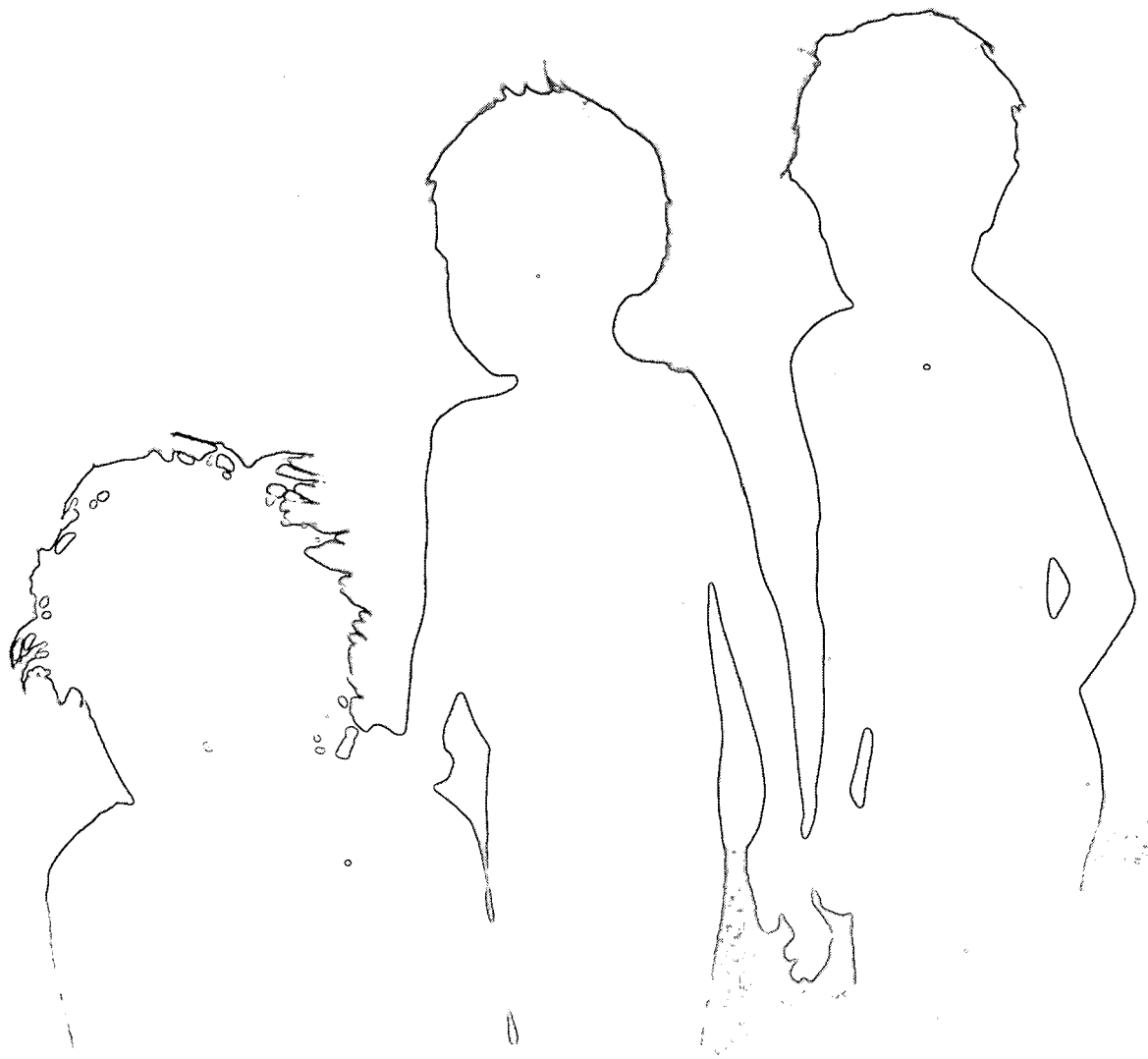
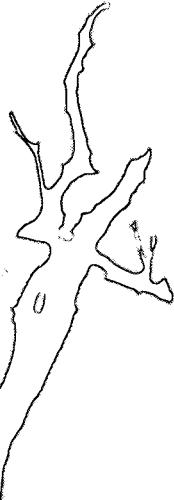


(Judge Lewis)

23/82

DB



Report of the South Australian  
Aboriginal Customary Law Committee

CHILDREN AND AUTHORITY

IN THE

NORTH-WEST

REPORT OF THE SOUTH AUSTRALIAN  
ABORIGINAL CUSTOMARY LAW COMMITTEE

ADELAIDE,  
AUGUST, 1984

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ACKNOWLEDGMENTS

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The co-operation of the Courts Department, the South Australian Institute of Technology and the South Australian Police Department made it possible for members of the Committee to engage in the field trips associated with this Report.

The Committee wishes to thank the Pitjantjatjara Council, and the many individuals throughout the Pitjantjatjara lands for their assistance, courtesy, and interest in the work of the Committee. In particular, the work of the Committee was greatly assisted by the information provided by Mr. John Tregenza of Maru Consultants Pty. Ltd.

Finally, we are much indebted to Mrs. Joan Davids and Mrs. Aphy Hughes for the typing.

SUMMARY OF PROPOSALS

- . Establish a North-West Policy Bureau to monitor Pitjantjatjara/Government relations.
- . Explore the possibility of establishing a Pitjantjatjara Adelaide Office for liaison and communications, and logistical purposes.
- . Establish a Community Resources Task Force to work among the Pitjantjatjara to provide cross-cultural support in ameliorating problems with children.
- . Prohibit the carrying or consumption of alcohol on the Pitjantjatjara lands.
- . Create the offence of petrol sniffing, directing punishment at parents, not children.
- . Require judicial officers to undergo relevant courses of training before serving in the North-West.
- . Convene the Court of Summary Jurisdiction six times per annum in the Pitjantjatjara land.
- . Do not extend police services or introduce a system of police aides.

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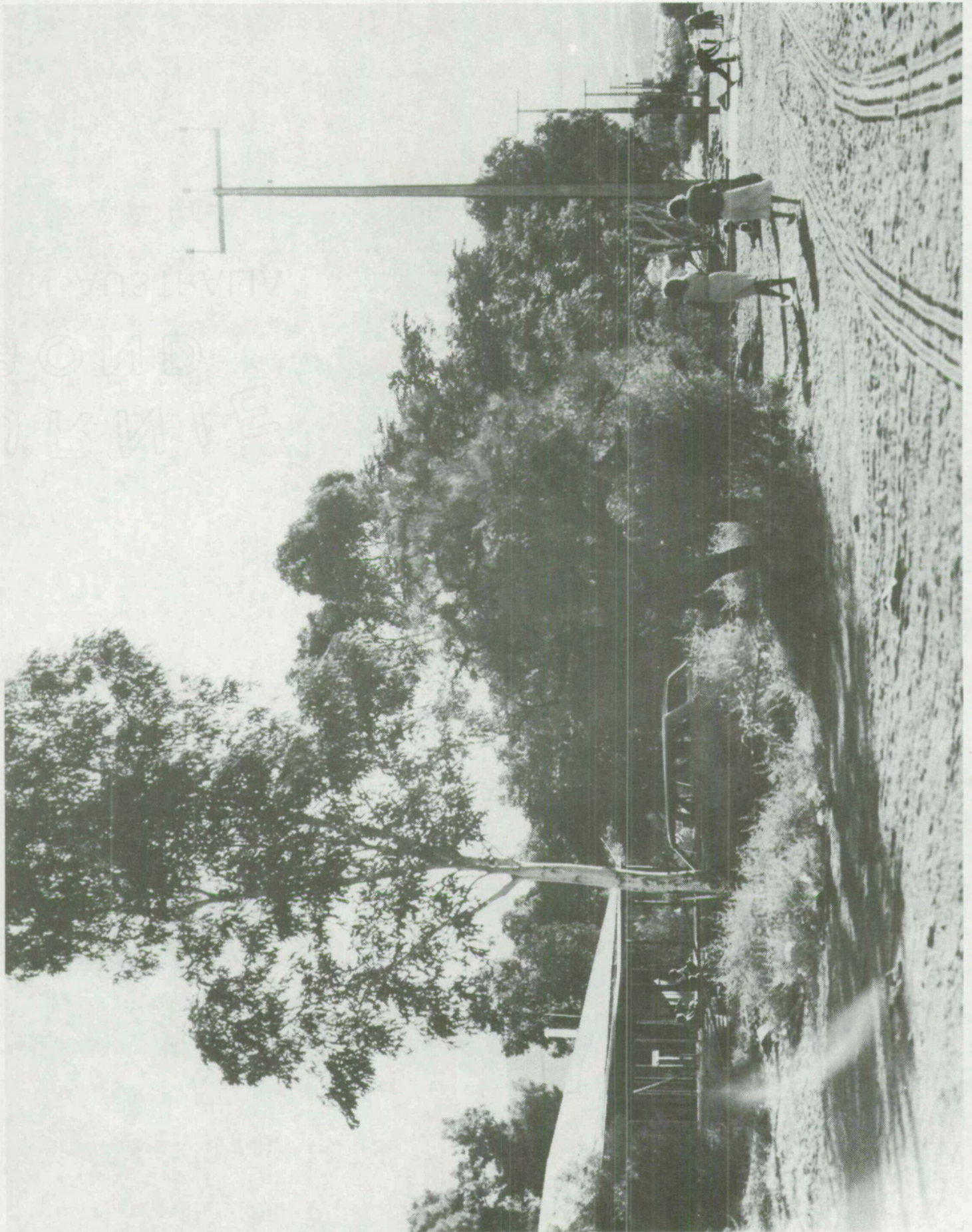


PLATE 1 - AMATA



2.

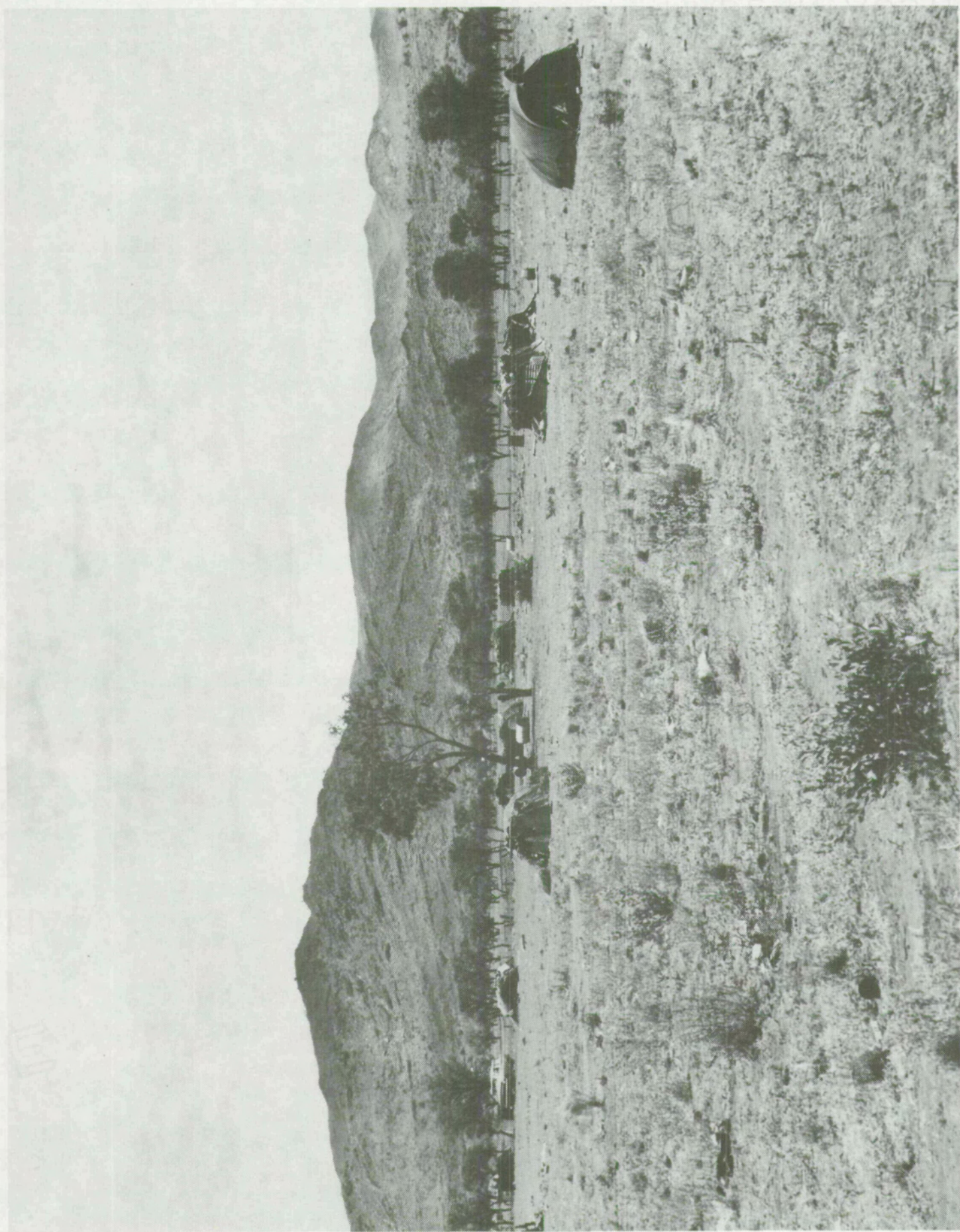


PLATE 2 - CAMP-SITE - AMATA

CHAPTER 1

INTRODUCTION

. Preliminary

This Report deals with the period elapsed since the Interim Report of December, 1981.

