

PUBLIC AFFAIRS COPY
PLEASE DO NOT REMOVE

MORNINGTON ISLAND REVIEW REPORT

A report by the

RACE DISCRIMINATION COMMISSIONER

and the

ABORIGINAL AND TORRES STRAIT ISLANDER
SOCIAL JUSTICE COMMISSIONER

APRIL 1995

*Human Rights and
Equal Opportunity Commission*



MORNINGTON ISLAND REVIEW REPORT

A report by the

RACE DISCRIMINATION COMMISSIONER

and the

**ABORIGINAL AND TORRES STRAIT ISLANDER
SOCIAL JUSTICE COMMISSIONER**

APRIL 1995

Commonwealth of Australia

ISBN 0 642 22672 5

This work is copyright. Apart from any use as permitted under the Copyright Act 1968, no part may be reproduced by any process without prior written permission from the Human Rights and Equal Opportunity Commission. Requests and enquiries concerning production rights should be directed to the Race Discrimination Unit, HREOC, GPO Box 5128, Sydney NSW 2001.

TABLE OF CONTENTS

Mornington Island Profile	iii
Introduction	iv
Executive Summary	viii
1. The Administration of Criminal Justice	1
The Investigation of Complaints Against Police	1
Public Drunkenness and Diversionary Centres	2
Watchhouse Issues	3
Police Training	5
Liaison and Support Functions	6
Community Input into Selection Procedures	7
Aboriginal Community Police: Employment, Training and Powers	8
Juvenile Justice and Youth Issues	9
General Policing Issues	11
Violence Against Women	12
The Report on the Review of Policing on Aboriginal and Torres Strait Islander Communities	12
2. The Availability of Employment, Goods and Services	14
Health	14
Housing	18
Education	20
Other Goods and Services	22
The Community Development Employment Program	24

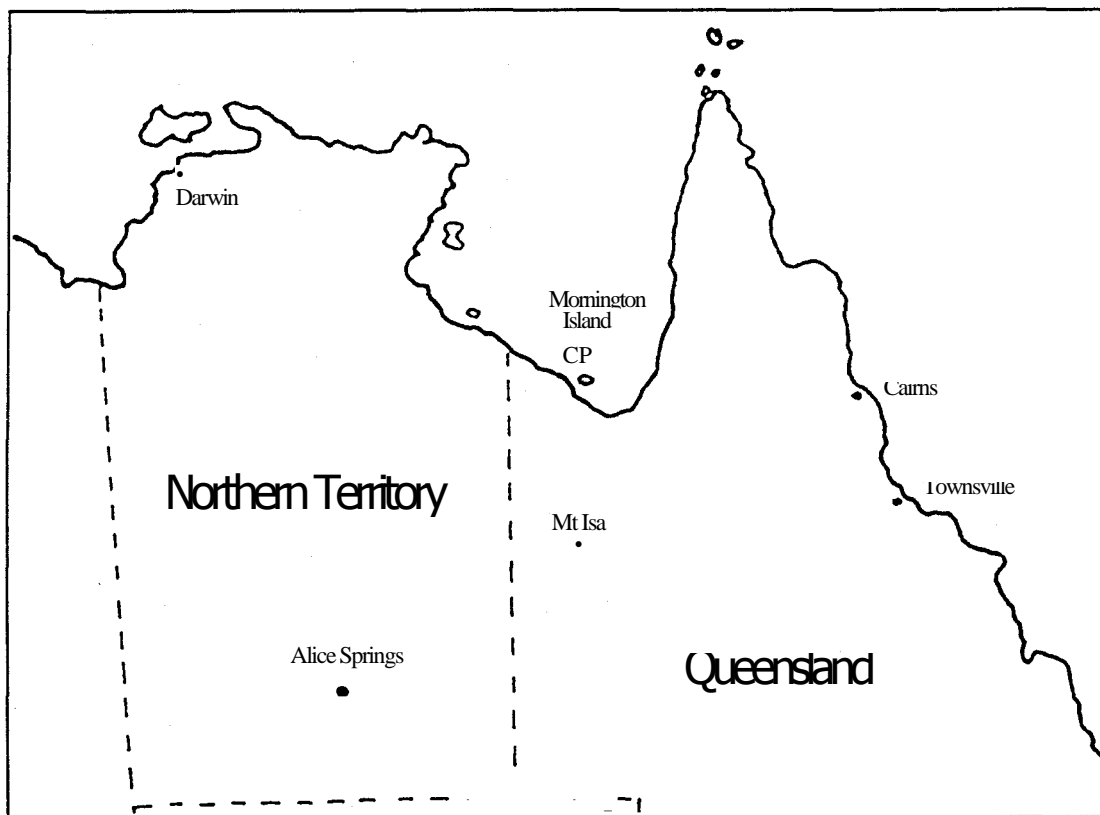
Other Employment and Training Issues	28
3. SelfDetermination and Governance	31
Customary Law and Community Mediation	32
Open Government and the Shire Model	33
The Alternative Governing Structures Program	35
Summary of Self-Determination Issues	37
Appendix: The Mornington Report Recominendations	39
Glossary	46

MORNINGTON ISLAND PROFILE

The Mornington Shire, in Queensland, is made up of 22 islands of the Wellesley group situated in the south eastern corner of the Gulf of Carpentaria. Mornington Island is the largest of these islands. The township on Mornington Island is called Gununa and it is the centre of the population. There are approximately 1000 Aboriginal people and approximately 60 non-Aboriginal people living in the Mornington Shire.

The Mornington Shire is an isolated community. The nearest city is Mount Isa situated some 500 kilometres to the south. The level of literacy is estimated at 30% of the adult population with perhaps a further 40% of the adult population semi-literate. A large proportion of the population has tested positive for Hepatitis **B** and there is a high incidence of sugar diabetes.

Mornington Island was administered by the Uniting Church until 1978. It is now constituted as a Shire under the *Local Government (Aboriginal Lands) Act 1978*. The history of Mornington Island can be found in the 1993 Human Rights and Equal Opportunity Commission Report, *Mornington*.



INTRODUCTION

This review is a follow-up to *Mornington: A Report by the Federal Race Discrimination Commissioner*, released in April 1993. That Report was the result of a two-and-a-half year investigation into a range of issues affecting Aboriginal people living on Mornington Island in far north Queensland.

In November 1990, the then Race Discrimination Commissioner, Ms Irene Moss, received a petition signed by 163 Aboriginal residents of Mornington Island requesting her to investigate an incident involving Aboriginal people and the police. It soon became apparent that the problems experienced by the community on Mornington were not confined to a particular incident. The incident itself became a focal point for requesting outside assistance through the Human Rights and Equal Opportunity Commission¹ and for expressing the frustrations which flowed from broader and more systemic issues. Indeed, the poor relations with police at the time, and what the community saw as the failure to deal adequately with their legitimate complaints, ultimately reflected wider problems concerning the social, economic and political situation governing the lives of people on the Island. In this sense, problems with the administration of the criminal justice system on the Island were symbolic of far greater problems with government more generally.

Events on Mornington Island have not remained static. During the course of the Mornington investigation, many Aboriginal people on the Island continued to develop community organisations and solutions to their own problems. They often initiated and sustained these responses with inadequate support from outside agencies.

Similarly, external events have also affected the situation on Mornington. The recommendations of the Royal Commission into Aboriginal Deaths in Custody have impacted to varying degrees on state and federal policies. In addition, both the investigation by the former Race Discrimination Commissioner and the subsequent Mornington Report itself has influenced service provision to the community. Indeed the Mornington Report noted that there was considerable improvement in the quality of policing services on the Island during the period in which the Commission undertook its investigation.

When the Mornington Report was released there was a commitment to return to the Island within twelve months to review the situation. Accordingly, a review team from the Human Rights and Equal Opportunity Commission visited Mornington Island in April 1994 and consulted with Council and residents, as well as inspecting facilities on the Island and visiting outstations. A draft review was sent to the Council for comment and in October 1994 the Acting Race Discrimination Commissioner, Mr Michael Dodson, visited Mornington Island and met with the Council and the community. The concerns of Council have been considered in this Review Report. The review team also sought comments from all Queensland Government departments

¹ Referred to hereafter as the Commission.

and other agencies to which recommendations were directed in the Mornington Report.

We" have jointly reviewed the material which has been provided and noted what changes have, or have not, occurred. This Review Report does not itemise responses to each of the 91 original recommendations'. Rather, it is concerned with the broad areas of change and with the extent to which the issues affecting the people of Mornington Island have been, or are being, resolved.

The Commission's original Mornington Report can be encapsulated in two basic themes:

- the people of Mornington Island lived under a form of governance which had been imposed from the outside and were thus denied a meaningful process for achieving self-determination; and
- the social, political and economic conditions under which people lived on Mornington Island would not be tolerated in any non-Aboriginal community in Australia.

In other words, the key points of the original report were the denial of self-determination and the failure to facilitate commonly accepted standards of citizenship and social participation.

In this Review Report, the changes which have occurred on Mornington Island are evaluated within the broad context of these original principles. The Report is divided into three sections: the Administration of Criminal Justice; the Availability of Employment, Goods and Services; and Self-Determination and Governance.

Self-determination is a key principle underlying both the original Mornington Report, as well as this Review Report. Self-determination is both a process and a fundamental right, and every issue facing indigenous communities including status, entitlements, treatment and aspirations is part of the process of self-determination.

When the original Mornington Report was released there were conditions for the Aboriginal community which could only be described as, intolerable. These were circumstances which would not be condoned in non-indigenous Australia. It was virtually impossible to get a job except for 'work for the dole' on the Community Development Employment Program (CDEP). It was impossible to buy a house. Indigenous housing was rented from a single authority. Many houses were in a

ⁱⁱ Commissioner Dodson, in his substantive position as Aboriginal and Torres Strait Islander Social Justice Commissioner continued his involvement in the Mornington Review after the appointment of a new Race Discrimination Commissioner, Ms Zita Antonios, in October 1994.

The original recommendations are reproduced in the Appendix. References to the text indicate where there is general discussion relevant to specific recommendations.

chronic state of disrepair. Incomes from CDEP were garnisheed for debts, rent and levies. There were mark-ups of between 40% and 90% on goods bought at the only store. There were endemic problems with banking and postal services including allegations of discrimination and interference with personal bank accounts and mail. Despite the cultural significance of giving birth on the Island, women were required to travel, often without support, to the mainland hundreds of kilometres away prior to the due date. The local economy appeared to be 'alcohol-driven' in that the only profitable activity was derived from the sale of alcohol.

It was the pervasive system of day-to-day control over so many aspects of people's lives which was most apparent. People were told when and where they could work and when they must take their holidays. They were allocated housing and were told if and when they might expect repairs. Some were told how much money they could withdraw from their bank accounts. Others were told how much money would be removed from their 'pay-packet' to cover debts. This form of control is insidious, all-encompassing and akin to life under former missionary and 'protection' regimes. Yet this regime existed under the eyes of a State Government formally committed to self-determination.

Of course, for any individual instance of control there were always explanations. Pregnant women were sent to Mt Isa because it was medically the safest option; outside contractors took the vast majority of properly paid employment on the Island because there was a lack of local skills among Aboriginal people; the administration of CDEP required allocation of work duties and time; the huge mark-ups at the shop were necessary to cover the costly freight expenses.

Yet it was apparent, when these instances were taken together, that the Aboriginal people on Mornington Island lived in unacceptably oppressive and inequitable conditions. Self-determination was simply not apparent at the community level. In fact, it was hard to imagine a social, economic and political situation more removed from self-determination than that which existed on Mornington. Inevitably, the original Mornington Report reflected on the role of the local council. Those reflections were not and are not directed at the Aboriginal council members who are elected in local government elections and who operate in surely the most difficult of circumstances. However, we do question whether the local government model is suitable for achieving the goals of self-determination. We do question how seriously the State Government is committed to the principles of self-determination in developing alternative governing structures for those communities operating under local government legislation (Mornington and Aurukun), for those communities operating under Deed of Grant in Trust, and for the many Aboriginal and Torres Strait Islander people living in other communities throughout Queensland. We also question how seriously particular government departments are in paying more than lip-service to the notion of self-determination. In some instances it is apparent that self-determination in practice has been reduced to a nominal and tokenistic form of consultation - it is essentially seen as a necessary gloss on decisions which have already been taken.

The political, economic and social problems which beset communities like Mornington Island will not be resolved until self-determination is taken seriously - until the resources, planning and decision-making processes are under indigenous control. This Review identifies some progressive changes which have occurred, particularly at the local level. These changes are slow and painful but they are occurring. Far more needs to be done, particularly in negotiations between the State Government and the community. At the broadest level, this Review Report shows the distance which must be travelled before self-determination has any meaning in the day-to-day lives of Aboriginal and Torres Strait Islander people.

ZITA ANTONIOS
Race Discrimination
Commissioner

MICHAEL DODSON
Aboriginal and Torres Strait
Islander Social Justice
Commissioner

EXECUTIVE SUMMARY

1. Administration of Criminal Justice

Complaints Against Police

- The Criminal Justice Commission has improved its liaison and complaint handling capabilities with Aboriginal and Torres Strait Islander communities. However, greater resources need to be directed into this area with the employment of additional indigenous personnel.
- The Queensland Police Service has failed to acknowledge that complainants should be kept informed of the progress of their complaint.
- The Human Rights and Equal Opportunity Commission will be requesting further information from Aboriginal and Torres Strait Islander Legal Services in Queensland concerning perceptions of the inadequacies with the current system of investigating complaints against police.

Public Drunkenness

- This Report condemns the Queensland Government's record in the area of decriminalisation and the establishment of sobering-up centres in the strongest possible terms. The State Government has clearly failed to come to grips with this issue, particularly when deaths in custody will continue to occur in situations where people are detained for public drunkenness.
- It is inappropriate that the Mornington Island Council with limited resources be expected to fund its own sobering-up centre. The provision of sobering-up centres was one of the major recommendations to governments by the Royal Commission into Aboriginal Deaths in Custody.

The Watchhouse

- The Mornington Island watchhouse has been replaced, although the Queensland Police Service failed to consult with the community over the new watchhouse.
- The expense and size of the new complex is an inappropriate response to the needs of the community.
- There is a failure to separate clearly the court function from the police function in the new police complex.

Police Training and Selection

- There have been some positive changes in relation to training of State police. However, many of the responses appear to be slow in their implementation.

- There continues to be a failure to ensure that Aboriginal communities have formal and ongoing participation in the selection of police officers in their communities.
- The commitment to meaningful implementation of self-determination policies in relation to policing is questioned.

Community Police

- Substantial resources are being provided by the community itself with an increase in community police numbers and equal employment of men and women.
- There are still serious reservations about many of the issues relating to community police. The State Government (especially the Queensland Police Service) must reconsider its contribution in terms of resources.
- There have been improvements but much needs to be done in training and police functions.

Juvenile Justice and Youth Issues

There is a need for careful monitoring by the Department of Family Services and Aboriginal and Islander Affairs (DFSIA) of the extent to which Aboriginal and Torres Strait Islander young people benefit from the diversionary aspects of the new juvenile justice legislation.

