such records should be considered the property of the Aboriginal community and be vested in the Ministry for Aboriginal Affairs (54)[101].

(4) Compensation

The New South Wales government should compensate Aboriginal communities for the disruption of families and removal of their children under the Aborigines Protection Act 1909[102] and child welfare legislation through funding special Aboriginal-run programmes to research this period and, where requested, to trace family members and assist individuals who had been removed from their communities (56).

(5) Implementation

The implementation of these recommendations should be reviewed by the Ministry of Aboriginal Affairs, advised by a working group including representatives from the Aboriginal Children's Service and Legal Service and Medical Service as well as the Department, the Ministry of Aboriginal Affairs, and the Family and Children's Services Agency (57).

This chapter does less than justice to the richness of Aboriginal thinking on these issues, but perhaps it does indicate the main themes, and how they might be translated into specific proposals. Indeed, it seems clear that Aboriginal ideas and proposals have already had considerable impact on government

policy and the development of services. The following chapter will consider some of these developments.

CHAPTER 3

CURRENT DEPARTMENTAL PRACTICES AND POLICIES

1. INTRODUCTION

This chapter considers some recent trends in the practice of the Department of Youth and Community Services relating to Aboriginal child welfare. It may be said at once that there has been a large number of significant developments, especially since about 1980. These include formulation of policy; the appointment of Aboriginal people to the Department's staff; and a multitude of decisions at field level, such as an increased willingness to discuss placement issues with a local Aboriginal organisation, or to explore fully the availability of extended family before taking proceedings in the children's court. The range and diversity of these developments, and the fact that many of them are not recorded at all or in readily accessible forms, make it impossible to attempt a complete description, and what follows is illustrative only.

We start with a survey of Aboriginal children admitted to state wardship in the year 1981/82. We then look at wards from a different point of view, based on an examination of the files at a particular district office of the Department. This is followed by a consideration of Aboriginal children in foster care, and here the discussion draws on a series of interviews with foster parents. There is then a short discussion of Aboriginal offenders. The following topics focus on the processes of the child welfare syste; there is an examination of a "case conference" involving Aboriginal children, and then an examination of the move to "Aboriginalise" welfare services for Aboriginal people. Finally, we consider recent formulation of policy based on the recommendations of a Working Party of social welfare administrators.

2. ABORIGINAL STATE WARDS: A SURVEY

State Wardship

The Child Welfare Act 1939 provides:

(1) Notwithstanding any other law relating to the guardianship or custody of children the Minister

> shall be and become the guardian of every child or young person who becomes a ward to the exclusion of the parent or other guardian and shall continue to be such guardian until the child or young person ceases to be a ward.

The effect of these words is to effect a transfer of parental responsibility to the state, in the person of the Minister for Youth and Community Services. It is the most total transfer of responsibility over children known to our law, for in a case in 1964 the Australian High Court held that even the Supreme Court could not make a custody order once a child had been made a ward[103]. In that case, a natural father handed his baby over to the welfare department at a time when he could not look after him, the mother having left. Two months later the Department refused to return the child, and the father obtained a custody order from the Supreme Court. But on appeal the High Court ruled that the Supreme Court had no power to make such an order, since the effect of the legislation was to give the Minister total control over the child. It follows that in law the Minister (in practice usually the Department) can decide whether a child who is a ward should be placed with foster parents, or in some establishment or institution, or returned to the parents on a trial basis, and has power to determine all other matters relating to the child's life. Such decisions cannot be reviewed by the Courts.

Wardship has been a potent weapon in the fight to assimilate Aboriginal children,[104] and, at least from a legal point of view, represents the ultimate defeat for Aboriginal parents or communities who wish to retain responsibility for their children. It is an area of child welfare in which the Department's policies and practices are all-important, for there are effectively no legal constraints. How is it used in connection with Aboriginal children today?

The Survey

Published information about Aboriginal children who become wards is limited. When the Aborigines Protection Board was abolished in 1969, responsibility for its wards was transferred to the Department (then known as the Child Welfare Department), whose policy was not to publish separate statistics for Aboriginal children[105]. The first published study was the Report of the Aboriginal Children's Research Project, by Chris Milne, in 1982[106]. Milne estimated that in 1980 there were at least 549 Aboriginal

state wards; 119 were in Departmental homes and 430 were in foster care[107]. This total did not include Aboriginal wards who were in corrective institutions (Milne located 12 such children) or in the care of Aboriginal foster parents or relatives (estimated at 30 children).

Departmental records give somewhat lower figures, showing that there were 438 Aboriginal wards in April 1982, 380 in August 1983, and 374 in November 1984[108]. Both Milne[109] and Langshaw[110] have noted that departmental records have seriously underidentified Aboriginal children, perhaps by as much as 30%, and this may account for the discrepancy between Milne's figures and those of the Department.

The figures suggest some decline in recent years in the numbers of Aboriginal children who are wards, but this tendency cannot be clearly established because of the uncertain identification of Aboriginal children. In addition, any such decline should be kept in perspective. First, it may be that the decline in Aboriginal wards is less than the overall decline in the number of state wards, which has been considerable in recent years[111]. Second, even the latest figures show a continuing disproportional representation of Aboriginal children in the child welfare system: while Aboriginal people constitute approximate 1% of the N.S.W. population, they account for well over 10% of state wards[112].

Neither the Milne study nor the Departmental records identify the rate at which Aboriginal children become wards. Nor do they indicate the reasons for wardship or the processes involved. These questions were the focus of a small study carried out by the author and the Department, examining all Aboriginal children who became wards in the year 1981-82. The survey was based on a questionnaire designed by the author and completed by officers in the Department's ten regions. To ensure confidentiality, the returns did not mention the names of the children, who were identified by numbers only. After the answers were collected, a draft of the survey was circulated for comment to Regional Directors, several of whom responded with comments and further information. The author is grateful to those Departmental officers, both in Head Office and the Regions, who took the trouble to complete yet another boring form at a time of scarce resources and organisational change.

The survey is by no means definitive. For some children, information

is sparse. More important, it is not known whether Departmental records, on which the survey is based, still under-identify Aboriginal children. This is particularly important in the present context, since there would presumably have been no involvement by Aboriginal people in decisions about children not identified by the Department as Aboriginal. Thus the survey may suggest a greater level of Aboriginal involvement, and a lower number of Aboriginal children becoming wards, by up to a factor of about 30 per cent, the degree of under-identification found by Milne[113]. Nevertheless, the survey gives some indication of the numbers of Aboriginal children who become wards and the reasons and processes that are involved.

Findings

Over the period 30 June 1981 to 1 July 1982, 22 Aboriginal children are shown in Departmental records to have become wards. Information obtained relating to these children is set out in the following Table.

Discussion

(i) Numbers and Policies

The inferences that can be drawn from this survey are limited but important. First, the number of Aboriginal children who became wards during the year was 22. While it is unfortunate that any Aboriginal children become wards, the number is perhaps smaller than might have been expected. This figure is consistent with an impression the author received in discussions with Departmental officers and others, namely that serious efforts are being made to reduce the number of Aboriginal children coming into wardship. It seems, too, that regional trends reflect different degrees of emphasis on the policy of reducing the numbers of wards. Thus the Western Region, which includes some of the most disadvantaged Aboriginal communities, had the second largest number of Aboriginal wards of any Region in 1983: 58 wards, of a total of 380[114]. Yet in 1981-82, as the table shows, no new Aboriginal wards were admitted in this Region. North Western Metropolitan Region, which had the largest number of wards in 1983[115] admitted only one new Aboriginal ward in 1981-82. The evidence suggests that the number of children coming into wardship reflects Departmental policy more than the situation and needs of the children. The figures do not tell us, unfortunately, what services were available to the children who might otherwise have become wards, and the effect on them of the change in policy. Nor do they tell us how far such changes are motivated by a

desire to reduce public expenditure.

(ii) Reasons for Wardship

In law, children can become state wards in two ways, either by being surrendered by their parents or as a result of an order of the children's court in proceedings under the Child Welfare Act 1939[117]. Such court orders may be made both where a child has been found to have committed an offence and where the child is held to be "neglected" or "uncontrollable".

All the Aboriginal children who became wards were either committed to wardship by the children's court on the ground that they were "uncontrollable" or "neglected", or were admitted as wards by the Department. None were made wards[118] after being found guilty of an offence[119]. The survey thus suggests that wardship in these cases was used to protect the children (rather than to punish their misbehaviour)[120]. The legal categories of neglect were those that involved parental failure rather than children's misbehaviour (except perhaps for case 1, "uncontrollable", but note that the child here was seven years old). And the children were rather young; only four of the 22 were 11 years or older.

It is Departmental practice not to use administrative admission to wardship except where the admission is with parental consent or at the parents' request, and this practice appears to have been followed in the present sample (cases 4, 8, 10 and 22). In the other 18 cases the children were made wards by order of the children's court.

TABLE 4: ABORIGINAL WARD INTAKE STUDY

Child	Age	Residence Before Made Ward	Reason for Wardship	Was there a Case Conference to consider whether wardship appropriate?	Was any Aboriginal organisation involved?	Present Planning of wards
1	7	Ardlethan	Uncontrollable (committed by children's court).	Apparently not	No	In special facility e.g., for handicapped, or hospital.
2	3	Lalor Park	Neglect (committed by children's court).	Yes	Yes. Aboriginal Children's Services attended case conference. Were later contacted re placement but were not able to respond.	First placed in foster care, which broke down. Then in a residential facility, family group home or establishment.
3	10	Shalvey	Neglect (incompetent guardianship) (committed by children's court).	No	Aboriginal Specialist Section of YACS.	Foster care(not known if foster parents Aboriginal), in Glenorie.
4	15	Pt. Macquarie	Admitted by YACS on application of parent (mother) - inability to manage/cope.	No, but discussions with mother and Regional Director, etc.	No	In residential facility (family group home or establishment.
5	2	Grafton	Neglect (destitute) (committed by children's court).	Yes	"Grafton" (probably means an Aboriginal organisation in Grafton was involved).	With Aboriginal foster parents.

Child	Age	Residence Before Made Ward	Reason for Wardship	Was there a Case Conference to consider whether wardship appropriate?	Was any Aboriginal organisation involved?	Present Planning of wards
6	1	Grafton	Neglect (destitute) (committed by children's court).	Yes	"Coffs Harbour" (probably means an Aboriginal organisation in Coffs Harbour was involved)	With Aboriginal foster parents.
7	1	Grafton	Neglect (destitute) (committed by children's court).	Yes	"Coffs Harbour" (probably means an Aboriginal organisation in Coffs Harbour was involved)	With Aboriginal foster parents.
8	1	Coraki, via Lismore	Admitted by YACS, "Health reasons, incompetence of parents"	A Conference "at District Officer level with Aboriginal Community Worker"	No, but Aboriginal community worker was involved	With non-Aboriginal foster parents.
9	15	Sans Souci	Neglect (incompetent) guardianship (committed by children's court).	None recorded on file	Aboriginal Children's Service asked to verify child's claim, made after placement that he was Aboriginal	In residential facility — Renwick, at Mittagong.
10	5	Sydney	Admitted by YACS at father's request — mother "did not want" child.	"Yes (by phone)"	Aboriginal specialist Section of YACS, Redfern	Placed with Aboriginal foster parents at Bodalla.
11 (Sibling of 10)	6	Sydney	Admitted by YACS at father's request — mother "did not want" child.	"Yes (by phone)"	Aboriginal specialist Section of YACS, Redfern	Placed with Aboriginal foster parents at Bodalla.

Child	Age	Residence Before Made Ward	Reason for Wardship	Was there a Case Conference to consider whether wardship appropriate?	Was any Aboriginal organisation involved?	Present Planning of wards
12	9	Bomaderry	Improper guardianship (bedside children's court — urgent medical treatment necessary).	No (note urgency of case)	No	With parent in Bomaderry.
13	3	Bomaderry	Neglected — improper guardianship (committed by children's court) Child Abuse case. Department asked for remand. Child's mother's solicitor asked for wardship.	No	Aboriginal Community Worker (YACS) involved.	With non-Aboriginal foster parents in Nowra (near Bomaderry).
14	7	Kamarah	Neglected — incompetent guardianship. (Committed by children's court).	Yes	Yes	Not known.
15	15	Finley	Neglected — incompetent guardianship. (Committed by children's court).	Yes	Yes	Not known.
16	4	Glen Innes				
17	3	Glen Innes	Neglected — incompetent guardianship.	No	Not at initial placement, but Aboriginal Specialist Section involved later.	With non-Aboriginal foster parents; later with relative in Queensland.
18 (Siblings)	2	Glen Innes	(Committed by children's court).			

Child	Age	Residence Before Made Ward	Reason for Wardship	Was there a Case Conference to consider whether wardship appropriate?	Was any Aboriginal organisation involved?	Present Planning of Wards
19	13	Maitland	Neglected — incompetent guardianship (mother dead, father's whereabouts unknown. Committed by children's court).	Yes	"No — child does not relate as being Aboriginal".	With non-Aboriginal foster parents in Maitland.
20	9mths	Newcastle	Neglected — incompetent guardianship (committed by children's court).	Yes	"No — Mother: Caucasian; Father: Aboriginal referred to Aboriginal Legal Aid".	With non-Aboriginal foster parents in Mereweather.
21	9	Forster	Neglected — incompetent guardianship (committed by children's court).	Yes	"Yes — Aboriginal Childrens Service contacted by phone; Purfleet and Forster elders spoken with".	With non-Aboriginal foster parents near Taree, joining brother and cousin in placement.
22	4	Purfleet	Admitted by YACS on application by mother. There had been previous court cases and temporary placements.	Yes	Yes — Purfleet Aboriginal Medical Services.	With non-Aboriginal foster parents near Taree, joining two cousins.

(iii) Placement Decisions and Aboriginal involvement

Milne and others have argued that there should be increased Aboriginal involvement in the child welfare system and that Aboriginal children should as far as possible be placed or retained in Aboriginal care[121]. Indeed the main reason (though not the only one) for increased Aboriginal involvement is that it is thought likely to increase the number of Aboriginal children who can be placed in Aboriginal care. The assumption is that Aboriginal people will have a special understanding of the community context of child placement, and will be able to work more comfortably than non-Aboriginal workers with the children, their relatives, and potential Aboriginal foster parents.

The present survey offers some evidence that is relevant to these arguments, although it is far from conclusive. The sample is small and the information is limited. In particular, we do not know precisely how the Aboriginal involvement worked, or what were the possible alternatives for each child. Nevertheless, as far as it goes, the survey does offer some support for the view that involvement of Aboriginal people will increase the likelihood that Aboriginal placements will be found for Aboriginal children.

The information relating to placement decisions and Aboriginal involvement is summarised in Tables 5 and 6.

TABLE 5: ABORIGINAL INVOLVEMENT IN THE INITIAL PLACEMENT OF WARDS, 1981-82.

Aboriginal staff of Department of Youth and Community Services	5 cases
Other Aboriginal individuals or organisations involved(a)	6 cases
Nature of Aboriginal involvement unknown	1 case
Total Aboriginal involvement	12 cases
No Aboriginal involvement(b)	10 cases
Total placements	22 cases

Notes: (a) In three cases (16, 17 and 18) there was Aboriginal involvement after the initial placement[122].

(b) Includes cases 5, 6 and 7, in which the information received is somewhat equivocal.

Tables 4 & 5 show that while Aboriginal people are involved in a significant number of placements of Aboriginal children, numbers of Aboriginal children were still being placed without consultation with Aboriginal people as late as 1981-82. It should be remembered that these are figures based on children identified as Aboriginal in the Department's records. If Aboriginal children were still being underidentified in 1981-82, then the real number of Aboriginal children placed without Aboriginal involvement would be greater than the figures shown.

The form of Aboriginal involvement varied. The Aboriginal Specialist Unit of the Department was involved in three cases (nos. 3, 10 and 11). Aboriginal community workers were involved in five cases (nos. 5, 6, 7, 8, and 13). Of the cases where Aboriginal involvement was by people other than departmental employees, the involvement was as follows: Aboriginal Children's Service (cases, 2, 9 and 21), Aboriginal elders (case 21), the Aboriginal Medical Service (case 22). There was some Aboriginal involvement after the initial placement (by the Specialist Section, in cases 16, 17 and 18) and in aspects of the case other than placement (case 9, identification of child after placement as Aboriginal; case 20, father referred to Aboriginal Legal Service).

In only one case was there a record of involvement by several Aboriginal people or organisations (case 21). It is possible that information on this matter is incomplete, for there has often been considerable collaboration between, for example, the Aboriginal Children's Service and the Specialist Centre (now "Gullama").

The survey unfortunately does not tell us why Aboriginal people were involved in some cases and not others. It seems that sometimes the Department would form its own views about the Aboriginal identification of a child, as in case 19, although Milne has argued that this matter above all should be dealt with by Aboriginal people, as it was in case 9, but after the initial placement. It might be inferred from case 20, perhaps, that the Department looked primarily to the mother to decide whether to involve Aboriginal organisations.

Tables 4 & 5 then, show that in 1981-82 Aboriginal involvement was likely but by no means certain in the placement of Aboriginal wards, and the reasons for failure to involve Aboriginal people might include judgements by the Department about the identification of the child. There may of course have

been other factors, such as the availability of appropriate Aboriginal people at the time, especially where an urgent decision was required. The survey indicates that in 1981-82 there was a need for considerable work to achieve a situation in which Aboriginal people would be involved in all placement decisions relating to Aboriginal children. The policies, laws and resources need to achieve this end are considered in chapter 4.