. Membership of the Committee as at the 31st December, 1983:

<u>Chairman:</u>	Judge J.W. Lewis
<u>Members:</u>	Sgt. Frank Warner
	David A.C. Hope

In addition, participants were from time to time seconded from the Pitjantjatjara communities.

Mr. R. James resigned as at the 31st December, 1981 due to an interstate transfer. The Committee records its appreciation of the valuable contribution he made to its work.

. Terms of Reference

"To enquire into and report on the recognition of Aboriginal Tribal Law and the administration of justice in Aboriginal Communities in the North-West and at Yalata and insofar as matters are relevant to the powers and functions of the South Australian Parliament and Government. In particular, to investigate and report on:

- (a) the attitudes and opinions of the North-West and Yalata Communities towards tribal law and towards European law and its application to the Communities;

- (b) the extent to which the existing courts should recognise tribal law and authority;
- (c) the extent to which legislation should recognise tribal law and authority;
- (d) the current arrangements for the administration of justice in the North-West and their effect on Aboriginal tribal law, culture and authority;
- (e) the means whereby the current system for the administration of justice can be improved;
- (f) the implications of proposals made by the Committee for the administration of justice in the North-West and Yalata communities and any required legislative changes.

In making its Report, the Committee is to have regard to the work of the Australian Law Reform Commission under its reference on Aboriginal Customary Law."

#### Meetings and Field Trips

Apart from regular routine meetings held among Adelaide Committee members in Adelaide, some twelve meetings, inspections and trips were undertaken in the period since the last report. Details are included in this Report as Appendix I. It should be noted, that to the time of writing, the emphasis has been on the North-West rather than Yalata. This does not reflect any lack of concern over the very serious problems faced by the Yalata community, but merely the order of the approach, given limited resources.

5.

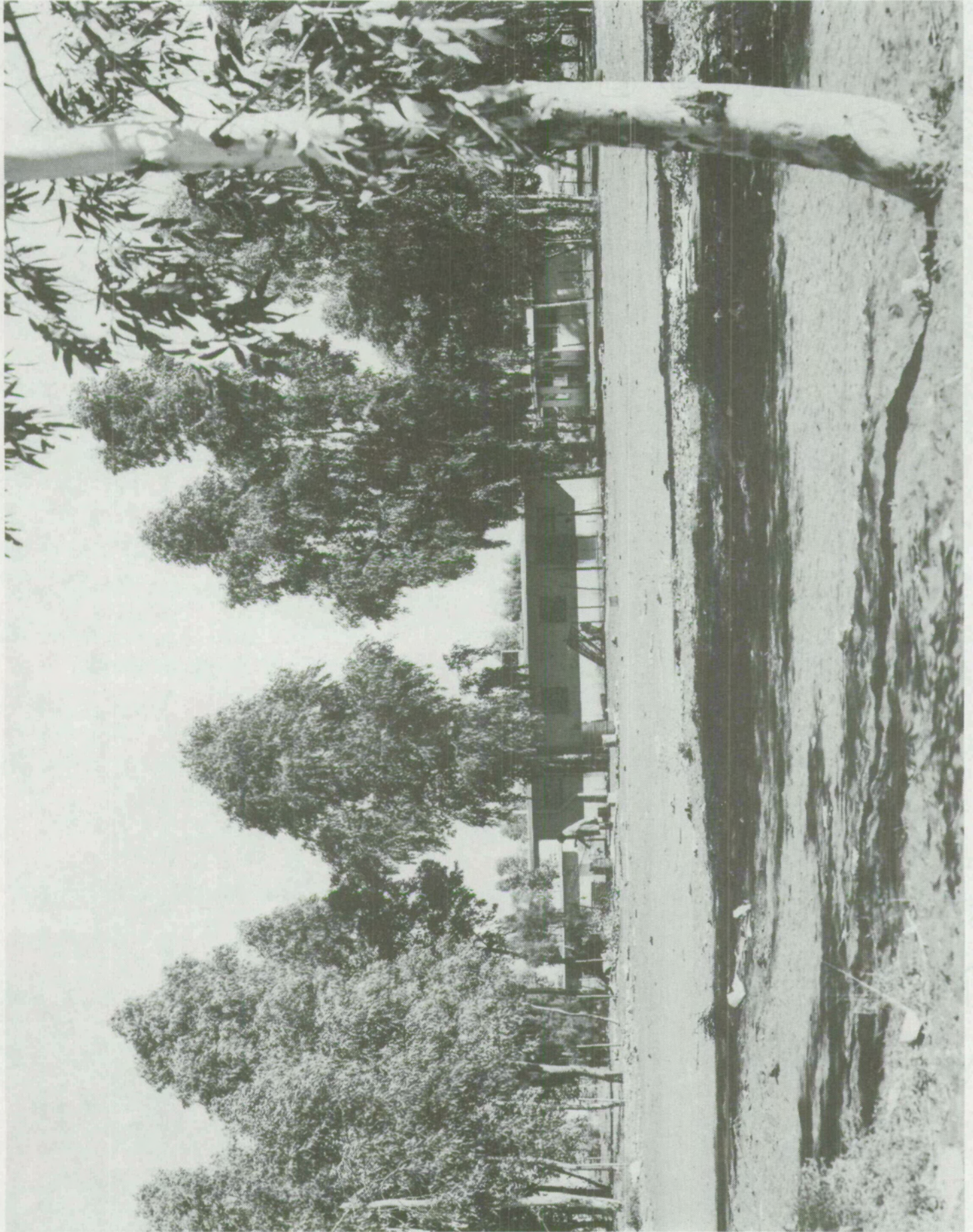


PLATE 3 - FREGON



PLATE 4 - THE OFFICER CREEK, FREGON

## CHAPTER 2

ISSUES AND APPROACHTHE PRINCIPAL ISSUES

The substance of the Report reflects a profound unease at the position of children in Pitjantjatjara society. Between them and adults there is something more than the oft-cited generation gap. Rather, there has developed what might be best seen as a crisis of authority in which modern events have overtaken traditional coping institutions. Thus, when it comes to dealing with some of the destructive behaviour of children, adults are out of their depth. Ways and means of redressing this situation have determined the direction and nature of the recommendations to follow.

The Report will also include considerations of allied issues, principally; alcohol, local management of offences, police, police aides, courts, remand centres.

Finally, the Report has included a series of photographs for the purpose of giving readers who have not been to the North-West, some idea of the communities and conditions.

APPROACH

In formulating approaches and recommendations the Report acknowledges the following factors:

- . The historical dimension.
- . The cross-cultural nature of problems and solutions.
- . The necessity for an inter-disciplinary approach given the underlying social complexities in the North-West.

- . The empowerment of Pitjantjatjara to deal with children.
- . The need for what happens in the North-West to have a flow-on benefit to the rest of the State, and enhance aspects of it.

#### BACKGROUND

- . Who are the Pitjantjatjara - and How Many?

Until recently it has been appropriate to look to the extent of the outstation movement to identify those who would call themselves 'Pitjantjatjara'. However, unity of purpose politically has strengthened the Pitjantjatjara culturally, and that in turn has created a paradox of confidence, with the composite dialectic groups now coming to assert traditional claims for separate identity.

Thus, although the word 'Pitjantjatjara' is used in this Report, the term should be regarded as tentative and there will be circumstances in which it will be appropriate to substitute the names of the composite dialectic groups - principally, Yangkuntjara, Nga:tjatjara and Nyaangantjara.

There is a special problem with regard to Yalata which comprises a community of people generally subsumed under the term Pitjantjatjara, but who chose not to enter into the arrangements subject to the provisions of the Pitjantjatjara Land Rights Act, 1981. These people have traditional links with the Great Victoria Desert,

though in post contact times have been domiciled south of the desert under mission patronage. Until 1952 they tended to centre on Ooldea but were dispersed south to Yalata and west to Cundelee, firstly in response to the closure of the Ooldea mission, and then to increasing Government pressure to clear the desert in the course of the atomic bomb testing programme between 1953 and the early sixties.

At present the population of Yalata is approximately 550. In this Report, the Yalata people will be considered as a separate population from the Pitjantjatjara community. The map below depicts the present extent of the Pitjantjatjara lands. It will be seen that as these straddle the South Australian, Northern Territory and Western Australian borders, it is unrealistic to speak as though there were a specifically South Australian Pitjantjatjara population. Rather, the Pitjantjatjara comprise a group which is for social, political and cultural purposes, fluid.

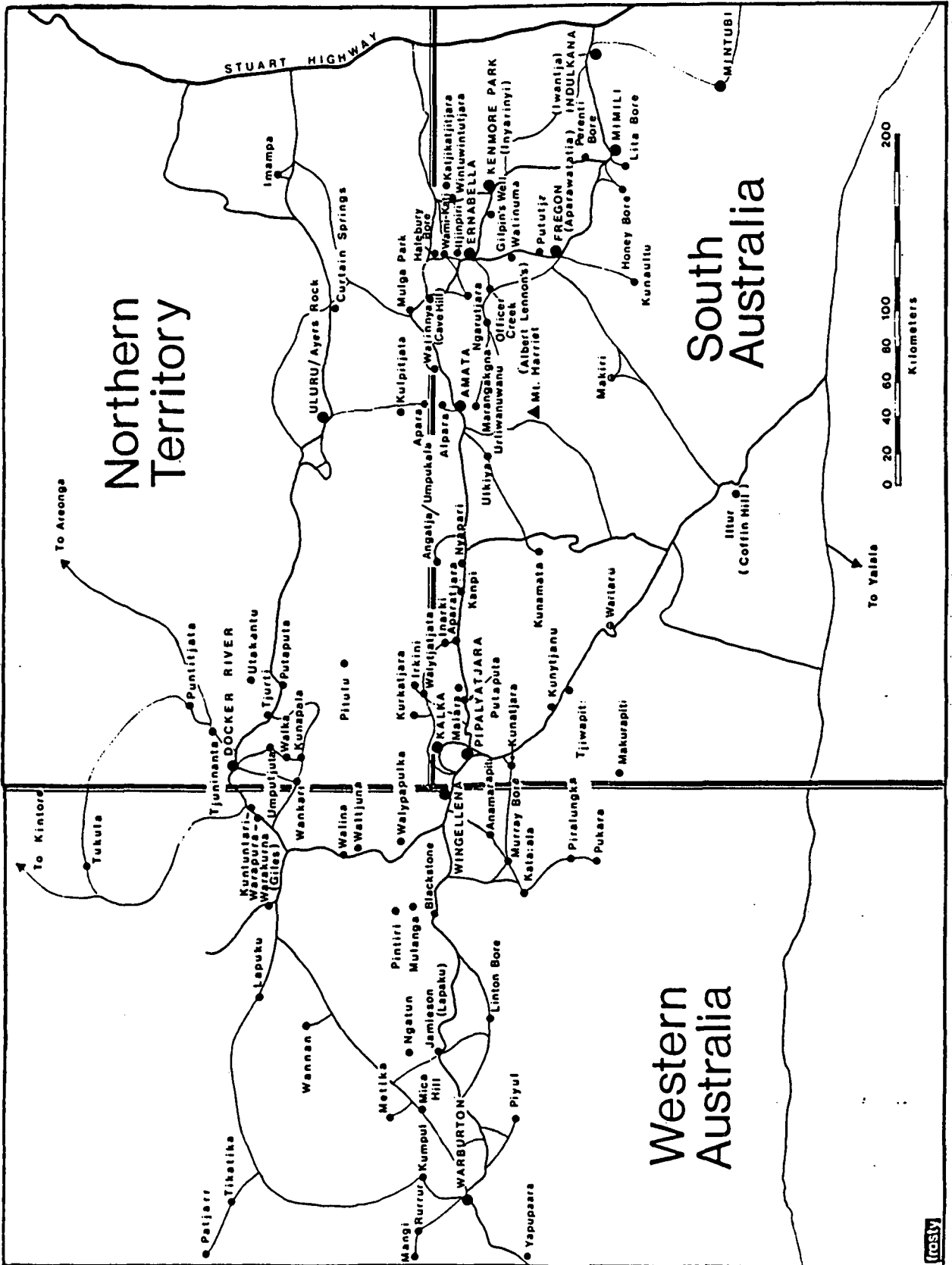
For modern Western European administrative purposes, it is possible to speak of a South Australian Pitjantjatjara population only by identifying specific tracts of South Australian land and relating these to a notional population.

The Committee estimates that there are 3,736 Pitjantjatjara in the area given by the map on p. 10. In South Australia proper, we reckon on the figure of 1,375 which relies on a condensation of sources but principally the Commonwealth Department of Aboriginal Affairs Community Profile figures for Area 6-3.<sup>1</sup>

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1. D.A.A. 81/453, and Hope, D., *Dreams Contested*, Unpublished Thesis, 1983, p.48.