General Policing Issues

- The Queensland Police Service's *Report of the Review into Policing in Aboriginal and Torres Strait Islander Communities* needs to be released and responded to. The Report has been presented as the major policy initiative for policing in Queensland indigenous communities, yet after several years it is not available.

2. Employment, Goods and Services.

Health

- The Aboriginal Health Service has not received extra staff as recommended in the first Mornington Report.
- It has been argued that, for local people, giving birth on Mornington Island is seen as a very important cultural matter. There has been little positive response to enable birthing to safely take place on the Island.

There is need for Queensland Health to develop and implement an anti-racist strategy.

- The Report accepts that Queensland Health is considering its service provision to remote Aboriginal and Torres Strait Islander communities. However, given the urgency of the situation regarding poor levels of health of Indigenous people, the process of implementation must be accelerated. Specifically, the appointment of more trained staff (indigenous health workers, midwives, registered nurses and drug and alcohol workers) to the Aboriginal Health Service on Mornington Island would allow the speedy introduction of innovative programs which may also have wide applications in other Aboriginal and Torres Strait Islander communities.

Housing

- The description by the Department of Housing, Local Government and Planning (DHLGP) of some of the older housing stock on Mornington Island as 'generally poor' is a gross understatement. The DHLGP needs to consider urgent funding to meet the basic housing requirements of people on Mornington Island.
- The Report identifies concern about housing management practices. Some aspects of those policies are determined by the level of funding available which is the responsibility of the DHLGP.
- Recent direct funding to Aboriginal organisations representing outstations should assist in the improvement of housing facilities.

Education

- There has been a clear commitment from the principal and staff of the Mornington Island School to implement fully the recommendations made in the first Mornington Report. It is hoped that this commitment will prove to be long-term, systemic and supported by the Department of Education, rather than relying on the initiatives of individuals.

Other Goods and Services

- The people of Mornington Island have recently been left with no banking facilities. This as an intolerable situation, particularly given the size of the community and its isolation.
- There is continuing concern about the prices and the limited availability of goods at the single store operated by the Gununamanda corporation.

CDEP

- There is concern that CDEP is being regarded as a component of local government funding. If this is the case, then clearly CDEP is being used as a substitute for proper funding and equitable funding arrangements.
- More generally, there are some fundamental issues concerning the nature of CDEP and its relationship with other Federal legislation. The Commission is currently examining legislation and policies relating to CDEP to see whether they have may have adverse discriminatory consequences for CDEP participants which are inconsistent with human rights.

Other Employment and training issues

- There has been an increase in the employment of Aboriginal people in Council funded positions. However, there still needs to be greater participation by Aboriginal people on Mornington Island in all areas of employment, both public and private sectors, including senior positions.

3. Self Determination

- The Report questions how seriously the State Government is committed to the principles of self-determination in developing alternative governing structures for Aboriginal and Torres Strait Islander communities.
- In some cases it is apparent that self-determination has been reduced to a nominal and tokenistic form of consultation.
- There is continuing concern that the political structure of the Shire on Mornington Island is a model of governance which was imposed by the State government and does not necessarily facilitate indigenous modes of governance.
- Because of the Shire model, Mornington Island has limitations imposed on it in developing community courts, retaining revenue collected as fines and developing customary law.
- Access to training for Councillors remains problematic. The State Government should consider financial contributions it could make in this area.
- It is now four years since the Legislation Review Committee released its report on self-determination in Queensland. The Commission is keen to see what tangible outcomes have been achieved to date with the Alternative Governing Structures Program. Until recently there had been no indication that the Council or people on Mornington Island were aware of its processes.

1. THE ADMINISTRATION OF CRIMINAL JUSTICE

The original HREOC investigation on Mornington Island was prompted by serious concerns about the administration of justice. It is perhaps not surprising that a substantial focus, and many of the recommendations, of the original Mornington Report dealt with criminal justice-related matters. Some of these issues have been resolved, but many are still of serious concern.

The Investigation of Complaints Against Police

The Commission was critical of the nature of the investigation conducted into allegations of police misconduct on Mornington Island, and of the failure to adequately inform complainants of the progress and result of investigations. The Queensland Police Service (QPS) did not agree that the police investigation of the incident was inadequate. The Criminal Justice Commission (CJC) acknowledged that aspects of the investigation were 'not desirable' and that there were deficiencies'. There have been changes in procedures relating to the investigation of matters where civilians are injured and in the nomination of commissioned officers to conduct such investigations'.

The Commission also regarded it as important that the CJC improve its liaison and complaint handling capabilities-with. Aboriginal and Torres Strait Islander communities. There have been substantial improvements in this area with the appointment of a twenty member Aboriginal and Torres Strait Islander Liaison Committee and the employment of an Aboriginal and Torres Strait Islander Liaison Officer to conduct community education and act as an 'intermediary' with complainants'. These initiatives are to be applauded. However, the Commission is of the view that the complaint handling and community education functions could not be effectively conducted by a single individual covering all of Queensland. Greater resources need to be directed into this area with the employment of additional indigenous personnel.

The QPS response to the question of complaint handling was somewhat evasive. There was no recognition that complainants should be kept informed of the progress of their complaint, although these procedures can take considerable time. On a more general level, the CJC noted that 'mechanisms have been established to ensure that the Chief Officer of the CJC's Complaints Section has regular contact with the National Aboriginal and Islander Legal Service Secretariat in order to be kept abreast of concerns that the ALS may have in regard to Aboriginal-police relations'⁵.

Despite the changes which have occurred, serious concerns have been raised with the Commission about investigations into allegations of police misconduct. The Commission will be requesting

¹Your Report also criticises the fact that the investigation was conducted by a sergeant of police on Mornington Island. The Commission acknowledges that this was not a desirable situation.' Correspondence from Chairman, CJC, to RDC 28 April 1993.

² Correspondence from CJC to RDC, 11 April 1994.

³ *ibid.*

⁴ *ibid.*

⁵ *ibid.* Presumably the CJC means the Queensland Aboriginal and Islander Legal Service Secretariat rather than the national body.

further information from Aboriginal and Torres Strait Islander Legal Services in Queensland concerning what they perceive to be the inadequacies with the current system of investigating complaints against police.

It should also be noted that the complainants, who sparked the Commission's inquiry into Mornington Island, never received any recognition that their original complaints about police misconduct may have been inadequately dealt with by the authorities.

Public Drunkenness and Diversionary Centres

The Mornington Report recommended that public drunkenness be decriminalised. When the Human Rights and Equal Opportunity Commission first visited the Island in 1991, some 75% of all arrests were for public drunkenness. There had also been a death in police custody on the Island where the person was assumed to be drunk and was left unsupervised in the police watch house.

In recommending the decriminalisation of public drunkenness, the Commission was reaffirming similar recommendations from both the Royal Commission into Aboriginal Deaths in Custody and a coronial inquiry held on Mornington Island into the death of Craig Sandy. The Royal Commission had found that the most appropriate place for an intoxicated Aboriginal person to be taken was to a sobering-up centre operated and staffed by Aboriginal people.

Public drunkenness is an offence in Queensland under the *Liquor Act 1992*. The Queensland government stated its commitment to the decriminalisation of public drunkenness in 1992 and began a review process. The 1992 legislation had a sunset clause for the offence which was due to expire on 30 June 1993. The sunset clause was then extended by a further year. In May 1994, the Queensland Cabinet rejected the decriminalisation of public drunkenness.

Diversionary centres have been established in Brisbane, Mt Isa and Cairns. The QPS is developing a Cell Visitors/Diversion Centre Operator's Manual to provide guidelines for police, cell visitors and people working in diversionary centres. However, there is a need to look beyond the Queensland Government statements in relation to the provision of services for dealing with intoxicated persons. The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs has forcefully argued that, despite the rhetoric, only one purpose-built and fully-resourced centre for dealing with intoxicated persons has been built in all of Queensland'. That centre is in Mt Isa. The Commission agrees with the Standing Committee that it is indeed an appalling performance given that the Interim Report of the Royal Commission into Aboriginal Deaths in Custody called for decriminalisation nearly seven years ago'. The Commission condemns the State Government in the strongest possible terms for failing to come to grips with this issue, particularly when deaths in custody will continue to occur in situations where individuals are detained for public drunkenness.

⁶ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (1994), *Justice Under Scrutiny*, Report of the Inquiry into the Implementation by Governments of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody, AGPS, Canberra.

'The Committee finds that despite claiming to support Recommendations 79, 80 and 81 [relating to decriminalisation and the provision of alternative resources], Queensland has dismally failed to implement them through a continuing saga of working groups and of management failures' (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 1994, p.140)

And where does this record leave communities like Mornington Island? The Mornington Council informed the Commission that the State Government had told the Council that it should pay for the provision and staffing of any sobering-up centre on the Island out of its own resources. This position is even more intolerable in that the State Government has been arguing that the reason for the delays and then the suspension of decriminalisation of public drunkenness was the need for the development of alternative strategies based on the use of diversionary centres.

There are models for sobering-up centres in Western Australia, Victoria, South Australia, the Northern Territory and NSW, some of which have been operating for well over a decade. Some schemes are joint Commonwealth/State funded, others are financed entirely by the State Government.

The Commission stresses that it is clearly inappropriate for an Aboriginal Council with limited resources to be expected to fund a sobering-up centre. The provision of sobering-up centres was one of the major recommendations to governments by the Royal Commission into Aboriginal Deaths in Custody. A sobering-up centre for Mornington Island was a specific recommendation of the Mornington Report, as well as being recommended previously in the report of coronial inquiry⁸. The State Government is abrogating its responsibilities in this regard. This abrogation is even more stark in the case of Mornington Island where some \$2.8 million was spent on a new police complex but there was no money for a sobering-up centre. The irony of this situation is reinforced when we consider that the majority of people held in the old watchhouse were there for public drunkenness.

Watchhouse Issues

The Commission was highly critical of the existing watchhouse facility on Mornington Island. It recommended its immediate replacement and that there be consultation with the community and the Aboriginal "and Torres Strait Islander Legal Service on the design requirements of the new watchhouse: The watchhouse has now been replaced. The consultation did not occur.

The QPS stated in its response to the Commission that 'development of the design and function of the watchhouse was undertaken in conjunction with the Mornington Island community. Final plans of the building were reviewed by the Community Council and staff. Representatives of the Aboriginal and Torres Strait Islander Legal Service were also in attendance at this review held on Mornington Island in December 1992'⁹.

The view of the Council was substantially different. The Shire President publicly stated that the police department 'threw the watchhouse plans on the table and wanted us to accept it... There was no consultation with the community. As the elected council, we are the government of the day; we should have had some input. I suppose we just have to accept it now'. Similar views were related directly to the Commission in discussions with Council. Council members stated that they felt intimidated and threatened into accepting the pre-existing plans.

⁸ The inquiry into the death of Craig Sandy was determined by the Coroner, Mr Irvine Killen, in the Mornington Island magistrate's court on 20 November 1991.

⁹ Correspondence from the Office of the Cabinet Queensland to RDC, 9 June 1994.

The QPS position on watchhouses is clear-cut:

All new watchhouses are fitted with electronic monitoring/surveillance equipment. In addition particular emphasis has been placed on the provision of specific 'visitors' areas in all new watchhouse designs for Aboriginal and Torres Strait islander communities.

A key aspect of these developments is that extensive liaison is undertaken with interested community groups, including Aboriginal and Torres Strait islander community members, to ensure the best possible design is achieved'.

Consultation with Aboriginal communities and organisations over cell accommodation was also recommended by the Royal Commission into Aboriginal Deaths in Custody (see recommendation 148). According to the Government, 'with the design of new watchhouses, it is current practice for Aboriginal and Torres Strait Islander Community Councils to be consulted'. However, it is clear that the QPS failed to consult with the community on Mornington Island over the new watchhouse.

The new police complex on Mornington became operational on 25 February 1994 at a cost of \$2.8 million. The complex contains the police operational centre, designated office space for the community police, a court room for the visiting magistrate and the watchhouse (including cells and visiting areas). The watchhouse is fitted with electronic monitoring and surveillance equipment.

The Commission has a number of concerns with the watchhouse. First, there is the failure to separate clearly the court function from the police function. It is of serious concern to the Commission that the courtroom is inside the same building as the police and the watchhouse. Any notion that the role of the court is separate and is to test police evidence and determine the case against an individual who is presumed innocent, may well be lost on the community.

Secondly, one outcome of the new watchhouse is that prisoners given short custodial sentences may serve their time in the watchhouse rather than being transported to prison¹¹. There are advantages in this procedure in that the prisoner is not removed from the community. The Commission's first reaction was that there would need to be careful monitoring to ensure that magistrates do not resort to the more frequent use of short custodial sentences, instead of utilising non-custodial options, because of the availability of what is essentially a local 'prison'. However, recent enquiries have shown that the watchhouse has not been used for this purpose since it opened, with 'lack of staff' cited as the reason. A staff of four police is not sufficient to provide 24-hour surveillance of prisoners (community police

¹¹ Melville, D., Jeans, D., Adcock, T. and Preston, W. (1994) 'Aboriginal Deaths in Custody: Evaluation of the Queensland Police Service's Implementation of the Royal Commission into Aboriginal Deaths in Custody', *Current Issues in Criminal Justice*, Vol 6, No 2, p.256.

¹² Queensland Government (1994), *Royal Commission into Aboriginal Deaths in Custody. Progress Report on Implementation to December 1993*, Vol 3 'Implementation of the Recommendations', Aboriginal Deaths in Custody Secretariat, Department of Family Services and Aboriginal Islander Affairs, p.160.

¹³ Under section 32 of the Queensland *Corrective Services Act* prisoners can be held in police watchhouses if their sentence is less than 31 days.

are not used for this activity). A related concern was the potential holding capacity of the new watchhouse given that it serves a small community of around 1,000 people. However, it appears that since the first Mornington Report was released the number of people held in custody has reduced substantially.

The Royal Commission's recommendations were designed to minimise the incarceration of Aboriginal people and to improve the conditions of those held in custody. In the case of Mornington Island fewer people are being held in custody and the conditions of custody have been improved. However, one concern is that the style of watchhouses may place an overemphasis on electronic surveillance. The Royal Commission into Aboriginal Deaths in Custody stressed the importance of personal contact checks rather than electronic surveillance. There is a need to be certain that new forms of surveillance do not displace or minimise the need for personal checks.

Thirdly, there is concern about the expense and size of the new complex. Mornington Island is a poor community. The multi-million dollar police complex stands in stark contrast to the level of facilities supplied in other areas of social service. The QPS should not be simply criticised for building a new watchhouse and expending resources in the community. The old watchhouse had to be replaced. However, what is apparent is that many people in the community feel that the new watchhouse is an inappropriate response. People in the community have questioned the Government's spending priorities given, in particular, the lack of a "sobering up" centre--People have - quite rightly asked, why is the money always available for policing functions but not for areas of community development?