TABLE 6: ABORIGINAL INVOLVEMENT AND THE PLACEMENT OF ABORIGINAL WARDS, 1981-82

Number of wards placed in Aboriginal care:	6
Number of wards placed in non-Aboriginal care[a]:	12
Number of unknown placements:	4
There was Aboriginal involvement in the placement of all 6 wards placed in Aboriginal care.	
There was Aboriginal involvement in the placement of 4 (one third) of the 12 wards placed in non-Aboriginal care[b].	

Notes: (a) In cases 16, 17 and 18 the wards were placed in Aboriginal care after Aboriginal involvement following the initial placement.

(b) In three of the four cases in which Non-Aboriginal placement following Aboriginal involvement, the placement did not separate the child entirely from Aboriginal relatives and community. In case 13 the child remained in the same district, and in cases 20 and 21 the children were placed with siblings and/or cousins in the care of non-Aboriginal foster parents. (It is not known whether this was also true of some placements where there was no Aboriginal involvement).

It should not be assumed that Aboriginal placements were available and appropriate for all the children. There might have been cases, for example, in which the child required specialist medical or other care not available in the Aboriginal community. Again, a child might have been brought up by non-Aboriginal people and strenuously resist being placed with Aboriginal people: in such a case, perhaps, some period of counselling might be necessary before the child would come to accept his or her Aboriginality. Nevertheless, one would expect such cases to be rare if there were in operation a positive approach to Aboriginal placements, a consistent involvement of Aboriginal people in the placement decision, and the provision of

appropriate resources to assist Aboriginal families and communities to care for their children. The fact that the number of Aboriginal childred placed outside Aboriginal care was twice the number placed with Aboriginal people, and that many of these placements were made without consultation with Aboriginal people, suggests that in 1981-82 there was a long way to go before this aspect of Aboriginal child welfare could be regarded as satisfactory.

3. ABORIGINAL WARDS IN ONE DISTRICT OFFICE

In July 1982 the author visited a district office of the Department and spent two days talking with the staff, including an Aboriginal caseworker, and examining all the files relating to the eight Aboriginal wards in the care of that district office. The following paragraphs summarise the situation of the eight children (whose names have been changed) as it appeared from the Departmental records and interviews.

Joseph Stevens was aged six. His mother, Deidre, was living alone in a caravan park. In 1978 Joseph and his two older brothers were found by the Children's Court to be "neglected", and were committed for two years to the care of a charitable institution. This arrangement ended in 1980 and the two older children went with their mother. Joseph, however, did not go with his mother. He had been looked after by house-parents who were working for the charitable home and they in effect became his foster parents. Joseph's father had been killed and the Departmental officers said that the mother had to a large extent rejected Joseph. About a year later, with the mother's consent, Joseph was taken to court again as being a neglected child and was made a ward. He remained in the care of the house-parents at the charitable institution as their foster child and has very little contact with his mother. A Departmental officer inolved in the case said that Joseph was doing well at the private denominational school he attended, and that in the officer's opinion it would be a good thing if he were to be adopted by the house-parents, who were white. It was said that Joseph's problem was essentially that Deidre did not want him.

The mother's rejection, however, does not explain why no Aboriginal placement was found for Joseph. Perhaps little effort was made in 1980 to find such a placement. More likely, the Department may have been somewhat compromised by its close working relationship with the charitable home; it may have found it difficult to remove the child from house parents who had

formed a particular attachment to him. Alternatively, it may have formed the view that any advantage of an Aboriginal placement would have been outweighed by the trauma of removing Joseph from the only secure family he had known. Even this, however, does not explain why an Aboriginal placement was not obtained in 1980 when the children were first removed from the mother. It should be added that the particular children's home was nearby, had many Aboriginal children, and had several Aboriginal people on the staff, so that life with the foster parents did not represent as severe a break with the Aboriginal community as such placements often do.

Michael Stephens, aged 2, was Joseph's half-brother, born at the time Joseph and the other children were in the charitable institution. Michael had been living with his mother in the caravan park until shortly before my visit. Following complaints that he was being abused, both the mother and her de facto were convicted of offences against him, and Michael was brought before the court as "neglected". He was placed in temporary foster care with a non-Aboriginal couple, and although the Department asked the children's court to adjourn the matter so a report could be obtained, the court immediately ordered that Michael should become a ward. At the time of my visit, the Department was seeking a suitable Aboriginal placement with the assistance of the Aboriginal community worker; if none were found, he might have to stay with the foster parents. The file described very real problems at the time of the court hearing, ranging from bruises, vitamin deficiency and poor physical development to a tendency to burst into tears when an adult stranger spoke to him. An "annual review" some months later stated that there had been no contact with the mother and that restoration to her was unlikely. It recommended that the foster parents (who lived in the same town as the mother) should keep Michael in contact with his siblings but that contact with the mother at this stage might set him back in his development.

Margery Goodall, aged seven, was brain-damaged and hyperactive, a condition that was said to be worsening as she grew older. She had been placed as a ward with white foster parents in a town some distance away, immediately after birth. It seems that the mother, who was very young, had given consent to adoption. The foster parents were said to be coping very well with a very difficult child. It was not clear what efforts had been made to find an Aboriginal placement for Margery.

Andrew and Tom Bissell were brothers whose mother had died and whose

father was unknown. Andrew was said to be pale in colour and not recognisable, in the district officer's opinion, as Aboriginal. Tom, aged nearly 18, by contrast, was very dark. Andrew, aged about 16, was said to be doing "very well" in his placement with white foster parents and in an apprenticeship as a greenkeeper. He was said not to relate to Aboriginal people at all, and to wish to change his name to that of the foster parents. Tom, described as "big, strong and lazy", had been placed with white foster parents, but had been removed after allegations that he had stolen and behaved rudely to the foster parents, striking the foster mother on one occasion at least. His educational and employment record was poor. On one occasion he voluntarily returned to a Departmental institution making allegations of violent treatment by the foster father. He was said to have a strong affinity with Aboriginal kids, but was "too lazy for sport". He discovered his extended family after receiving a phone call from another town, and after a series of meetings went to live with them. The officer said he had rather lost touch with Tom and believed he might be in prison; the only recent contact had been when Tom visited and asked for money from the Department. The officer told me that he had spent a lot of time with Tom but had never been able to control him.

(It is of course impossible to know where the truth lies in such cases: Tom would perhaps tell a very different story. Perhaps his story would have been a happier one if he had been placed earlier with his extended family. But this is uncertain, as is the question whether his brother Andrew would have been better off brought up as a member of the Aboriginal community. Andrew's choice today seems to be to disown his Aboriginality. Who can say whether he will regret this choice in later life, and whether his choice might have been different if he had been differently handled when he first came into the Department's care)?

James Plant, whose father was Aboriginal, was made a ward only to obtain permission for a blood transfusion, which was refused on religious grounds by his mother, a Jehovah's Witness. He had remained in his mother's care.

Michelle Peters, aged eight, was placed in the care of an Aboriginal woman when her mother died in a motor accident. Unfortunately the woman neglected Michelle, who was then made a ward. Michelle was placed "very satisfactorily" with an Aboriginal relative of the woman, and appeared likely to be adopted by this relative and her Aboriginal husband.

Jan Pringle, aged fifteen, presents a long and sad story. She was with a white foster family, and the placement had worked "reasonably well" until the previous two years. However, the foster parents lived in a remote area and she had had little chance to be with other children. The very extensive file provides many insights into the difficulties of an obviously Aboriginal child living with white foster parents. In 1972 it is noted that Jan "seems to resent being called Aboriginal. Apparently in the area where she had formerly been she tried to pass herself off as Fijian". During the 1970's many pages of file notes document a variety of attempts to establish contact between members of Jan's family. On some occasions the mother failed to attend arranged meetings. This provokes some file notes treating the mother as a nuisance factor: she should be told that Departmental officers are not going to chase her all over New South Wales and that it is not fair to the children if she fails to turn up. Another officer wrote that the problem could be that the mother gets embarrassed in the presence of relatives over the fact that she had apparently given up her children. Various factors were treated as inhibiting meetings: that the mother had given consent to a child's adoption; that the foster parents objected; that meetings were distressing for the child; that meetings were sought by the mother or other adults rather than by the children. In all, the documentation provides insights into the varied factors that are regarded as relevant to planning for children in care, and testifies to the extraordinary amount of hard and often frustrating work that needs to be done by a bureaucracy in handling the ever-changing relationships between family members scattered over New South Wales.

This, perhaps, touches on the key problem, namely the initial placements of Jan and her brothers and sisters. The four children were neglected when young, and in 1971, when the oldest child was five, were placed in foster care. Where? One in Orange, one in Blackheath, one in Campbelltown and one in Cooma. The only factor mentioned in the reports at that time was the children's religion (the oldest was five): it was seen as vital that they be placed with people of Protestant faith. There was no mention of the possibility of their being placed close together, no suggestion that their Aboriginality might have been a relevant factor.

It is a tragic case. Overall the picture emerges of a Department in recent years generally promoting renewed contact with the natural family, but finding it nearly impossible to do so in the light of all the consequences of the original disastrous placements. At the time of my visit, the foster parents

were at the end of their tether. Jan had become involved in drugs and alcohol and was rapidly getting out of their control. In many ways, Jan's story illustrates the points made over and over by Aboriginal critics of the system. The result of the extensive intervention of the authorities into her life had been to produce a disturbed and unhappy young adult, neither able to meet the expectations of white middle class society nor able to fit easily into the Aboriginal community. Aboriginal people are surely not alone in yearning for a world in which such a placement decision is unthinkable. Making such decisions unthinkable is one of the tasks of today's child welfare system. Many Aboriginal people believe this can only be achieved through a considerable transfer of responsibility over Aboriginal children to Aboriginal people. We will return to this in the final chapter.

These few cases cannot provide a basis for any sweeping conclusions, but they do underline some difficulties associated with the handling of neglected Aboriginal children by the Department. The tragic absurdity of initial placements that scatter siblings far and wide away from their family and their own people has already been noticed. Such mistakes today are hardly forgivable. A second lesson, perhaps, is the evident difficulty that a government department has in handling the constantly changing world of young children, especially when they are part of a community network of families stretching well beyond the territory of any particular district office. It is a curious experience reading through some of the files. It must be enormously difficult for Departmental officers trying to keep track of various relatives, to piece together reports and correspondence from several district offices on different members of a family, hazarding guesses as to whether a child's welfare will be served by contact with a distant relative, who may be known only from a paragraph on last year's report from another office. It seems surprising that any visits are arranged, any contacts made. Yet they are, and if one can believe the files, they are sometimes successful. But there was a sense of people clutching at straws to solve the problems of strangers in a world too subtle, contradictory and shifting to be caught in the pages of a report. The available evidence seemed thin and unreliable, and the reasoning appeared to draw more on intuition and experience than on any body of theory. The complexity of the problems, even in the few cases considered, was indeed daunting, and the author emerged from the experience both with a sense of the dedication of many departmental officers and of the clumsiness of bureaucratic methods in the task of assisting children in trouble.

A clear theme of the files and interviews was that in recent years the children's Aboriginality has become much more significant in the handling of the cases. The older records treat the children as problems in child welfare, while more recently there is a sense of dealing with Aboriginal child welfare. But if the above anecdotes show an emerging sense of the importance of Aboriginality, they nevertheless also illustrate a system in which non-Aboriginal people and methods are still firmly in charge. These children are the responsibility of the Department, not of the parents or the Aboriginal community. The increased willingness to allow and encourage family reunions, and even the involvement of an Aboriginal field officer, cannot disguise the continuing dominance of what is essentially a non-Aboriginal bureaucracy in which non-Aboriginal people hold the positions of power.

4. WHITE PARENTS, BLACK CHILDREN

Since the early days of the European invasion, Aboriginal children have been placed in the care of European foster parents. There is little doubt about the purpose of the first such placements: it was the elimination of the child's Aboriginal traits, and the substitution of more "civilised" values and behaviour, and ultimately the separation of the children from their own people. Here is the Rev. Samuel Marsden, writing of his early experience with an Aboriginal child:

> ...I have also a little native boy who takes up part of my attention — He is about six years old — and now begins to read English and wait at table, and hope at some future period he may be a useful member of society. He has no inclination to go among the natives, and has quite forgot their manners[123].

It seems, however, that such placements were often unsuccessful in their objectives[124].

What is the purpose of such placements today? No explicit discussion on the placement of Aboriginal children can be found in the legislation or in official Departmental publications such as the Practice Manual on Wards. However, this last document states general principles that are presumably intended to apply to Aboriginal wards as much as to other children. These stress the "continuous involvement of natural parents in planning for and maintaining contact with their children"[125] and the unification of the ward's family, which is the "prime goal of the Department's casework"[126]. Similarly,

provisions in the Community Welfare Act 1982 (not yet in force) state that the responsibility for children "belongs primarily to their parents, but if it is not fulfilled, it devolves upon the community"[127]. Courts will be required to take "cultural" and "ethnic" factors into account when making decisions about children[128]. Whatever the precise significance of such ideas, taken together they indicate that it is not a currently acceptable departmental policy to place Aboriginal children in foster care for the purpose of assimilating them to the non-Aboriginal community. This view is reinforced by policies adopted in 1984, to be considered at the end of this chapter.

What of practice? Does it match the theory?

Statistics on Aboriginal children in non-Aboriginal[129] foster care are scanty. However, it appears from available studies[130] that in 1980 the vast majority of Aboriginal children in foster care were state wards. Of these, numbering about 230, about 30 were placed with Aboriginal foster parents and 200 with non-Aboriginal foster parents. Of the 140 or so Aboriginal children in the care of non-government agencies, probably fewer than ten were in foster care.

Because the majority of Aboriginal children in non-Aboriginal foster care are state wards, and because the Department kindly co-operated in the study, a small survey was made of non-Aboriginal foster parents who had Aboriginal foster children.

Constraints of time and resources meant that the survey would necessarily be limited, designed to give leads and insights rather than firm conclusions. With the co-operation of the Department, a group of 30 foster families was identified and the parents invited to participate in the survey. Fifteen families indicated that they were willing to do so, and these families were all interviewed. In all cases the foster mother was interviewed, and in many cases also the husband, and sometimes the children. The families lived in the North Western metropolitan area of Sydney. The interviews, which took 1-3 hours, and were conducted at the families' homes, were informal and lossely structured. The interviewers sought to explore a number of key issues, especially the selection and training of the foster parents; the relationship between the children and their Aboriginal families; and the attitudes of the people involved towards racial issues, discrimination and the like[131].

The fifteen interviews were conducted by Ms. Carla Hankins and Ms. Coral Edwards. Ms. Hankins is an honours graduate in sociology; Ms. Edwards is an Aboriginal woman who was herself brought up by non-Aboriginal people and has been through the experience of re-discovering her Aboriginality, a process recorded in a remarkable film held by the Australian Institute of Aboriginal Studies.

Because the acceptance rate for the interviews was only 50%, the parents interviewed are not necessarily representative of white foster parents of Aboriginal children. Perhaps some of those who declined did so because they felt threatened by the prospect of interviews which focussed on their children's Aboriginality. If so, foster parents in general may be less comfortable with racial issues, and may do less to relate their children to the Aboriginal world, than the families interviewed here.

Another important matter relates to the stage of the fostering process that these families had reached. Typically, the foster parents were in their 40s or 50s and the children had been placed about how the children were placed in the late 1960's and early 1970's, and how these children are now faring. The sample did not involve foster families who had received children very recently (the most recent placement was in 1980; the second most recent in 1976). It is possible that practice has now changed. It is likely, in fact, that there are far fewer such placements today; as we have seen, only 22 children were admitted as wards of the state in 1981-82, and of these only a few were placed with non-Aboriginal foster families. These interviews therefore provide information about some of the Aboriginal children who were placed in foster care years ago and are still there.

THE INTERVIEWS

It will be convenient to describe results of the interviews under appropriate headings.

(1) Reasons for Fostering

A clear pattern emerged from the foster parents' comments about why they fostered an Aboriginal child. First, they usually wanted to foster a child so they could have a family. None of them saw themselves as working towards the restoration of the child with the natural family, as foster care theory and Departmental policy suggests[132]. In general, while they recognised

that they might "lose" the children, they hoped that they would become permanently members of their families. In many cases, they would have adopted the children had this been possible. Adoption was not feasible, because the natural parent would not consent to the adoption, or the Department would not apply for adoption, or because the foster parents felt that they could not afford to forgo the foster parents' allowance.

Why an Aboriginal child? Some applied for an Aboriginal child because they felt that Aboriginal people were discriminated against, and Aboriginal children had special need for foster homes. Not all, however, had chosen an Aboriginal child.

> Mr. and Mrs. A were unable to have children, and enquired from the Department about fostering a child. They were asked if they would take a "coloured" child, but refused, because they believed that the child would be harrassed by the local community. They were later told of a sick baby in hospital; if he survived, they could have him. They took the ill child from hospital, and were led to believe that they would eventually be able to adopt him. However, it later appeared that adoption was not possible, because the mother would not consent. It was only when the child was aged 7 that they were told he was of Aboriginal descent; they had originally been told that nothing was known about the child's family.

(2) Selection and Support from YACS

The foster parents were asked about the selection process. They had broadly similar experiences. They had not found it difficult to be accepted; the Department's questions were mainly about practical matters such as the adequacy of the accommodation. In no case was there any discussion about the children's Aboriginality, or the problems that this might lead to. There was no information or guidance on how the child might be brought up to have a good image of Aboriginal people or to keep in contact with them. As these foster parents saw it, the initial selection process paid no special regard to the children's racial identity, and did not discuss in any way its implications for the child's development. The general approach appears to be reflected in the words of one foster mother, who, when asked if she would take an Aboriginal boy, replied, "Black, white or brindle children are all the same".