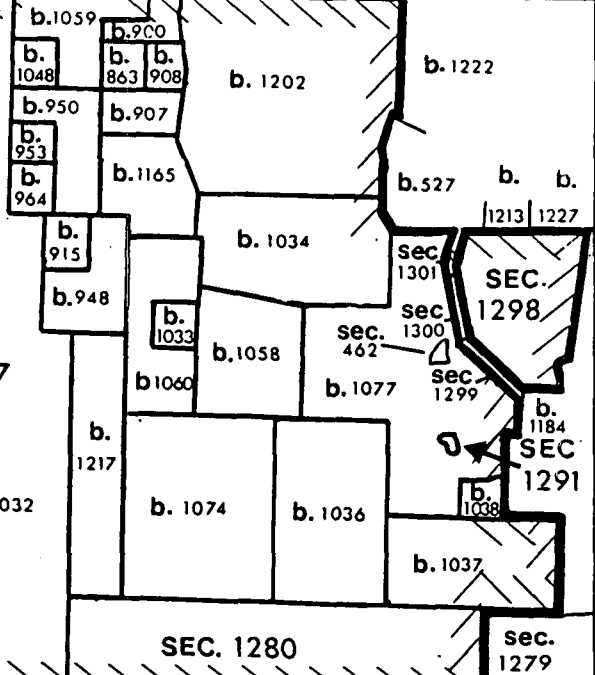


MAP 1 - THE PITJANTJATJARA HOMELANDS

NORTHERN TERRITORY

NORTH WEST RESERVE  
b.1031

SEC. 1297



SEC. 50

CONSERVATION PARK

UNALLOTTED CROWN LAND

WOOMERA PROHIBITED AREA

YALATA

KILOMETRES 50 40 30 20 10 0 SCALE 50 100 150 KILOMETRES

AUSTRALIA  
WESTERN

MAP 2 - THE PITTANTJATJARA LANDS

The Pitjantjatjara lands are as defined by the Pitjantjatjara Land Rights Act, 1981, on p. 11 above.

#### Administrative Context

The transition since the seventies from institutionalised training for assimilation, to self-determination, has been accompanied by an increased questioning of the role of bureaucracies in remote areas both by the Pitjantjatjara, and their advisors.

With Commonwealth Grants-in-Aid funding, communities have been able to buy their own assistance in categories determined in accordance with Pitjantjatjara priorities. Those priorities have to date principally concerned the logistics and the infrastructures of the so-called 'homelands movement', and the provision of health services. Government instrumentalities now need to take account of the increasing localization of Pitjantjatjara affairs, and the accompanying expectation that whatever is done must accord with their priorities. They also need to take account of a spirit of scepticism which the Pitjantjatjara, for the moment at least, are exhibiting toward government departments. Measures designed in Adelaide ought not to presuppose that the best vehicle of implementation is necessarily the traditional bureaucracy.

From a management perspective localisation has not, to date, meant the wholesale substitution of Pitjantjatjara workers for European. Rather, the Pitjantjatjara have identified categories of work for which they have no real taste, and other categories which they have taken over. Fundamentally, the Pitjantjatjara have assumed executive positions and have assigned functional duties to European employees. There are, of course, grey areas and in the context of this Report, the provision of Police aides is a good example of a service that comes into that category. It would appear that the Pitjantjatjara have no sweeping point of view about the role of the Europeans and seem to prefer to treat each instance on its merits.

Likewise, there is a new order of sensitivity on the part of Europeans familiar with the area. They are now showing an increased reluctance to prescribe solutions. At the moment there is what this Committee would consider to be a healthy and appropriate process of each side re-accommodating to each other, and of finding new ways and means of exploring problems and communicating them.

While in this situation the Government's role should be non-paternalistic and sensitive, it ought not necessarily be over tardy in initiating, as appropriate, relevant measures. There is a real danger that the approach of Government may become uncoordinated - with individual departments and instrumentalities from both State and Commonwealth sources entering into ad hoc dealings with the Pitjantjatjara and

making decisions bearing upon a range of functions and sensitivities. There is a danger that many of the hard-learned lessons of the assimilation era and its aftermath may be lost on succeeding generations of participants in relations between the two cultures. This applies more particularly to the European side which does not have the benefit of a culture, small in numbers, which communicates and internalises its position on any matter almost instantaneously.

Indeed, perhaps one of the most salient characteristics of remote central Australian regions and the complexity of the cross-cultural human activity in them, is the extent to which dilettantism has flourished. There has been little continuity of service, a history of amateurism, and a tradition of policy making from the remote city which has never been able to inform itself through reference to an accumulated body of knowledge.

This Committee is strongly of the opinion that an initiative must be taken to provide ways and means of informed and up-to-date policy development and review for the area. Whatever courtesies may have constrained this process in deference to the development of autonomy, it must be borne in mind that the Pitjantjatjara are South Australian citizens and are making pleas for help. Their social conditions indicate that they are facing increasing difficulties in the areas familiar to us as health, education, law and order and social welfare.

Rapid Culture Change

While it is true that the homelands movement has given the traditional culture a filip, there are inescapable countervailing factors which serve to cement the Pitjantjatjara into a modern world. For example, there is the comparatively novel need to conduct political relationships with the outside world; the need to cope with new problems of health; new problems of law and order; and new opportunities associated with mobility, communications, and education. The cultural pathology consequent upon new factors in modern circumstances is acknowledged by the Pitjantjatjara and most observers, as a major source of concern.

Whatever optimists may feel about the long-term viability of the traditional culture, there is something ineluctible in the merging of traditional and non-traditional culture traits and in the evolution of new, and in some cases unexpected and unintended, patterns of behaviour. We feel there is much more to come. For example, the advent of the telecommunications satellite (Aussat), will not only revolutionise communications but will and could, if not carefully considered and controlled, contribute as much to the breakdown of Pitjantjatjara society as has alcohol and the trappings of a consumer society. The implications of inland television need far greater consideration than can be included here. It is proposed by the Committee as a topic for further urgent consideration.

• The Legal Context

Many recent developments which have affected the interaction between the Pitjantjatjara and the South Australian legal system include:

- the passage of the Pitjantjatjara Land Rights Act, 1981;
- the Commonwealth Government's intention to return Ayer's Rock to its original owners.
- the establishment of liquor outlets at Marla and the opal-mining settlement of Mintabie;
- the establishment of the Yulara Village at Ayer's Rock with the provision of take-away facilities for alcoholic liquor. This will almost certainly have adverse implications for the Pipalyatjara community and its associated homeland outstations;
- an apparent stalemate in South Australia in the formulation of regulations concerning the carrying or consumption of alcoholic liquor in the Pitjantjatjara lands - although we understand that drafting has commenced. But at the moment, no prohibition or regulation exists.
- the development of uncertainty regarding prohibition of entry to the lands by non-Aborigines, following the decision (now under review) in Gerhardy v Brown.<sup>2</sup>

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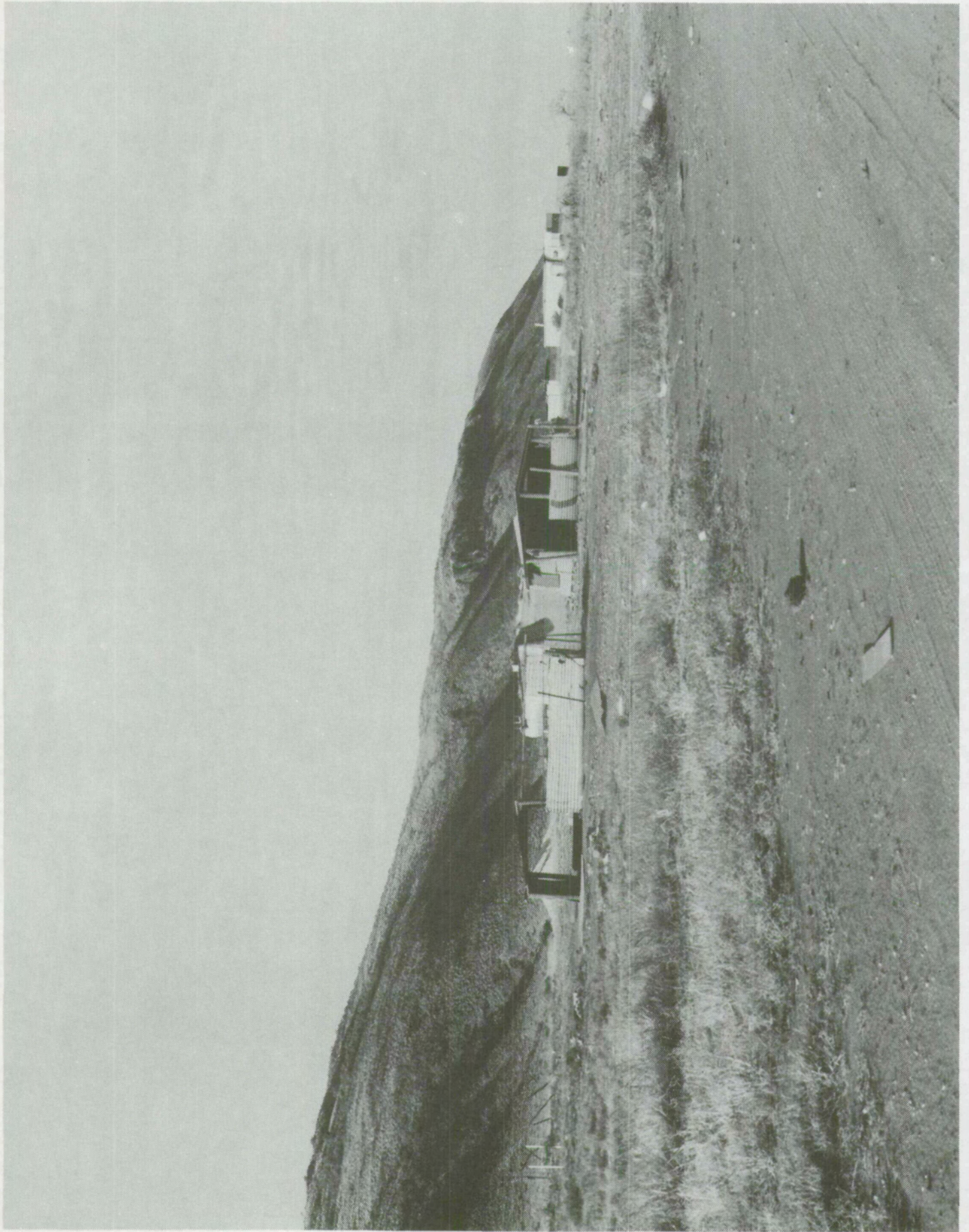
2. *Judgment of Millhouse J., South Australian Supreme Court. Unreported to date but delivered 21 July 1983 - S.19 Pitjantjatjara Land Rights Act - Entry without permission - inconsistent with S.9 Racial Discrimination Act (Commonwealth) - S. 19 held to be invalid - Vide S.109 Australian Constitution.*

- the ongoing process of alienation of children from the traditional culture, and a perceived increase in the incidence of petrol sniffing;
- the continuance of a rate of juvenile crime far in excess of State norms, as shown in the figures on p. 25.
- Pitjantjatjara representations to improve arrangements concerned with the administration of justice in the North-West, and the recently announced intention on the part of the South Australian Police Commissioner to introduce a system of Police aides following the Northern Territory model.

While current legislative provisions relating to the lands are essentially straight-forward, the Committee takes the view that they will develop in legal scope, as the Gerhardy v. Brown and subsequent Appeal would indicate (on p. 16 above). We also believe that the Pitjantjatjara will be subject to increasing pressures from environmentalist, tourist, and mining interests. In this situation, we would argue that the management of the boundary between the Pitjantjatjara and the outside world will become increasingly complex.

But the issue which currently evokes greatest concern is the position of children and youth.