The Mornington Report also recommended that there be a watchhouse register established to monitor conditions in Queensland watchhouses. A committee has now been established in Brisbane with the aim of monitoring conditions in watchhouses. The committee has a number of concerns relating to numbers held in watchhouses and length of stay, the physical conditions under which people are held and access to adequate medical attention. There are specific issues which will be followed-up including monitoring of the availability of fine default options, disparities in remission times for prisoners held in watchhouses, compliance with watchhouse procedures and utilisation of diversionary schemes.

Police Training

Since the Commission's study of Mornington Island began in early 1991, there have been a number of changes in police training. Some of these changes specifically relate to policing in Aboriginal and Torres Strait Island communities, and other general changes (such as those relating to the appropriate exercise of standards of duty of care) impact on the quality of policing in indigenous communities.

The Queensland Police Service (QPS) has undertaken a number of projects to improve police knowledge in relation to duty of care for persons in custody. These projects have received funding from the Commonwealth. They include the Custody Awareness Lecture Package and the incorporation of custody issues in the Competency Acquisition Program for existing officers. A Custody Manual and a Watchhouse Custody Register (with a medical screening process) have been introduced. To improve the quality of information on police custodies a computerised Custody Index has been introduced which details information on individuals arrested, detained or questioned for an indictable offence. There have been some substantial

criticisms specifically in relation to the Custody Manual concerning the actual extent to which operational police are aware of, and comply with, procedures".

Cross-cultural training for police was identified as an important issue in the Mornington Report and there have been developments in this area by the QPS. These projects have been funded by the Commonwealth. The QPS contracted the Bureau of Ethnic Affairs to provide cross-cultural training specifically related to cross-cultural communication processes. There have also been units developed or are being developed in the Competency Acquisition Program including 'Race Relations', 'Aboriginal and Torres Strait Islander People and the Law' and 'Aboriginal and Torres Strait Islander Contemporary Issues'.

In addition, first year constables spend four weeks of their initial year in an Aboriginal community. Their role is to interact with the community without conducting any reactive policing duties. The communities involved in this training project include Mornington Island as well as Cherbourg, Doomadgee and Kowanyama. Training on Aboriginal and Torres Strait Islander issues has also been expanded for new recruits. According to the QPS this training is not treated as simply an 'add-on component' but integrated and assessed within mainstream training issues'.

The Mornington Report was also concerned that police going to work in remote indigenous communities like Mornington Island should be adequately trained in the specific issues of those communities. Apparently the Northern Police Region has developed its own induction package for police about to be transferred to Aboriginal communities, although the Commission has no further details on the nature or extent of this package'.

According to the QPS, a more comprehensive induction training package has been prepared for police working in Aboriginal and Torres Strait Islander communities by an indigenous consultancy company. This package was funded by ATSIIC Royal Commission implementation money and was being prepared at the time of the original Mornington Report in April 1993. The package is still under consideration.

There have been some positive changes in relation to training of State police. However, many of the responses also appear to be extraordinarily slow in their implementation - the induction training package is one example.

Liaison and Support Functions

Each police region has a police officer appointed as a Cross-Cultural Support Officer. The Mornington Report identified a number of problems with the liaison system including that some officers were part-time in the position; there were enormous distances to be covered in some regions by a single officer; a statement of duties had not been adequately addressed; there was no designated budget for carrying out duties; and the low rank of those serving in

¹⁴ Brennan, S. (1994) 'As Good as Their Word: A Response to Melville et al', *Current Issues in Criminal Justice*, Vol 6, No 2, pp.264-274.; and also House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 1994, pp.137-138.

¹⁵ Melville, et al, 1994, p.258.

¹⁶ Correspondence from the Office of the Cabinet Queensland to RDC, 9 June 1994.

the position meant limited input into the development of policy'. More recent criticism of aspects of the program have been aired by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs'. Like earlier Commission concerns, these criticisms were not directed at the officers serving in these positions, but rather at the level of organisational support. According to the Standing Committee, some senior police 'have a very rudimentary understanding of what community liaison involves [and] believe that spying on the group being liaised with is an integral part of liaison''.

The QPS response to the recommendations from the Commission was simply that the role and function of the Cross-Cultural Support Officers was being considered in the light of the Queensland Public Sector Management Commission Report'. The Commission's view is that the QPS should also be considering the role and function of the Cross-Cultural Support Officers in the light of both the original Mornington Report recommendation as well as the more recent critique provided by the House of Representatives Standing Committee.

The QPS also employs Aboriginal and Torres Strait Islander people (who are not police officers) as liaison officers to work with the State police in a number of locations in Queensland. This scheme does not affect Mornington Island as there is no liaison officer position established there. However, the scheme has come under some criticism from other quarters in relation to its operation'.

Community Input into Selection Procedures

The Mornington Report found that there were no formal mechanisms for Aboriginal communities to have input into the selection of officers to serve in Aboriginal communities. At times there was some level of involvement in selection procedures. However, this involvement was described as 'haphazard, informal, [and] of an advisory capacity'''. It should also be noted that participation in selection processes has always only been considered by the QPS for gazetted positions and not for constables.

At the time of the release of the report in 1993 it was QPS policy to include Aboriginal and Torres Strait Islander representatives on selection panels. However, it appears the implementation of the policy is still dependent on a training package for community members before they can participate. This training package (funded by ATSIC Royal Commission implementation money) was referred to in the Mornington Report in the beginning of 1993. The response from the QPS to the Commission in mid 1994 noted that 'the QPS, on completion of its consultant's report, should implement a selection process which assures

¹⁷ Mornington Report, p.27.

¹⁸ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 1994, pp.264-266.

¹⁹ *ibid.*

²⁰ Correspondence from the Office of the Cabinet Queensland to RDC, 9 June 1994.

²¹ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 1994, p.260.

²² Mornington Report, p.25.

formal community input over which police officers will be stationed at Mornington
In other words, the training package had not been implemented, and it is apparently still
under consideration two years later²⁴.

It appears that the State Government has not responded in any meaningful way to ensure that
Aboriginal communities have formal and ongoing participation in the selection of police
officers. The inability to comply with this recommendation also raises questions about the
commitment to meaningful implementation of self-determination policies.

Aboriginal Community Police: Employment, Training and Powers

The role of community police on Mornington Island came under particular attention in the
Mornington Report. Specific issues identified included powers of arrest, duties of the
officers, relationship with State police, training, and conditions of employment including
remuneration²⁵.

There has been a substantial increase in the number of community police to twelve, with the
employment of equal numbers of women and men. The Mornington Council is responsible
for the provision of wages and vehicles for the community police. The Council is to be
commended on the fact that half of the community police are women and that the Council
has taken on this additional financial responsibility. The community police now receive award
wages.

A training package (funded by the Commonwealth) with supporting videos has been
developed for training community police by the QPS. Training is provided by either the
Cross-Cultural Support Officer or the regional training officer visiting the community. There
has also been a TAFE 'train the trainer' course at Innisfail on how to provide appropriate
training to Aboriginal and Torres Strait Islander students. However, the QPS will still not
recognise that it should accept responsibility for the training of community police without the
assistance of Commonwealth funding. The inequity in this approach is further compounded
when we consider that the Council is heavily subsidising State Police operations by paying
salaries and vehicle costs.

In addition the Commission still has serious concerns about the quality of the training which
the community police receive through the training package consisting of eleven modules.
Eleven modules taught on location cannot deal with the broad ranging issues to which
community police must respond. The expanding role of community police is an important
part of implementing self-determination but this expansion must be met with corresponding
levels of training. Connected to this issue is the failure to adequately consider career

²³ Correspondence from the Office of the Cabinet Queensland to RDC, 9 June 1994.

²⁴ Melville, et al, p.261.

Mornington Report, pp.32-38.

²⁶ The QPS does note that training and employment of community police will be a central issues
considered in the 'Report on the Review on Policing of Aboriginal and Torres Strait Islander
Communities'. However this is of little significance if the report is never released (see below).
Correspondence from the Office of the Cabinet Queensland to RDC, 9 June 1994.

structure and professional development for individuals who wish to take on the task of community police officer.

An important feature of the functions of community police relate to the powers they exercise under community by-laws. The Mornington Report noted that the powers of arrest by community police were not general and had to be regulated under the by-laws of the community. A coronial inquiry had found that the practice of community police arresting and detaining individuals for public drunkenness was unlawful because there was no by-law giving community police the necessary authority. This practice has now stopped and the Commission has been informed that community police do not make arrests. If an arrest is required then the State police are called to attend.

The Commission is aware that there have been plans to change the by-laws at least since 1990. In 1994 the police sergeant had drawn up a new and comprehensive set of by-laws concerning offences relating to assault, drunken and disorderly persons, obscene and abusive language, protection of minors, possession of dangerous articles, possession of prohibited liquor and other matters. It is the Commission's understanding that Council has on a number of occasions sought to have by-laws introduced. However, the matter stalled after being forwarded to the DHLGP.

The issue of by-laws has been a problem for many of the DOGIT communities in Queensland as well as for Mornington Shire. In November 1994, new sets of by-laws were to be introduced into a number of north Queensland communities to increase the extremely limited powers of the community police. It would appear that Mornington is further restricted in implementation of by-laws because of its status under the local government legislation. In addition, community courts are not operating on Mornington Island.

Overall, the Commission still has serious reservations about many of the issues relating to community police. Substantial resourcing is being provided by the community itself. The State Government (especially the QPS) must reconsider its contribution. There have been some improvements but obviously much needs to be done in terms of training and functions. All citizens - including those on Mornington Island - have the right to expect that their police forces are properly trained. Community police could also provide an important step in the direction of self-determination in communities like Mornington Island. This will not occur while there is inadequate training, ill-defined powers and no professional structure.

Juvenile Justice and Youth Issues

When the original Mornington Report was released, the new Queensland *Juvenile Justice Act 1992* had not been proclaimed. However, it was noted that the legislation provided important provisions which allowed for the cautioning of young people to be administered by an elder of an Aboriginal or Torres Strait Islander community instead of a police officer. It was noted that this provision could provide an important mechanism in strengthening the Walgut Kuba Laga scheme (already existing on Mornington Island) which utilised elders and community sanctioning after a young offender had been brought before the court. The Mornington Report strongly supported the scheme.

However, it appears that there has been inadequate attention to the provisions of the new legislation in relation to cautioning on Mornington Island. When the Commission visited in April 1994, police themselves were administering cautions rather than community elders. At

the official level, police policy and procedures support the involvement of Aboriginal elders in the cautioning process'.

An important implication from this is the need for careful monitoring by the Department of Family Services and Aboriginal and Islander Affairs (DFSAIA) of the extent to which Aboriginal and Torres Strait Islander young people actually benefit from the diversionary aspects of the new legislation. Comprehensive statistical research in both South Australia and New South Wales has shown that Aboriginal young people are generally less likely to benefit from police decisions to use diversion than non-indigenous young people'. The extent to which arrest rather than attendance notices is used also needs careful monitoring. The placement of juveniles in police watchhouses also needs to be monitored. The QPS advise that arrest is only used as a last resort and that the QPS policy is not to place juveniles in police watchhouses except in exceptional circumstances'.

Crime prevention, particularly with young people, was also seen as an important issue in the Mornington Report. The Commission is pleased that the Council has tried to develop its role in this area. The Council applied to the Queensland Department of Tourism, Sport and Racing for a recreation officer but was unsuccessful in its application. It has had to rely on a CDEP position for the establishment of the recreation officer which it recognises to be an unsatisfactory situation.

The Commission also recommended the development of a specific CDEP project/s which could include young people who are 'at risk'. The Council has been considering this option and the Shire Clerk has suggested that such a project should provide work which incorporates literacy and numeracy, or which provides young people with various skills. One concern has been that any such CDEP project should not deter young people from seeking further education'.

The Commission also had in mind the type of successful example implemented recently at Kowanyama (another Aboriginal community in the Gulf area). In this scheme, a number of persistent juvenile offenders were identified and targeted for inclusion in a constructive program run by elders, police, teachers, the Kowanyama Community Council and the parents or guardians of the at-risk young people. Specific activities for these boys were organised. The activities included camping weekends where they learned traditional bush skills and fishing. There was also their inclusion in more general youth activities such as video shows and sporting events on Friday evenings; and art activities such as mural painting throughout the town. In three months, the average rate of six appearances before the Children's Court per month had fallen to nil^m.

²⁷ Queensland Government, 1994, Vol.3, p.255.

Gale, F, Bailey-Harris, R. and Wundersitz, J. (1990), *Aboriginal Youth and the Criminal Justice System*, Cambridge University Press, Melbourne; and Luke, G. and Cunneen, C. (1995), *Aboriginal Young People and Discretionary Decisions in the NSW Juvenile Justice System*, NSW Juvenile Justice Advisory Council, Sydney.

²⁹ Correspondence from the Office of the Cabinet Queensland to RDC, 9 June 1994.

Report of the Shire Clerk - Federal Race Discrimination Commissioner's Report, April 1993

³¹ 'Juvenile crime drops under new plan', *Cairns Post*, 23 June 1994.

The Walgut Kuba Laga scheme was originally established as a community sanctioning process to be imposed after an initial court appearance. The QPS also mentioned a scheme they are promoting called the Homeland Aboriginal Program for Youth (HAPY) which is directed at 'providing community input into juvenile offender rehabilitation'³². No other details are available on the program at present.

The DFSAIA employs two Aboriginal people associated with the Remote Area Aboriginal and Islander Child Care Program and the Alternative Care and Intervention Program. The latter worker is involved with older children and youth and had offered administrative support to the Walgut Kuba Laga scheme. There was also involvement in organising video nights and camps. The DFSAIA is also involved in the provision of community service orders and probation orders. A number of community organisations are involved in supervising community service orders including Yuenmanda Welfare, Gununamanda, the Old People's Home, Mornington Island State School and the Shire Council.

General Policing Issues

There are a number of general issues relating to policing on Mornington Island which were raised in the original Report. One area of concern at the time of the Report was that people should not be arrested for minor offences such as obscene language. In cases where charges were going to be preferred, offenders should be proceeded against by way of summons rather than arrest. While the Commission is not aware of any current problems on Mornington Island in this regard, it does have concern that the QPS still regards arrest for minor offences such as obscene language as a suitable tool for diffusing potentially more serious situations³³. The use of minor public order offences in this manner was adversely commented upon by the Royal Commission into Aboriginal Deaths in Custody.

The Commission was also concerned with a number of police staffing issues on Mornington Island. Some of these issues have been addressed. The QPS has gazetted a position for a senior constable on the Island, in addition to the position of sergeant. Married quarters are available for both positions and there is a minimum two year tenure. This change goes some way to addressing the issue of a constantly changing staff with short term appointments. However, the remaining constable positions are still on a six month rotational basis and the Commission holds to its view that this rapid rotation adversely affects the quality of policing.

The Commission was particularly concerned that facilities be made available which would enable female police officers to be stationed on Mornington Island. According to the QPS 'the issue of female officers being transferred to communities is currently being considered'. There is no further indication of how or when this matter might be resolved.

³² Correspondence from the Office of the Cabinet Queensland to RDC, 9 June 1994.