Nevertheless, it seems that in at least some cases the foster parents' knowledge of the children's Aboriginality influenced the way they

interpreted their behaviour. One foster parent, discussing a child's poor concentration, said "Maybe it's his breeding. It's part of their nature isn't it? Peter can play tennis and beat some of the men on their home court but in competition he can't maintain his concentration". And the foster mother who made the "black white or brindle" remark noted above, said that her foster child spends his money "just like Aborigines who eat a big meal with no thought of tomorrow and then starve for three weeks".

(3) Information About the Child

Typically, the information given to the foster parents about the children's natural families was meagre and often inaccurate. Frequently, more information was provided later, in what appeared to be a haphazard fashion.

* Mr. and Mrs. A were told that their foster child's father was white and that he was dead, and that their child was the eldest in the family. However, when the child's uncle came to see him recently they learned that the child's father is Aboriginal and alive, and that there is an older brother.

* Mr. and Mrs. S were told by the Department that they didn't know anything about the child's family when the child was placed in 1970. Recently, however, the Department told the child that he has a brother and sister, whom he cannot see. The brother is "in care" and believes himself to be the son of the people looking after him, and the woman concerned doesn't want him to learn the real situation.

* The P family found that their foster child's surname had been misspelled on the forms. They knew only that his father was Irish, mother Aboriginal. When the child arrived, at age 3, he talked continually about his brother, and got upset and had frequent nightmares. Unknown to the P's, the brother had been with the child at the home where he had been previously. Had the P's known this, they would have applied for both children. They started taking the brother for visits, and he was subsequently placed in their care as a second foster child, but only seven years later.

(4) Family Contact

The foster parents were asked about what contact they or the foster children had had with members of the children's Aboriginal family. One striking finding was that, one way or another, there had been significant contact between most of the children and some members of their original families. Of the fifteen foster families, twelve had been involved in some such contact.

What stimulated the contact? The families displayed a remarkable

diversity on this point. Some foster parents were keenly in favour of contact, others neutral or opposed to it. In several cases, a member of the child's family — usually the mother or a brother or sister — made an approach to the foster family. It is likely that at least some of these approaches would have had the co-operation of, and perhaps were initiated by, the Department. To determine this would require further research. In some cases, the initial contact led to further meetings, with the children sometimes going to spend periods of time with other members of the natural family. Letters or photographs were sometimes exchanged. In some cases, the contact was not continued. When it was the other family member who broke off the contact, this caused distress to some children, especially where the initial meeting had been a joyous reunion. Sometimes, the children did not wish to maintain a relationship with the family after the initial contact had been made.

The diverse experiences of the families may be illustrated as follows:

* The P's had two brothers as foster children. There had been some meetings with members of the natural families, and these had gone well. In addition, the boys were encouraged to visit other Aboriginal people, and they spent some time with Aboriginal people on the South Coast when the P's went there for holidays. The interviewer talked with the boys; they said they were happy living with the P's, and did not expect to have any problems because they were Aboriginal, a view that Mrs. P agreed with.

* The D's foster child, S, had a less happy experience. S went home with her mother twice for a holiday; on one occasion they went to visit S's father, who was in prison. The visits home were apparently traumatic, and S said that she didn't like eating cake and Coca-Cola for tea, and that she was upset because she had to sleep with her two brothers on a mattress on the floor. On the second visit, there was a fight. S hid under the bed, and rang Mrs. D to fetch her the next morning. S would have nothing to do with her mother after those visits. Mrs. D was angry with the Department for not giving her information about the mother's lifestyle, which would have helped her prepare the child for the visit.

* The W family is a more ambiguous case. T, the foster child had no contact with her natural family. An officer from the Department had asked Mrs. W if T wanted to see her mother in Sydney, and T said yes, provided Mrs. W was with her at the time. However, nothing came of this; apparently the mother did not arrive in Sydney. T was asked by the District Officer if she wanted a photo of

> her mother, and she said she already had one, referring to a photo of Mrs.W. The W's recently discovered that T had a sister, who was not "with Welfare", but the people she was living with would not let her see her mother. Mrs. W said that T's mother contacted the Department "from time to time". She explained T's recent bad behaviour at school as being caused because T felt "let down" by her mother. In discussions about Aboriginality, Mrs. W asked "Why is there something special about T being Aboriginal? We're all human beings". She also said "We all should be aware of our birthright". Asked about T's feelings about being Aboriginal, Mrs. W said that she "didn't think it worried" T. When asked about the possibility of T mixing with or marrying an Aborigine, Mrs. W said that was her business; "as long as they don't ask me to do it. I suppose if I thought enough of the person I could". The interviewer thought that she had a "poor concept of Aboriginality", and that she was content to leave the situation as it was, rather than actively encourage T to meet her mother.

On the matter of contact with relatives, then, the interviews present a diverse picture. From this diversity, however, some general points emerge.

First, none of the foster parents experienced contact with natural relatives as part of a planned programme to aid the child's development. It often came "out of the blue", when a relative attempted to establish contact, or a departmental officer encouraged it. None of the foster parents appeared to have thought through the implications of contact, nor had they apparently been encouraged to do so by Departmental officers. The foster parents had not been counselled, trained or selected with this possibility in view: when they received the children, the matter was apparently not considered, and certainly not discussed. It is therefore not surprising that some of the foster parents appeared to find contact threatening and that they did not seem to have any guidance or support in handling the complex reactions of the children to the experiences of contact with their families, or, in some cases, of failed attempts at contact.

The finding shows practices that appear totally at odds with Departmental policy as stated in the Ward Manual:

> Foster parents are essential team members in the rehabilitation process. Thus they should have a clear and definite understanding of what is involved in foster care and be able to accept their role as team members in the rehabilitation of both the child and his family[133].

Second, there is evidence in the interviews that to some extent the Department promotes such contact. Although the sample is small, the interviews suggest that the guidance in this matter comes from higher up in the Department ("head office" for a foster parent may refer to the Regional Director as well as Head Office), but is not always supported by the field staff. Also, it seems that it is a recent policy of the Department: typically, it was recent contact that was initiated by the Department, after years of silence on the matter. The interviews suggest, therefore, that in recent years the Department has adopted policies and practices more favourable to contact with (and information about) natural relatives, and that this message has considerably influenced field staff, but has yet to be fully incorporated into practice. On the basis of conversations with various Departmental officers over the period of the research, and on the examination of Departmental files at one office, it appeared that arranging such contact was often a time-consuming and sometimes frustrating exercise, one that staff often found it difficult to do effectively while carrying out their other duties. If contact between foster children and their natural families is to be developed and made more beneficial to the children, it may be necessary to call on additional, and perhaps more skilled, human resources.

Third, a most encouraging finding was that although there was some family contact in most cases, the sample did not include any cases in which contact with the natural family seemed to be undermining the children's relationship with the foster parents. Some form of contact with natural relatives had been established, and often maintained, in a way that did not seem to create a barrier or distance between the children and the foster parents. This is interesting, because my impression is that many foster parents fear that contact with the child's relatives will have this effect. It might also be noted that the literature on adoption and foster care, as well as the Department's Manual on Wards, suggests that it is quite possible for children to maintain a good relationship with both their natural relatives and their foster parents. It seems from the present study that this is also true for at least some Aboriginal children, although how many, and for how long, remains uncertain. I heard anecdotal evidence of Aboriginal children in foster care being returned to Aboriginal communities, but have no systematic evidence on whether this was resented by the foster parents or seen by them as a satisfactory outcome; nor is there information about the children's feelings, or their subsequent development.

(5) Aboriginality and Discrimination

Since the European invasion, the pervasive assumption among non-Aboriginal people has been that it is useless to be Aboriginal in today's world, and that Aborigines are valued only to the extent that they show an ability to be like other people. There is a partial exception to this, namely the view that in their "natural state" Aboriginal people had a nobility and dignity, and this should now be recognised in the teaching of history and in other ways. This concession, however, has limited relevance in New South Wales, where few, if any, Aboriginal people live fully traditional lives. Thus for New South Wales, the only aspects of Aboriginality that gain significant respect in the non-Aboriginal community belong to a life-style no longer available. In my reading and discussions with people in the course of this study I formed the view that among the non-Aboriginal community there was effectively no sense of an authentic role for an Aboriginal person in New South Wales today.

This background helps to explain what is the basic finding on this matter, namely that the children's Aboriginality was nearly always seen as if it were a problem. Seldom in the interviews was there any sense that the children were lucky to be members of Australia's indigenous people, the inheritors of a rich and complex tradition. The questions that arose were whether the children had been jeered at or victimised for being Aboriginal, whether they could "fit in" at school, whether they would be discriminated against later in life when the time came to look for employment and accommodation, and so on. The interviews provided solid evidence, the more impressive because it usually did not have to be made explicit, that the image of Aboriginal people in non-Aboriginal eyes was a negative one.

Some foster parents were fiercely loyal to their children and sought to defend them, often with courage and love, against discrimination and any suggestion that they were inferior. But the chief theme of these efforts was that Aboriginal children were as good as anybody else, and that individuals should be judged on their own merits, not on their race. Thus the argument was not that Aboriginality was a source of pride and esteem, but that it was irrelevant. Even these efforts, therefore, did not necessarily build up a positive image of Aboriginality: the debate remained firmly about whether Aboriginality was a handicap or problem to the children.

There are some limited but important exceptions to this. The earlier

interviews by Sue Thomson were of foster parents who had attended meetings, arranged by the Department, to discuss the fostering of Aboriginal children. The author attended one such meeting. About six couples (in some cases just mothers) attended, and several brought their foster children with them. There was a film on Aboriginal life on a reserve, and the evening was organised by Aboriginal officers attached to the Aboriginal special section of the Department at Redfern. There have also been picnics organised for such parents, at the initiative of Aboriginal people and some supporters in the Department and the Family and Children's Services Agency. Such efforts are of the greatest importance, and would perhaps be even more effective if they received more support and publicity from the Department. Apart from these activities, some of the foster parents interviewed, as we have seen, encouraged contact between the children and their relatives and had encouraged them to learn about the place where they had been born or spent their earliest years.

In several families there was discrimination against the child from members of the foster parents' families, although in some cases this difficulty was overcome. There was some reported trouble at school, most commonly taking the form of name-calling by other children, frequently said by the foster parents to belong to ethnic communities. The following cases illustrate the type of problems the children encountered:

* Mr. and Mrs. B had trouble from their own parents when they fostered an Aboriginal boy: Mrs. B's mother wrote saying that she was "disgusted", and that the child "would never be my grandchild". The B's also have an adopted Aboriginal child, a girl. She visited her mother several times successfully. Then the mother started to ring up nearly every night, and the child became surly and unhappy. She later told the B's that her mother had been saying such things as "you don't belong to them, they are only trying to turn you against me". The B's took evasive action, obtaining a silent number, but the episode was apparently very disturbing for the girl, whose school work deteriorated and who spent months seeing a counsellor; she was "just coming to terms with everything" after 6 months. Despite this episode, and the fact that the B's attitude was that the child should not see her mother for a while, the B's said they would help her re-establish contact when she is older. The other child had satisfactory visits with her mother. Both children were said by interviewer to be "really well adjusted and seem very happy with the B's". The B's had attended picnics arranged by the Department for white foster parents of Aboriginal children. The interviewer (herself Aboriginal) states that N is "aware of her Aboriginal background and she is proud of the fact that she is Aboriginal".

The B family illustrates a fostering which appears to have had some success in combating discrimination, even though the placement with non-Aboriginal foster parents was itself the source of some of the problems.

* The P's had originally declined to accept an Aboriginal child, Robert, but took an ill Aboriginal baby from the hospital. They were told it would be possible to adopt the child later, but it turned out that the mother would not consent and the child remained a foster child. They only discovered the child was Aboriginal five years after placement. There was a conversation between the District Officer and Mrs. P in which the officer said that the mother was an alcoholic and "lived off prostitution". Mrs. P said she was surprised the mother had only three children, to which the officer replied that "God looks after his own"; Mrs. P told the interviewer that she supposed He must, and that she was surprised the children were all by the same father.

  On the question of contact by the mother, the departmental officer said to Mrs. P that he thought the local office where the mother lived was of "the old school" in its attitude to Aborigines and probably "hustled her out", to which Mrs. P replied "I guess if she wanted to see him badly enough, after 12 years she'd have found a way". She also said that it wouldn't worry her if Robert later sought out his family; "I'd rather he did and wipe it. I don't think he'd bother with it after that".

  When Robert first learned about his mother, he was "thrilled". But at school one of the children called him "Abo". Mrs. P said it would perhaps teach him to keep things to himself a bit more. The interviewer thought Mrs. P antagonistic towards Robert's mother and to a lesser extent the rest of the family. A revealing incident took place on a bus trip. A woman asked Robert if he had any brothers and sisters. Simultaneously the child answered "yes" and Mrs. P answered "no". Later, Mrs. P explained to Robert that the P's were his family; friends and relatives might know the real situation but a casual observer "is just being polite and it is best not to say those things". The interviewer commented that Robert is unlikely to get much encouragement in the future in respect of his Aboriginality.

* Mrs. V said that the reason she wanted an Aboriginal child was because she wanted a child who had the least chance of going back to its natural family. She had firm views about the rights of foster parents. She felt that after three years the children should be available for adoption, especially if there is no contact with the natural family: "What right have the natural parents to hold back on their children's security"? She said that the Department had encouraged contact with the natural family, and that she didn't object to this. However, she went on to repeat her views about the desirability of adoption, saying "Where

> are my rights? I'm just an extra employee". She said that she encouraged the children in their Aboriginality, but the children weren't very interested. She said that she was "very sorry they missed the boat as Aboriginals, but if they {presumably meaning the parents} wanted them brought up as Aborigines they should have given them to their own people". Nevertheless, Mrs. V thought one of the children displayed Aboriginal traits in that he could mentally wander, and that mathematics was "a dead loss for him".

There are many variants on these themes. The foster parents differ in their attitudes to Aboriginality and in their ways of handling the subject. It seems that the children, too, differ in their attitudes: how far this is due to the foster parents' handling of them is difficult to say. In some families, however, the foster parents make strenuous efforts, often with considerable skill and sensitivity, to help the children come to terms with their identity.

The interviews indicate that for many Aboriginal children in non-Aboriginal foster care, questions relating to their Aboriginality pose worrying and disturbing problems. The foster parents' responses were often sympathetic, but the evidence suggests that many of the parents, perhaps because they had not experienced such difficulties themselves, did not find it easy to help the children in this area. Their position was often a difficult one: they faced all the usual difficulties and challenges of their children's adolescence, and in addition problems about racial identity for which they could offer little assistance. Indeed, there is evidence in some cases that other Aboriginal people criticised and even abused the foster parents. In such situations there must be pressure on children to resolve the tension either by identifying their foster parents as part of the problem, or by adopting a hostile attitude to Aboriginal people. In any case, these interviews suggested that communication on this delicate matter between foster parents and children was often very limited. Thus one child was found by the foster parents, and a district officer, to be withdrawn and reluctant to discuss the issue, but in conversation with a sympathetic and sensitive Aboriginal interviewer who had had somewhat similar experiences, spoke intimately, freely and at length about the matter.

(6) Discussion: Some Implications

Aboriginal spokespeople have argued that no Aboriginal children should

be placed with non-Aborigines. Such placements remove the children from their families, communities and culture, and cause them severe identity problems. Frequently, at or around puberty they become disturbed by sets of conflicting messages about who they are and how they should behave. Further, Aboriginal children are subjected to discrimination and only Aboriginal people are able to help them resist it, both because Aboriginal people understand the most effective techniques and because it is a comfort and reassurance for the children if they are living with other Aboriginal people in a community where Aboriginality is the norm, and is respected.

The arguments in favour of placing Aboriginal children in non-Aboriginal care are muted these days; there are few people prepared to argue that they are desirable in principle. Yet they are still a common type of placement for Aboriginal wards who were unable to live with their own families, and until recent years it seems to have been assumed that non-Aboriginal placements were to be preferred. One has to infer the case for such placements from practice, from what the foster parents said, and from some scholarly writings. Perhaps the case can be summarised as follows. It is vital that children have good diet, clothing, medical care, education. Aboriginal people (for whatever reason) frequently lack the resources to provide these things. Therefore, it is desirable that children who cannot stay with their own parents should be placed where they can get regular good food, good housing, and so on. As for non-material things, foster parents are as capable of love as Aboriginal people, and what is important is that children grow up being loved, and having a good self-image based on the care and esteem of their parent-substitutes. Research shows that children fostered or adopted into white families do not necessarily develop racist attitudes. As long as foster parents encourage them to understand Aboriginal culture (e.g. by reading books) and to value their Aboriginal heritage, no harm will be done to them. It will be open to them later in life to choose whether to live as an Aboriginal or a white person.

These two opposed viewpoints are here briefly and crudely stated, but even so it is clear that the issues are very complex, and that each side makes a series of assumptions and assertions that could, in principle, be tested by research evidence. The task, however, of teasing out and testing all the factual assumptions behind these arguments is enormous. It would require, at least, a comparison between Aboriginal children in white homes and a similar group of Aboriginal children placed in Aboriginal foster homes. Again, since it is the long-term consequences that are important, the research would have

to study the development of the children to adulthood.

The present research, consisting of interviews with a small sample of white foster parents and with a few of the children, can only scratch the surface. Nevertheless, the interviews do seem to provide some insights into the practice that might require further study.

First, it is clear that the early placements of these children violated the principles of case work as later formulated in the Ward Services Manual. No assistance was given to the foster parents in coming to terms with their children's Aboriginality, and often basic information was lacking, or wrong. The foster parents were not assessed by reference to their suitability to care for an Aboriginal child.