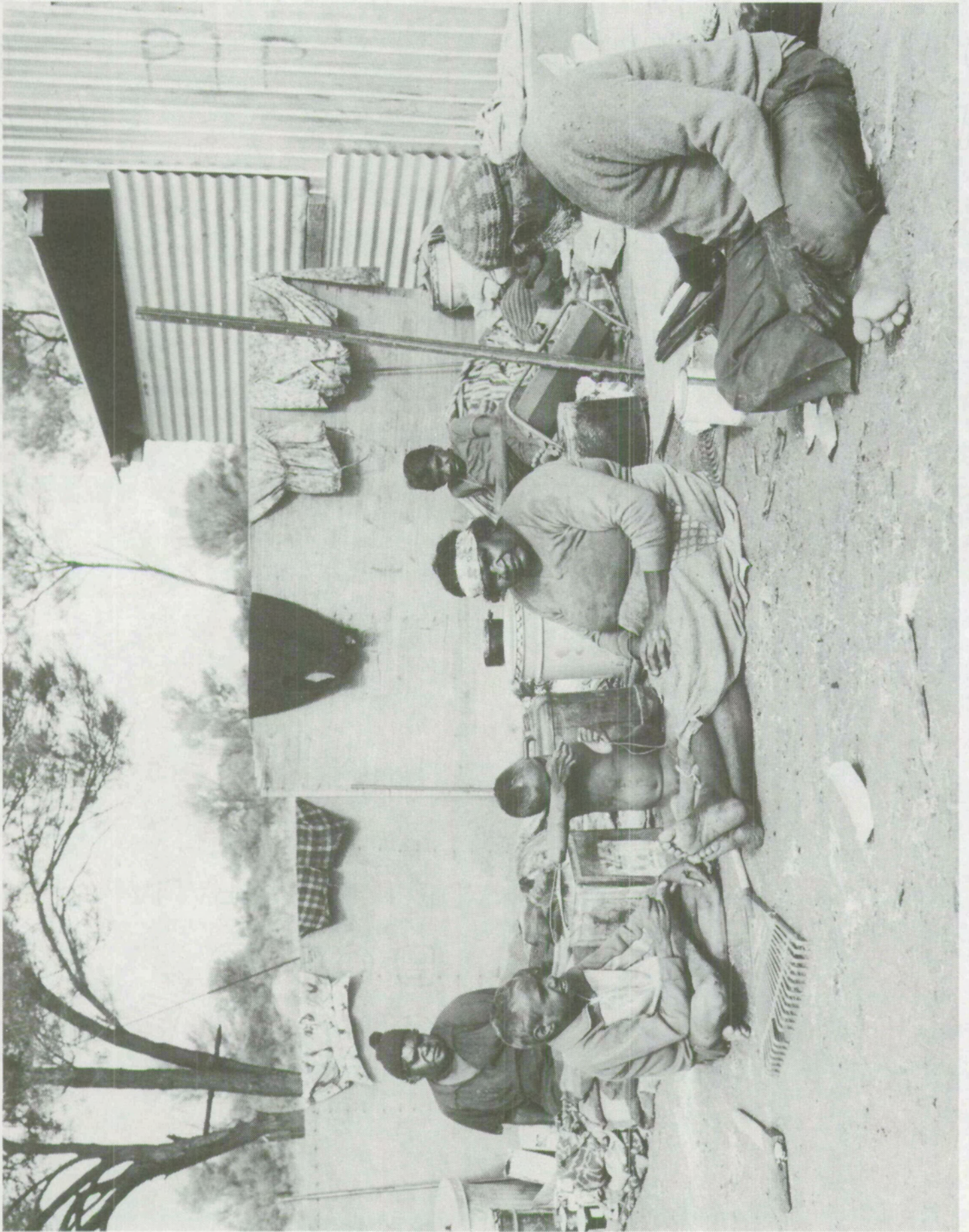


PLATE 6 - HOMELANDS COMMUNITY AT KUNATJARA

## CHAPTER 3

CHILDREN. Introduction

By far the greatest number of offences and certainly the source of greatest concern both to the Pitjantjatjara and their European supporters - or detractors - is the high incidence of child delinquency.

One of the major consequences for the Pitjantjatjara of European intervention has been the destruction of old certainties, and confusion as to how to deal with new problems in social affairs. The behaviour of children, in particular, has created difficulties for a society which was traditionally prepared to allow them wide latitude in behaviour. Even fear of children getting lost - except for the very young - had little currency in an environment where the landscape was a mantle. Moreover the human environment was one rich in kinsfolk who looked after each other in accordance with the responsibilities determined by kinship relationships.

In this situation, children were socialized into considerable freedom. Kids could have fun. An analysis of the way authority worked traditionally suggests that it was never conceived as an artifice for controlling children. It was tied into the world of adults and their relations not only with one another, but to the land and the supernatural.

While children could scarcely do entirely as they pleased, there was a real sense in which they were incidental to the real concerns and the politics of the society, all of which were focussed in the adult domain. Children were, as it were, held in the wings until it was their turn to participate.

In modern settlements, however, children have been able to generate a life to a large extent independent of the dictates of tradition. At school they become socialized to values and a framework of thinking imposed from the outside: children congregated at picture evenings, at the store, or a building site in pursuit of aims which were never envisaged in the framework built up for the regulation of traditional affairs.

Rev. J. Downing, an Alice Springs community development worker, reporting on child delinquency in 1971, observed that in situations of rapid social change where old practices and values are challenged, the first to suffer are the older children and adolescents. Some school teachers, particularly in the mid-70's post Vietnam period, came in as agents of change - themselves young and possibly rebellious. They found it easy to identify with the children, reinforcing their frustrations and anxieties in the name of liberation.<sup>3</sup> Children's ambitions were thus stimulated and they gained courage in ignoring the rules of society and the discipline of their own culture.

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3. Downing, J.H., "Juvenile Delinquency in the North-West of South Australia." Report for the Department of Aboriginal Affairs, 1970.

. Petrol sniffing

One of the major concomittants of this new turn of events has been the growth of petrol sniffing. Regular petrol sniffers at Amata and Fregon are as young as eight and ten and as old as 21.

There is a growing literature on the subject, with the most recent South Australian analysis being that of Morice, Swift, and Brady, centring on Yalata<sup>4</sup>, and more generally among the Western Desert people, Ferguson<sup>5</sup>, and Huey<sup>6</sup>. Those in the Northern Territory include Nurcombe<sup>7</sup>, Eastwell<sup>8</sup>, and Tomlinson<sup>9</sup>. Studies generally conclude that petrol sniffers are in a similar position to victims of lead poisoning, with resultant behavioural and academic problems - particularly in respect of disturbances in attention, hyper-activity, reduced verbal and auditory competency, and excitability<sup>10</sup>. But the most immediate and overt result is intoxication.

- 
4. Morice, R., Swift, H., and Brady, M., Petrol Sniffing Aboriginal Australians: A Resources Manual, Adelaide: The Flinders University of South Australia, 1981.
  5. Ferguson, D., "Report on Petrol Sniffing at Amata". Canberra: Department of Aboriginal Affairs, mimeo, 1978.
  6. Huey, D., "Petrol Sniffing in Traditional Communities". Department of Aboriginal Affairs, mimeo, 1978.
  7. Nurcombe, B., "Petrol Inhalation in Arnhem Land", in Hetzel, B.S. (ed.), Better Health for Aborigines?, Brisbane: University of Queensland, 1974.
  8. Eastwell, H.D., "Petrol Inhalation in Aboriginal Towns: its Remedy, the Homeland Movement", Medical Journal of Australia 2: 221-224.
  9. Tomlinson, J., "Petrol Sniffing in the Northern Territory", Australian Journal of Alcohol and Drug Dependency, 2(3): pp. 74-77, 1975.
  10. Morice et al, op. cit., p. 25.

The social consequences vary but typically children roam the community in clusters and create mischief. Often this takes the form of abuse or, as often, of offences against the person and property. There has been a history for 15 years of car stealing, vandalism, and housebreaking, larceny, and offensive behaviour while children sniff petrol. The most intractable sniffers are stigmatized as 'bad kids', and this becomes a self-fulfilling prophecy as the children go from bad to worse. In reality, adults only react to petrol sniffing if there are accidents, otherwise children go ahead more or less unhindered.

The most dramatic development associated with petrol sniffing is that the discharge of authority in the society has been confused. Children have at their disposal relatively powerful artifices of social manipulation which they use destructively in the absence of norms and conventions which might otherwise teach and control them.

#### The extent of the Delinquency Problem

The statistical data now cited have been provided by the South Australian Police Department's Community Affairs and Information Services Branch<sup>11</sup>. Figures are provided for the number of offenders, the number of offences,

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11. Warner, F., "Law and Order - Aboriginal Communities - Pitjantjatjara Land and Yalata - Statistics". S.A. Police Department, Community Affairs and Information Services Branch. Mimeo, 1984.

and are given in respect of four Data Collection Units (DCU's). The source document is included in our Report as Appendix 2. While the data do not isolate petrol sniffing - since it is not at present an offence - there are prima facie grounds for believing that nearly all delinquency is associated with petrol sniffing. Broadly speaking, the Data Collection Units should be conceived as comprising two ethnopolitical entities already described:

- \* The Pitjantjatjara Lands Communities.
- \* Yalata Community.

(1) The Pitjantjatjara Lands Communities.

This area comprises those communities previously described as Pitjantjatjara, but contained within South Australia. Offenders in this area are typically juvenile, young adult, and male. Only two females were reported in 1982/83<sup>12</sup>.

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12. Warner, F. (1984) op. cit., Warner also notes:

*"The number of offences reported differs from the number of offenders for three main reasons:*

- \* offences reported within a specific period may be cleared up within a subsequent period.*
- \* one offence may involve a number of offenders*
- \* offenders reported within a specific period may have committed offences reported within a previous period.*

*For the purposes of this paper a limited comparison of the number of offences reported within the period is provided."*

Percentage of total Offenders, by Age.N = 186.

Under 16 years	27.4%
16-17 years	21.5%
18-21 years	36.6%
Over 21 years	<u>14.5%</u>
	<u>100.0%</u>

Offences committed in this area are principally those against property, thus:

Percentage of total Offences, by Type.N = 138.

Against Property	79.0%
Against Good Order	9.8%
Against the Person	<u>11.2%</u>
	<u>100.0%</u>

(2) Yalata Community:

Comparable categories of figures for the Yalata Community show a significant upward shift in the age of offenders, more females (7.9%), and a greater number of offences relating to motor vehicles and against the person.

Percentage of total Offenders, by Age.N = 189.

Under 16 years	6.3%
16-17 years	12.7%
18-21 years	12.7%
Over 21 years	<u>68.3%</u>
	<u>100.0%</u>



Percentage of total Offences, by Type.N = 194.

Against Property	26.5%
Against Good Order	31.7%
Against Vehicle and Traffic	22.2%
Against the Person	<u>19.6%</u>
	<u>100.0%</u>

Using the population of 1,375 cited on p. 9 for the South Australian Pitjantjatjara, the percentage of offences in the North-West in 1982-83 is 10.4%. In the case of Yalata, the figure is an alarming 35.3%. The same calculation performed in respect of 1981-82 data yields 11.2% for the North-West communities and 33.2% for Yalata<sup>13</sup>. The samples are too small to infer any trends.

When compared with the North-West, Yalata's problems are clearly more serious, both in terms of absolute numbers, (conceived as the incidence of offenders in the Community's population), and the trend to more serious offences committed by a greater number of adults.

When any of these figures are compared with the general South Australian population, it is evident that offending is at least ten times more prevalent in Pitjantjatjara Communities compared with the State as a whole. In saying this, the Committee recognises that data concerning what might appear to be comparable State/Pitjantjatjara categories, must be interpreted

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13. Warner, F. Op. cit. (1982).

with caution due to the magnitude of sample size differences. That duly acknowledged, and even with some further varnishing of the truth by using 1981 figures (which are at hand), the point at least of magnitude can surely be made. Thus:<sup>14</sup>

State population: .....	1,293,800
Offenders: .....	27,171
Percentage of Offenders to Population: .....	2.1%
Percentage of Children as Offenders: .....	22.3%
Percentage of Adults as Offenders: .....	77.7%

It would therefore seem manifest that offences committed by children is a far greater problem in the Pitjantjatjara lands than this State generally: and that Yalata has a crime incidence of a magnitude unlikely to be experienced in the wider community - and possibly without precedent even in particular problem localities.

Although the recommendations of this Report (pp.73 et seq) reflect the problem instanced in the North-West, the case of Yalata is regarded by the Committee as especially serious. This is particularly marked with the impending passage of the Maralinga Tjuritja Land Rights Act and the potentially immense problems associated with the use and administration of the lands. That matter, however, must remain outside the scope of this Report.

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14. Leonard, B.E. South Australian Year Book, No. 16 1981. Adelaide: Australian Bureau of Statistics, S.A. Office 1981.

. Dealing with the Problems of Delinquency and Petrol Sniffing.

Dealing with child problems has not, to date, yielded credible solutions. To begin with, there is always a lag between the time of commission of an offence to its resolution in court. While this may be as short as a week, it may be as long as 12 months - and the median in 1981 was 120 days.<sup>15</sup>

If it is accepted that juveniles, however witlessly, have destabilised the ordinary processes of social control, there would seem little long-term benefit to be gained from the courts taking offenders to task in the hope that they may have sufficient penitence to mend their ways. Indeed, the approach to date has compounded, rather than relieved the problem.

To begin with, the practise of remanding children to Adelaide to be heard by a Judge of the Children's Court is a form of enslavement to legislation which no-one pretends was ever intended for the North-West. The practise continues (particularly by Justices), in spite of a direction from the Senior Judge of the Children's Court requiring such remands to be used only on his authority, or that of his nominee.

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15. Warner, F., Op. Cit., 1982.

Apart from the logistical problems and time delays, children are inappropriately separated from kinsfolk, but then feather-bedded with handsome meals, colour television, the latest movies, not to mention pampering by pixilated urban Europeans. They return heroes, and provide the foundations of a notoriety that is perpetuated by their peers.