³³ *ibid.*

³⁴ *ibid.*

Violence Against Women

Violence against women was recognised in the Mornington Report as an issue of special significance. The situation changed on Mornington Island during the course of the Commission's investigation from a situation where there was literally no use made of protection orders to a situation where there was a recognition by police of the importance of providing protection for Aboriginal women. During 1993 some sixty protection orders were issued for women on Mornington. The QPS has recognised that 'domestic violence is a serious issue on Aboriginal communities' and admits that 'there are problems being experienced in the enforcement of the legislation in respect to the separation of the parties'. It also recognises 'that further work also needs to be undertaken in relation to training and program development. To that end, the Police Service has allocated \$25,000 to develop and deliver training on the appropriate application of the provision of the *Domestic Violence (Family Protection) Act 1989* to police working in Aboriginal and Torres Strait Islander communities'³⁵.

It should be noted that a recent report from the Office of the Status of Women has highlighted some of the specific disadvantages faced by Aboriginal and Torres Strait Islander women in gaining access to protection orders'. Apparently a report by the DFSAIA on the effectiveness of domestic violence legislation in Aboriginal and Torres Strait Islander communities has been deferred pending the implementation of a community education strategy on the legislation by the DFSAIA'.

The Report on the Review of Policing on Aboriginal and Torres Strait Islander Communities

As a response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody, the QPS initiated a review into policing in Aboriginal and Torres Strait Islander communities. The review had begun in March 1993 just prior to the release of the Mornington Report. In May 1993 correspondence from the QPS indicated that 'many of the issues raised in Chapters 3, 4 and 5 of the Mornington Island Report are being addressed in this review'. The Commission was also told that the 'Police Service generally sees this project as a unique opportunity to review the specific policing needs of Aboriginal and Torres Strait Islander communities and to develop strategies which will improve the service delivery in these areas'³⁹. Clearly much importance was being placed on the outcomes of this police review.

The review was Commonwealth funded by ATSIC and DEET for \$149,000. The review was to consider and report on the following matters:

³⁵ *ibid.*

³⁶ National Committee on Violence Against Women, *The Effectiveness of Protection Orders in Australian Jurisdictions*, AGPS, Canberra, 1993.

³⁷ Correspondence from the Office of the Cabinet Queensland to RDC, 9 June 1994.

Correspondence QPS to RDC, 18 May 1993.

³⁹ Correspondence QPS to RDC, 28 April 1993.

- the current policing methods and any associated problems;
- practical and affordable ways of improving the delivery of policing services on these communities;
- options for improving police/community interaction and increase the involvement of the community in solving law and order problems;
- whether a single policing strategy for these communities was possible; and
- whether community police should be retained in their current form and how the use of these police could be maximised'.

The report of the review is frequently mentioned in Government papers and correspondence as an indication that specific policing issues in Aboriginal and Torres Strait Islander communities are receiving serious attention". In other words, considerable reliance has been placed on this report by the Government to show a serious commitment to improving the administration of criminal justice in Aboriginal and Torres Strait Islander communities. In the 'whole of government' response from the Queensland Cabinet to the Commission concerning the recommendations of the Mornington Report, it was noted on a number of occasions that specific issues would be addressed in the Review and that, at June 1994, a discussion document would be available in the 'near future'⁴².

However, the report has been about to be released for some time. Thus 'the review is expected to be completed in late 1993', and 'it is anticipated the first draft of the report will be available for further consultation in May 1994'. As at March 1995 the completed report has still not been released and there is apparently no immediate plan to do so.

Given this long drawn out response to what has been presented as the major policy initiative for policing in Queensland indigenous communities, the Government's commitments in this area have to be questioned.

⁴⁰ Queensland Government, 1994, Vol.3, p.98

¹ see, for example, Queensland Government, 1994, Vol.3, pp.98, 213, 230, 243, 245. ⁴²

Correspondence QPS to RDC, 18 May 1993.

Queensland Government, 1994, Vol.3, p.213.

⁴⁴ Melville, et al, 1994, p.261.

2. THE AVAILABILITY OF EMPLOYMENT, GOODS AND SERVICES

The Queensland Government has maintained that it is committed to the non-discriminatory provision of essential services to Aboriginal and Torres Strait Islander communities irrespective of their ability to pay'. The following review of housing, health and other issues on Mornington Island raises serious questions about that commitment. The review shows that there have been some positive changes in relation to employment. However, there is still a need for more to be done, particularly in relation to CDEP.

Health

The major concern of the Mornington Report in relation to health was the provision of health services, training in indigenous issues and the involvement of Aboriginal people in consultative mechanisms.

Queensland Health states that it is committed to effective community participation and that it is also looking at community management of health services. In relation to consultation, it mentions the participation of at least one Aboriginal or Torres Strait Islander member on most of the Regional Health Authorities. There has also been reference to the establishment of the Aboriginal and Torres Strait Islander Health Policy Unit and the establishment of regional Aboriginal and Torres Strait Islander Health Advisory Councils'. In addition there are the State Tripartite Forum and the Torres Strait Health Council which directly advise the Minister on indigenous health issues'.

With regard to Mornington Island, the Department says that 'the Executive Officer of the Western Sector of the Northern Regional Health Authority visits Mornington Island every two months and meets with the Shire Clerk and Council Representatives to discuss health issues. Hospital staff and health workers meet with the council on a 'when needed' basis to discuss public health issues and other health matters". Yet the Commission's information from Mornington Council suggests that this is a considerable overstatement. The Council noted that 'the Executive Officer... may visit Mornington Island regularly, however, he has only met with the Shire Clerk informally on two or three occasions and has addressed Council on one occasion only".

Queensland Health has also stated that it is moving towards community management of health services which serve largely Aboriginal and Torres Strait Islander clients through 'ensuring adequate numbers of qualified indigenous health workers are available to staff health

Queensland Government, 1994, Vol.3, p.210. Queensland

Government, 1994, Vol.3, p.269. Correspondence from Minister

for Health to RDC, 13 May 1994.

⁴⁸ *ibid.*

⁴⁹ Correspondence from Mornington Shire Council to RDC, 'Notes on Draft Review Report', July 1994.

services, and through the development of community education and training in management and health issues". There are also four pilot projects seeking to develop a model for community management of health services'. The Commission has no other details on these four projects and remains concerned with any claims about the level of staffing for indigenous health workers. Indeed, one of the recommendations from the Mornington Report which has not been met was that the Aboriginal Health Service receive extra staff particularly for their servicing of outstations.

Queensland Health indicates that the following visiting services regularly attend Mornington Island: Mental Health Nurse twice a year; Sexual Health Team four times a year; Child Health nurse with the Royal Flying Doctor Service twice a year; Alcohol and Drug service twice a year; Healing Health Unit twice a year; an Alcohol and Drug Service worker from Mt Isa on 'a regular basis'; a Pediatric Registrar and a Senior Medical Officer in Obstetrics sent to Mornington Island hospital on 'a regular basis'; and there are plans to send an Ophthalmology Registrar to Mornington Hospital on 'a regular basis'. The Royal Women's Hospital has also sent a pap smear and breast examination team to Mornington in the last six months.

However, for the Aboriginal community to make full use of these services it requires an adequately staffed and resourced Aboriginal Health Service to coordinate the specialist's contact with the community. The Aboriginal Health Service is expected to do all the -preliminary-and-support-work. For example, in relation to the visit_by the pap smear and breast examination team, the Aboriginal Health Service must contact all the women who should have pap smears and breast examinations, tell them the purpose of these tests, persuade them to come and be tested and even collect the women (although the Service is without proper transport for this task). A similar problem faced the Aboriginal Health Service when the trachoma team arrived. This is an onerous task in addition to their already demanding workload.

The Commission was also concerned with issues related to women's health and to birthing. In relation to these issues, Queensland Health has responded that it has funded three peak bodies (the Aboriginal Coordinating Council, the Island Coordinating Council and the Queensland Aboriginal and Islander Health Forum) to employ women's health workers. Their functions are to 'both provide information, referral and networking services and to identify the specific health needs of indigenous women and their preferred methods of service delivery to address those needs. While this funding was provided in mid-1993, delays in recruitment have meant that the program has only recently begun operating".

Queensland Health also notes that funding has been provided to a number of community based organisations for the provision of support services for indigenous women, particularly those who are the victims of violence. On Mornington Island, the Northern Regional Health

Queensland Government, 1994, Vol.3, p.216.

⁵¹ Correspondence from Minister for Health to RDC, 13 May 1994.

⁵² *ibid.*

⁵³ *ibid.*

Authority maintains a women's health group to discuss health issues on Mornington Island. The group has received a grant of \$50,000 for cancer prevention'.

In relation to birthing, the major recommendation of the Commission was that a birthing centre be established on Mornington Island. According to Queensland Health, the Aboriginal and Torres Strait Islander and Women's Health Policy Units have conducted consultations on Mornington Island regarding ante-natal, birthing and post-natal services. The conclusion drawn was that 'while in the long term they wished to see child birth occur in remote communities, this would not be possible without unacceptable risk to mothers and babies while the underlying health of indigenous women was at its current low level'⁵⁶.

In the interim, it was agreed that improved ante-natal and post-natal services within communities were desirable. With specific regard to Mornington Island, Queensland Health is considering a proposal 'to employ a full-time registered midwife and a part-time Aboriginal health worker for the purpose of developing and implementing a community midwifery program, excluding birthing, for Mornington Island. It is expected that, while pregnancy-related matters, primarily ante-natal and post-natal care and education would form the major components of service provided by this pilot program, other women's health matters would also be addressed by the registered midwife and Aboriginal health worker'⁵⁷.

The outcome of the above consideration is not known. However, the Commission finds that these responses are unacceptably slow given that the issues have been identified for some time'. Why should the proposal be only now at the 'consideration' stage? Given the earlier work by Commission in the Cooktown region, and the strong concerns expressed by the Commission in the Mornington Report, it would have been reasonable to expect the immediate implementation of the services of a registered midwife to at least address ante- and post-natal care and education, even excluding the issue of birthing. Her presence may have saved another tragic infant death which has occurred in the period between the Mornington Report and this Review Report.

The Commission is also concerned with the reasoning behind these policy considerations. The level of health service provision to Mornington Island is poor and yet the poor health of women on the Island is a reason for the failure to develop a specific program. The Commission argued previously in the Mornington Report that giving birth on the Island was seen as a very important cultural matter⁵⁸. There are fundamental implications in being born away from the Island because of the special relationship between Aboriginal people and country. Being born away from country is seen as breaking the special relationship between family and the land. In addition, Aboriginal women have skills in midwifery which are being undermined and the women are being disempowered. As was stated in the Mornington

ibid.

ibid.,

⁵⁶ ibid.

⁵⁷ See Human Rights and Equal Opportunity Commission, *The Provision of Health and Medical Services to the Aboriginal Communities of Cooktown, Hopevale and Wujal Wujal*, AGPS, Canberra, 1991, p. 56.

" Mornington Report, pp.60-63.

Report, the issue of birth is one that relates directly to issues of self-determination. There are strong feelings in the Mornington Island community that giving birth away from the Island undermines self-determination.

The Commission has no wish to endanger the lives of women or newly born babies through a lack of access to medical services. However, there are options available which would overcome any fears concerning the requirements of emergency medical intervention. More generally, for a range of cultural and material considerations (such as increased family support), giving birth on the Island could be expected to improve the health of women.

An issue which was also addressed in the Mornington Report (and in an earlier Commission report') was the training and support for nursing staff operating in Aboriginal and Torres Strait islander communities. Queensland Health states that it has developed a cultural awareness package by which 'indigenous health workers are trained to deliver cross-cultural education to their non-indigenous colleagues'. The cultural awareness package aims to 'inform non-indigenous health practitioners of the cultural implications of health and health care services for indigenous people'. In addition a Remote Area Nurses' Orientation Program has been developed 'to ensure that newly appointed staff are aware of the cultural, social and professional issues with which they will be confronted in the particular communities to which they are appointed'.

While cross-cultural training is important, the Commission was also concerned that Queensland Health develop and implement an anti-racist strategy. There is no reference to this having been considered, let alone developed and implemented.

Queensland Health have also indicated that there have been improvements in employment conditions and training for Aboriginal and Torres Strait Islander health workers. A career structure and award for indigenous health workers has been developed and adopted, and a Certificate in Indigenous Primary Health Care is available at a number of TAFE colleges (including Cairns and Thursday Island). There has also been established a Bachelor of Applied Science - Indigenous Primary Health Care program at the University of Queensland.

There is a need for an ambulance service on Mornington Island. Residents reported problems to the Commission associated with seeking assistance for seriously ill or injured persons. There is no ambulance and the hospital vehicle cannot be used as a substitute for an ambulance. In discussions with Commission, members of the community have indicated that when they have requested assistance, individuals have been told that they had to bring the patient to hospital. Given there are very few private vehicles among the Aboriginal population, the lack of an ambulance service poses a serious risk to the community. The Council is currently requesting funds to establish this service.

⁵⁹ Human Rights and Equal Opportunity Commission, *The Provision of Health and Medical Services to the Aboriginal Communities of Cooktown, Hopevale and Wujal Wujal*, AGPS, Canberra, 1991, p. 53.

60 Queensland Government, 1994, Vol.3, p.227.

⁶¹ Correspondence from the Minister for Health to RDC, 13 May 1994.

⁶² *ibid.*

Health issues on Mornington are very basic. There is a need for a massive injection of resources into alcohol services of all descriptions - sobering-up centres, counselling, related medical services and social services such as diabetes screening and nutrition. These must be coordinated and funded. The Aboriginal Health Service at its present staffing level simply cannot cope with the variety of needs that it should service.

The Commission accepts that the Queensland Health is considering its service provision to remote Aboriginal and Torres Strait Islander communities. However, given the urgency of the situation regarding poor levels of health of indigenous people, the Commission urges that the process of implementation be accelerated. Specifically, the appointment of more trained staff (indigenous health workers, midwives, registered nurses and drug and alcohol workers) to the Aboriginal Health Service on Mornington Island would allow the speedy introduction of innovative programs which may have wide applications in other Aboriginal and Torres Strait Islander communities.

Housing

The Mornington Report had a number of concerns with housing primarily around issues of building, design, repairs, tenancy arrangements and levies. As we noted in the Preface, much of the housing on Mornington is in need of some repair. Some housing is in a shocking state of disrepair and cannot be described as meeting basic human needs.

There are several players involved in the provision of housing including the Department of Housing, Local Government and Planning (DHLGP), the Shire Council and ATSIC. Incorporated community groups reflecting outstation interests are also now involved in receiving housing grants.

The major funding for housing is through the Aboriginal Rental Housing Program (ARHP) administered by the DHLGP. The DHLGP provides grants to Aboriginal and Torres Strait Islander Councils for the construction of rental accommodation for Aboriginal and Torres Strait Islander people. According to the DHLGP: 'Councils funded under the program are responsible for the administration and management of this housing and are required to formulate their own housing management policies and practices. As such, the recommendations stemming from the [Mornington] report that relate to housing management matters are specifically directed to the Shire Council'. However, while the management practices are clearly the responsibility of Council, it must be acknowledged that at least some aspects of those policies will reflect the level of funding available and whether that funding is adequate or inadequate to meet basic housing requirements. Thus responsibility for the situation must be taken by the DHLGP.