Second, it seems that all the foster parents hoped or assumed that the children would become permanent members of their families, and some at least of the foster parents would have adopted the children if this had been legally and financially possible. In no case were the foster parents given any idea that their task was to work with the Department towards the restoration of the children to their own families. The children's past was typically ignored or denigrated, and their future assumed to be with the foster family. Typically, for these families, at the time of placement at least, fostering was a substitute for adoption.

Third, in contrast to the circumstances surrounding the original placements of these children, there was a clear pattern of activities on the part of the Department in recent years to encourage visits between the children and their natural families. If these efforts were part of a systematic plan for the children's welfare, the foster parents were not let in on the plan: for they invariably described the visits in terms of responses to accidental meetings, approaches to the children by other members of the family, pressure from the children, and pressure from Departmental officers. Thus there is evidence of a desire of the Department to encourage contact, but no evidence of systematic planning of such contact, or of inviting the foster parents to participate in such planning.

Fourth, in fact, one way or another, there was considerable contact between these foster children and members of their natural families. These contacts appeared generally successful, in that they gave apparent pleasure

and satisfaction to the children and other family members, mainly parents and siblings. Some difficulties did arise. It is tempting to speculate that all these difficulties might have been avoided by more careful planning, but one cannot be sure.

Fifth, the frequent contact did not in any case seem to undermine the foster parents' authority or alienate the child from them. This finding is important, for some foster parents were anxious on this score. It is also consistent with research in adoption that suggests that contact with children's natural parents does not normally alienate them from the adoptive parents.

Sixth, the study throws a little light on the very complex question of "identity crisis". There was evidence that some children felt ambivalent about their Aboriginality, or appeared to reject that part of their identiy, but others seemed comfortable with their identity, and proud of it. Some of the differences between children may have been due to the foster parents' handling of the matter. In some cases, however, children in the same foster family had very different feelings about their Aboriginality, and these feelings seemed to stem from something other than the foster parents' behaviour. It is not possible in this kind of research to measure the long-term effect of these difficulties, especially the extent to which the children will find it difficult to relate to other Aboriginal people when they grow up. Indeed, it is difficult to know from an interview with a foster parent, and even with a child, the intensity of the feelings involved. For example, a district officer interviewed one of the children after the research, and asked her how she felt about being Aboriginal. She replied "I hate it". Is this the cry of a deepy disturbed child, or merely an exasperated comment from a moody adolescent? Much more intensive work would be required to find out. The study, therefore, yields no definite finding on this important and controversial question. It does suggest, however, the following:

(i) Aboriginal children's experience of an "identity crisis" differs greatly from one child to another, and is likely to be influenced by the foster parents' attitudes and behaviour as well as by other factors;

(ii) Some of the children's difficulties arise because of their placements in white families (e.g. the child who was disturbed by the mother's attack on her foster parents);

(iii) Difficulties about identity can range from severe to mild, and in at least some cases it is possible for an Aboriginal child in a white foster family to be proud of being Aboriginal and, so far as can be discovered, secure and confident in his or her identity;

(iv) Untrained and unprepared foster parents can sometimes deal reasonably well with this identity problem, but may also be unable to deal with it at all or may deal with it tactlessly and clumsily.

In conclusion, it must be emphasised that because of the smallness of the sample and the response rate of 50%, generalisations from the survey must be made cautiously. In particular, it seems likely that those foster parents who agreed to participate in the survey would have been more supportive of their children's Aboriginality than those who did not. If so, the children of the missing 50% of foster families might well be more troubled, and more alienated from their Aboriginal identity, than the children of the families interviewed.

5. A 'CASE CONFERENCE'

A 'case conference' is a meeting arranged by the Department to review the situation of a child or group of children. It is a well recognised procedure which ideally brings together many or all of the people having responsibility for the children. Case conferences have no legal status as such but may result in a generally accepted decision. In appropriate cases a court might be asked to make orders giving effect to the decision.

The author had the opportunity to attend a case conference called to consider what might be done about three Aboriginal children whose mother had left them. As the details of the conference and its implications for Aboriginal child welfare have been discussed elsewhere[134] only a brief account will be given here.

There was clearly a need for some alternative arrangements to be made for the children. Before the conference, proceedings had been commenced in the children's court to have the children dealt with as "neglected", and they had been placed with Aboriginal foster parents on a trial basis. The case conference was notable because it was attended by nine Aboriginal people who were either representatives of Aboriginal organisations or employed by government departments (the Health Commission and the Department of Youth and Community Services). The result of the conference was that instead of being made state wards the children were committed to the care of the Aboriginal Children's Service. The issue turned out to be a technical legal one: whether the children — whose present placement with the foster parents was generally agreed to be satisfactory — should be made wards of the state or should be committed to the care of the Aboriginal Children's Service. In the result, the conference decided to recommend the latter course, and the appropriate order was later made by the court, by consent.

The case represents the new practice of the Department against the background of the old. The Aboriginal community had been very worried about the children becoming state wards, which as we have seen would have transferred legal responsibility for the children to the Department. Such a proceeding, in Aboriginal eyes, represented the familiar threat of white authorities in child welfare: the children would be taken away. The Departmental representatives protested at the conference that this was not their intention; the children would remain with the local foster parents unless that placement turned out to be unsatisfactory. However, the Aboriginal representatives correctly saw that such a result would nevertheless transfer legal authority for the children out of Aboriginal control. The case of Jan Stevenson, discussed earlier, is an example of the kind of destruction that can happen when children are made state wards, and such a consequence was feared by the Aboriginal representatives at the conference.

The newer approach is reflected in two main ways. First, the case conference process itself provided an opportunity for Aboriginal people to explain their point of view and press for the solution that represented what they considered to be the best for the children. The process thus embodied the Department's willingness to consult effectively with Aboriginal people. Second, the actual result was that legal responsibility for the children was not transferred to the Department, but was placed with the Aboriginal Children's Service (under the continuing supervision of the court, which could

deal with any further problems requiring a reconsideration of the allocation of responsibility). Thus the Departmental representatives were prepared to accept a result in which they gave up at least part of the legal power they would have had over the child had they pursued the original court application to make the children wards.

The case may be seen as representing a transition phase in Aboriginal child welfare. As the Aboriginal representatives saw it, it was pressure from them that led to the case conference and to the placement of the children with the Aboriginal foster parents, and the discussion at the conference was rather tense, with the Departmental representatives struggling to come to terms with different views of the appropriate resolution of the children's problem. Through a combination of forceful and skilful representation from the Aboriginal people and an open-minded approach by the Department, a novel and acceptable solution was reached. Those present agreed that it had been a fruitful exercise and a better way to resolve such problems than litigation in the children's court. Such a spirit may prove valuable in addressing questions of Aboriginal child welfare in the future.

6. OFFENDERS

The over-representation of Aboriginal children in the criminal justice system is well known. Thus Milne found that in June 1980 there were 105 Aboriginal children in corrective institutions, constituting 18.2% of all children in corrective institutions in New South Wales[135]. For many of these children, placement in a corrective institution involves a very significant separation from their links with the Aboriginal community. Milne found that although most corrective institutions were in or around Sydney, 80% of the Aboriginal residents came from country areas in the State[136]. For 34% there had been no contact with family members in the last three months[137].

While a detailed discussion is outside the scope of this report, some recent initiatives may be noted. The training school at Mount Penang has in recent years taken a bus-load of residents — mainly Aboriginal — on a trip to remote Aboriginal communities. These trips, which have taken place two or three times a year, were described by the superintendent as valuable both for the boys and the staff: for the boys, the trips reduced the isolation from their families and friends, and for the staff the trips provided an insight into the home circumstances of some of the Aboriginal residents.

Another example is the appointment of Aboriginal staff to the training schools. Milne found that in August 1981 there were two Aborigines in permanent positions in residential care, and six trainees under the N.E.S.A. Scheme[138]. In December 1984 this number had not increased[139].

The author spoke with three Aboriginal staff on a visit to Mt. Penang training school. The special value of such appointments appears to be that Aboriginal staff are likely to have greater rapport with Aboriginal residents, and to have a greater understanding of their situation. Nevertheless, both the staff members themselves and the superintendent emphasised that they did not work exclusively with the Aboriginal residents.

There have also been initiatives relating to earlier phases of the criminal process. A telephone survey[140] of regional district officers in 1982 showed that in one area Departmental officers claimed to have a good relationship with the courts, and to have had a significant drop in committals of children — the emphasis was on alternatives to institutionalisation. In another, it is said that discussions with the Aboriginal Legal Service prevent many cases from having to go to court. Such initiatives in the criminal area will usually require co-operation by the police.

The author encountered an example of a reasonably good working relationship between the Aboriginal Legal Service and the police at Nowra, on the South Coast. Officers of the Legal Service said that in a number of cases the police would contact the Legal Service for advice before taking proceedings. In some cases, children were brought before a meeting or informal tribunal of Aboriginal elders rather than being brought before the court. It was the author's impression that such co-operation is perhaps the exception rather than the norm: in many cases relations between the police and the Aboriginal community are very unsatisfactory. Even in Nowra, co-operation could not be guaranteed in every case. No doubt the possibilities for good working relationships depend not only on the individuals involved but on the general relationships between blacks and whites in the relevant communities: it seems that the police come under a great deal of pressure to conform to the expectations of the white community, and of course it is the duty of Aboriginal organisations to reflect the wishes of the black community in the area.

Finally, reference might be made to some current proposals. The

author attended a meeting arranged by one of the Sydney regional offices, called to consider how to promote alternatives to institutions for young Aboriginal offenders. The meeting was attended by representatives from a range of Aboriginal organisations, as well as Departmental officers and others. It was remarkable in that there was general agreement not only on the need to reduce the numbers of Aboriginal children in corrective institutions, but also on the need to ensure that what was done reflected the wishes of the Aboriginal community. It is, of course, a long way from planning to execution, but the meeting seemed to express widely held views about changes needed in jevenile justice areas generally, and more specifically in relation to Aboriginal children.

7. ABORIGINAL PEOPLE ON THE DEPARTMENT'S STAFF

A significant part of the Department's response to Aboriginal child welfare in recent years has been the appointment of Aboriginal people to its staff. There are three main instances of this: the appointment of Aboriginal district officers, the establishment of an Aboriginal Contact Centre, "Gullama", in an inner-city area of Sydney, and the appoinment of Aboriginal "programme officers".

Aboriginal District Officers

In 1978 the Department of Aboriginal Affairs (D.A.A.) funded the appointment of 12 Aboriginal trainee caseworkers (as they were originally called)[141]. More were appointed later, and many later became district officers of the Department of Youth and Community Services: in December 1984 there were approximately 30 Aboriginal district officers and another 15 in training[142].

Different opinions have been expressed about the significance of this initiative and the value of the community welfare workers. Milne wrote in 1982 that their role had never been clear and had been subjected to conflicting prescriptions from D.A.A. and the Department. In practice, they tended to be restricted to making traditional welfare assistance more accessible to Aboriginal communities. He continued:

> In 1981, Aboriginal Caseworkers expressed frustration and anger about their treatment and the sometimes impossible demands of their role with its often conflicting responsibilities

> between their employer and their communities. As a group they have been isolated, poorly paid, and in many cases subject to excessive restrictions imposed by their immediate superiors[143].

The Department's Corporate Plan, developed in 1981, includes the aim of promoting Aboriginal access to services and Aboriginal participation in decision-making[144]. It seems likely that Aboriginal community welfare workers would be effective in making services more accessible to Aboriginal people. How far these appointments increase Aboriginal "participation" is a more complex issue. Clearly, as Aboriginal people, they are participating in the system, but in a relatively low and powerless position within the Department. Whether their presence increases the participation of Aboriginal communities is as yet unclear. The case conference earlier referred to showed that in some situations at least these people cannot easily function both as employees of the Department and as representative members of the Aboriginal community[145].

During the research, the author had the opportunity to speak with several Aboriginal community welfare workers and attended one of their conferences in 1982. There certainly appeared to be unresolved problems about their role, and there were some complaints that the workers were not given sufficient power or resources to enable them to function as effectively as they would wish to. On the other hand, some at least seemed satisfied that their position was of value. It may be that some of the difficulties will diminish with more experience as their role becomes clearer. It was the author's impression that at least from the point of view of the Department, these officers performed a valuable role. One Regional Director wrote to the author in the following terms:

> ...it is true that in the process of adjusting to the machinations of our Community Welfare Offices, newly appointed Aboriginal Community Workers would be liable to feel both intimidated and unlikely to express a view contrary to that felt by their Officer-in-Charge. However, the passage of time and personal growth has seen the emergence of community workers who can be depended upon to present an objective, cultural viewpoint and it is that balance which attracts their involvement in all substitute care matters concerning Aboriginal children placed on the North Coast[146].

The progress of these individuals from the anomalous position of Aboriginal Caseworker to the position of district officer represents an

advancement in terms of status and responsibility. District officers are the Department's generic field staff, carrying out virtually all the Department's work under the direction of their supervising officers. At the same time, with the change in status they will no doubt be required to carry out the normal duties of departmental officers, working with non-Aboriginal as well as Aboriginal people. The extent to which they make a special contribution in connection with child welfare in Aboriginal communities may largely depend on their personal skills and priorities, on how far they are encouraged to do so by their superiors in the Department, and on the extent to which they are accepted by the Aboriginal communities. Their appointment is undoubtedly a welcome attempt to redress unemployment among Aboriginal people and the implement policies of equal opportunity. It may be expected to help make the Department's services more accessible to Aboriginal people. Whether their appointment constitutes progress towards Aboriginal self-determination is a more complex question. Its answer depends partly on how their roles develop and partly on the answers to the question to be considerd in chapter 5.

Aboriginal Centre "Gullama"

This centre was established in 1978. It had a small staff — about four or five officers, of whom two were Aboriginal — and was established in remarkably squalid premises until 1983. Its profile was low-key in the extreme; it was not listed in the telephone directory, and at the entrance to the building in which it was to be found (with difficulty) there was a sign referring only to the Health Commission, with which the unit shared premises. There was even some uncertainty about its correct name. Its role was unclear in many respects, according to the staff interviewed by the author. The centre had some of the powers of a District Office, but not all. In general, it was the author's impression that the centre provided a place where some Aboriginal people might come without feeling intimidated as they might be by regular district officers, and whose staff had a special understanding and affinity with Aboriginal people, and were well placed to consult on personal problems and liaise with other organisations. On the other hand, the centre was apparently not much consulted by the Department on policy issues relating to Aboriginal people, and the staff felt rather unappreciated and removed from the centre of things.

In a paper in June 1982 the Director-General Mr. W.C. Langshaw described the centre as follows:

Aboriginal Contact Centre, Redfern

A specialised Aboriginal Service at Redfern was established by the Department in 1978 to —

* provide an advisory, consultative, supportive, advocacy and referral service to Aboriginal people and organisations engaged in the delivery of services to Aborigines, throughout New South Wales

* alleviate problems of isolation and communication

* assist Aboriginal people to develop their full potential and to be able to manage living in a multicultural society

* support the promotion and development of Aboriginal customs, cultures and beliefs.

The valuable specialised support services provided by the officers at the Centre have become well known to many agencies working with Aborigines and to the Aborigines themselves, not only in New South Wales but also Interstate.

Staff at the Centre make home visits where necessary, as well as cater for the many Aborigines who visit the centre daily, seeking assistance. It is common for clients, across the whole metropolitan area of Sydney, to visit the Centre because they are able to relate to the Aboriginal Staff employed there.

To assist with the implementation of their programme, officers at the Centre work in close co-operation with Aboriginal Health Workers of the Health Commission of New South Wales, consult with offices of the Housing Commission of New South Wales and the Aboriginal Medical Service, as well as the Department's Aboriginal Community Welfare Workers[147].

Aboriginal Programme Officer

In 1982 the Department of Youth and Community Affairs created a new position in Head Office, that of Programme Officer. Whereas the Aboriginal district officers operate at the service level, the new position involves an Aboriginal contribution in the area of policy formation. In June 1982 the Director-General described the position as follows:

Programme Officer

The Department has recognised the need to employ Aboriginal staff in policy development positions and has recently advertised for a Programme Officer to join the team in its Policy Development Directorate.

> A most important part of this officer's role will be to promote a contribution by Aboriginal people in New South Wales in the development of suitable welfare services for Aboriginal people, to assist in the development of Aboriginal self-help groups and to monitor the effects on Aboriginal people of the range of services developed under the provisions of the Community Welfare Act.
>
> It is expected that this will certainly involve —
>
> * efforts to increase the communication and mutual understanding between Aboriginal people, government officers and the community generally;
>
> * developing constructive relationships with Aboriginal organisations and facilitating their developmental programmes, while at the same time
>
> * stimulating recruitment of Aboriginal people into public service positions and ensuring that they receive appropriate and adequate training to enable them to progress in the service;
>
> * working with these public servants and the Aboriginal community to design and implement effective policies and programmes;
>
> * training non-Aboriginal staff to understand the situation Aboriginal people are in and to be able to work productively with Aboriginal staff;
>
> * seeking to ensure that the resources needed for Aboriginal community programmes and government programmes are made available;
>
> * monitoring the results of Departmental programmes as they affect Aboriginal people[148].

By December 1984 five Aboriginal people had been appointed in five Regions as "Community Programme Officers". They operated from Regional Offices and had a general responsibility to oversee services to Aboriginal communities, the funding of Aboriginal projects in the Region, and the operation of substitute care (e.g. foster placements)[149]. It remains to be seen how influential these appointments will be, but together with the appointment of an Aboriginal Programme Officer in Head Office, they appear to hold some promise of introducing Aboriginal input into the Department at a policy-making level, for the Regions are of considerable importance in setting policies for the delivery of services.