Attempts to find more appropriate forms of punishment have proved vexatious and elusive. The connection between initiation and a consequent return to socially acceptable behaviour, has given rise to a school of thought which would have child delinquents dealt with by the 'elders'. Yet initiation as an artifice of rehabilitation has not proved to be any answer since it cannot be arranged without extensive preliminaries, and in any case, it is not guaranteed, nor was it ever designed as a 'cure'.

Moreover, the evidence would suggest initiation to be counter-productive when conceived as a device for trans-cultural punishment. There is an oft-cited case of a mature man who chastised an adolescent who was petrol sniffing in the settlement area of Amata. The adolescent, who had been initiated as a result of court proceedings, retaliated with such vilification that the man, caught unawares, became confused and unable to cope. This incident illustrates a growing alarm at the medium-term consequences of forcing troublesome adolescents into early initiation to 'cure them'. It is a strategy which does not work.

Whether deliberate or not, these children are exploiting Pitjantjatjara norms which, as noted, give children virtual immunity from punishment by their fathers and those of their generation. Fathers and mothers grizzle but have not devised a coordinated approach which will solve difficulties by piercing custom. For example, an ex-warden at Amata, engaged the Committee in 1981 in an account of his detestation of petrol sniffers and their lackadaisical families. That very night, his own son rolled a truck he had taken illegally while sniffing petrol. It was no ordinary occasion, with the truck turning end to end and finishing on top of another vehicle. Male adult tolerance is really seldom disguised as evidenced by an apparently total lack of concern when children eavesdrop more or less as a matter of course, on community meetings, taking cans of petrol to the cover of a bush mere metres from proceedings. At Amata children openly walk the streets sniffing petrol. Some even posed, cans poised, for the Committee to photograph.

One of course must be conscious of the inappropriateness of being overweeningly censorious in approaching child delinquency in the North-West. In behaviour such as petty crime and petrol sniffing there is a more than passing resemblance to the rite of passage, in addition to manifestations of the strong cultural requirement for peer group conformity.

Moreover, in taking a superficial view of adolescent behaviour, Europeans can too readily miss a profound paradox. As pointed out by a perceptive observer with a long and intimate association with the Pintubi<sup>16</sup>, there is in defiance, a sense of strength. Thus many youngsters in displaying a seemingly dangerous level of recalcitrance can be seen as having a strength respected and valued by older people. For example, a youth engaging in threatening behaviour with a knife would at that level be seen as displaying strength. But this would be put to the test by his backing off, when called to do so, at the critical moment. Such a person may be given a hard time at initiation and drawn into spiritually dangerous situations causing considerable fear. Yet in this way, the most recalcitrant may get the most favoured insights. Then having been drawn into the men's world, and their natural strength and élan matured, they develop into redoubtable adults.

In that way, delinquents do not usually seem to become long-term deviants, but are pulled back sooner or later into acceptable modes of behaviour by the cultural sinews which ultimately over-ride adolescent waywardness. And in the case of petrol sniffing there is still no hard evidence that it has serious long-term repercussions - even though it would scarcely come as a surprise to learn that it has.

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16. Dick Kimber - Personal communication.

It is also worth remembering that petrol sniffing was one of the great issues irritating welfare staff in the old assimilationist institutions. Here was a case of Europeans not only piqued by the cheek that children gave them with impunity, but given to seething at the doubling-up offered through the vicarious contributions of parents. It was in this context that petrol sniffing and the associated delinquency became the basis of many a cause célèbre, with the sniffers themselves all too readily branded as a caste of contemptibles.

However, with the end of institutionalization, petrol sniffing appears to have become more prevalent, both as a concomittant of delinquency, and as a pastime pursued by an increasingly wide age-range of children. It has nowadays gone beyond being a source of discomforture to Europeans, and is currently subject of grave and widespread concern by Pitjantjatjara mothers. Along with obesity and VD it is seen as a symptom of something very wrong. People are not only alarmed, but are pleading for government assistance.

We consider that one of the most effective ways of so assisting adults would be to enjoin upon them legal responsibility for controlling their children. This may be, and has been, done through the courts, by requiring adults to be answerable for the delicts of their children.

In 1969, a magistrate dealt with a child offender by fining his mother. The measure seemed promising but was not followed up. Then in November, 1981, it was resurrected by the Committee at a Homelands Council meeting at Nyapari as a device which might be re-adopted, and was well received. But an opposite view expressing abhorrence was adopted at a subsequent meeting. Then in September, 1983, it was strongly advanced to the Committee as a procedure favoured by communities generally in the North-West.<sup>17</sup>

We believe that Courts could play an incisive role if punishment for child offences were directed at parents. Such an approach might help the adult community find ways and means of controlling children and it would help the work of the Community Resources Task Force proposed later in this Report in channelling energies into alternative pursuits. Strategically, the measure would invoke empowerment of adults to deal with their own children through the medium of European law. This would not be a return to paternalism but rather a response to the stated wish of the Pitjantjatjara for Government to step in and act. It would be a case of modifying the parent/child bargaining scenario by limiting the choice of parents to give way by virtue of constraints

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17. Tregenza, J., "Report on Fieldwork for the Aboriginal Customary Law Committee: North-West, 27/4/83 to 15/5/83". Mimeo 1983.



beyond their capacity to control. It would be a move, long overdue, to put the ball at the feet of the adults. In the light of these considerations then, the measures appearing on pp. 73-88 are proposed. However, they should not be considered in isolation from associated matters, to which the discussion now turns.

## CHAPTER 4

ALCOHOL. Introduction

The commonly accepted view in the North-West is that children and adolescents having dissipated themselves on petrol, graduate to alcohol in young adulthood. Drinking is looked upon with considerably more concern than petrol sniffing due to the fear that serious injury or death may result from ensuing fights, or from dangerous driving. This concern is reflected in the provisions of S.43(1)(c) and (d) of the Pitjantjatjara Land Rights Act, 1981 for the regulation of possession and consumption of alcohol on the Pitjantjatjara lands. These provisions were inserted into the Act following strong representations by the Pitjantjatjara to the Land Rights Working Party in 1978 - but have never been promulgated.

Concern over alcohol is greatest in the East - particularly at Indulkana where there is easy access to liquor outlets at the newly established rail village of Marla - though that problem exists to a greater or lesser extent throughout the lands. There are outlets at Ayers Rock, or for that matter, Alice Springs, only eight hours away. The problem is worst at Yalata.

In general, however, alcohol consumption is opportunistic rather than habitual and there are strong community pressures to proscribe it. That in itself is a capital resource which should be reinforced through Government backing.

The Pitjantjatjara have sought prohibition for nearly four years. Indeed, male Pitjantjatjara, while scarcely acknowledging problems of petrol sniffing and child delinquency, have been trenchantly critical of the South Australian Government for its failure to legislate for prohibition in the Pitjantjatjara lands.

It should perhaps be added that alcohol problems may enjoy more prominent articulation than petrol sniffing, since alcohol concerns affairs in the adult - as against child - domain. As already indicated, traditional factors would tend to keep children's interests out of political deliberations.

#### The Northern Territory Approach

Here is an issue which may gain illumination from the Northern Territory experience, in particular, provisions contained in the Liquor Act to empower the N.T. Liquor Commission to declare a dry area following the application of an interested party. While the Commission has been publically sceptical as to the wisdom of prohibition, a Report it sponsored provided a guarded confirmation of its effectiveness. It should be noted that about half the Northern Territory Aboriginal Communities have sought, and been granted, a dry status (44 at February, 1982).

It should also be noted that the nature of the prohibition in each dry area is subject to considerable variation. Thus the Liquor Commission has the capacity to confine the prohibition to particular categories of alcohol (e.g. beer, spirits, or wines) and also has the power to grant permits to individuals, and licences to organizations, within dry areas.<sup>18</sup>

The Northern Territory being bigger and more diverse than South Australia's West can offer a wide range of social contexts for the purposes of analysis and comparison. Indications are, that areas comparable with South Australia's North-West fare well, if not best, due to two factors: one, remoteness and secondly, a dry - or quasi dry - community tradition. With regard to remoteness, we have been told that Papunya has had its long-standing liquor problem ameliorated partly because the Pintubi (about 400) have, since 1981, moved 300 kms. west to Kintore in the Gibson Desert, with smaller groups going even further west into Western Australia. This has created a logistical difficulty in getting alcohol out, and thus, by default, has helped minimise consumption. As regards community tradition, the Liquor Commission's Report on Restricted Areas makes an interesting comment:

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18. See Northern Territory Liquor Commission Annual Report, 1981-82.

*"In some communities, the declaration of a dry area has made no real difference to the situation as regards access to liquor. At Gapuwiyak, for example, there is a very strong community consensus against alcohol. The formal declaration of a dry area around Gapuwiyak merely ratified under Territory law a decision already made, and by one means or another pretty effectively enforced, by the community years before. This is not to say that the declaration of dry areas under these circumstances is a waste of time. On the contrary, people living in these communities say that it is most important that the white man's law should reinforce community decisions on issues of this kind." 19*

At the same time, the Report notes the crucial assistance provided by the imposition of strategic restrictions of liquor sales from roadside premises. Thus the Commission has "not the slightest doubt" that if the Glen Helen outlet had been allowed to continue to sell fortified wines to the local Aborigines "then the dry areas...at Hermannsberg, Areonga, and Papunya would have been rendered almost worthless."

So far as the question of European drinking in prohibited areas is concerned, the Northern Territory experience has been that, by and large, the measure is supported - with opposition for the most part muted. The Liquor Commission notes, however, that exceptions notwithstanding, school teachers and police were most likely to be opposed to dry areas, or be sceptical as to their likely results.

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19. Northern Territory Liquor Commission Report on Restricted Areas. Alice Springs, mimeo, March 1982, p.10.

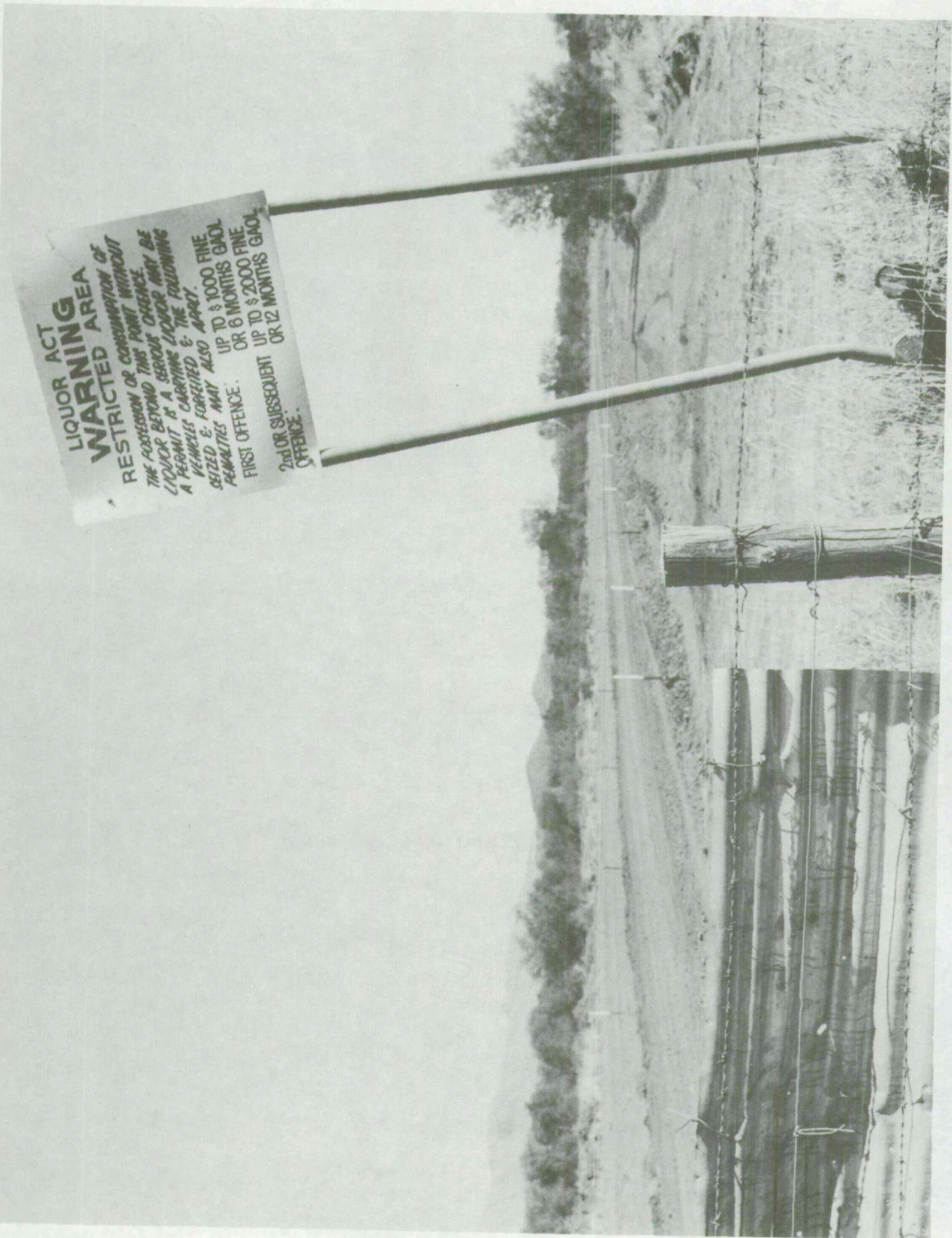


PLATE 7 - ENTRANCE TO THE PAPUNYA DRY AREA

. Dealing with the Problem

As noted, Pitjantjatjara leaders have been critical of South Australia for not implementing provisions for the prohibition of liquor in the Pitjantjatjara lands.