The issue of repairs and maintenance to housing stock is a point of contention in the community. Individuals contribute a boarder or maintenance levy", yet feel that repairs are not carried out in a timely or equitable fashion. The Shire Clerk suggested that a review of

Correspondence from Office of the Cabinet, Queensland to RDC, 9 June 1994.

⁶⁴ The boarder levy is often perceived as a 'tax' on over-crowding whereby each additional person receiving an income (including CDEP) in a house contributes an additional \$20 rent to the Council. See Mornington Report, pp.69-70.

procedures, including the charging of levies be carried out⁶⁵. The Commission also recommended the development of tenancy agreements which spelt out the rights and obligations of both parties. The Council has developed a tenancy agreement. However, this agreement still needs to be translated into plain English. Some consideration should also be given to the fact that there are literacy problems and that English is a second language for many people. Use of BRACS⁶⁶ might therefore be more appropriate.

The DHLGP is also looking at 'a range of options to increase the level of training and support given to Councils to ensure housing funded under the program [ARHP] is administered appropriately and equitably and that tenants are given the opportunity to contribute to housing decisions within their community'. The Commission urges that these issues be considered as priorities. Much of the housing stock is in need of repair; the people have little or no choice in terms of housing (unless they move to an outstation); and it is apparent that the issue is divisive within the community.

The DHLGP has acknowledged that 'As with most rural and remote Aboriginal and Torres Strait Islander communities in Queensland the condition of houses, particularly older stock on Mornington Island, is generally poor. While the maintenance and upgrade of housing is the responsibility of Council, it is recognised that in most cases the level of rental income received by Councils is insufficient to maintain these houses, given the high costs of repair and service delivery. DHLGP is currently examining ways of addressing these problems'. The description of some of the older stock as 'generally poor' is a gross understatement. We urge that the DHLGP examination of the issue be conducted urgently. The contribution which ATSIIC makes to house maintenance, insurance, refurbishment and renovation should also be reconsidered.

The Commission recommended that Aboriginal people on Mornington be involved in the building and repair of houses. Council has agreed that Aboriginal house renovation teams be developed 'under CDEP. One difficulty is the lack of training for building trades workers. In mid 1994 there were two local Aboriginal men who had almost completed their apprenticeships as carpenters. There were another six apprentices doing building trades (carpentry, plumbing and electrical) but they were still at Cairns and Townsville TAFEs⁶⁹. The DHLGP, as part of the administration of ARHP, offers construction and project management services to Councils. 'The Department's construction co-ordinators facilitate the use of CDEP to assist in the construction and upgrade of houses and assist Councils with construction, employment and training programs within their communities'. This may be a fruitful avenue for the Council to pursue.

⁶⁵ Report of the Shire Clerk - Federal Race Discrimination Commissioner's Report, April 1993

BRACS refers to Broadcasting for Remote Aboriginal Communities Service.

⁶⁷ Correspondence from Office of the Cabinet, Queensland to RDC, 9 June 1994.

ibid.

One of the difficulties faced by the apprentices is finding a fully-qualified tradesperson to whom to be apprenticed: each tradesperson can only have two apprentices and they must have continuity of employment in order that the apprentice may complete his/her time.

Correspondence from the Office of the Cabinet Queensland to RDC, 9 June 1994.

Appropriate housing design was another of the Commission's concerns. The Council has employed consultants 'who had design talks with a good sampling of elders and other community members at a public meeting called for that purpose and subsequently with Councillors. Extensive modifications were made to designs for seven houses being erected this year as a result of those talks'. Another useful way of approaching the design issue was shown at Mapoon, where the community negotiated the construction of a 'display home' incorporating design features that were thought to be more culturally appropriate and acceptable to Aboriginal families. The community has a chance to study the building and consider its design in a tangible way and, as a result, could participate meaningfully in design questions.

Another development in the housing situation on Mornington Island has been the approval by DHLGP of a grant of \$40,000 for outstation housing to Lametha Aboriginal Corporation under the Local Government and Community Housing Program. According to the DHLGP 'the direct funding of incorporated organisations for the development of community housing projects on Mornington Island is providing the residents with access to accommodation that is administered by incorporated community or family groups rather than Council and as such provides a valuable housing alternative'.

Education

The Mornington Report was concerned primarily with two issues relating to education: strategies to deal with low participation rates and the provision of educational services to outstations. Other issues have been brought to the attention of the Commission since the release of the Report which are primarily related to providing education after Grade 10 through extension of the school to Grade 12 and the development of accredited TAFE courses'.

The Commission has noted the clear commitment from the principal and staff of the Mornington Island School to implement fully the recommendations made in the Report. It is hoped that this commitment will prove to be long-term, systemic and supported by the Department rather than relying on the initiatives of individuals.

A number of programs have been put in place by the school staff in conjunction with the Mornington Island School Advisory Council (SAC) to increase the participation rate of students'. 'In 1993, the school successfully applied to the National Aboriginal Education Project for funding to employ a part-time school community liaison officer. This officer visited homes and discussed with parents attitudes to the school, individual student attendance patterns, parental responsibility and family strategies to encourage an improved school

⁷¹ Correspondence from Mornington Shire Council to RDC, 'Notes on Draft Review Report', July 1994.

⁷² Correspondence from the Office of the Cabinet Queensland to RDC, 9 June 1994.

Report of the Shire Clerk - Federal Race Discrimination Commissioner's Report, April 1993.

The SAC was formed in 1993.

attendance. Funding to continue this position was not successful in 1994 and a teacher aide is now being used in this role⁷⁵.

In other initiatives an Outreach Education Program has been developed. The staff and SAC identified a group of around 40 boys in the 10-15 year age group as the main problem group of non-attendees. Their attendance was less than 50 days each in a school year of 200 days and they were students with low levels of achievement, poor self discipline and at risk of developing patterns of unlawful behaviour. By rearranging school staff loads, a teacher and an aide were released to work exclusively with these boys. A core group of 15 'at risk' boys were constituted into a special group who were taught separately in the morning (including a range of vocational and physical activities as well as traditional skills) and integrated into classes in the afternoon. The school attendance rate of this core group rose from about 20% to over 90%.

On the advice of the SAC, the school is now developing an appropriate specialist intervention program for girls.

Other groups of poor attendees were identified, such as those reluctant to attend school because of embarrassment over poor levels of achievement. These children were personally collected by a teacher's aide from their homes. The teacher's aides were able to become familiar with specific issues affecting the children. The children were provided with specialised basic literacy and numeracy lessons during the first part of the morning, before being re-integrated into regular classes.

Additionally, highly desirable incentive prizes (such as mountain bikes) have been instituted as a reward for good attendance.

There has also been a concerted effort to provide educational services to those children spending time on the outstations. A registered teacher and an Aboriginal aide were released from routine classroom duties in July 1993 to develop and co-ordinate the concept of outstation education. This school team together with a councillor and outstation committee member offered a regular visiting education service for up to fifty-three children living on nine outstations'. According to the Department of Education, 'In 1993, the outstation team made fifty-three visits and travelled 1883 kms to provide this service. In 1994, each outstation has nominated its own tutor to liaise with the school team and provide daily tutorial services between team visits... Most outstations are visited for one day in each ten school days, depending on student numbers. A 'granny', who is affiliated with the outstation, travels with the school team. On arrival, the team divides the children into three groups according to current achievement levels. The Northern Territory Bush Books curriculum, which focuses specifically on literacy and numeracy, has been adopted. At the conclusion of the teaching session, the outstation tutor is provided with individual education programs for each student for completion before the team's next visit''.

Correspondence from the Office of the Cabinet Queensland to RDC, 9 June 1994.

⁷⁶ *ibid.*

⁷⁷ *ibid.*

The Department of Education has also noted that 'a training program developed by the school has been devised to train outstation tutors in all aspects of their role which includes personal literacy and numeracy levels, developing effective strategies for teaching literacy and numeracy, developing coaching and modelling strategies, time tabling, learning and monitoring student progress. Training sessions have commenced and will continue regularly during 1994. It is anticipated that a form of TAFE certification will be developed for outstation tutors who undertake this training".

The Mornington Shire Council and the Mornington Island Outstation Committee have been supportive of the outstation education program and contributed resources to support the initiatives. The school is currently investigating the use of BRACS to deliver locally developed television and audio educational material to the outstations.

On 11 March 1993, the principal wrote to the Commission advising of a planned Collaborative School Review, 'where selected aspect of school operation are critically evaluated in order to improve performance and set new directions for the next triennium'.

Other Goods and Services

There are three issues to be considered in this section: the availability of alcohol, banking services and the store.

The Commission has been concerned about the level of banking service provided by the agency on the Island. The Council approached the banking corporation with which it conducted its own business to ascertain whether a local branch could be established. However, there was apparently no commitment to establishing a level of service any greater than which already existed. Since the release of the Mornington Report the existing agency has closed.

The people of Mornington Island have now been left with no banking facilities whatsoever. The Commission sees this as an intolerable situation particularly given the size of the community and its isolation. The Commission is currently working with the Council in an attempt to remedy the situation. The Council appealed to the Commission for assistance at the time of the bank's withdrawal of services in late 1994, and the Commission is pursuing a reversal of the decision to close the agency through correspondence with the Banking Ombudsman, the Commonwealth Banking Corporation Board and the Treasurer.

The Commission was also seriously concerned about the prices and the limited availability of goods at the single store operated by the Gununamanda corporation. The Commission suggested either considering the subsidisation of freight costs or the opening of a second store in competition. The Shire Clerk has also considered that freight subsidisation might increase sales and levels of profitability'. It appears that this matter is still to be considered.

⁷⁸ *ibid.*

Correspondence from Mornington Island School Principal to Executive Director, HREOC, 11 March 1993.

⁸⁰ Report of the Shire Clerk - Federal Race Discrimination Commissioner's Report, April 1993.

Of all issues on Mornington Island, it is the sale and consumption of alcohol which is one of the most divisive. It appears that the Commission's position in respect of alcohol has been misunderstood, so it is necessary to reiterate some basic points. The Mornington Report made three recommendations in this area.

First, that community consultation occur in the process of deciding what policy should be adopted and that the mediation services of the Community Justice Program could be put to use in this regard (as they have been in Doomadgee). The Commission recognised the community divisiveness around the issue and was suggesting ways of attempting to overcome these problems.

Secondly, the Commission was concerned with apparent discrimination related to the availability of alcohol. In particular the (then) licensing conditions which prohibited Birri Fishing Lodge from serving alcohol to permanent residents (who are overwhelmingly Aboriginal) appeared to be discriminatory. The Commission is fundamentally interested in non-discriminatory practices. Whatever restrictions on the sale of alcohol which apply to Birri Fishing Lodge or any other establishment on Mornington should apply equally to all people irrespective of their Aboriginality. This does not mean that Council cannot restrict the sale of alcohol; it does mean that such restrictions should be applied to everyone. Many people on Mornington Island recognised that a fundamentally unacceptable situation existed when a non-Aboriginal person could obtain alcohol but an Aboriginal person could not.

Thirdly, the Commission was concerned with the recording mechanisms used for determining how much alcohol a person had purchased (and presumably consumed). These records could be potentially damaging to individuals in a range of situations (for example family law matters, insurance matters, etc). It seemed that this issue had not been addressed nor had concerns with how these records were stored, secured and disposed of. The Commission is well aware of the fact that if alcohol restrictions apply they need to be regulated in some form. The Commission acknowledges that there is not necessarily an easy answer to this question. However, questions of individual privacy must be addressed and respected.

Overall it should not be construed that the Commission is supporting a non-regulatory position in regard to alcohol or that alcohol should be available in unrestricted quantities. The Commission would support whatever the position the Council arrived at (through consultation with the community) irrespective of whether it was advocating a dry community or one without restrictions. The Commission's major concern is that the decision on alcohol availability reflects the process of community consultation, and that the decision be applied to all people in the community irrespective of their race or cultural background.

Since the Mornington Report was released, the licensing conditions at Birri Lodge have been altered to remove any question of discrimination. Alcohol is available between certain hours to all people irrespective of whether they are 'permanent residents' of the Island.

There have also been moves to consider various options relating to the sale of alcohol prior to the opening of new canteen (Social Club). A public meeting was held at the Festival Ground on 24 October 1994 to discuss the operation of the Social Club. The Council produced a community discussion paper with seven options ranging from the option of a dry community to the option of unrestricted sales of alcohol twelve hours a day and six days a week. The discussion paper carried arguments for and against each option. The paper also stated that Council would lobby government agencies for a sobering-up centre; monitor progress for an ambulance service; request funding for a recreation officer; employ alcohol

workers; improve the management and job content of CDEP; and provide training throughout the community. The Commission supports the Council in these initiatives.

The Commission acknowledges that the Council is taking an active role in these forms of community consultation to resolve this issue. The Commission is also aware that the Action Group which meets at the Aboriginal Health Centre has been taking an active role in calling for greater regulation of street drinking'.

The Community Development Employment Program (CDEP)

The CDEP program was the subject of fourteen recommendations in the Mornington Report. The major areas of concern can be summarised briefly as: the lack of community involvement in the development, design and implementation of CDEP projects; problems with training and administration of CDEP; and the nature of the conditions of employment for CDEP participants.

In 1991 there was a CDEP review conducted on Mornington Island by personnel from the Department of Social Security, the Department of Employment, Education and Training and ATSIC. Many of findings of this review paralleled the conclusions which were reached in the Mornington Report.

In April 1994 a further review of CDEP on Mornington was conducted by an ATSIC review team. The results and recommendations of this review reflected in part some of the earlier concerns and will be referred to further below.

An area of concern in the original Mornington Report was the CDEP project managers and their relationship to Council and the community more generally. NPM's contract with the Council was terminated after a restructuring of CDEP management. As the ATSIC review of CDEP noted, '[e]arly in 1993 Council resolved to take a more active role in the management of its own affairs and restructure its operation. This restructure resulted in the termination of NPM's contract. ATSIC staff at the time were aware of and supported this move. The NPM period of managing the CDEP and other Council projects, has left a bitter taste with community members and instead of advancing CDEP the program had further deteriorated'. NPM has vigorously defended its role to the Commission, particularly in relation to training and the administrative and technical control provided by NPM over capital projects undertaken on the Island. 'Our conclusion which we feel that your [review] report should reflect is that NPM contributed a valuable service to the Mornington Island community in obtaining funding for a number of essential services and ensuring that this was utilised responsibly in providing these services'. However, the Commission stands by its original concerns about the nature of CDEP work projects, attitudes to training in areas other than trades, failure to support the outstation movement with CDEP and poor relations with the community. Many of these points were also raised in the 1991 CDEP review report. The Commission has not and does not question the technical capabilities of NPM staff.

⁸¹ Minutes of the Action Group Meeting, 14 October 1994.