8. DEPARTMENTAL POLICIES

As noted earlier, during the period in which field work was carried out for this study, there was no officially formulated policy relating to Aboriginal children, although the material already presented shows the existence of emerging strategies and practices adopted at the district and regional level, and no doubt unofficially in Head Office. In November 1984, following the report of a Working Party of the Standing Committee of Social Welfare Administrators, a circular was sent to Regional Directors on "The Implementation of Policy of Consultation: Aboriginal Fostering and Adoption"[150].

The circular states that the Minister had approved the attached policy recommendations on Aboriginal children coming into care and the adoption of Aboriginal children. Taken together these documents establish policies designed to keep Aboriginal children in the care of Aboriginal people and to ensure proper consultation with Aboriginal people when decisions are to be made about Aboriginal children.

In addition to these general policies, the circular contains some more specific directions about the appropriate methods of consultation about Aboriginal people.

This chapter has examined a number of aspects of developments within the Department of Youth and Community Services relating to Aboriginal child welfare. It is apparent that in recent years there has been a significant change of direction. The new direction involves practices and policies designed to keep Aboriginal children within the Aboriginal community, to increase Aboriginal employment at various levels within the Department, and to develop appropriate forms of consultation with Aboriginal people about the provision of child welfare services.

It is beyond the scope of this study to assess the effectiveness of the emerging policies and practices. But the material presented here allows for some evaluation of the adequacy of the policies that have now emerged, most recently in the circular relating to consultation with Aboriginal people.

Clearly they represent a sharp reversal of the historical policies of Aboriginal child welfare law, examined in Chapter 2. Equally clearly, they are consistent with many of the demands and aspirations of Aboriginal people discussed in Chapter 3. Does it follow that all that remains is to do further work to translate these policies into reality? Or do the policies still fall short of an appropriate framework for Aboriginal child welfare law and practice in the 1980's and beyond? This difficult question is the subject of the final chapter.

CHAPTER 4

CHILD WELFARE REFORMS AND ABORIGINAL POLICY

There have been significant changes in Departmental thinking, and to some extent practice, on Aboriginal child welfare. Some examples have been given in Chapter 3. While these changes appear to move in some of the directions indicated by Aboriginal people (see Chapter 2), it is not clear how far they are based on an overall policy relating to Aboriginal people. The appointment of significant numbers of Aboriginal community welfare officers of the Department, announced by the Director-General of the Department in March 1984,[151] provides an example. Are these officers to carry out the normal duties of district officers, or are they to play a special role in connection with Aboriginal children? Is the funding of these appointments seen as expression of a commitment to Aboriginal people? If so, on what basis was this initiative preferred to the many others recommended by the Aboriginal Children's Research Project? Why was the decision made to place these district officers in the Department's ordinary community welfare offices, rather than, say, to establish more specialist Aboriginal units like Gullama (see Chapter 3)? Again, on what basis was the decision made to spend money this way rather than by granting additional funding to Aboriginal organisations to assist them in child welfare work? In the absence of any evident underlying policy about the direction of Aboriginal child welfare, there seems no principled way of choosing between such options.

It seems desirable that specific initiatives in Aboriginal child welfare should be grounded in some overall policy towards Aboriginal child welfare. This chapter presents the argument that decision-makers face a choice between two fundamentally different approaches to Aboriginal affairs, and therefore Aboriginal child welfare; and it considers the implications of this analysis for the development of existing policies and the creation of new ones.

TWO APPROACHES TO ABORIGINAL CHILD WELFARE

The history of Aboriginal child welfare provides a useful starting point in attempting to clarify options for today's decision makers. The material examined in Chapter 1 suggests that there are three distinct phases.

The first phase is constituted by the regime of the Aborigines Protection Board and later the Aborigines Welfare Board, covering the period 1883-1969. In this period, Aboriginal child welfare was seen as part of the white man's response to the "Aboriginal problem", a response which consisted of establishing a special authority to control Aboriginal people, and promote their welfare as seen by the white authority. Except to some extent in relation to full bloods, the authority considered that the "welfare" of Aboriginal people would be promoted by measures designed to make them like white people, so they could take their place in the "wider" society. By the 1960's, however, the view came to prevail that this objective was not likely to be advanced by the continuation of a separate authority having powers over Aboriginal people, and that such an authority in fact constituted a threat to their civil liberties. The abolition of the Aborigines Welfare Board in 1969 marks the end of the first phase.

The second phase occurred between 1969 and about 1980. During this period, separate laws or provisions for Aboriginal people were seen generally as unjustified, and perhaps discriminatory. In this second phase, Aborigines were to be treated like everyone else. There were to be no special detriments, and no special privileges, associated with being Aboriginal. The ordinary systems of health care, legal services, child welfare and so on would apply to all alike, regardless of race. Aboriginal people had the same rights as everyone else, in particular the right to freedom from discrimination. It was proper to criticise the legal system or the health system for any less favourable treatment of Aboriginal people, but the notion of equal participation in these and other social services by individuals was seen as marking the limits of the rights of Aboriginal people. During this period, as might be expected, there was little mention of Aboriginal children in the annual reports of the Department, and, with the curious exception of adoption, statistical information did not identify Aboriginal children.

By the late 1970's, however, new and very different ideas had gained ground, leading to what is here regarded as the third phase, which brings us into the present. "Self determination" became more prominent than equality as a touchstone of justice for Aboriginal people[152]. The emergence of support for Aboriginal initiatives, especially in the areas of legal services, health and housing, represented a new sense that justice to Aboriginal people includes some recognition of the rights of Aborigines to continued existence and development as a people. It was not enough, as had been previously assumed, to ensure

that Aboriginal individuals were free from discrimination[153]. The granting of rights to individuals alone was seen as another strategy for implementing the policy of assimilation, since what was protected was the individual Aboriginal's right to participate in the non-Aboriginal society. The individualistic notion of freedom from discrimination was consistent with a community which, having largely destroyed Aboriginal society, gave Aboriginal people no choice but to live according to the rules and traditions of the alien European community. A new view of equality emerged, in which Aboriginal people had a right to a place in a viable and authentic Aboriginal community. Since vast damage had been done to Aboriginal society by the European conquest, justice for Aboriginal people required that steps be taken to assist them in consolidating and developing their culture, traditions, and identity[154].

Against the perspective of recent thinking the distinction between the first two phases seems more a matter of strategies than of basic orientation. Both the first and second phase denied Aboriginal people such a destiny, and both are now widely seen by Aboriginal people as "assimilationist", in that ultimately they provided no real option for Aboriginal people other than fitting in with the non-Aboriginal community. The crucial distinction is thus between assimilationist[155] policies and policies of self-determination, which are based on the right of Aboriginal people to continued existence as a distinct and viable group.

This analysis, of course, does not do justice to the complexity of the issues. But it may be useful in clarifying the choices facing the decision makers in Aboriginal child welfare today. Child welfare laws were formulated during periods when overall Aboriginal policies were "assimilationist" in the sense used above[156]. What child welfare policies are appropriate in the context of an overall policy of self-determination for Aboriginal people? To answer this question it is necessary to say a little more about self-determination.

Like all such terms, "self-determination" has more than one meaning, and no doubt its various shades of meaning conceal important differences of opinion among those who support it. Nevertheless, it is a key notion, expressing the Aboriginal aspirations canvassed in Chapter 2 and having significant support by both the New South Wales and federal government[157]. Its implications for Aboriginal child welfare are therefore of considerable importance[158].

Generally, self-determination seems to mean the right of Aboriginal people

as a whole to have the opportunity to control their destiny, to consolidate, develop and adapt their laws, culture and traditions in a way that ensures their continuation as a viable and identifiable race. It is not possible to describe in advance precisely what form the result will take, or the strategies that Aboriginal people will adopt; what is central is that they should have the chance to work out their destiny in their own way. European conquest stripped Aboriginal people of their land and much of their culture. Consequently it is necessary for Aboriginal people to be provided with the tools necessary to translate their aspirations into reality. As is now widely recognised, land rights are, for a dispossessed people whose identity is bound up with the land, the most central requirement. But land will not be enough, especially in New South Wales where many Aboriginal people live away from land to which they might have traditional claims. Aboriginal people also require the resources necessary for them to become self-determining. Precisely what these resources are, and how much the non-Aboriginal community is willing to hand over, are difficult political issues. However, it has been seen that Aboriginal people have pressed very hard their claims to determine the welfare of their children, and indeed the right to pass on their Aboriginal identity to children is at the heart of the continuation of Aboriginal people. The resources required would therefore necessarily include financial support to enable extended families to care for Aboriginal children, and for Aboriginal agencies to be developed or expanded. They would also need to provide for preventive services to reduce the amount of family disruption caused by poverty and social disorganisation, these being directly linked to dispossession from the land and decades of government policy that locked Aboriginal people into a dependent and powerless position.

Self-determination needs to be distinguished both from multiculturalism and from apartheid. "Multiculturalism" requires that cultural differences be respected and that public services be equally accessible to all[159]. It is consistent with notions of equal employment opportunity for women and members of other disadvantaged groups in the community[160]. Such policies, of course, will be to the advantage of Aboriginal individuals as well as other people. But they should not be confused with a policy of self-determination, which is based on the unique claims of Australia's indigenous people, arising out of the tragic story of dispossession and oppression in their own land. Aboriginal people claim redress from non-Aborigines, who are enjoying the fruits of these past injustices. And unlike Australians with other backgrounds, whose race and culture will generally continue in other

countries whether or not it flowers in Australia, what is at stake for Aboriginal Australians is their very existence as a distinct and identifiable people. That is why Aboriginal people have spoken of the policy of assimilation as "cultural genocide". In discussions of Aboriginal child welfare, it is often said that if certain measures are taken for Aboriginal children, similar measures would have to be introduced for other "ethnic" groups. This remark shows a failure to grasp the essential difference between self-determination and multiculturalism.

Opponents of land rights for Aboriginal people have sometimes claimed that land rights, and the policy of self-determination, are essentially policies of apartheid under another name. The claim is untenable. Self-determination, unlike apartheid does not prevent those Aboriginal people who wish to do so from participating fully as a member of the community. It merely offers an opportunity for Aboriginal people to take the necessary steps to ensure their continuing viability as a race. It enhances their rights, rather than restricts them[161].

RECENT REFORMS: ASSIMILATION OR SELF-DETERMINATION?

Chapter 3 presented a range of recent changes in policy and practice in Aboriginal child welfare. Are these based on underlying policies of assimilation, or self-determination?

This question cannot be answered easily, because the changes have not been accompanied by any explicit statement of underlying policy. Even the Working Paper of the Social Welfare Administrators, the most coherent official statement of policy to appear, does not address the question explicitly. It is necessary therefore to examine the changes themselves to see whether their effects would be more consistent with one policy than the other. Space does not permit an exhaustive treatment here even of the matters canvassed in Chapter 3, but a brief analysis of some of the main changes will be offered.

Appointment of Aboriginal Staff to the Department

The appointment of Aboriginal district officers is explicable without reference to self-determination. It can be readily enough justified in terms of equal employment opportunity: indeed, advertisements for Aboriginal positions have to be cleared with the Anti-Discrimination Board, whose charter

does not single out Aboriginal people for any special consideration. Aboriginal people have been underemployed in the Department as they have been in the public service generally; and such appointments will no doubt be welcome in view of the disproportionate number of Aboriginal children in the care of the Department.

Whether they also promote Aboriginal self-determination is more debatable[162]. Aboriginal officers in these positions are subject to the authority of their employers, not of their communities, and community authority seems to be an important aspect of Aboriginal self-determination. As has been noted, the extent to which these officers will be working specifically with Aboriginal people, and especially with Aboriginal communities, is as yet unclear, and it is entirely a matter for decision by their superiors in the Department. It is arguable, indeed, that such appointments operate against the development of self-determination, for the individuals appointed to these positions might otherwise have been available for employment in Aboriginal organisations. Employment in the public service may weaken their authority within their communities, and thus deprive the communities of some of their most valuable workers in child welfare. It remains to be seen how far these predictions come true, but at this stage the appointment of these officers seem not to be based on the policy of self-determination and may even work against it.

The appointment of the more senior programme officers is more difficult to evaluate. These officers, too, are in a sense removed from their communities, and were appointed on the orthodox basis of advertisement and selection within the public service, not by any decision making by Aboriginal communities. On the assumption that these individuals are especially skilled in policy development and the design and implementation of services, the loss of their potential services to Aboriginal organisations is all the greater. On the other hand, being in a policy-making role gives these officers a special opportunity to develop policies and methods of service delivery that promote the involvement of Aboriginal families and communities in child welfare, and thus to advance Aboriginal self-determination.

Consultation and Co-operation with Aboriginal Communities and Organisations

We have seen that in a number of ways the Department has adopted the

practice of consulting with relevant Aboriginal organisations and community groups in making decisions about individual children and to some extent about other issues relating to child welfare. This development could perhaps be explained without reference to the policy of self-determination. It is clearly good practice to involve members of any child's family and community, and one might expect similar consultation with any relevant organisations of children with ethnic backgrounds or from particular (e.g. religious) communities. The Community Welfare Act 1982 contains provisions aimed to ensure that all children's identification with particular groups is taken into account[163], and these sections do not distinguish between Aboriginal and other children.

This analysis is perhaps too severe. While such consultation and co-operation is capable of being explained by reference to ordinary notions of children's welfare in a multi-cultural society, it seems likely that the process of consultation with Aboriginal groups is being developed with particular emphasis not given to other groups in the community. To the extent that this is so the Department's practice may well reflect notions of self-determination. Perhaps what is important here is the long term effect of such consultation. If the consultation is limited to cases where there is obvious benefit to the children, it need not be explained by reference to self-determination, but if it is combined with a deliberate effort to build up the strength of Aboriginal community organisations and improve their skills that it is more likely to promote Aboriginal self-determination.

The Aboriginal Child Placement Principle

Placement of Aboriginal children with white families was the preferred option when the child welfare system was used for the purpose of attempting to assimilate Aboriginal children into the non-Aboriginal community. As we have seen, there is now considerable acceptance of the reverse principle, namely referred placements of Aboriginal children with other Aboriginal people, ideally members of the extended family or the child's community. Such a change of approach has been long sought by Aboriginal people.

The full implications of the placement principle cannot be explored here[164], but it is important to clarify the nature of the principle and its connection with the policy of self-determination.

The principle may be variously expressed, but perhaps the key

question is its relationship to the well-established legal rule that in custody and related matters the child's welfare should be "the paramount consideration"[165]. This rule, now entrenched in the legislation, applies to the decisions of courts in making decisions about custody and adoption. Usually, the decision is made after two or more parties have put forward conflicting claims to the custody of the child, and in this context the rule means that in deciding such cases the court should make whatever decision it thinks will best promote the child's welfare. The court is not permitted to base its decision on some other criterion, such as what is a fair result as between two parents in view of their behaviour towards one another[166]. When the Aboriginal child placement principle is applied in such a context, it is usually seen as no more than a guide to what is likely to be for the benefit of the particular child. Thus if on the facts the court were satisfied that a placement with non-Aboriginal people would be better for the child, it should make that decision. All existing legislative forms of the principle appear to be consistent with this approach, and the Australian Law Reform Commission regarded it as self-evident that the placement principle should not be interpreted as inconsistent with the more fundamental rule that the child's welfare is paramount[167].

Seen in this light the placement principle is far from being an expression of Aboriginal self-determination. It would be difficult to resist the argument that the principle could be applied to any child having an identification with a particular race or culture, and indeed there are provisions to that effect in the N.S.W. Community Welfare Act[168]. The argument for confining the principle to Aboriginal children is a practical one: that in view of the past practice of placing Aboriginal children away from their own people, and continuing prejudice against Aboriginal people, it is desirable to state in a public and formalised way that courts should acknowledge the value to Aboriginal children of continuing links with their heritage and identity.

In the child welfare system, however, the placement of children is only rarely a matter of choosing between two competing claimants. More commonly, the task is to find a suitable alternative placement for a child whose present home has proved unsuitable. Often, there are many possible choices, sometimes with little to choose between them. In this context, the placement principle becomes of considerable importance, for it in effect directs the decision maker to search for a suitable placement first among

Aboriginal people. If it is combined with a sensitivity to Aboriginal culture, and with a willingness to provide financial support for Aboriginal families who would thereby be suitable for the child, the principle has the potential to keep at least the majority of children who enter the child welfare system within Aboriginal care. In the context of seeking placements for children, then, the principle means that Aboriginal children should be placed in Aboriginal care unless no suitable Aboriginal placement can be found. As a guide to the placement of Aboriginal children, therefore, it is a significant step towards Aboriginal self-determination and entirely consistent with the paramouncy of the child's welfare.

Implementation of the Aboriginal child placement principle in the child welfare system, therefore, requires the implementation of several policies. One is consultation and co-operation with Aboriginal agencies and communities, discussed above. Another is non-intervention. Under such a policy, the Department would seek to ensure that children's welfare is served by the least intrusive measures possible; for example, making children wards and placing them in residential care would be avoided where possible. For Aboriginal children, this would often mean seeking to work out an arrangement with the Aboriginal community for the satisfactory care of the child. There is some evidence in Chapter 3 that the Department is pursuing such policies, for example, the absence of any Aboriginal children being made state wards in the Western Region of N.S.W. in 1981-82. Such policies can form a vital part of the policy of self-determination, by allowing the Aboriginal community to take responsibility for the welfare of its children[169]. However, it will only do so if combined with the provision of the resources necessary to enable the community to discharge this responsibility. In the absence of such support, policies of non-intervention may amount to the abandonment of children by shifting responsibility for their welfare to people who have not the resources to cope with it.