John Tregenza in his Report to this Committee, notes in respect of alcohol:

*"... The fears expressed ... are associated with rowdiness and disruption ... disorderly behaviour, anti-cultural behaviour (talking and singing non-public matters and overlooking appropriate relationship behaviour), violence and assaults, disputes which involve non-Pitjantjatjara weapons or stances, the driving of motor vehicles in a manner which puts people at risk ... Not only are these aspects of behaviour unacceptable, but also, they can cause a chain reaction of responses ... which in themselves have the potential to be extremely disruptive, and the cause for further offences."* 20

In these circumstances, communities wish to be empowered to act swiftly, firstly to incarcerate offenders and then to deal with them in a locally convened court. It has been suggested to the Committee that communities should have the power (similar to that possessed by Northern Territory magistrates), to seize motor vehicles transporting liquor, then either to destroy or sell them. Though we consider these suggestions to be impracticable as stated, they nonetheless provide the basis of recommendations later in this Report: one, the need for legislative backing in the form of Regulations prohibiting the consumption and carrying of liquor on the

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20. Tregenza, J., Op. cit.

Pitjantjatjara lands: two, the need for the Licensing Court to be cognisant of the effects of liquor outlets off the lands: and three, how local control might be managed. It is to this latter question that the discussion now turns.



## CHAPTER 5

THE LAW ENFORCEMENT FRAMEWORKIntroduction

Questions of local control and law enforcement raise fundamental issues relevant to this Report. The purpose of this Chapter is firstly to give an account of the Pitjantjatjara approach to social control in order better to make an informed judgment as to what might constitute an improvement. Secondly, the Chapter will look at police arrangements as they stand and are developing, and in particular draw on comparable Northern Territory experiences. Finally, the Chapter will look at contemporary Pitjantjatjara-Police relationships, noting the imponderables and options.

1. THE PITJANTJATJARA APPROACH TO SOCIAL CONTROL.

In white Australian society, management of public order involves a unilateral approach exemplified by the employment of police power, together with an accompanying acceptance, by both community and the offender (however reluctantly), that the course of action is proper. The Pitjantjatjara, on the other hand, approach the resolution of offences in two ways.

Firstly, those offences acknowledged as matters to be disposed of in the public domain, are dealt with under the general assumption that the initial responsibility to sue for redress rests with the offended parties. Once this happens a dispute follows and two rules predominate. One is, that any ensuing violence will be managed on a tit-for-tat configuration so that a balance of blows is maintained. The second is, that obligations of kinship will come into force to enjoin upon the relatives of the disputants to take sides in accordance with custom regardless of the rights and wrongs of the dispute. Since everyone is a kinsman of everyone else, the rules of kinship instantly determine where each person in the community stands in relation to the disputants. For the purposes of that particular dispute, the entire group will polarise, with individuals grading themselves into intimate or distant supporters depending on their relationships to the disputants but not necessarily in accordance with the factors causing the dispute itself.

Dynamics aside, there is locked deep in the Pitjantjatjara system of values an unthinkable-ness about aggressively siezing another person. Each individual is autonomous, aristocratic, and inviolate. For one adult to denigrate, publically challenge, or to lay hold of another either directly or through kinsmen, therefore constitutes an offence. Serious consequences will almost inevitably follow; and if people are drunk, these can be widespread and catastrophic.

Instances of behaviour constituting offences so treated would require extensive analysis and description - though the following instance is possibly worth citing.

In 1981 the man Kelly, who was a warden at Fregon beat his son, aged 14, for petrol sniffing. His enraged wife cleaved him with a steel fence dropper, and her sister then intervened in order to stop the fight. Meanwhile, Kelly obtained another steel dropper and in retaliation hit his wife. The community then became polarised. A spear was thrown at Kelly: the police were called but the fight having taken its course subsided by the time they arrived. However, the woman who tried to arbitrate was finally speared. She, in fact, was from Amata. When the Amata men heard about this they threatened to come over to Fregon to retaliate; and although this has not happened it will no doubt be taken into calculations when future disputes are in the process of being solved.

In this first class of offences then, many Pitjantjatjara prefer an outsider to cope with offences like petrol sniffing because it avoids community polarization, and the spread of disputation.

The second class of offences are those which are seen as acts of sacrilege: those, that is, which regardless of intention are seen to pose a threat to the tightly packed balance between man and the supernatural. It then falls to those individuals in whom it is vouchsafed to manage and preserve that balance, to secure quick and positive redress. Again, the details are outside the scope of this Report, but two rules are relevant. The first is that any redress is exacted unilaterally. The second is that the enactment, and all information about it, is sealed in the ritual domain. In other words, while the Pitjantjatjara know about the unilateral exercise of power, they would not conceive of its being used in the course of maintaining law and order in the public, or secular, domain.

The essential elements of the problem of law and order from the Pitjantjatjara viewpoint in the modern context are therefore these:

- There are new delicts which no-one knows how to deal with appropriately because they have yet to be digested by the traditional system of dealing with offences.
- New forms of behaviour like petrol sniffing, drunkenness, and contemporary forms of delinquency require, for the sake of order, someone to lay hold of the offender, but the act of laying hold of someone is itself an offence - unless occurring in the highly esoteric ritual context.

- An individual Pitjantjatjara who might have the temerity to flout tradition and take action unilaterally will invoke the rule of polarization rather than a consideration of the rights and wrongs of the issue at hand.
- The only individuals able to escape the inexorable application of the traditional modes, are those outside the kinship system. For most purposes, these are Europeans - particularly European police.

The elements will be considered later in the Chapter in the light of proposals and problems relating to ways and means of maintaining order in the Pitjantjatjara lands.

## 2. POLICE AND POLICE AIDES

South Australia has approached the maintenance of law and order by the provision of a mobile, effective, yet unobtrusive police presence in the Pitjantjatjara lands. The Pitjantjatjara have, however, argued that whatever the merits of existing arrangements, they need to be extended.

At a meeting convened at Wintuwintutjara in November 1983, for example, there was concern with offences relating to illegal entry into the lands, the carrying and consumption of liquor, and the high incidence of petrol sniffing. The meeting showed considerable enthusiasm for an increased presence of South Australian police, coupled with what they described as strong laws proscribing the carrying and consumption of liquor.

It was advanced that the presence of residential officers sensitive to the problems of the Pitjantjatjara, fluent in the language, located in regional centres (Pipalyatjara, Ernabella and Indulkana), would be able swiftly to attend to matters beyond traditional control. They argued that this would remove the pressures and anxieties, allowing them to get on with their customary way of living and reinforce gains already made in the course of the homelands movement. Yet, this is not a widely supported proposal, and in that connection it would be useful to comment on the Northern Territory experience of having police stations on Aboriginal lands.

Police on Reserves in the Northern Territory

Police stations in the southern most part of the Northern Territory permanently staffed with a sergeant and one or two constables are situated at:

Ayers Rock  
 Kulgera  
 Harts Range  
 Hermannsburg  
 Papunya  
 Yuendumu  
 Ti Tree

The problem appears to be that residential police have yet to establish themselves as an institution integrating well into the lives of the communities. There is a widespread view in Alice Springs that the South Australian approach is superior, and a feeling that in any case,

the Northern Territory is unlikely to extend the provision of Police Stations in Aboriginal communities. Presumably the expense is prohibitive but there appear to be other factors casting doubt on long-term appropriateness. To begin with, the factor of remoteness, which has always created difficulties in the history of Aboriginal affairs, means that people are attracted to work in Central Australian communities for reasons which are not necessarily conducive to appropriate service - e.g. promotion, attractive penalty provisions, and the acquisition of service experience. Appropriate service needs to rest on a foundation of enthusiastic support for Aboriginal aspirations and modes of conduct, as well as a thorough knowledge of their culture.

Further problems of service in remote communities, lie in the divisions Europeans create between one another. On one hand, there are those who have become identified with Aboriginal culture, in some cases through initiation and marriage, but more often, through an affinity with its emphasis on kinship values. On the other hand, there is still a tradition of conventional assimilationist thinking which is antipathetical towards Aboriginal values, and in particular to those Europeans who seek to champion them. The problem with this division is that it can create enclaves in remote settlements which draw on the energies of those in them to glean, interpret, and embellish evidence to validate their respective positions. In the case of police, this situation is not helped by a folklore perpetuating a history of violence towards Aborigines. Certainly, if there is to be a successful positioning of police on reserves, it would seem that there has yet to be development

of an appropriate values framework based on traditions of service and expertise.

In the Committee's opinion, the South Australian approach, of mobile policing, does not raise the problems of an accommodation of a police culture to Aboriginal culture as might be posed by the establishment of residential arrangements. In the Committee's opinion, the Northern Territory model would not seem to offer an improvement.

. Police Aides

The possibility of introducing to the North-West lands a system of Aboriginal police aides brings into focus a long-standing issue throughout Central Australia. At the heart of the matter are the hidden factors bearing on schemes and initiatives designed to work in a trans-cultural context. There has been a history in South Australia of transcultural initiatives in the fields of, for example, welfare, health, education and housing, nearly always instigated by energetic people of goodwill, who have gained Pitjantjatjara concurrence. Yet, the initiatives have virtually all failed due to the operation of cultural factors, which in being unseen have generally eluded analysis.

So far as police aides are concerned, Central Australia has seen a succession of attempts for 30 years on both sides of the border to introduce Aboriginal para-police to assist with the maintenance of law and order. But, there is an equally longstanding history of relinquishment on the part of those Aboriginal people accepting positions. The Ernabella wardens and the Amata atunmanykupai<sup>21</sup> are examples.

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21. Atunmanykupai - one who looks after.



Downing notes that as far back as 1952 attempts were made to establish a local law enforcement system at Papunya with the appointment of "community officers". Later, "camp orderlies" were appointed. As Downing correctly notes, traditionally it is only the "members of any one clan that have the full power and/or authority to control the affairs of that clan. Where there are many family groups, as at Papunya, the enforcement of Aboriginal law becomes very difficult".<sup>22</sup>

More recently, it has been argued from the Aboriginal quarter that the problem stems ultimately from the lack of legitimation of the powers of Aboriginal para-police, as they have been conceived to date. This argument, is at the moment gathering strength, as the South Australian Police Force is examining the option of introducing a system of Police aides into the North-West following the Northern Territory model. We therefore wish to look at comparable precedents, and then form some conclusions as to the best way of approaching innovation.

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22. Downing, J.H. "Examination and Assessment of the Problems of Juvenile Deviant Behaviour in Aboriginal Communities in the North-West of South Australia." Mimeo, 1971, p.42.