ATSIC 'CDEP Review Report', 29 August 1994, p.3

The Commission supports the Council's introduction of a more direct role in the administration of CDEP. However, there have continued to be problems relating to the CDEP project officer, the restructuring of that position and the issue of training. It is hoped that these problems will be resolved.

The 1994 CDEP review report also identified a number of ongoing problems. The report noted that a 'considerable number of participants indicated that while they fully supported the continuation of CDEP they wanted CDEP taken away from the Shire Council and run by an incorporated body. Some of the participants on the outstations indicated that they would like the outstation CDEP run independently of the main CDEP'. Many of the reasons cited for this desire for a separation of CDEP from Council were articulated several years ago when the Commission first began its investigation on Mornington. The reasons include the lack of communication between participants and council, lack of input into decision-making, the withholding of CDEP money and lack of projects involving cultural and traditional activities'. It should be noted that the Council has since informed the Commission that there has been the reinstatement of some cultural work into the CDEP program under the supervision of the Shire President'.

The CDEP review team considered a number of possibilities including funding alternative organisations such as the Wellesley Islands Aboriginal Corporation to run CDEP. However, in the end the review team decided to continue to leave CDEP under the control of the Shire Council while at the same time making a number of significant recommendations. An important part of the reasoning behind this decision was that the current Council was newly elected and should be given the opportunity to prove that CDEP can be administered successfully. The Commission supports this view.

In brief the 1994 CDEP review report identified the following points:

- it appears that the CDEP is operating significantly worse than it was at the time of the last 'review
- it is clear that the participants want CDEP to continue
- the participant schedules are being maintained adequately
- the participants and the Council have a lack of understanding of CDEP and in particular the rules applicable to CDEP
- while 365 participants are listed on the schedule only 263 are on the pay-roll. Forty-four of the participants are dependent spouses
- monitoring of CDEP by the ATSIC regional office will need to improve
- the work plan and performance report needs to significantly improve in 1994/95

" ATSIC 'CDEP Review Report', 29 August 1994, p.3

⁸⁵ ibid. See also the original Mornington Report, pp.78-86.

⁸⁶ Correspondence from Mornington Shire Council to RDC, 'Notes on Draft Review Report', July 1994.

- some categories of CDEP workers are not being given the opportunity to earn up to their Job Search entitlement
- CDEP projects continue to be task oriented rather than people/participant oriented
- the community and the participants still feel that they do not 'own' the CDEP
- the number of women involved in CDEP remains low
- the CDEP committee needs to be reformed with wider representation including outstations
- Councilors are paid \$370 per week from CDEP wages without being required to work on CDEP projects
- the allocations of funds to the outstations needs to be improved^f.

A concern of the Mornington Report was that CDEP participants were being used as a pool of unskilled labour for functions which are properly those of local government. The recent CDEP review team also raises the issue and Council acknowledges the difficulties in determining whether CDEP is being used as a substitute for, or a support to, municipal operations. In addition, CDEP is clearly being used as a significant support for Council administrative positions. According to the CDEP review report, many council administrative staff have a significant proportion of their duties attributed to CDEP including the following: shire clerk (10%), deputy shire clerk (10%), accountant (50%), purchasing clerk (80%), debtors clerk (10%), three pay clerks (100%, 50% and 10% respectively), two accounts payable clerks (both 80%) and reception (10%). The CDEP review report has advised of the necessity for a substantial review of the administrative support being attributed to CDEP⁸⁸.

A national review of CDEP has noted that CDEP clearly plays a fundamental role in the provision of essential services (water, sewerage, power, roads, sanitation, etc.) and housing (construction, maintenance and repairs) in many Aboriginal communities". The relationship between CDEP and a local council structure will always be difficult and the situation on Mornington Island is not a single occurrence. One Queensland council noted that their organisation had been 'swamped' by CDEP'.

However, over and above this issue is the question of whether CDEP is being used as a substitute for the proper functions of local government. In Queensland it has been noted by the Electoral and Administrative Commission that CDEP is regarded as a component of local

ATSIIC 'CDEP Review Report', 29 August 1994, pp.5-6

ibid., pp.28-29

⁸⁸ Deloitte Touche Tohmatsu, *No Reverse Gear*, A National Review of the Community Development Employment Projects Scheme, ATSIIC, 1993, p.45.

⁹⁰ ibid., p.80.

government funding'. If this is the case then clearly CDEP is being used as a substitute for proper funding and equitable funding arrangements.

A further issue raised in the Mornington Report concerned the development of CDEP projects specifically for young people and for women. The recent CDEP review report shows that this is still an issue of concern. The recent review noted the following.

There are no specific projects for youth. It seems to be that they were just assimilated into all other activities. There are some youth who do not fit the Job Search/New Start criteria and therefore have no income from any source. These youths have not completed school and have no intentions of doing so. It must be noted that not all young people are academically minded but have good skills in other areas. Whilst these numbers might be small it is essential that they are not completely omitted from the system'.

In relation to women, the recent review echoed comments made by the Commission in its earlier report. The participation of women in CDEP is extremely limited and appears primarily associated with cleaning roles'.

A further concern of the Commission was that people working under CDEP should be entitled to certain basic conditions which other workers in Australia have as rights. There is a CDEP Grant Procedures Manual which sets out the obligations of the grantee. The CDEP grantees (whether councils or other organisations) are considered employers and have obligations to their employees. The CDEP Procedures Manual encourages certain behaviour from grantees in relation to employment conditions. Section 8.6.2 (b) 2 of the manual requires that grant organisations 'determine, in consultation with participants, the wages and conditions under which CDEP participants undertake CDEP work activities'. Section 8.6.2 (b) 3 requires that 'all CDEP participants are aware of the local terms and conditions under which they are paid for undertaking CDEP activities'.

The Commission recognises that many of the problems facing CDEP on Mornington Island are not particular to that community. The national review report on CDEP indicated similar problems on a more widespread scale'. In particular the report noted that there were ambiguities in the program's goals and the perception existed in some communities that the program had 'stalled' and that participants were caught in CDEP without proper employment options. In addition, training and the acquisition of skills was generally unstructured and lacked access to accreditation. The report also noted that there was a failure of other agencies to meet their obligations in remote communities and instead to rely on CDEP to fill the gap'.

The Commission recognises that there are some fundamental issues concerning the nature of CDEP and its relationship with other Federal legislation. The Commission is currently

⁹¹ *ibid.*, p.82.

ATSIC 'CDEP Review Report', 29 August 1994, p.37.

⁹³ *ibid.*, p.41.

" Deloitte Touche Tohmatsu, 1993.

⁹⁵ *ibid.*, p.3.

examining legislation and policies relating to CDEP to see whether they have may have adverse discriminatory consequences for CDEP participants which are inconsistent with human rights.

Other Employment and Training Issues

There were a number of issues which the Commission considered in relation to employment, many of which were directed at Council's employment strategies. Recommendations in the Mornington Report were directed at setting targets for employment of Aboriginal people on staff, the utilisation of traineeships, adequate local advertising of positions, training workshops on completing job applications and attending interviews and greater use of Aboriginal people in normal employment positions rather than simply on CDEP.

There have been some improvements in some of these areas because of initiatives by Council. Notices advertising positions have been displayed outside the shop and, where appropriate, in the canteen, as well as in the local newsletter. It has been noted that 'Council has given clear preference to Aboriginal people in its employment over the past eighteen months. It has also internally promoted Aboriginal people rather than recruited senior personnel from off the Island. This approach has resulted in the reduction of contract offices from six to two in the financial section of Council's administration alone. Greater acceptance of the Council is reflected in the increased interest, sometimes even competition, for Council jobs by local Aborigines'. However, the Commission is not aware that specific targets have been set for the employment of Aboriginal people. As the Council is aware, there is a need to change the perception of the community that the Council is run by non-Aboriginal personnel and this change will occur as more Aboriginal people are employed in Council positions.

The Commission advocated the use of a selection committee process when deciding on applications. The Council has notified the Commission that 'Councillors and Aboriginal staff are leading members of the community and no appointment is made without the concurrence of such people as panel members'. According to Council, selection panels are used in deciding the majority of Council positions.

The Commission also recommended the establishment of traineeships. The Council supports this approach and in June 1993 a TAFE accredited General Office Traineeship was introduced with Council taking on three placements and the school taking one. This program was discontinued after two months because of the illness of the main teacher and the lack of a qualified replacement. Clearly, the question of training is absolutely fundamental to enable Aboriginal people to improve their economic position as well as meaningfully implement processes of self-determination. It is hoped that there has been considerable progress in this area after the initial setback described above. It is noted that Council has employed a Training/Workplace Health and Safety Officer to coordinate Council's training.

In the Mornington Report, concern was expressed that Aboriginal people were overwhelmingly concentrated in the CDEP program while virtually all fully paid non-CDEP

⁹⁶ Correspondence from Mornington Shire Council to RDC, 'Notes on Draft Review Report', July 1994.

positions were occupied by non-Aboriginal staff in the school, the hospital, the police station and the Council. There appears to have been some significant improvements as far as Council employment is concerned. The Council informed the Commission that as at 1 July 1994 there were 67 persons on the Council pay-roll of whom 45 were Aboriginal. It is important in all other areas of employment on the Island that consideration be given to the training and use of local people. For instance, the police sergeant indicated to the Commission that a local Aboriginal person could be trained as a Clerk of the Court, a duty currently filled by the sergeant himself.

There are still many avenues to be explored in increasing the level of training and employment of Aboriginal people on Mornington Island. The Royal Commission into Aboriginal Deaths in Custody recommended that governments adopt a 'fair employment practice in relation to the letting of government contracts, which gives preference to those who can demonstrate that they have adopted and implemented a policy of employing Aboriginal persons in their workforce' (Recommendation 307). The Queensland State Purchasing Council (Administrative Services Department) has opposed the recommendation as it stands. However, it does support 'reserving certain types of work for Aboriginal persons... eg work at Aboriginal and Torres Strait Islander communities' and/or 'ensuring that the invitation documents for work in such communities require the use of local labour as far as practicable'. The Royal Commission also recommended that there be Aboriginal participation in the awarding of construction contracts and that such contracts should provide for community employment and training_ of local persons, and that local tenders should receive contracts if their tender price is not unreasonably high. The State government response is that State agencies are bound by State purchasing policy which would need to be modified before the recommendation could be implemented.

The DHLGP has facilitated the use of CDEP in the construction and upgrading of houses built under the Aboriginal Rental Housing Program. The Mornington Shire Council has noted that it has 'incorporated into building contractor's contract/tender conditions the requirement to employ local Aboriginal labour and provide training'. The planned project for upgrading roads on Mornington will provide training for some Aboriginal people although it will utilise non-local labour.

The Mornington Report was highly critical of employment practices, CDEP and training at the time of the original investigation. The Report noted the following:

The structure of employment throughout the Island means that non-Aboriginal people make the day-to-day decisions. In the school, in the hospital, and in the police station, the key decision-makers are non-Aboriginal while the ancillary staff are Aboriginal. All the basic decisions about what work is conducted under CDEP are made by non-Aboriginal technical staff. That work is then carried out by Aboriginal people under the supervision of non-Aboriginal people. The key administrative decisions at Council are made by non-Aboriginal people from the shire clerk down to the receptionist at the counter. Even at the Council guest house, the part-time manager is non-Aboriginal

⁹⁸ Queensland Government, 1994, Vol.3, p.322. "

ibid., p.341.

¹⁰⁰ Correspondence from Mornington Shire Council to RDC, 'Notes on Draft Review Report', July 1994.

while the cleaning staff are Aboriginal women working for CDEP. Throughout the Island, Aboriginal people are in a subservient position to non-Aboriginal decision-makers'.

The Commission is pleased to indicate that there have been some changes to the situation described above, particularly in relation to the control of CDEP and employment in Council positions. As the Council acknowledges, much still needs to be done. In particular, state government departments need to consider how they can increase the level of Aboriginal employment in their respective organisations and increase the level of Aboriginal decision-making. Ultimately, employment and training have a fundamental relationship to self-determination.

lot Mornington Report, p.87.

3. SELF-DETERMINATION AND GOVERNANCE

Self-determination can have various meanings. At the broadest level it can refer to the rights of indigenous people to make political decisions concerning fundamental aspects of their life because they are a fully autonomous people with certain rights in international law. Such a view of self-determination could include questions as basic as sovereignty, or in a more restricted sense, decisions about suitable political structures for self-government which operate within the existing non-indigenous political and legal system.

Self-determination is also used in a more restricted sense as a part of non-indigenous government policy whereby indigenous people are given limited powers in relation to decision-making. In this sense, the development of self-management may be a legitimate expression of self-determination. Self-determination in this sense is said to impact on the nature and delivery of services covering institutions like health, education, justice and employment. In the strongest interpretation of this position, self-determination can be seen as indigenous people setting policy and administering programs. In the weakest version, self-determination can be watered down to existing government departments consulting with indigenous people over specific policies.

The situation on Mornington Island shows that there are problems in relation to the implementation of self-determination both at the level of governance and at the level of service delivery.

The Queensland Government maintains that 'self-determination is part of the Government's policy framework'. It frequently specifies two departments (DFSIA and Health) as the major agencies for self-determination, although self-determination would clearly impact on a range of other government service providers including police and housing. Indeed, one of the problems identified by the Commission is the failure of departments like the QPS to deal adequately with the issue of self-determination.

In its response to the Commission, the DFSIA endorses the principles of self-determination as it relates to the Mornington Island community and other Aboriginal communities in Queensland. The DFSIA states that it recognises the Mornington Shire Council as 'a legitimate third tier of government', an autonomous elected body responsible to the people of the community for the decisions it makes. The DFSIA notes that the Council is 'all Aboriginal, is elected by Aboriginal people, meets regularly, is financially accountable and keeps accurate minutes of its meetings'. The account by the DFSIA is factually correct in regard to the Council. However, these points are not the same as endorsing the principles of self-determination. One of the problems which the Commission has with the relationship between the political structure of the Shire model and the principle of self-determination is that it is a model of governance which was imposed by the State government and does not necessarily facilitate indigenous modes of governance. At one level, the State Government at least implicitly recognises this point through its implementation of an 'alternative

Queensland Government, 1994, Vol.3, p.199.

Correspondence from the Office of the Cabinet, Queensland to RDC, 9 June 1994.

governing structures' program designed to enable communities like Mornington to reconsider questions of governance.

The issues of self-determination are complex and, by their nature, open-ended. The Commission is not trying to impose any easy solutions nor any pre-determined conclusions about what should constitute self-determination. However, the Commission is seeking to ensure that communities like Mornington Island are in a position to take advantage of their rights in this regard and are not deceived into complying with, or acting within, the self-interested parameters set by governments. One of the major failings in relation to facilitating the process of self-determination which was identified in the Mornington Report and is still an issue now, is that communities like Mornington need resources to be able to discuss the often complex issues which self-determination implies.