Support of Aboriginal Agencies and "Gullama"

The Department provides financial support for the Aboriginal Children's Service and other Aboriginal agencies, and this includes the Aboriginal Contact Centre, Gullama. These two activities provide an instructive case for analysis. Gullama functions somewhat like an ordinary community welfare office, distinctive mainly for being located in a district with a high Aboriginal population and having nearly all-Aboriginal staff. In itself, being a part of the

Department, it can hardly be an expression of the policy of self-determination. However, in practice its officers may do much to build up the capacity of individual Aboriginal people and even communities to care for their children; and it can liaise effectively with Aboriginal organisations.

By contrast, support for Aboriginal organisations such as the Aboriginal Children's Service is perhaps the most obvious expression of a policy of self-determination. The governing body of such organisations is constituted by elected Aboriginal people, and their survival and effectiveness depends not only on their work but on their acceptance by the relevant Aboriginal community. These organisations, however, work under real constraints. They depend on government funding, which may be provided in a way that limits or directs their activities. For example, officers of the Aboriginal Children's Service told the author that their funding was based on the assumption that their work would be confined to the Sydney region, frustrating the agency's wish to operate on a State-wide basis. There are difficult issues here, involving a choice between the model of a central agency developing branches throughout the State (the model, incidentally, of the Department itself) and on the other hand the emergence of numerous separately funded and controlled Aboriginal agencies. The decision may or may not coincide with the wishes of Aboriginal people and the most effective forms of child welfare. The present point is that this important structural decision was made not by elected Aboriginal people but by the funding authority.

It follows that funding and other support for Aboriginal organisations is the most direct expression of the policy of self-determination, and is the most consistent demand of Aboriginal people themselves, as appeared in Chapter 2. At the same time, the limitations inherent in a body receiving annual funding from government mean that such organisations are far from autonomous: they are accountable to the funding authority and dependent on its continued support, as well as being accountable to the community which elected their governing body and whose interests they are elected to serve.

Conclusion

Recent developments in Departmental policy are not explicitly based on any overall policy for Aboriginal people. Generally speaking, they may be explained by reference to overall policies of multiculturalism and equal opportunity: similar arrangements could be justified for other groups in the

community. Nevertheless, the new policies for Aboriginal people are not generally matched by policies for other groups, and most of them are capable of promoting the ability of Aboriginal individuals, families and communities to retain the care of their children, and, in this sense, of promoting Aboriginal self-determination. How far they will actually do so depends on the vigour with which the policies are implemented.

THE WELFARE ADMINISTRATOR'S WORKING PARTY: A NATIONAL PERSPECTIVE

In 1983 a working party of the State Welfare Administrators published a report on policies for the fostering and adoption of Aboriginal children[170]. The report is of considerable significance nationally. It is of particular importance in the present context because its recommendations are largely consistent with recent developments in New South Wales, and because it has received consideration by the Secretariat of the National Aboriginal and Islander Child Care Agencies. A consideration of the report and its reception by Aboriginal people may help us understand the gap between existing and emerging policies and Aboriginal aspirations.

The Introduction to the Report refers to recent "acceleration" of community awareness of Aboriginal culture values and heritage, heightened by an "increasingly vocal and articulate Aboriginal lobby and complemented by consistent research findings on the inequalities of equal treatment". This is said to have led to a questioning of past and present practices, a recognition of the role and value of Aboriginal heritage and family and community relationships, shame over historical treatment of Aboriginals, and a "determination to recognise, respect and reflect Aboriginal culture, customs and opinions in legislation and practice". Reference is made to past assumptions that placement in the white community would generally benefit Aboriginal children, and recent attempts in all States and Territories "to redress past practices through developing principles and policies for the fostering and adoption of Aboriginal children". Most of these principles emphasise the importance of

(i) where possible keeping Aboriginal children in their families and communities, and

(ii) consulting with the child community or an Aboriginal agency before making a decision about the placement of an Aboriginal child;

Later, the report couples with these principles "the provision of special assistance to Aboriginal communities for the development of support and preventive services to families"[171].

The report goes on to discuss the guidelines[172] formulated by the Federal Department of Aboriginal Affairs and published in 1980, on which it is claimed there was "broad agreement" although these were not formally ratified either by the Standing Committee of Social Welfare Administrators or the Council of Social Welfare Ministers (a body constituted by the Welfare Ministers of the various States and Territories). Although the guidelines were "indicators of changing practices" there were "various discrepancies between policy and practice" throughout Australia about placement of Aboriginal children and consultation with Aboriginal communities as well as "the perpetuation of historical and entrenched attitudes of many welfare practitioners to Aboriginal Australians".

The Social Welfare Administrators, predictably enough, did not support federal legislation, holding that recognition of the principles at State level, and perhaps State legislation along the lines of the Northern Territory Community Welfare Act, would be "sufficient".

The recommendations of the Working Party may be summarised as follows[173].

* In the placement of an Aboriginal child, a preference should be given, in the absence of good cause to the contrary, to a placement with
  - (i) a member of the child's extended family;
  - (ii) other members of the child's Aboriginal community who have the correct relationship with the child; and
  - (iii) other Aboriginal families living in close proximity.

* Criteria for the selection of foster parents should be amended to allow for Aboriginal couples living in a de facto relationship, or married according to the prevailing social customs of their communities.

* There should be consultation before placement decisions are made about Aboriginal children, to ensure a significant Aboriginal influence on any decisions made. The consultation should be, in order of priority, with the child's extended family, people who have a correct relationship with the child according to Aboriginal custom, and recognised Aboriginal agencies.

There should be consultation between the Social Welfare Ministers and Aboriginal agencies to define the role of the latter in each State and Territory, and there should be adequate Commonwealth funding to enable the agencies to fulfil the role that they are to have. Co-operative working arrangements should be made between the agencies and the State and Territory departments.

* Aboriginal staffing within welfare departments should be increased by accepting "appropriate experience and skills in lieu of academic qualifications" and recruitment policy should ensure that Aboriginal people are not employed at a lesser rank than equivalent non-Aboriginal workers.

* All staff working with Aboriginal children should receive training on the "principles, policies and procedures on Aboriginal child placement" and on Aboriginal culture, family networks and customary law; and Aboriginal people should be involved in such training. It is recommended that welfare departments 'should recognise the possible dilemmas of Aboriginal staff members in relation to child placement decisions, customary law and tribal alliances, and provide the necessary support for such staff".

These recommendations were duly put before Aboriginal child care agencies for consideration. Despite the fact that in some ways the recommendations are in line with much that Aboriginal people have been claiming, the Report was rejected by the national organisation of Aboriginal and Islander Child Care Organisations (SNAICC) at its conference in Townsville in March 1984, to which the author was privileged to be invited. There were two main grounds for this rejection[174]. The first was a rejection of the manner in which the Social Welfare Administrators went about the process of developing policies. From the point of view of the Aboriginal agencies, the recommendations had been formulated with no real consultation with Aboriginal people, and had been put forward with a request for an urgent response. This was quite unsatisfactory to SNAICC, which saw the process of policy formulation as one requiring full consultation from the start, rather than the presentation of policies already formulated. Further, SNAICC took the view that on such a fundamental matter it was essential to consult with local community groups, a process which required considerable work because it entailed education about the issues at stake. Many of the smaller agencies and community groups could hardly have been expected to give instant answers to such questions as the desirability of federal legislation, and SNAICC quite understandably took the view that it could not speak on behalf of all its affiliated members without considerable consultation.

The second main reason for the rejection of the Report was that it failed to address several major issues: whether the policies should be embodied in legislation, the funding of Aboriginal and Islander child care agencies, and "real decision-making powers to Aboriginal/Island people". It was also clear that Aboriginal people did not accept the Report's case against federal legislation, for a motion was passed seeking funding for SNAICC "to develop national legislation pertaining to Aboriginal and Islander children which is acceptable to all Aboriginal and Islander communities". Another matter on which there was a difference of view was the role of Aboriginal people who are State employees. SNAICC's view was that they be "accountable to the Aboriginal and Islander communities to ensure control of decision making in respect to Aboriginal and Islander child placement".

The rejection of the Report provides a sad study in failure of communication. It underlines the need for Aboriginal representatives to be involved on an equal basis in the formulation of policy from the start: Aboriginal people have a shrewd understanding of the enormous importance of the initial statement of issues and policies. It also shows that Aboriginal people tend to proceed on a more participatory model of decision making than is common in the non-Aboriginal decision-making process. More subtly, it illustrates the enormous difficulty in seeking to resolve such matters on a State-by-State basis. As we will see, the evasiveness of the Report on such fundamental matters as the underlying policy and the role of legislation seems an inevitable result of seeking consensus between States of different political persuasions on such a politically sensitive matter.

It does not follow that the Report was a failure. It may well have provided a valuable basis for bringing child welfare practice more into line with acceptable standards for the 1980's, and may thus take its place as a step towards the establishment of a uniform, and perhaps national, system of Aboriginal child welfare. In the following section, we will turn from the <u>use</u> of the Report in the process of consulation to its <u>content</u>, which is generally consistent with the recent developments in New South Wales examined in Chapter 3. To what extent do such recent developments, and the policies advocated in the report, constitute an appropriate model for Aboriginal child welfare in the future?

CURRENT REFORMS AND ABORIGINAL ASPIRATIONS: HOW FAR APART?

Continuing Aboriginal Concern over Child Welfare

There can be no doubt that the recent changes go some way to remove the past injustices of the Aboriginal child welfare system. If these policies are vigorously implemented, we should see the end of the days when State wardship, foster care and adoption have the effect, whether or not intended, of removing Aboriginal children from their families, communities and Aboriginal identity. And yet Aboriginal anxieties about the child welfare system remain. Why?

There seem to be at least three reasons. The first is that the recent policies fail to address some of the most serious problems facing Aboriginal children. The reason that Aboriginal children are still over-represented in the child welfare system is not that the authorities are taking Aboriginal children into care in circumstances where other children would be left in the community: indeed it may well be that today Aboriginal children are less likely to be taken into care than other children in similar situations. The reason is surely that Aboriginal children are at greater risk of neglect than other children because of the poverty and stress under which so many Aboriginal families live, and these social and economic factors, the long-term result of dispossession of Aboriginal people from their land, cannot be overcome by even the most enlightened child welfare laws and policies.

The second reason is that today it is the criminal justice system that removes the largest number of Aboriginal children from their families and communities[175]. While in a general sense the child welfare system is based on the welfare of the child, the criminal side of the children's court jurisdiction is also concerned with the prevention of offences and the protection of people's person and property. The criminal system is outside the scope of this report, but it may be noted that recent departmental initiatives to reduce the number of children in custody[176] may ease the situation for Aboriginal children. Again, there can be little doubt that poverty lies at the heart of the problem of young Aboriginal offenders. The problems facing reformers of the criminal system in its application to Aboriginal children are immense, and a thorough examination is long overdue. It might well be appropriate to establish an investigation into the impact of the

criminal justice system of Aboriginal children as soon as the recent Departmental policies of "de-institutionalisation" are in place. Nevertheless, while reviews of the criminal justice system may have a considerable impact, it seems unlikely that they will make more than limited progress so long as Aboriginal children remain locked into poverty and disadvantage.

The third reason why Aboriginal people remain concerned about the child welfare system, despite the recent changes, is that the recent changes fall considerably short of Aboriginal aspirations to self-determination. This requires further consideration.

Self-Determination and Aboriginal Child Welfare

We saw in Chapter 2 that one of the main themes of Aboriginal demands was for an active rather than a passive role in child welfare. To some extent, this demand is met by the recent developments. But Aboriginal people go further. They claim a right to participate in decisions about their children, not merely an opportunity to do so when permitted by the authorities. This claim is at the heart of the notion of self-determination, and of the continuing dissatisfaction by Aboriginal people with the child welfare system. Even under the recent developments, Aboriginal people have no such right. Their participation at all points depends on the willingness of the Department, and to some extent the courts, to work with them. There is no guarantee that the new policies will not be changed, or that they will be implemented vigorously and consistently. Similarly, there is no guarantee of continued funding for Aboriginal child welfare organisations, or of funding which will enable them to carry out their responsibilities as they (as distinct from the funding authority) see them. Thus recent reforms offer Aboriginal people a precarious kind of self-determination, one that depends on the continued acquiescence of the government authorities.

The Role of Law

One way in which Aboriginal people have sought to attain a position of responsibility in child welfare is through law. As has been seen, the Social Welfare Administrators' report is evasive about the role of law in the implementation of its policies. Yet the law could play an important part in implementing the kinds of reforms desired both by Aboriginal people and, it seems, by the Social Welfare Administrators[177]. It could also help to bridge

the gap between the policies currently embraced by the Social Welfare Administrators and the implications of the policy of Aboriginal self-determination. The details of such a legislative programme, which have been given consideration by the Australian Law Reform Commission, are beyond the scope of this report, but some of the central issues will be canvassed briefly[178].

The best known use of law in the present context is to make the Aboriginal child placement principle binding on the courts. In different forms, the principle has found legislative expression in the United States[179] and Canada[180] in relation to the indigenous peoples of those countries, and more recently in two Australian jurisdictions[181]. Briefly, the principle states that in determining what is in the interests of an Aboriginal child, courts should prefer placements within the Aboriginal community to placements outside it.

Other familiar provisions[182] require certain forms of consultation before a court makes an order relating to a child. Many variants are possible. The rule could simply require the authority to satisfy the court that appropriate consultation had taken place, or it could require that notice of the proceedings be given to appropriate Aboriginal representatives, who would then have an opportunity to participate in the proceedings. The law could go further, and give a power of <u>veto</u> to Aboriginal representatives, as in effect the law gives a kind of veto to the Department in adoption proceedings[183].

Law could also be used in relation to children presently in care, guaranteeing forms of review that include Aboriginal representatives, or establishing the rights of parents and children to information about each other[184].

Examples of possible uses of law could be multiplied. Such laws would advance Aboriginal self-determination to a significant extent. They would give the policies some degree of permanency, since it is more troublesome to change a law than to change a policy. They would make the policies enforceable by Aboriginal people on behalf of their children, so that adherence to the policies would no longer be merely a matter of the authorities' goodwill. Finally, the writing of these policies into law would involve a public commitment to the policies, which would have considerable symbolic and political significance for Aboriginal people. The silence of the Social Welfare

Administrators' report on the role of law may reflect a lack of willingness to base Aboriginal child welfare squarely on the policy of Aboriginal self-determination. This caution is entirely understandable in a document which seeks a consensus among the States on Aboriginal policy. The limitations of the Social Welfare Administrators' report leads to the next issue in this area, namely whether laws on these matters should be at a State or national level.

There is now a considerable body of opinion in favour of a federal Aboriginal Child Welfare Act. Such legislation was called for by the Steering Committee of the Aboriginal Children's Research Project[185], and by virtually all the Aboriginal opinions expressed to the Australian Law Reform Commission[186]. In May 1982 at the Third Australian Conference on Adoption, at which most Aboriginal Child Care Agencies were represented, the Conference as a whole passed a resolution[187] recommending that

> the Federal Parliament should enact an Aboriginal and Torres Strait Islander Child Care Act in exercise of the power granted by s 51 of the Commonwealth Constitution.

In addition, the Family Law Council of Australia, in a submission to the Australian Law Reform Commission, supported "the view that the Commonwealth exercise its "Aboriginal" power to deal with the custody of all "Aboriginal" children whether of tribally married parents or not"[188]. Federal legislation has been tentatively recommended by the Australian Reform Commission[189]. There is a strong case for such legislation. Responsibility for Aboriginal affairs is a federal matter[190], and as we have seen policies on Aboriginal child welfare depend on whether there is to be a basic policy of assimilation or of self-determination for Aboriginal people in Australia, a matter on which it seems entirely appropriate for the decision to be made at a national level. It seems clear that Aboriginal people desire such legislation, partly because they see it as the only way of creating uniformity throughout Australia[191], a view which seems realistic in the light of past attempts to achieve uniformity on sensitive topics by agreement between the States, notwithstanding the considerable achievement of the Working Party of Social Welfare Administrators in achieving some degree of adherence to generally stated principles on child placement and consultation.

On the other hand, child welfare is a traditional responsibility of

the States, and the enactment of federal legislation over State opposition bristles with problems, since the child welfare system interacts considerably with the provision of other services such as housing and health, which are largely under the control of the States.

The Limits of Law

Legal provisions of the kind indicated are a necessary and significant move towards building a system of Aboriginal child welfare on the basis of a policy of self-determination for Aboriginal people. But laws will make only a limited contribution unless they are accompanied by other measures. If the economic and social conditions of Aboriginal families remain as desperate as they now are, some form of child welfare intervention will continue to be required for a disproportionate number of Aboriginal children. Again, the actual capacity of Aboriginal families, communites and agencies to care for their children depends to a large extent on factors within the control of government and other funding agencies.

The difficulties facing families and communities beset by poverty and its associated social problems need no elaboration here. But the difficulties facing Aboriginal organisations are perhaps less well known. It is clear that Aboriginal agencies can function very effectively in child welfare. A great deal of their strength lies in the fact that their officers understand Aboriginal ways of caring for children and the complex matters of kinship and social structure that are highly relevant to the care of children within Aboriginal communities. This knowledge is often highly particular: in Aboriginal agencies, someone always seems to know members of the child's family, or to have a close knowledge of what is going on in the child's local community, and this knowledge is of the greatest value in determing a placement for a child. It is possible, too, that in general, Aboriginal adults have a close relationship with children, perhaps due to the high birthrate, the circumstances of much Aboriginal community life, and the common experience of being involved in the care of children in extended family networks.