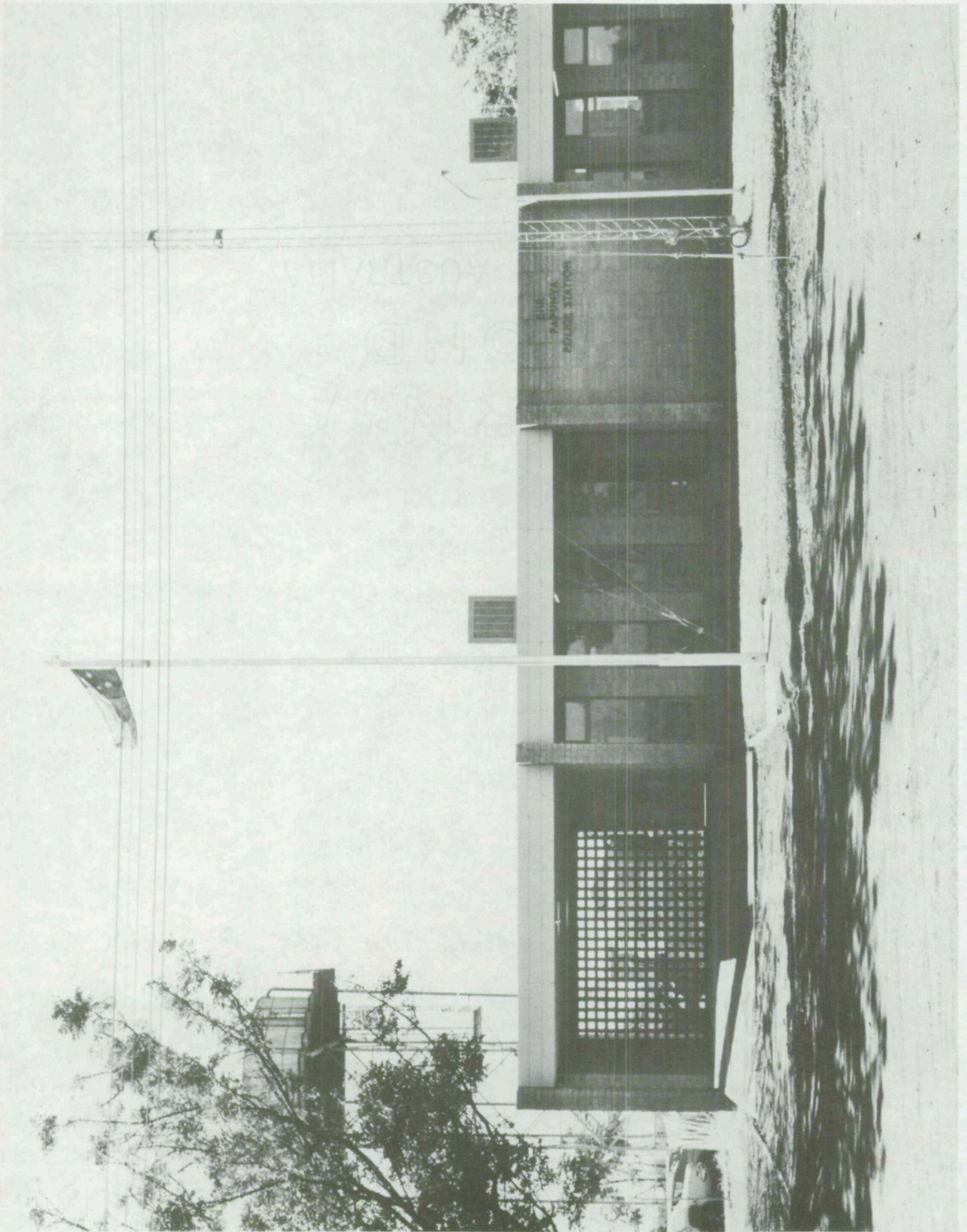


PLATE 8 - PAPUNYA POLICE STATION

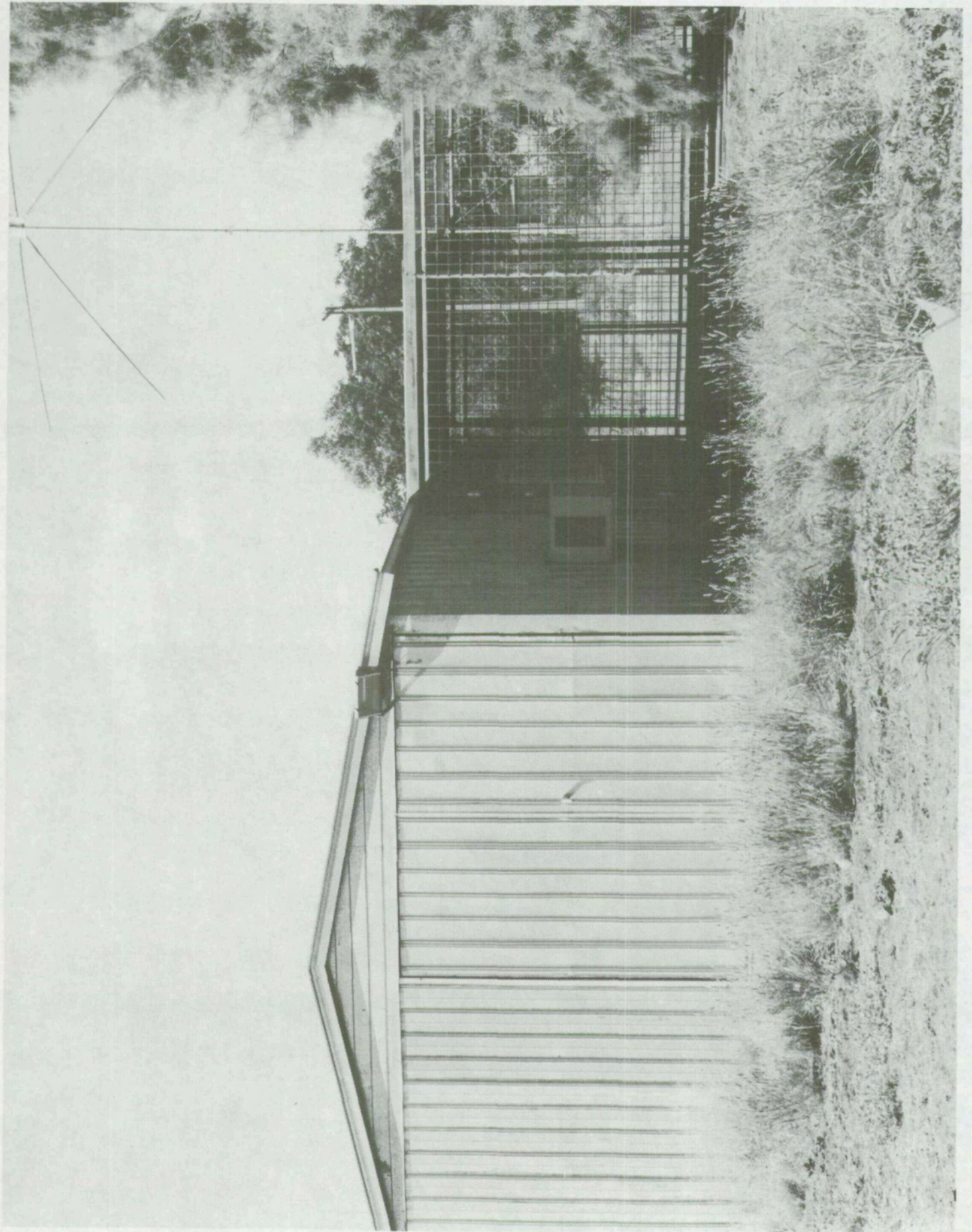


PLATE 9 - AMATA POLICE FACILITY

BOND

The Northern Territory Approach to Police Aides

The Northern Territory has a two tiered system of Aboriginal involvement.

- Police Trackers - employed under Public Service provisions, without police powers or any significant police function, whose duties are determined by the Officer-in-Charge, but which generally embrace:
  - .. help with local knowledge
  - .. tracking and searches
  - .. liaison
  - .. identification
  - .. cleaning
  - .. gardening
  - .. driving
- Police aides - employed under the provisions of the Police Administration Act which provides, inter alia that -

*"A police aide shall, subject to the terms and conditions specified in the instrument of his appointment, have the same powers, privileges, duties, and obligations as a member of the Police Force appointed under this Act."* 23

The police aide system has been established in the Top End of the Northern Territory for a number of years and is supported by a current budget allocation of \$360,000. There is a training program at Batchelor headed up by a senior officer.

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23. Police Administration Act, 1982, S.19 ss(3).

While we have not yet had the opportunity of going to the Top End (although a visit is planned shortly), or those parts of Western Australia where the police aide system is apparently working with some success, there are at present no police aides in Central Australia in communities with Pitjantjatjara affiliations - with the exception of Finke. There is, however, at each Police Station a police tracker. At Finke there is a police aide who works alone under direction from the sergeant at Kulgera - 180 km. away. The person concerned, however, is a Thursday Islander, and the Finke community which comprises an ageing population, is tight-knit and isolated, and has been socialised into European values by mission influence. Here is an instance, familiar to any student of colonialism, of the classic strategy of locating indigenous police in areas away from their own kinship - or social - system. In fact we have been informed that the original police aide at Finke - a Yangkuntjara - resigned due to difficulties posed by kinship relations.

What this means is that there are not, at the time of writing, police aides in Northern Territory communities which are related socially to the Pitjantjatjara. We understand that at least one Council has refused to nominate a trainee through its distrust of the way it would bear on relations with the police.

. Overseas

There is evidence to suggest that the failure of systems using local people to control problems which are essentially Western European in origin and character, is reflected in similar schemes overseas. Thus, in both America and Canada, crime on reservations is significantly higher than the rest of the population - in the case of the American Indian it is cited as 2,006 per 100,000 for rural America generally. The B.I.A. established an Indian training and research centre to provide a 10 week training course for tribal police. Critics charged the B.I.A. of "pitting Indian forces against Indian forces ..."

An Inuit commented in the case of Canada, that,

*"...working for the Royal Canadian Mounted Police is not an attractive proposition for Inuit since they are placed in a position in which it becomes their duty to enforce laws they do not believe in themselves."* 24

and that they run a high risk of being seen as turncoats or toadys.

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24. Cohen, F.G., Chappell, D., and Wilson, P.R., "Aboriginal and American Indian Relations with Police. A Study of the Australian and North American Experiences." Washington: Mimeo, September, 1975, p.23.

Many Pitjantjatjara, though attracted to the idea of police aides, are concerned at problems inherent in the relation between an aide and those whom custom obliges him to avoid - for example, his waputju - that is, his actual or potential father-in-law. The most sophisticated observers whether Pitjantjatjara or non-Pitjantjatjara, in fact see this as an intractable difficulty.

3. PUZZLES AND OPTIONS IN PITJANTJATJARA/POLICE RELATIONSHIPS.

One of the enigmas of this whole debate is that it is very hard to determine a genuine Pitjantjatjara position. In the first place questions of law and order may have been imperfectly considered since in many respects they fall outside the domain of traditional thinking, and may not necessarily have the priority, ascribed by European observers, in their contemporary decision making arrangements.

In the second place, each adult is regarded as having a proprietary right to his own "correct" and autonomous viewpoint. A representative view is thus an elusive phenomenon and usually lacks the essential element (for European purposes) of replicability. Thus, if ten people are asked what they think, there may be ten disarmingly certain viewpoints without any one person being prepared to engage in the calumny of challenging another.

None of this should be taken to mean that there are never Pitjantjatjara points of view. There certainly are, but tradition determines both the occasions and the manner of stating them. No doubt, in time, there will emerge a replicable consensus on the issues now being discussed. In the meantime acts of consultation should be viewed with caution.

There is nonetheless, a real sense in which the Pitjantjatjara want a stake in the policing system. But there seem to be two levels of thinking, one political; the other managerial. The problem is that what is desired politically does not seem to work-out managerially.

The political position is characterised by a desire to see Pitjantjatjara men participate in the policing of the area but lifted out of the kinship trap through the empowerment believed to derive from having a uniform and a police car. Thus, the Ernabella community advisor in 1981 advised that there was a system of wardens operating at Ernabella consisting of senior community members who resigned when they saw their positions becoming untenable due to their potential involvement in the use of force. However, according to him, the community wanted the vesting of police powers so that wardens could arrest offenders and, at the same time, have a way of coping with family retaliation. This same viewpoint has been put to the Committee



separately at several meetings over the past four years, and has carried with it a belief in the ability of a uniform or badge to afford immunity from violence. At Nyapari in 1981 the Pitjantjatjara Council made a strong plea for the introduction of wardens with full police powers together with uniforms and vehicles.

At the political level, then, the position is apparently clear.

However, at the management level, the difficulty has been illustrated ad nauseum in Central Australia, and runs a familiar course. Thus at Amata in 1969, following the resignation of the first two atunmanykupais the job fell to a senior and respected community member who had been brought up on a nearby station. As well as being a highly competent stockman he was familiar with European custom and fluent in English. At the expiration of two weeks he wrote the following letter: 25

*"I am sorry boss, I don't like this job to chase around the person, and I would like to be an ordinary man. People might have bad thoughts about this man chasing around people, and they will hurt me. This what I think and it's true. Please I want to be ordinary. I don't want to be a police officer from now on."*

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25. Nyinninga Stewart - personal communication.

Pitjantjatjara realists, even in the moment of supporting the principle of police aides, will acknowledge that in the practise there is a real potential for violence, particularly if one Pitjantjatjara were unilaterally to lay hands on another. These difficulties may not be absolute, as the (special) case at Finke, Northern Territory shows, but are seen as sufficient to cast real doubt on the wisdom of initiating a police aide scheme. As previously intimated, Pitjantjatjara and European observers with whom we have discussed the matter are uniformly sceptical of the scheme's potential to work as intended - except for its capacity to provide further income-producing positions in Aboriginal communities.

In fact, the extensive anecdotal material so far encountered by the Committee provides consistent, almost inexorable, confirmation of the improbability of introducing a successful police aide system which is based on using individuals from the communities in which they would be required to serve.

To make matters worse, the evidence suggests that the aide system - police or otherwise - as a category of employment has not become an effective institution in Central Australia except at routine level. It is at the political and executive levels that the Pitjantjatjara have shown greatest ability, interest and energy.

. Need for a new Approach

Here then there is an enigma posed by the Pitjantjatjara: wishing on one hand to have a stake in the modern innovations and services affecting them, but on the other, concentrating their energies on the politics of autonomy and leaving the managerial tasks to European employees.

There is, however, in the Committee's view much scope for South Australia to develop a new approach, based on experience and factors intrinsic to this State. Essentially, this would be to stop looking at effects requiring police action, and start looking at causes which require social action. However, before looking at proposals in detail, the role of courts first needs to be considered.