Customary Law and Community Mediation

The Mornington Report recommended that there be acknowledgement of the community's desire for the recognition of customary law. The DFSAIA has responded that 'the recognition of customary law is a complex and sensitive issue'. The DFSAIA is currently examining the issue of customary law, particularly on how it may relate to state and federal laws. The DFSAIA states that 'it is not possible to codify customary law when there is no precise understanding of the extent to which such law continues to exist at Mornington'. This is somewhat disingenuous if, in the first instance, there is no policy or plan to determine the extent of customary law.

The original Mornington Report considered in more detail the aspirations relating to the recognition of customary law. Those points will not be repeated here. However, it is important to note that recognition of customary law is fundamentally related to self-determination. The Commission acknowledges that finding the mechanisms for the introduction of customary law may be difficult yet it is imperative for Aboriginal and Torres Strait Islander communities to be able to consider how indigenous forms of social control can be re-instituted as recognised forms of sanctioning within the context of self-determination.

The issue of customary law is also closely associated with the development of community justice mechanisms and the use of community mediation. The Commission recommended that the Community Justice Program within the Queensland Department of Attorney-General be approached for assistance. The Program has already successfully operated in other communities as well as training a number of Aboriginal and Torres Strait Islander people as mediators. As was noted in the original report, mediation has been identified as an important component in developing community justice mechanisms and supporting the use of customary law. The Commission was informed by Yuenmunda Welfare that there was a lack of mediation skills on the Island. These skills could assist in the effective resolution of many issues ranging from community disputes to marriage counselling. Mediation promotes self-determination because it provides communities with the opportunity to resolve their own problems without either calling upon or being subjected to outside legal intervention.

¹ Correspondence from the Office of the Cabinet Queensland to RDC, 9 June 1994.

¹ *ibid.*

The Mornington Report noted that there were limitations imposed on Mornington in developing community courts, retaining revenue collected as fines, and developing customary law. These limitations still operate. Some of these limitations were specifically related to the status of Mornington as a Shire. The *Community Services Act* covering the DOGIT communities gave much clearer jurisdiction for the establishment of community courts. However, the Mornington Report noted the limitations of the community courts in the DOGIT communities as well. Certainly there was no suggestion that Mornington should become a DOGIT community.

The report advocated instead that the suggestions by the Aboriginal Coordinating Council and the Legislation Review Committee concerning community justice be taken seriously and the community look to pushing beyond the limitations imposed by the Shire model to consider how it might establish its own legal mechanisms such as courts. The Legislation Review Committee's report envisaged Aboriginal communities developing their own constitutions to cover a range of policing and judicial functions. The Aboriginal Coordinating Council envisaged whole areas of jurisdiction would be dealt with by community courts - for instance all matters which would normally come before the Children's Courts. It is also important to see how much further these proposals go compared to the government's notion of self-determination which allows for some limited aspects of control within the pre-existing legal framework. For example, the Queensland *Juvenile Justice Act* which enables elders to be involved in the cautioning process is far removed from the broad ranging community-based system that the Aboriginal Coordinating Council and the Legislation Review Committee was suggesting.

These proposals are essentially concerned with breaking down the hold of dependency and facilitating communities to take control of basic issues which affect the daily lives of their members. They are about allowing the concept of self-determination to move beyond being simply rhetoric towards programs which enable communities to administer the day-to-day situations and problems they confront. The Commission considers that the community has yet to be given the opportunity to discuss these issues and that the Council has still to come to terms with this aspect of the original report. The fact that the Council thought that the Commission was advocating that Mornington should become a DOGIT community indicates how poorly these issues have been understood.

Open Government and the Shire Model

The Mornington Report was concerned that, irrespective of the inadequacies which might exist within the Shire model of government, there were improvements which could be made to the current system of government. The Commission advocated the adoption of a policy of open government and the promotion of community involvement in decision-making processes. The original Mornington Report was concerned that Aboriginal people did not feel comfortable about accessing Council premises and putting forward their questions or claims. At various times this problem was admitted by Councillors. It is pleasing that the Council has taken some steps to open Council decision-making to greater input from the community.

There has been some use of the local media group BRACS to televise interviews with candidates for the local government elections. Council has also been publishing a community newsletter entitled *Council News*. It should also be noted that there have been community calls on Council by groups like the Action Group to make greater use of BRACS to transmit

news to the community. There have also been requests for a lockable billboard for public notices".

The Council notes a number of other points in relation to 'breaking down the barriers between Council and the community' including the replacement of the two metre fence surrounding the Council offices with one half this height and the erection of a flagpole flying the Aboriginal/Mornington Shire flag". The Council also draws attention to changes in employment with preference to Aboriginal applicants, Councillor representation on selection committees and the appointment of an Aboriginal understudy/assistant to the Shire Clerk". The Council also notes that self-determination has been encouraged 'through increased decision-making by Council rather than staff'. Finally it is noted that there has been an increased social guidance role for Councillors where residents can attend Council meetings to discuss various issues".

The Commission was also concerned that there be adequate training available for Councillors to assist them in being able to discharge their duties. Newly elected Councillors received some training in Cairns. However, requests by Council for funding from ATSIC for further training was declined because of lack of funds. It is noteworthy that the Development and Planning Section of the DFSAIA has responsibility for establishing a training unit to meet the training needs of both councillors and council employees. The unit will operate on a fee for service basis". The DHLGP is also proposing to develop Aboriginal and Islander Community Management Courses" - presumably on a fee for service basis. However, if Councillors are unable to obtain funding these courses will be of little benefit. The State Government should also consider what financial contributions it can make in this area.

The Mornington Report seriously questioned whether the Shire model of government was suitable for meeting the aspirations for self-determination. The main concerns related to the limited powers in important areas such as justice administration and, more broadly, the way decision-making was structured. The Commission also reflected similar views to the Legislation Review Committee's report *Towards SelfGovernment* which found that the legislation covering Mornington Island and Aurukun, as well as the DOGIT communities, 'does not provide Aboriginal and Torres Strait Islander residents with a culturally appropriate structure for government". The Committee found wide support for the view that Aboriginal and Torres Strait Islander communities should have more autonomy than was available under current legislation.

¹⁰⁶ Minutes of the Action Group Meeting, 14 October 1994.

¹⁰⁷ Correspondence from Mornington Shire Council to RDC, 'Notes on Draft Review Report', July 1994.

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid.*

¹¹⁰ Queensland Government (1994), *Royal Commission into Aboriginal Deaths in Custody. Progress Report on Implementation to December 1993*, Vol 2 'Policies and Programs', Aboriginal Deaths in Custody Secretariat, Department of Family Services and Aboriginal Islander Affairs, p.36.

¹¹¹ *ibid.*, p.37.

¹¹² Legislation Review Committee (1991), *Inquiry into Legislation Relating to the Management of Aboriginal and Torres Strait Islander Communities in Queensland, Final Report*, Cairns, p.1

These issues are discussed at greater length in the Mornington Report. However, it is worth noting that the Legislation Review Committee advocated that autonomy could be developed through proposed Aboriginal and Torres Strait Islander Community Government legislation. Such legislation would allow

Community government structures to have all local government powers and functions for an area. Briefly, governing structures would also have express functions and powers in the following areas: education, housing, health, employment, business and enterprise, recognition of custom, administration of justice, maintenance of peace, order and safety, management of natural resources, access and right of residency, alcohol and drug control, elections and referenda.'

A full list of the proposed powers and functions can be found in recommendation 21 of the Legislation Review Committee's Report. This list was also reproduced as an appendix in the Mornington Report. Many of the powers (like the recognition of customary rights, laws and traditions, the administration of justice, police and corrections, the management of natural resources, etc.) are additional to those available to mainstream local authorities.

The other concern for the Commission with the Shire model is the structure of decision-making power including that vested in the Shire Clerk and, through the recent legislative changes, the Chief Executive Officer. The increased powers under the new legislation is a point acknowledged by Council.' It should be made clear that the Commission's concern is not with any particular person acting in the position but with the position itself and the powers invested in the position. A further concern with the legislation is the power the State Government can, if it wishes, exercise over the Council. The Minister can refer virtually any Council matter to the newly established Local Government Commissioner for investigation and review. It is the Commission's view that the potential level of control over Mornington exerted by the State Government remains significant.

The Alternative Governing Structures Program

The Mornington Report was critical of the failure of the State Government to respond to the Legislation Review Committee's report. However, the Queensland Government has since established a 'Community Governing Structures' program. In relation to this program, the Government states that it has done the following:

The Queensland Government has approved an amount of \$600,000 over three years for the development of alternative governing structures in Aboriginal and Torres Strait Islander communities. This program is now being accessed by communities throughout the State which desire to develop structures that meet their particular needs and provide for a more acceptable scheme of governance in respect of their communities.., the program is specifically designed to allow communities to develop structures which meet their particular requirements. The program is designed to be

¹ ibid., p.9.

²Correspondence from Mornington Shire Council to RDC, 'Notes on Draft Review Report', July 1994.

as flexible as possible, and the Government has not imposed any parameters on what might or might not be covered in a new governing framework for the community"⁵.

The aim of the program is to provide a framework for communities to choose culturally appropriate management structures. The program will provide 'developmental and financial support and assistance to communities wishing to plan alternative community management structures and process for their future political, economic, social, environmental and cultural development'. A pilot scheme has been established at Aurukun. The experience of Aurukun is expected to provide the basis for developing policy approaches and procedures for working in other communities. It is expected that the development of this policy will take approximately five years."

According to the Queensland Government, the Aurukun Community Development Planning project is proceeding with planning for housing, outstations and alcohol management. There have also been some negotiations and planning in Pormpuraaw, Yarrabah and Hopevale. Information packages are being sent to other DOGIT communities as well as to Mornington Shire.

According to the DFSAIA, the Alternative Governing Structures Program comprises four components as follows.

(i) Community Development Planning

A process of community development planning will be undertaken within each community. Planning will focus on factors relating to the development and implementation of appropriate governing and community management structures which reflect the goals and aspirations of indigenous people with respect to their future social, economic, political, environmental and cultural development. A priority of each community planning process is the development of a comprehensive community management plan for each respective community, based on existing budget allocations.

(ii) Legislative Requirements

Consideration of any new legislative requirements required to facilitate the implementation of alternative governing and community management arrangements.

(iii) Implementation of Community Plans

The implementation of community plans may involve the modification and/or review of existing policies and practices.

⁵ Queensland Government, 1994, Vol.3, pp.212-213.

Queensland Government, 1994, Vol.2, p.52.

117 *ibid.*, p.36.

(iv) Resource Allocation, Monitoring and Evaluation

On-going consideration of issues involving resource allocation levels and the monitoring and evaluation of any new legislative model, particularly the effectiveness of new governing structures and financial accountability arrangements".

It is now four years since the Legislation Review Committee released its report. The Commission is keen to see what tangible outcomes have been achieved to date with the Alternative Governing Structures Program. Until recently there had been no indication that the Council or people on Mornington Island were aware of its processes. Indeed, it was the Commission that first raised the issue of the program with Council members. There was no awareness in the community of the Alternative Governing Structures Program at the time of the last Commission visit to Mornington Island in October 1994. This lack of knowledge questions the appropriateness of the DFSAIA approach in informing communities, yet a critical issue in the effectiveness of the program will be the extent to which communities can make informed choices about the type of options which are available.

Summary of Self Determination Issues

A more general criticism of the process of self-determination in Queensland has been the failure to actually specify the structure of negotiations which occur between government departments and communities. The House of Representatives Standing Committee has stated that 'there are no descriptions of any substantial outcomes of the negotiations [with communities] that have taken place in Queensland'. In other words, a vague commitment to 'negotiation' is no guarantee that such a process will occur in a meaningful way.

The Commission can also provide specific illustrations on Mornington Island of how self-determination fails to materialise in day-to-day contact with Aboriginal communities. The issues relating to the construction of the watchhouse on Mornington provide a graphic example of how the official position of self-determination (usually defined in its weakest sense of consultation rather than negotiation) is translated in practice to a process of informing the community and its representatives that certain policies or processes will be implemented. In this specific instance, 'self-determination' became an act of showing the Council the plans to the watchhouse and then leaving the Council with the view that they had to accept the situation.

The inappropriateness of the police complex also reflects on the failure to implement or facilitate self-determination. People on Mornington Island are struggling for what they see to be important facilities like an ambulance, a sobering-up centre and a birth centre for their community. Yet these community priorities are apparently ignored in favour of funding for a more sophisticated police presence on the Island.

Finally, it should be recognised that many Aboriginal communities are considering land tenure issues as a result of the Queensland *Aboriginal Land Act 1991* and the Commonwealth *Native Title Act 1993*. These issues will impact to some extent on the way in which self-

Correspondence from the Office of the Cabinet Queensland to RDC, 9 June 1994.

⁹ See also the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 1994, p.55.

determination might be developed. However, these land tenure issues should not be used as an excuse for failing to assist communities now in developing governing structures which reflect aspirations for self-determination. The evidence from Mornington Island strongly suggests that communities are not receiving that assistance.

APPENDIX

Reproduced below are the recommendations of the 1993 *Mornington Report*. The review process culminating in this Review Report examined the implementation of these recommendations. The page numbers in parentheses refer to the pages within this volume where the discussion is relevant to the recommendations.