Despite all this, working in child welfare requires a range of skills for which relatively few Aboriginal people have had the appropriate training or experience. These include a knowledge of the law and the practice of children's courts, available resources in the non-Aboriginal community, and some aspects of the running of organisations such as the keeping of financial

and other records. Because in present circumstances there is a necessary interaction between Aboriginal agencies and the "white" system of funding and child and social welfare, some staff at Aboriginal agencies may benefit from training in areas familiar in social work or administration. But this is only a part of the picture. Aboriginal agencies need to be accountable to their own communities and need to function in a way that discharges this duty as well as the need to be accountable to the funding or licencing body. And the agencies also have to address, in ways that are acceptable to them, the difficult task of combining the wisdom and experience of a central agency with the need for local communities to develop child welfare services that reflect their own needs and priorities. Finally, the staff of the agencies sometimes face problems in their relationships with other members of their communities, who may make demands for special services or the use of agency resources. Such demands may reflect the values of a closely-knit community to which the staff member belongs and yet be inconsistent with the staff member's duty to the organisation and responsibility for the administration of public money. Ideally, training for staff in Aboriginal child welfare agencies should be able to draw on relevant expertise within both communities, a task which will require a high level of collaboration as well as the provision of adequate resources. Giving legal recognition to Aboriginal agencies is an important step, but its practical effectiveness in promoting children's welfare will depend to a large extent on how far Aboriginal agencies are given resources and support to enable them to meet the challenges they face.

Self-Determination and Ultimate Responsibility for Aboriginal Children

If the analysis so far is accepted, the task of developing a child welfare system that reflects an overall policy of self-determination for Aboriginal people will require more than adoption of the policies advanced by the Social Welfare Administrators. It will also require the implementation of those policies into law, and ideally into a national Aboriginal Child Welfare Act. Beyond that, it will require the kind of support for Aboriginal agencies and communities that will enable them to take over responsibility for their children's welfare.

How far this process should go would depend on Aboriginal wishes, for the policy of self-determination involves enabling Aboriginal people to

take over the welfare of their children to the extent that they choose to do so. In principle, under a policy of self-determination the whole field of Aboriginal child welfare could eventually come under the responsibility of Aboriginal communities and agencies. But this is all highly speculative; the actual demands of Aboriginal people, examined in Chapter 2, fall well short of this. They do not include, for example, substituting a form of Aboriginal courts for the existing children's court. Whether such a demand might be made at some time in the future is quite uncertain. Fantasies about possible extreme forms that self-determination might take should not discourage reformers from developing the system to accommodate the presently quite limited aspirations of Aboriginal people to exercise a greater responsibility over their children.

The measures contemplated so far would go a considerable way towards giving Aboriginal people responsibility over their children, and would satisfy most or all of the specific demands expressed by Aboriginal people in this area. But even if the Aboriginal child welfare system were to be revised along the lines suggested here, there is a sense in which it would still fall short of Aboriginal self-determination. For ultimate responsibility over Aboriginal children would remain with the authorites. Even legislative provisions in a national Act could be repealed by the government of the day. Whatever the form of funding adopted, it could be revised or discontinued. Although courts might be guided by the Aboriginal child placement principle, they, and not Aboriginal bodies, would retain the right to make decisions about Aboriginal children.

This limitation raises issues of a quite fundamental nature, relevant to all aspects of Aboriginal policy. In the last few years, Aboriginal representatives have been exploring a much more thorough-going approach to what has here been referred to as self-determination[192]. They have argued that as a matter of law Aboriginal people have never lost the sovereignty that was theirs at the time the country was taken by Europeans[193]. The circumstances of that taking have been traditionally seen by Europeans as "settlement". But Aboriginal people, and increasingly European historians and lawyers see that taking as conquest,[194] and the existing regime as one that violates the rights of Aboriginal people under present international laws[195]. Aboriginal representatives are advancing these arguments in the international arena[196], with a view eventually to obtain a hearing in the International

Court of Justice, or making such a hearing sufficiently likely that pressures will be put on the Federal Government to pursue land rights and associated policies with a great deal more commitment than it has yet shown. They have gained considerable support from what they see as analogous movements for self-determination in third world countries, and from recent constitutional developments concerning Canadian Indian people[197].

Legal or political claims by Aboriginal people to sovereignty may appear excessive to many Australians who at best tend to see Aboriginal affairs as a matter of social welfare. But they are taken very seriously indeed in the international arena, in which there is a more sympathetic approach to the aspirations of oppressed or colonised peoples to autonomy.

Of courst, this major political and legal debate — arguably the greatest problem of justice for Australians in this century — cannot be pursued here. The logic of the claim to sovereignty seems to involve some form of self-government. What form this might take, especially in New South Wales, is highly problematical. But the issue cannot be ignored in considering Aboriginal children, because it represents a form of self-determination that would shift the ultimate legal responsibility for Aboriginal children's welfare to Aboriginal communities, or to some form of Aboriginal political governance. Questions of child welfare law and policy would then be entirely a matter for Aboriginal people.

Conclusions

This discussion of Aboriginal self-determination and child welfare may be summarised as follows. The recent developments discussed in Chapter 3 constitute a real advance in child welfare policies for Aboriginal children, and go some way towards increasing the responsibility of Aboriginal people over their children. Nevertheless, they can be largely accounted for by reference to policies of multiculturalism and equal opportunity, and go only some of the way towards promoting Aboriginal self-determination, despite the apparent adherence of both the New South Wales and Federal governments to that policy. The continuing gap between Aboriginal aspirations to self-determination and even recent changes in child welfare helps to explain the continuing tension in discussions of Aboriginal child welfare, and the kind of

paradox exemplified by the incident described in the Introduction to this report.

For this gap to be narrowed, and notions of Aboriginal self-determination to be translated into the child welfare system, there would need to be legislation, ideally at a national level, building into law the measures advocated by Aboriginal people, and to some extent, by the Social Welfare Administrators. But law alone would not be enough. There is also a need for considerable financial and other support to enable Aboriginal families, communities and agencies to take over responsibility for their children. This would be a major exercise, involving close consultation with Aboriginal people on a national, state and local level. It is crucial to the effectiveness of such an exercise that the basis be clearly identified as a way of giving a measure of justice to Aboriginal people, as distinct from the quite different task of providing social services on the basis of need to underprivileged groups in the community.

Even such a programme as this would not give Aboriginal people self-determination in the sense of ultimate legal responsibility, but if such measures are not carried out in child welfare and other areas there seems little doubt that Aboriginal people will increasingly find support in the international community for their claims to justice and perhaps to sovereignty. Australia's response to the needs of present and future generations of Aboriginal people may come to be seen as falling short both of the moral and legal standards of the international community and of the apparent commitment of the Federal and most State governments to policies of self-determination for Aboriginal people.

NOTES

INTRODUCTION

1 M. Brady, "Some Problems of Method and Theory in Aboriginal Research" in P. Cashman, Research and the Delivery of Legal Services (New South Wales Law Foundation, 1981) p.281; see also M. Langton, "Urbanizing Aborigines: The Social Scientists' Great Deception" (1981) 2 Social Alternatives 19.

2 On the Aboriginal Legal Service, see G. Lyons, "Aboriginal Legal Services" in P. Hanks and B. Keon-Cohen, Aborigines and the Law (Geo. Allen & Unwin, Sydney, 1984) 137-159 and the citations at n 6.

3 See "Assimilation and Aboriginal Child Welfare — the Community Welfare Bill 1981" Discussion Paper No.3 of the Aboriginal Children's Research Project (Family and Children's Services Agency, Sydney 1981).

4 C. Milne, Aboriginal Children in Substitute Care, Principal Report of the Aboriginal Children's Research Project (Family and Children's Services Agency, Sydney, 1982) p.6.

5 H.C. Coombs, M.M. Brandl and W.E. Snowdon, A Certain Heritage: Programs For and By Aboriginal Families in Australia (Centre for Resource and Environmental Studies, A.N.U. Canberra, 1981); Lila Watson, "The Aboriginal and Islander Child and the Welfare System" (Paper delivered to 51st ANZAAS Congress, Brisbane, 1981).

6 The Year Book Australia 1980 gives the following definition: "...a person of Aboriginal or Torres Strait Islander Descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the Community, in which he lives". And see the valuable discussion by P. Hanks, in "Aborigines and Government" in Hanks and Keon-Cohen, Aborigines and the Law op.cit. note 2, at 29 32.

CHAPTER 1: HISTORICAL BACKGROUND

7 Margaret Tucker, If Everyone Cared (Ure Smith, Sydney, 1977) pp.81 ff. See also The Two Worlds of Jimmy Barker: The Life of An Australian Aboriginal 1900-1972, (Australian Institute of Aboriginal Studies, Canberra, 1977) especially Chapter 3. For a general review of the Board's work in relation to children see Peter Read, The Stolen Generations (N.S.W. Ministry for Aboriginal Affairs, Sydney, 1982) (later cited as "Read"). Heather Goodall's brilliant and detailed history includes an extended treatment of the apprenticeship system: Heather Goodall, A History of Aboriginal Communities in New South Wales, 1909-1939 (Department of History, University of Sydney, 1982) Chapter 3 (later cited as "Goodall"). Another valuable account, also based on Aboriginal informants, is Cara Hankins, "The Missing LInks" (B.A. Hons. Thesis, University of New South Wales, Department of Sociology, 1982) Aborigines Protection Act 1909, s.4.

8 For these and other examples, see J. Woolmington, Aborigines in Colonial Society: 1788-1850, (Cassell Australia Ltd., Melbourne, 1973) and Keith Wiley, When the Sky Fell Down, 1979, pp.190-213.

9 Anne Bickford, "Contact History: Aborigines in New South Wales After 1788" (unpublished paper, circa. 1980), p.88.

10 Proceedings of the House of Commons Select Committee on Aborigines (British Settlements), 1836, in British (House of Commons) Parliamentary Papers (Reports from Committees) Vol. VII, 1837.

11 Id., Vol. VII, 1836, p.684.

12 Appointed by notification in the Government Gazette, 5 June 1883.

13 N.S.W. Parliamentary Debates 1883, First Series, Vol. 8, pp.598-601, cited in C.D. Rowley, Outcasts in White Australia (Penguin Harmondsworth, 1972) p.10 (later cited as "Rowley, Outcasts"). Nevertheless, it appears that the emphasis on caste, appearance and proportion of Aboriginal blood was not a reflection of an articulated policy of assimilation (as it was to become in the late 1930s) but reflected, in part, a simple assumption that the presence of European blood would indicate a greater likelihood that the child would be susceptible to "training".

14 Report of Aborigines Protection Board for 1884 (lated cited by year only), pp.2,3.

15 1900, p.6.

16 1906, p.5.

17 1909, p.3.

18 1908, p.8.

19 C.D. Rowley, The Destruction of Aboriginal Society (Penguin, Harmondsworth, 1979) p.2 (later cited as "Rowley, Destruction").

20 C.D. Rowley, The Remote Aborigines, (Penguin, Harmondsworth, 1972) p.115 (later cited as "Rowley, Remote Aborigines").

21 Reports of Board, 1890, 1906 (p.11), quoted in Goodall, op.cit.,n.7, p.97.

22 Communication by A.W. Green, the President of the State Children's Relief Department, 23 February 1915; SCRDCF, Misc. papers, 9/6156, quoted in Goodall, p.72.

23 Goodall, pp.72-73.

24 1910, pp.2-4.

25 1912, pp.3-4.

26 1913, p.6.

27 1917, p.2.

28 1920, p.1.

29 1923, p.3.

30 1921, p.1.

31 1938, p.2. On assimilation and other policies, see generally Background Notes, Department of Aboriginal Affairs, 1980, quoted in G. Nettheim, Victims of the Law (Geo. Allen & Unwin, Sydney, 1981) p.170.

32 1941, pp.1-2.

33 1940, p.3.

34 1948, p.4.

35 The Reports from 1953 to 1962 provide tables setting out the situation of wards. After 1962 these figures were not published.

36 Section 11D(1)(e), inserted by the Aborigines Protection (Amendment) Act 1943, s.4.

37 Summary Report, 1944, p.10.

38 1953, p.6.

39 1945, p.6.

40 1949, p.4.

41 1956, p.4.

42 1957, p.4.

43 See e.g., 1889, p.3; 1890, p.2; 1892, p.3; 1899, p.2; 1904, p.3; 1928, p.2; 1939, p.6.

44 Pressures from white parents resulted in a Minute from the Minister of Education in 1937 stating that "where a number of Aboriginal children are attending school they should be segregated from the ordinary school pupils and provided with education in a school set apart for the purpose preferably at an Aboriginal settlement". Quoted in Rowley, Outcasts op.cit.,n.13, at p.26.

45 Ibidm pp.39-40.

46 e.g. 1935, p.2; 1938, p.2.

47 1939, p.7.

48 1945, p.3.

49 1950, p.8.

50 1949, p.10.

51 1953, p.6.

52 1953, p.6.

53 1949, p.4.

54 1955, p.10.

55 Aborigines Protection Act 1909, ss.4(2), 7.

56 Id., s.8.

57 Id., s.11.

58 Reports for 1908, p.8; 1909, p.3.

59 Aborigines Protection Amending Act 1915.

60 Id., s.2.

61 Id., s.11A.

62 Goodall, op.cit., n.7, Chapter 3.

63 Aborigines Protection Amending Act 1915, s.13A.

64 See Minister for the Interior v. Neyens (1964) 113 C.L.R. 411.

65 Aborigines Protection (Amendment) Act 1940.

66 There were one or two exceptions to this, in particular support for the Aboriginal Children's Services and (to a lesser extent) the existence of the "Aboriginal Specialist Section" within the Department of Youth and Community Services. Both of these (which date from the late 1970s) will be considered below.

67 Aboriginal Children's Research Project, Discussion Paper, 1981; "Assimilation and Child Welfare: the Community Welfare Bill 1981" (Family and Children's Services Agency, Sydney, 1981).

68 See A. Burns and J. Goodnow, Children and Families in Australia (Geo. Allen & Unwin, Sydney, 1979).

69 See generally Goodall op cit n 7, who gives a detailed account of the largely untold story of the sustained resistance by Aboriginal families and communities against the Aboriginal child welfare system.

CHAPTER 2: ABORIGINAL PERSPECTIVES

70 Child Welfare Act 1939, s.28(1).

71 C. Picton, ed., Proceedings of First Australian Conference on Adoption (Committee of the First Australian Conference on Adoption, Sydney, 1976) p.163. See also Bill Jackson, The First Aboriginal Child Survival Seminar "If Everyone Cared"; (Office of Child Care, Canberra, 1979) at pp.85-6 (later cited as "Jackson").

72 Diane Barwick "The Aboriginal Family in South Eastern Australia" in J. Krupinski and A. Stoller, eds. The Family in Australia (Pergamon Press, 1974), at p.154; A.K. Eckerman, "Aboriginal Children" in R.G. Brown, ed., Children Australia (Geo. Allen & Unwin, 1980) p.86; S. Fabian and M. Loh, Children in Australia - an Outline History (Hyland House, Melbourne, 1980); A. Hamilton, "Nature and Nurture: Aboriginal Child Rearing in North Central Arnhem Land (Australian Institute of Aboriginal Studies, Canberra, 1981); Basil Sansom and Patricia Baines, "Aboriginal Child Placement in the Urban

Context" in James Crawford, ed. Collected Papers from Symposium 4 of the XIth International Congress of Anthropological and Ethnographical Sciences, (Australian Law Reform Commission, Sydney, 1983); A.K. Eckerman, "Urban Group Organisation and Identity Within an Aboriginal Community", in R.M. Berndt, ed., Aborigines and Change: Australia in the 70s (Aust. Inst. Aboriginal Studies, Canberra, 1977) p.288, espec. at pp.298-301.

73 Chris Milne, Aboriginal Children in Substitute Care, Principal Report, Part One, of the Aboriginal Children's Research Project, (Family and Children's Services Agency, Sydney, 1982) pp.56-57 (later cited as "Milne").

74 A.K. Eckerman, "Urban Group Organisation and Identity within an Aboriginal Community", op cit note 72.

75 Id., p.300-301.

76 See Esther Alvarez, unpublished paper 1983, based on field trips to Bourke. The paper is held at University of New South Wales Law School.

77 There is an interesting discussion of Aboriginal organisation in Max Kamien, The Dark People of Bourke, (Australian Institute of Aboriginal Studies, Canberra, 1978).

78 Jackson, op cit note 71.

79 Id., p.3.

80 Id., p.5.

81 Id., p.35.

82 Id., p.36.

83 Id., p.37.

84 Id., resolutions 11 and 35, pages 38-38.

85 Id., p.38.

86 Id., resolution 37, p.45. Compare Rowley, Outcasts, op cit note 13, p.136: "Much of the talk about assimilation has been of the training of the young to be different from their parents".

87 Jackson, op cit p.45.

88 Id., pp.45-46.

89 Id., pp.48-49.

90 Id., pp.50-51.

91 Id., p.51.

92 Id., pp.69-70.

93 Id., pp.86, 88-89.

94 Milne, op cit note 73, pp.56-57.

95 The members of the group are listed in the Report, Appendix A1.

96 Milne, op cit p.viii.

97 It is not entirely clear whether Rec 18 attempts to clarify the position under the present Commonwealth/State agreement or anticipates the results of its re-negotiation, (Rec 17).

98 Aboriginal community welfare workers and the programme officer are considered below, Chapter 4.

99 These guidelines are set out as an Appendix to the Australian Law Reform Commission; Reference on Aboriginal Customary Law; Research Paper No.4, "Aboriginal Customary Law: Child Custody, Fostering and Adoption" (1982).

100 Identification is to be based on the method worked out by the Project, discussed in Milne, op cit note 73, 24-26.

101 They should be later transferred "to the Aboriginal Archive within the proposed Aboriginal Heritage Commission": together with the records of the Aborigines Protection Boards and Welfare Boards: recommendation 55.