Recommendations to the Mornington Island Report

Recommendations to Section 1: General

1. In recognition of the fundamental right of self-determination for indigenous people, that the principles of self-determination be applied in future dealings between State and Federal bodies and the people of Mornington Island. (pp. 31-38)
2. That adequate attention be paid by State and Federal bodies to the distinct history of Mornington Island, and in particular the imposition and impact of the shire council model on Mornington Island. (pp. 31-38)
3. That recognition be given by State and Federal bodies to the fact that Mornington Island people have not been given the opportunity to express their preferred options in relation to the form of political administration. (pp. 31-38)
4. That legislative recognition be given by State and Federal bodies to the desire by Mornington Island people for adequate recognition of customary law. (pp. 31-38)

Recommendations to Section 2: Media and the Criminal Justice Commission

5. That the management of the Mount Isa newspaper, the North West Star, implement recommendation 46 of the National Inquiry into Racist Violence which requires that the media strive for more balance in the reporting of race related issues and avoid sensationalist coverage of these issues.
6. That the management of the Mount Isa newspaper, the North West Star, should follow recommendation 208 from the Royal Commission into Aboriginal Deaths in Custody and implement a process which encourages formal and informal contact with Aboriginal and Torres Strait Islander organisations to create a better understanding of issues.
7. That the Queensland Police Service and the Criminal Justice Commission acknowledge by way of letters to Lyndon Jack and Terry Burke that the police investigation of the incident was inadequate and that reliance by the Criminal Justice Commission on the police version of the incident may have perpetuated an injustice against them. (pp. 1-2)
8. The Criminal Justice Commission implement recommendation 20 of the National Inquiry into Racist Violence which requires:
 - (i) the establishment of designated Aboriginal and Torres Strait Islander investigatory positions with the function of following up complaints from Aboriginal and Islander people;
 - (ii) the establishment of designated Aboriginal and Torres Strait Islander education and information officers with the function of providing accessible information to Aboriginal and Torres Strait Islander communities in relation to police complaints mechanisms. (pp. 1-2)
9. That the Queensland Police Service (QPS) establishes protocols for informing complainants (or their legal representatives) of the progress of a complaint at regular intervals. (pp. 1-2)

Recommendations to Section 3: Criminal Justice Issues

10. That the Queensland Government, as a matter of urgency, implement the necessary legislation to decriminalise public drunkenness. (p. 2)

11. That the Queensland Government, as a matter of urgency, investigate the feasibility of establishing a sobering-up centre on Mornington Island. (pp. 2-3)
12. That the Mornington Shire Council implement the recommendation from the coronial inquiry into the death of Craig Sandy, and authorise Aboriginal community police to apprehend persons for drunkenness with the condition that such persons be taken to a sobering-up centre. (pp. 2-3 and 8-9)
13. That police on Mornington Island follow the recommendations from the Royal Commission into Aboriginal Deaths in Custody in relation to the use of charges of obscene language, and that where such charges are preferred that the offender be proceeded against by way of summons rather than arrest. (p. 11)
14. That the Mornington Shire Council acknowledge that it can play a leading role in crime prevention strategies, and that such strategies should involve maximum community direction and participation. (pp. 9-11)
15. That the Human Rights and Equal Opportunity Commission liaise with the Aboriginal Coordinating Council to assist the Mornington Shire Council in the development of crime prevention strategies along the lines already suggested by the Aboriginal Coordinating Council and the Australian Institute of Criminology. (pp. 9-11)
16. That the Queensland Police Service, on completion of its consultant's report, implement a selection process which assures formal community input over which police officers will be stationed at Mornington Island. (pp. 7-8)
17. That the Queensland Police Service review their policy of sending unmarried male police constables on six month rotations to Mornington Island with the view to facilitating the use of married police officers and female police officers who may wish to serve extended periods in the community. (p. 11)
18. In line with the above recommendation, that the Queensland Police Service develop selection processes for police serving in Aboriginal communities which are complementary to the stated commitment to community policing, and which facilitate the integration of police into the community. (pp. 5-8)
19. That the Queensland Police Service recognise that it is unacceptable that police serving in Aboriginal communities should have no specialist training, and that therefore the development and introduction of induction training occur as expeditiously as possible. In addition to such training, new police should be formally introduced to elders in the community. (pp. 5-6)
20. That the Queensland Police Service review the status and functions of Cross Cultural Liaison officers with a view to establishing gazetted positions with specified duties and appointment at a level which recognises the importance of the task. (pp. 6-7)
21. That the Queensland Police Service review their training programs in relation to the use of domestic violence legislation in Aboriginal and Torres Strait Islander communities; and that the Service monitor the use of protection orders to ensure that there is equity in the availability of protection orders for women irrespective of their racial or ethnic background. (p. 12)
22. That the Queensland Police Service consider the recommendations from the report being prepared for the Queensland Department of Aboriginal and Torres Strait Islander Affairs on the effectiveness of the domestic violence legislation in Aboriginal and Torres Strait Islander communities. (p. 12)
23. That the police and the Mornington Council continue to convene and support a committee (which includes other interested parties such as the Yuenmanda Women's Group) to develop appropriate responses to domestic violence at the community level. (p. 12)
24. That Mornington Shire Council and the Queensland Police Service implement the recommendations from the coronial inquiry into the death of Craig Sandy which relate to the employment, training and work practices of community police. (pp. 8-9)
25. That the Queensland government follow up on the implementation of the recommendations from the coronial inquiry into the death of Craig Gable Sandy. (pp. 8-9)

26. That Royal Commission-funded training currently being given to Queensland State Police on the responsibilities and duty of care owed towards persons in custody, also be available to community police. (pp. 8-9)

27. That when Aboriginal and Torres Strait Islander community police are being employed, there should be particular attention paid to recruiting Aboriginal and Torres Strait Islander women. It may be necessary to implement a necessary minimum requirement that a certain number of community police are women. (pp. 8-9)

28. That the Human Rights and Equal Opportunity Commission ascertain the current position in relation to award payments of community police and take appropriate action where necessary. (pp. 8-9)

29. That the Queensland Police Service accept responsibility for the training of Aboriginal and Torres Strait Islander community police and accordingly make the necessary budgetary allocations; and that there be ongoing evaluation of the effectiveness of Aboriginal and Torres Strait Islander community police training in Queensland communities. (pp. 8-9 and 12-13)

30. That the Human Rights and Equal Opportunity Commission finds that the Mornington Island watchhouse is not a safe custodial environment and recommends its immediate replacement. When replacing the watchhouse, state works should ensure adequate consultation with the Aboriginal and Islander Legal Service and the Mornington Island community concerning special design requirements. (pp. 3-5)

31. That police on Mornington Island strictly adhere to the recommendations of the Royal Commission into Aboriginal Deaths in Custody in relation to checks and supervision of people in custody. (pp. 3-5)

32. That a register of conditions in watchhouses in Aboriginal and Torres Strait Islander communities in Queensland be kept by a group of independent observers comprising representatives from the Aboriginal and Torres Strait Islander communities, the State Government, the Queensland Anti-Discrimination Commission and the Queensland Council for Civil Liberties. (pp. 3-5)

33. That offences against Aboriginal and Torres Strait Islander women, particularly those involving sexual assault, be investigated fully by police and treated seriously by judicial officers. (p. 12)

Recommendations to Section 4: Young People

34. That Mornington Shire Council consider specific initiatives in CDEP programs which will involve young people who have left school. Involving young people in CDEP could be considered as part of a crime prevention program by Council. (pp. 9-11)

35. That any review of sentencing options for young offenders or any development of community-based sentencing options on Mornington Island should be aware that Aboriginal and Torres Strait Islander juveniles are already grossly over-represented in the most punitive stages of juvenile justice intervention and that they are already serving longer periods in incarceration than non-Aboriginal youth. (pp. 9-11)

36. That the holding of Aboriginal juveniles in the watchhouse at Mornington Island is contrary to recommendation 242 of the Royal Commission into Aboriginal Deaths in Custody and should cease immediately. The Department of Family Services and the Police Service should liaise to establish suitable forms of custody in those cases where it is absolutely necessary. (pp. 9-11)

37. That police on Mornington Island ensure that young people are proceeded with by way of attendance notice as an alternative to arrest and bail. (pp. 9-11)

38. The establishment of the Walgut Kuba Laga scheme is strongly supported. It is recommended that it should be extended to include cautioning prior to court appearance, and that it should receive adequate support from the Department of Family Services and the Mornington Shire Council. (pp. 9-11)

39. That Mornington Shire Council consider the employment of a recreation officer as part of developing a crime prevention program. (pp. 9-11)

Recommendations to Section 5: Crime Prevention and Community Justice

40. That Mornington Shire Council develop a crime prevention strategy. The Aboriginal Coordinating Council, Australian Institute of Criminology and the Human Rights and Equal Opportunity Commission may assist in this regard. (pp. 28-31)

41. That Mornington Shire Council and other interested groups approach the Community Justice Program with the view to utilising its services in developing community-based dispute resolution programs through the use of mediation. It is important that information about the Community Justice Program should be disseminated in the community. (pp. 32-33)

42. That the Queensland Government clarify its response to the development of community justice mechanisms particularly in light of the limitations of the legislation affecting Mornington Island and Aurukun. (pp. 32-33)

Recommendations to Section 6: Provision of Goods and Services

Health

43. That the Regional Health Authorities establish consultative mechanisms which will facilitate input from Aboriginal and Torres Strait Islander people in remote areas such as Mornington Island. **(pp. 14-18)**

44. That the Regional Health consultative mechanisms facilitate Aboriginal and Torres Strait Islander women to identify their concerns and needs and to participate in the development of strategies to meet these needs. (pp. 14-18)

45. That the Regional Health Authority establish a birthing centre on Mornington Island. Such a centre might be considered within the development of a Women's Health Unit. (pp. 14-18)

46. That the State Department of Health, in conjunction with other appropriate bodies, implement the recommendations from the Human Rights and Equal Opportunity Commission Report on the Provision of Health and Medical Services for Aboriginal Communities of Cooktown, Hopevale and Wujal Wujal; in particular those recommendations relating to the development and implementation of anti-racist strategies; the development of incentives for remote area nursing; the development of training programmes in Aboriginal and Torres Strait Islander culture; and the training of Aboriginal and Torres Strait Islander people in health care and nursing. (pp. 14-18)

47. That community health teams situated in Mount Isa arrange for regular visits to Mornington Island. (pp. 14-18)

48. That the Mornington Island hospital and the Aboriginal Health Centre visit Aboriginal people on outstations and that they receive the extra staffing to enable such visits to occur. (pp. 14-18)

49. That the Queensland Department of Health reassess its provision of services and its service delivery in remote Aboriginal and Torres Strait Islander communities; and that such reassessment particularly consider common medical problems which require specialist service delivery. (pp. 14-18)

Alcohol

50. That the Council initiate a process of community consultation in relation to the consumption and sale of alcohol, and that the Council consider the use of the mediation services of the Community Justice Program in such a process. (p. 23)

51. That the licensing conditions applying to Birri Lodge appear to be discriminatory and need to be reviewed. (p. 23)

52. That Council review its policy of collecting information on individual alcohol consumption so as to comply with guidelines and principles relating to information privacy. (p. 23)

Housing

53. That Council review its boarder/maintenance levy with a view to eliminating inequitable outcomes. (pp. 18-20)

54. That Council negotiate with Aboriginal people in regard to housing design and renovations. (pp. 18-20)
55. That Aboriginal people be involved in the building and repair of houses on Mornington Island. (pp. 18-20)
56. That Council develop written tenancy agreements in plain English which specify rights and obligations in relation to repairs and maintenance, etc; and that there be some educative process introduced so that people understand their rights and obligations. (pp. 18-20)
57. That Council recognise that it has obligations as a landlord to ensure that premises are fit to live in and are in a reasonable state of repair, and Council abide by its obligations as a landlord under the Residential Tenancies Act (1975) Qld. (pp. 18-20)

Banking

58. That consideration be given to the opening of a second bank agency on the Island. (p. 22)
59. That Council investigate the possible advantages of conducting its own business through another bank. (p. 22)

Store

60. That the pricing strategies and overheads involved in running the store be reviewed. (p. 22)
61. That consideration be given to opening a second store on the Island to stimulate more competitive pricing. (p. 22)
62. That Council consider some form of subsidy for the store, including a freight subsidy on goods transported to Mornington Island. (p. 22)

Education

63. That the Education Department re-evaluate its current strategies on Mornington Island to arrest the decline in participation rates. (p. 20-22)
64. That the Education Department consider, in conjunction with the community, the most appropriate way of providing services to the outstations. (p. 20-22)

Recommendations to Section 7: Employment

Council Employment

65. That Council establish strategies and targets for the increased employment of Aboriginal people on Council staff. (pp. 28-30)
66. That vacant positions at Council be advertised locally, and that those advertisements be prominently displayed for a set period of time. (p. 28)
67. That training workshops be conducted on completing job applications and selection processes. (pp. 28-30)
68. That a selection committee process (including community representation) be instituted for deciding on successful applicants to vacant positions. (p. 28)
69. That Council introduce traineeships to allow for the necessary skill acquisition for Council positions. The Commission supports the policy of the Australian Services Union in this regard. (pp. 28-30)
70. That other bodies on the Island employing Aboriginal staff (such as health, education, police) consider similar processes. (pp. 29-30)

71. That policies which limit the CDEP employment of one spouse because of the other spouse's employment be reconsidered. (pp. 24-27)

72. That Council reconsider its employment strategies with a view to eliminating possible breaches of the Racial Discrimination Act. (pp. 28-30)

The Management of the CDEP

73. That mechanisms to achieve greater community involvement in the establishment of CDEP projects be introduced; and that CDEP projects reflect community interests. (pp. 24-27)

74. That CDEP not be used as a cheap pool of unskilled labour for functions which are properly those of local government. (pp. 24-27)

75. That work and skills falling within traditional culture being considered within the ambit of CDEP employment. (pp. 24-27)

76. That individuals working under CDEP be eligible for normal working conditions relating to holidays, and that Council develop a set of written conditions in plain English covering various aspects of CDEP employment; and that workshops be conducted to explain those conditions. (pp. 24-27)

77. That the allocation of CDEP work to single and family people needs to be reviewed through negotiation with the community. (pp. 24-27)

78. That Council develop special CDEP projects aimed at benefiting young people. (pp. 24-27)

79. That Council review CDEP in relation to the participation of women, and negotiate the development of suitable projects with women on the Island. (pp. 24-27)

80. That the number of hours available on CDEP not be used as a form of discipline and punishment by Council over individuals on the Island. (pp. 24-27)

81. That the Outstation Movement and Council contact the Centre for Appropriate Technology in Alice Springs for information regarding housing and other resources suitable for outstations. (pp. 24-27)

82. That Council re-evaluate its contractual relations with NPM in the light of the significant movement of CDEP workers to outstations. (pp. 24)

83. That Council reconsider the presence of NPM at Council meetings given the potential conflict of interest. (pp. 24)

84. That Council follow the previous recommendations of DEET and ATSIC and implement a process of tendering for training and administering the CDEP. (pp. 24-27)

85. That Council reconsider the current training plan given the inexperience of NPM in that role. (pp. 24)

86. That, in line with the demands of the ATSIC Regional Council, an urgent review of CDEP on Mornington Island be conducted. All residents must be involved in determining the future of their scheme. Such a review must provide the opportunity to discuss the range of options for CDEP including whether it should be totally separate from Council, whether an administratively separate CDEP for outstations should be introduced, etc. An outside facilitator might be usefully employed to assist in the review. (pp. 24-27)

86. That the Council adopt a policy of open government and promote greater community involvement in decision-making processes. (pp. 33-35)

Recommendations to Section 8: Change for the Future

Open Government

87. That Council implement specific measures for ensuring open government through the increased used of public meetings, the use of BRACS to televise Council meetings and the increased availability of Council minutes. (pp. 33-35)

88. That the Department of Housing and Local Government, in conjunction with the Department of Aboriginal and Islander Affairs, ensure that adequate training is available to Aboriginal councillors so that they can discharge their responsibilities. (pp. 33-35)

Self-Government

90. That the Queensland State government respond formally to the Legislation Review Committees recommendations to introduce self-government on Aboriginal and Torres Strait Islander communities. (pp. 31-38)

91. That the State government implement a process whereby people on Mornington Island are given the opportunity to consider, discuss and implement a community government best suited to their needs. (pp. 31-38)

GLOSSARY

ARHP - Aboriginal Rental Housing Program

ATSIC - Aboriginal and Torres Strait Islander Commission

BRACS - Broadcasting for Remote Aboriginal Communities Service

CDEP - Community Development Employment Program

CJC - Criminal Justice Commission

DEET - Department of Employment, Education and Training

DFSAIA - Department of Family Services and Aboriginal and Islander Affairs

DHLGP - Department of Housing, Local Government and Planning

DOGIT - Deeds of Grant in Trust

HAPY - Homeland Aboriginal Program for the Youth

NPM - Northern Project Management

QPS - Queensland Police Service

RDC - Race Discrimination Commissioner