102 See above, Chapter 2.

CHAPTER 3: CURRENT DEPARTMENTAL PRACTICES AND POLICIES

103 Minister for the Interior v. Neyens (1964) 113 C.L.R. 411; cf. K v. Minister for Youth and Community Services (1982) 8 Fam.L.R. 756.

104 For earlier times, see above, Chapter 2. Milne found that over half the Aboriginal children in Departmental homes had had no contact with their families during the previous three months: Milne, op. cit., note 73, p.13.

105 W.C. Langshaw, "The Treatment by the Courts of Ethnic Groups with Special Reference to the Treatment of Aborigines", Address to Annual Conference of Stipendiary Magistrates, Sydney, 4 June 1982 (later cited as "Langshaw"), p.2.

106 Op cit., n.104.

107 Milne, op cit., p.45.

108 Figures supplied by Department of Youth and Community Services.

109 Milne, op cit., p.11.

110 Langshaw, op.cit., n.105, p.2.

111 See, e.g., Department of Youth and Community Services Annual Report 1980-81, Part 2, Statistical Tables, p.75.

112 On the Department's figures for November 1984, Aboriginal children comprise 12.2% of all wards. Compare Langshaw, op.cit., pp.2-3.

113 Milne, op.cit., p.11.

114 Aboriginal Fostering and Adoption: Review of State and Territory Principles, Policies and Practices; Report of Working Party of Standing Committee of Social Welfare Administrators, 1983, (later cited as "Welfare Administrators Review"), Table 3, p.20.

115 Id.

116 For a discussion of the significance of cost-cutting in child welfare changes, see Martin Mowbray,"Restructuring Child Welfare" in The Action For Children Journal, Sydney, November 1984, 59-73.

117 Re an Infant K and the Adoption of Children Act (1973) 1 N.S.W.L.R. 31; Child Welfare Act 1939, s.82.

118 Although children committed to training schools are technically "wards" under Section 4 of the Child Welfare Act, they are not included in this survey, or indeed in other discussions of State wards. In the Community Welfare Act 1982 (NSW) there is no power to commit offenders as wards, a change which reflects the widely held view that criminal proceedings against children should be clearly distinguished from child welfare proceedings.

119 Child Welfare Act 1939, s.83.

120 This is admittedly something of an oversimplification. For a fuller treatment of the objectives of the child welfare system, see R. Chisholm "Children and the Law" in A. Burns and J. Goodnow, Children and Families in Australia (Geo. Allen & Unwin, Sydney 1979; 2nd ed. in press).

121 Milne, op.cit.,; Welfare Administrators Review, op.cit. n.114. See generally Chapters 1 and 4.

122 Letter from A.J. Maddox, Regional Director, North Coast Region, 8 March 1983.

123 Cited in J. Cleverley, The First Generation: School and Society in Early Australia (Sydney University Press, Sydney, 1971, p.104).

124 Collins lamented that the children abandoned their "comfortable abodes" in order to resume their former "savage mode of living": D. Collins, An Account of English Colony in New South Wales (Whitcomb & Tombs, Wellington, 1910), p.349. For this and the last citation the author is indebted to the valuable historical material in Ian J. Harvey, Australian Parents for Vietnamese Children (N.S.W. Dept. of Youth and Community Services, Sydney, 1980, pp.26-33.

125 Department of Youth and Community Services, Manual on Wards, para. 1.1.1.

126 Id., para. 6.1.1.

127 Community Welfare Act 1982, s.77(e), (f).

128 Id., s.81(3).

129 Aboriginal children are placed with Aboriginal foster parents by the Aboriginal Children's Service, which pays them an allowance under 2.27A of the Child Welfare Act, funds being provided by the Department.

The number of children involved grew from 21 in 1980 (Milne, op.cit., p.58) to 123 in November 1983 (Information provided by Aboriginal Children's Service, Sydney).

130 Milne, op.cit.,; G. Gregory and N. Smith, Particular Care (Children's Bureau of Australia, Melbourne, 1982).

131 Before the 15 interviews were carried out, some earlier interviews had been conducted by Ms. Sue Thomson of three foster families. These foster parents were not selected in a random way: they were people the author had met in the course of the study. While they have therefore not been included in the sample it may be noted that, broadly speaking, their experiences were similar to those of the families in the sample.

132 See especially Department of Youth and Community Services, Manual on Wards, Chapter 1.

133 Id., 1.1.8.

134 R. Chisholm, "Aboriginal Self-Determination and Child Welfare: A Case Conference" 1982 Aust.J. Social Issues Vol.17, No.4, 258-275 (later cited as "Chisholm, Case Conference"); R. Chisholm,"Aboriginal Children, Adoption and Permanency Planning: A Sceptical View" in R. Oxenberry, ed., Proceedings of the Third Australian Conference on Adoption, Dept. Continuing Education, S.A., 1982, pp.76-91.

135 Milne, op.cit., Appendix, p.10. Langshaw refers to a survey of training schools at 31/5/82 showing 21.2% of the 423 residents were Aboriginal. He adds that while the total number of offenders detained had dropped by 67% since 1969, the decline for Aboriginal children was only 22%: Langshaw, op.cit., p.4.

136 Milne, op.cit., pp.23, 26.

137 Id., p.34.

138 That is, National Employment Strategy For Aboriginals, a Commonwealth scheme providing job opportunities for Aboriginal people. See Milne, p.73.

139 Communication from Ms. Glenda Humes, Aboriginal Programme Officer, Department of Youth and Community Services, December 1984. It should be added that in late 1984 the main energies of the Department in this area were to introduce a programme of de-institutionalisation, and this may well have limited the appointment of new staff to residential positions, as well as discouraging for the time being significant initiatives in residential care.

140 Ms. Gwen Watt, Background Notes to Langshaw, op.cit., Department of Youth and Community Services, 1982, n.3.

141 Milne, op.cit., pp.73-4.

142 Information provided by Ms. Glenda Humes, Aboriginal Programme Officer, Department of Youth and Community Services, December 1984.

143 Milne, op.cit., p.74.

144 Cited in Milne, op.cit., p.74.

145 Chisholm, "Case Conference" op.cit., n.134, at pp.269-274.

146 Personal communication from A.J. Maddox, Regional Director, North Coast Region, Department of Youth and Community Services, 8 March 1983. 45.

147 Langshaw, op.cit., p.14. Glenda Humes advised that by December 1984 the staff comprised an Aboriginal officer in charge of six district officers and support staff, all but one being Aboriginal.

148 Langshaw, op.cit., p.15. Ms Glenda Humes, an Aboriginal woman, was appointed to the position, which she continued to hold in December 1984.

149 Information supplied by Ms. Glenda Humes, December 1984.

150 Circular from I.B. Alcorn, Director, Policy Planning and Research, 19 November 1984. The Working Party's Report is cited above, note 114.

CHAPTER 4: FUTURE DIRECTIONS IN ABORIGINAL CHILD WELFARE

151 Announced by the Director General of the Department Mr. H. Heilpern in March 1984.

152 For example a Select Committee of the N.S.W. Legislative Assembly based its recommendations on the right of Aboriginal people "to decide their own future on the basis of Aboriginal self-determination": Second Report of the Select Committee of the N.S.W. Legislative Assembly upon Aborigines, 1981, p. xii (later cited as the "Keane Report").

153 "The aim of Labor Government policies will be to ensure that not only the exceptionally talented and motivated Aboriginal can become self-determining, but that Aboriginals as a group have the possibility of self-determination": Australian Labor Party, Aboriginal Affairs Policy 1983, titled "Labor's Programme for Self-Determination", p.1.

154 See generally Keane, op.cit., note 1; H.C. Coombs, M.M. Brandl and W.E. Snowdon, A Certain Heritage; Programmes For and By Aboriginal Families in Australia, Centre for Resource and Environmental Studies, A.N.U., Canberra, 1981.

155 Thus the Hon. Frank Walker, then N.S.W. Minister for Youth and Community Services and Aboriginal Affairs, when introducing the Aboriginal Land Rights Bill 1983, referred to "the now discredited policy of assimilation": N.S.W. Legislative Assembly, 24.3.83, at p.21.

156 For a useful summary of Commonwealth policies prior to 1979, see the Submission of the Hon. R.I. Viner, then Commonwealth Minister for Aboriginal Affairs, tabled in Senate Debates 5 April 1979 and set out in Appendix 1 of Garth Nettheim, Victims of the Law, op.cit., n.31.

157 See Labor Policy on Aboriginal Affairs, op.cit., note 3; Keane; op.cit., note 2; Walker, op.cit. note 5; also the Hon. Frank Walker, Minister for Aboriginal Affairs, Green Paper on Aboriginal Land Rights in New South Wales (December 1982), quoting Premier Wran

who stated in June 1982 that "the Land Rights Legislation will embody the principles of self-determination set out by the Keane Select Committee...", p.2.

158 At the ALP National Conference on July 12 1984, the policy on Aboriginal Affairs was amended to include the principle that "Aboriginal and Islander children and youth 'at risk' should be primarily the responsibility of Aboriginal communities", and emphasised consultation and the development of child care agencies within the Aboriginal and Islander community: cited in SNAICC FLOW 29 (document prepared by the Secretariat of National Aboriginal and Islander Child Care), p.66.

In 1983 the Commonwealth Minister for Aboriginal Affairs, Mr. Clyde Holding, called in the House of Representatives for "restoration of the rights of Aboriginal families to raise and protect their own children by means of uniform laws and procedures in respect of child custody, fostering and adoption": Commonwealth of Aust., Parl. Debs. (H of R) 8 December 1983, p.3485.

159 See Australian Council on Population and Ethnic Affairs, Multiculturalism for all Australians, AGPS Canberra 1982; and, e.g., James Jupp, "Multiculturalism: Friends and Enemies, Patrons and Clients" Aust. Quarterly, Winter 1983, 149; Adam Jamrozik, "Migrants and Welfare: Is there a Need for Special Provisions?" (Paper presented at conference on Multiculturalism; Rhetoric and Reality, University of New South Wales, 17 September 1982).'

160 See Racial Discrimination Act 1975(C'th); Sex Discrimination Act 1984 (C'th); Anti-Discrimination Act 1977 (N.S.W.); Equal Opportunity Act 1977 (Vic); Sex Discrimination Act 1977 (S.A.).

161 This issue is thoroughly treated in Australian Law Reform Commission, Reference on Aboriginal Customary Law, Research Paper No.9, Separate Institutions and Rules for Aboriginal People; Pluralism, Equality and Discrimination (November 1982) and Research Paper No.10, Separate Institutions and Rules for Aboriginal Peoples — International Prescriptions and Proscriptions (November 1982).

162 See above, Chapter 4, and the reference cited at nn.144-145.

163 Community Welfare Act 1982 (N.S.W.), s.81(3) and (4).

164 For more detailed discussions see Australian Law Reform Commission, Research paper No.4, op.cit., n.99; R.Chisholm, "Black Children: White Welfare?" Paper delivered to XIth International Congress of Anthropological and Ethnological Sciences, Vancouver, August 1983, and published in Australian Law Reform Commission, Symposium 4: Aboriginal Law and Tradition in Australian Society — Problems of Conflict, Co-existence and Adaptation; Brad Morse and Richard Chisholm, "Reform of Aboriginal Child Welfare Laws: A Discussion Paper" (unpublished paper circulated to Aboriginal Child Care Agencies in response to Australian Law Reform Commission's Research Paper No.4) January 1983.

165 Family Law Act 1975, s.64. The principle also appears in State legislation e.g. Infants Custody and Settlements Act 1898 (N.S.W.) s.17; Adoption of Children Act 1965 (N.S.W.) s.17.

166 e.g. Marriage of Schenk (1981) FLC 91-023.

167 Australian Law Reform Commission, Research Paper No.4, op.cit., at p.17.

168 Community Welfare Act 1982 (N.S.W.), s.81(4). This legislation, which will replace the Child Welfare Act 1939, had not been brought into force at the time this study went to publication, March 1985.

169 A good example is the case conference described in Chapter 4, in which the Department sought and found an Aboriginal placement for the child with the help of local Aboriginal agencies (the Aboriginal child placement principle), discussed the problem with relevant Aboriginal people (consultation) and accepted a legal result which placed the children in the care of an Aboriginal agency rather than the Department (minimal intervention).

170 Welfare Administrators Review, op.cit., n.114.

171 Id., p.4.

172 Department of Aboriginal Affairs (C'th), Aboriginal Adoption and Fostering - Policy Guidelines, January 1980, reproduced in Australian Law Reform Commission, Research Paper No.4, op.cit., p.51.

173 The summary in the text is based on the recommendations set out at pp.6-10 of the Report.

174 The following paragraphs are based on the records of the Townsville Conference, kindly made available to the author, and all quotations are from a letter to The Hon. D. Grimes, Minister for Social Security from Ms. Marjorie Thorpe, National Co-ordinator of SNAICC, dated 17 April 1984.

175 See, e.g. N.S.W. Anti-Discrimination Board, Study of Street offences by Aborigines, 1982, and publications cited therein.

176 See Report to the Minister for Youth and Community Services From the Task Force Set Up to Advise the Minister on the Re-Structuring of Services to Young Offenders, Department of Youth and Community Services, May 1983.

177 This appears to be recognised in the comments of the Commonwealth Minister for Aboriginal Affairs, Mr. Clyde Holding, quoted above, n.157.

178 Australian Law Reform Commission, Research Paper No.4, op.cit. See also the citations at n.163 above.

179 Indian Child Welfare Act 1978 s.105 (reproduced in Australian Law Reform Commission, Research Paper No.4, p.57.

180 See generally Patrick Johnston, Native Children and the Child Welfare System, Canadian Council on Social Development, Toronto, 1984; Canadian Legal Aid Bulletin, Special Issue Part II, "Native People and justice in Canada" ed. Brad Morse, April 1982.

181 Community Welfare Act 1983 (NT) s.69; Adoption Act 1984 (Vic) s.50. The Family and Community Development Bill 1984 (Qld), like the N.S.W. Community Welfare Act 1982 s.81, carefully avoids creating any legal recognition of the rights of Aboriginal children in particular, merely requiring the court to take account of the need "to foster and assist the indigenous, ethnic and cultural identity of a child, his parents and

other members of his family" (cl.181(v), and stating the placement principle in terms of a preference for children to be placed "with persons who share the child's indigenous, ethnic or cultural background" (cl.196(2) (c)).

182 See especially the Indian Child Welfare Act 1978 (U.S.A.), s.102.

183 The Adoption of Children Act 1965 (NS.W.) s.21 forbids the Court from making an order for adoption unless the Director has filed a report, thus enabling the Director to prevent an adoption order being made by declining to file a report. See also s.18, restricting applications for adoption (except in certain cases) to the Department or authorised adoption agencies. Similarly, only the police and Departmental officers can commence proceedings in the children's courts to have a child dealt with as "neglected" under the Child Welfare Act 1939.

184 See, e.g. Indian Child Welfare Act 1978, ss.105(e), 107, 301. Similar measures have been advocated by the FACSA Steering Committee (see Milne, op.cit., note p.xiv) and Morse and Chisholm, op.cit., note 164).

185 Milne, op.cit., Recommendation 11, p.ix.

186 Personal communication from Professor James Crawford, the Commissioner in charge of the Aboriginal Customary Law reference at the Australian Law Reform Commission.

187 R. Oxenberry, ed., Proceedings of the Third Australian Conference on Adoption, Dept. of Continuing Education, University of Adelaide, 1982, Resolution 1, page 392.

188 Family Law Council, Submission to the Australian Law Reform Commission on the Recognition of Aboriginal Customary Law, No.289, 28 November 1983, p.3

189 Australian Law Reform Commission, Research Paper 4, op.cit.

190 The Commonwealth has had legislative responsibility for Aboriginal people under Constitution Act 1900 s.51 (xxvi) since the provision was amended after a referendum in 1967. The scope of this power in relation to Aboriginal child welfare is canvassed in R. Chisholm, "The Legal Possibility of Federal Laws on Aboriginal Child Welfare", a paper distributed to Aboriginal Child Care Agencies and later published in (1982) 6 Aboriginal Law Bulletin p.6. It will undoubtedly be thoroughly treated in the forthcoming Report of the Australian Law Reform Commission on the Recognition of Aboriginal Customary Law.

191 The statement in the text is based on discussion between the author and representatives of Aboriginal and Islander Child Care Agencies in Adelaide in May 1982 and in Townsville in April 1983.

192 Coe v Commonwealth (1978) 52 ALJR 334 was the first such claim heard in the High Court of Australia: it is unlikely to be the last.

193 This argument, the basis of Coe's application cited above, was much discussed by speakers at a Conference on Aborigines and International Law held at the Australian National University on Nov.21-22, 1983. See also J. Hookey, "Settlement and Sovereignty" in P. Hanks and B. Keon-Cohen, Aborigines and the Law (Geo. Allen & Unwin, Sydney, 1984) p.1.

194 Henry Reynolds, The Other Side of the Frontier: Aboriginal Resistance to the European Invasion of Australia (Penguin Books Aust., Ringwood Vic.) 1982.

195 Hookey, cited above note 193; see also G. Nettheim, "The Relevance of International Law", in the same volume, p.50.

196 For example, Aboriginal people from child care as well as other organisations were well represented in the proceedings of the Working Group on Indigenous Populations(a sub-committee of the Commission on Human Rights of the Economic and Social Council of the United Nations) and the Committee on the Elimination of Racial Discrimination in August 1984.

197 See B. Keon-Cohen and B. Morse, "Indigenous Land Rights in Australia and Canada", in Hanks and Keon-Cohen, Aborigines and the Law, cited above, note 193. See also Russell Barsh, "Indigenous Policy in Australia and North America" (unpublished, 1983).

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* Community Welfare Act, 1982.
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Victoria

* Equal Opportunity Act, 1977.
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Queensland

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