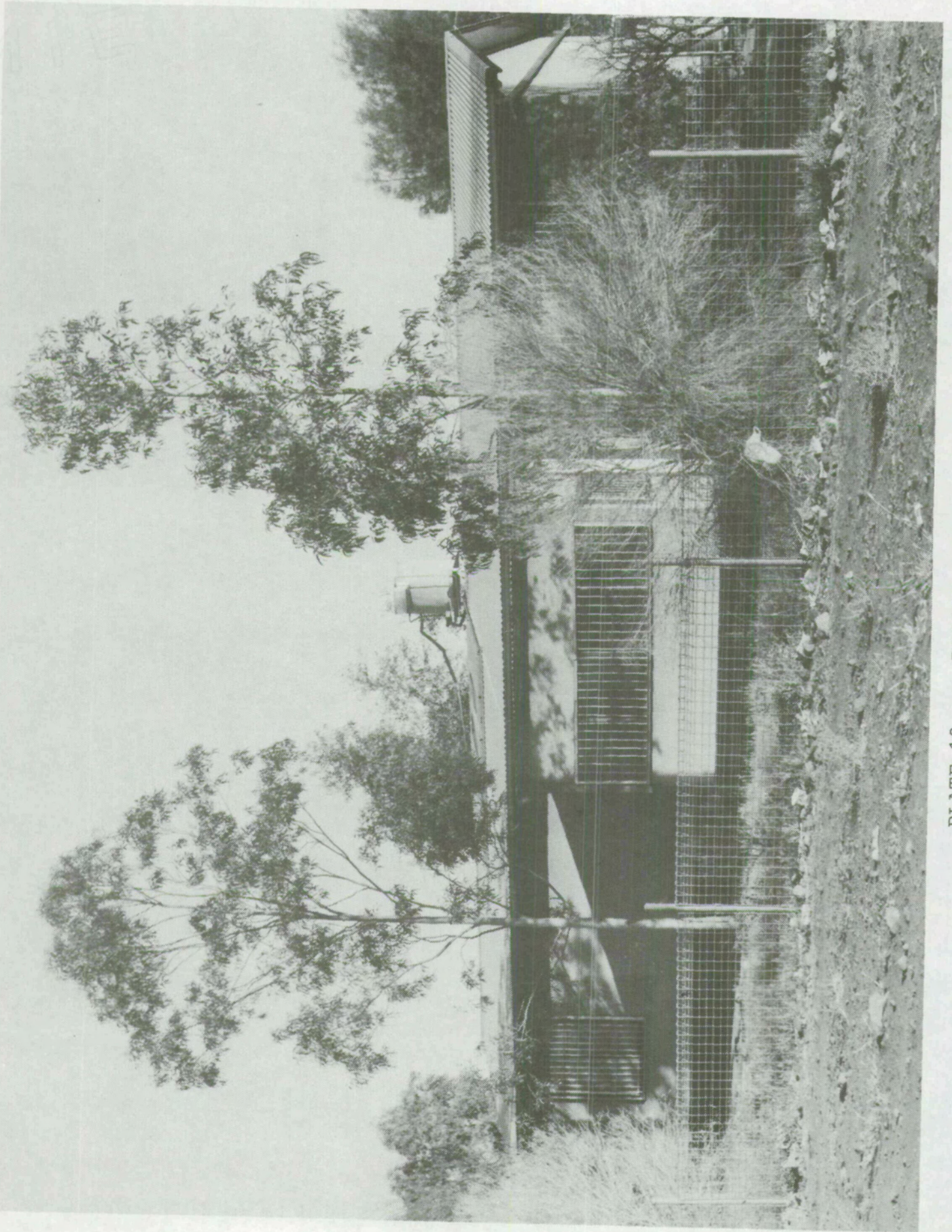


PLATE 10 - BARRED WINDOWS, INDULKANA

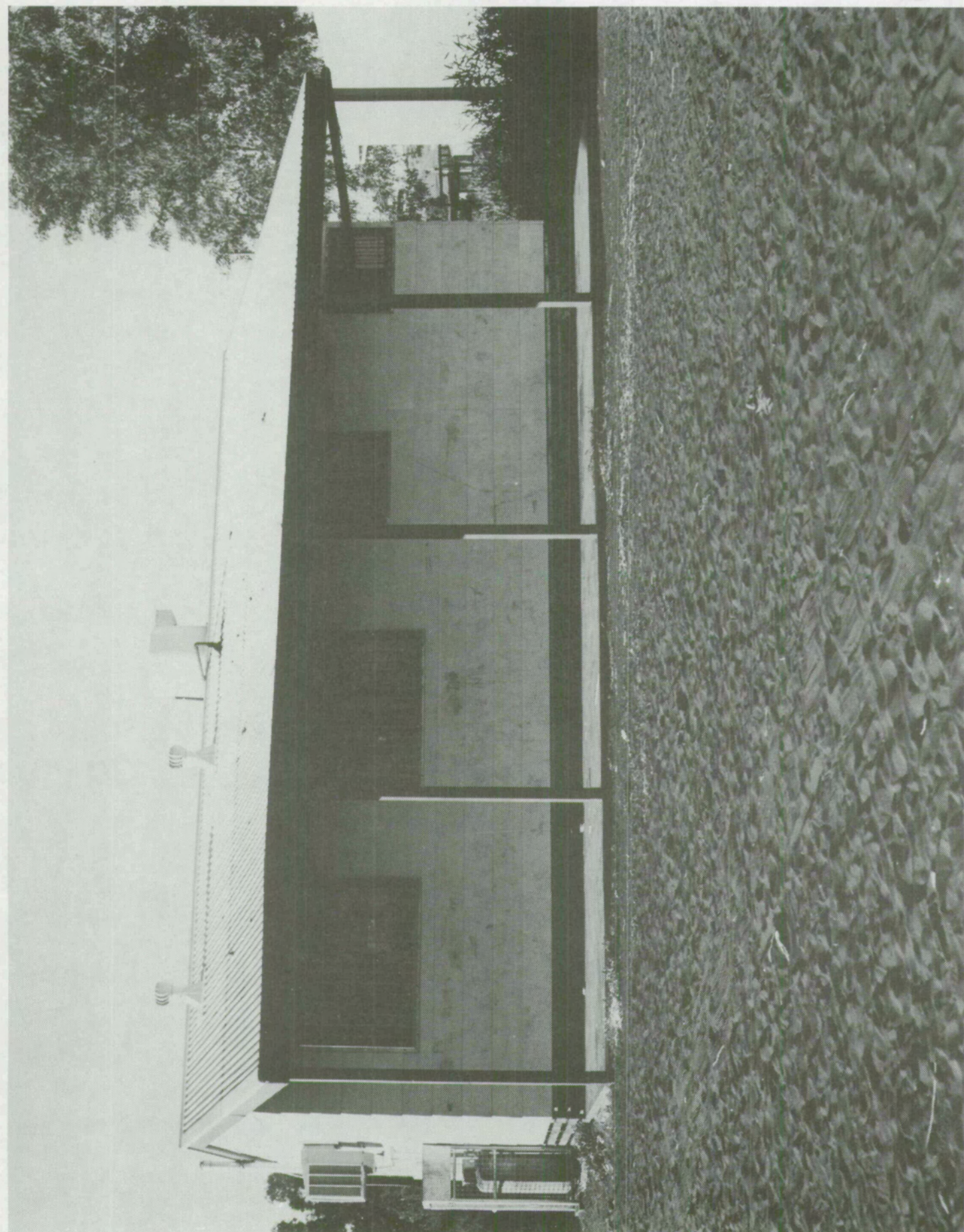


PLATE 11 - BARRED WINDOWS, AMATA



PLATE 12 - OLD HOUSE - PAPUNYA

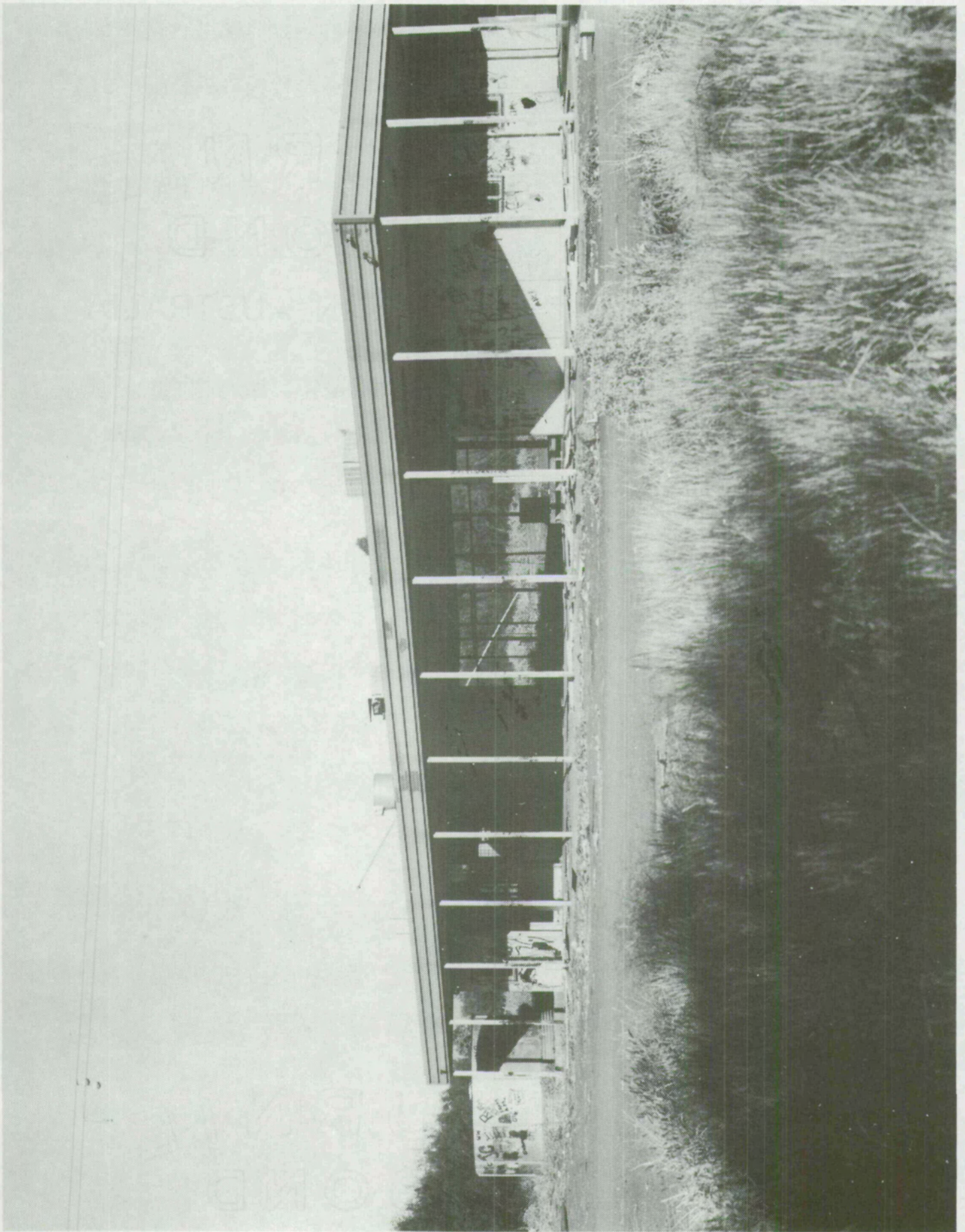


PLATE 13 - AMATA COMMUNITY CENTRE

## CHAPTER 6

ROLE OF THE CONTEMPORARY JUDICIAL SYSTEMFrequency of court proceedings

At the time of writing, the practice of the Magistrate of Port Augusta is to visit the North-West area once every four months. This follows a long-standing tradition of relatively infrequent Magisterial visits to the North-West - though it is a substantial improvement on the situation up to the early seventies when offenders were taken to the JP's court at Oodnadatta. The conclusion of this Committee is that three Magisterial visits a year is unacceptably infrequent and negates the notion of summary justice.

The Committee considers it vital that the frequency of visits be increased, and we fully concur with the contention of Mr. W.C. Chivell (see Appendix 3), that they should be doubled. The reasons for such an increase seem to us to be as follows:

- To visit the areas under consideration less than once every four months is in conflict with the notion of summary justice.
- Interaction between the Pitjantjatjara and the South Australian legal system has increased with affluence, particularly by children.



- New problems have been created by the presence of liquor outlets at Marla, Mintabi and Yulara.

If there is to be enforcement of effective laws concerning alcohol and petrol sniffing, it is probable that cause lists will be much longer. This would be in line with Pitjantjatjara expectations.

However, this Committee holds the view that regardless of the length of cause lists, magistrates should attend on the appointed days so that each community may expect regular attendance by judicial officers.

Moreover, during any visit where there is a light court work load the judicial officers involved would be able to have the opportunity of gaining insight into Pitjantjatjara customs and practices, and to become personally acquainted with the people with whom they deal.

#### Remand, Punishment and Rehabilitation

As already noted, part of the difficulty of dealing with children in accordance with the requirements of current legislation arises from the existence of remand facilities in Adelaide, remote from the North-West. Those facilities are wholly inappropriate as institutions which might punish or rehabilitate young Pitjantjatjara offenders.

In the process of informing itself of alternatives, the Committee inspected Giles House in Alice Springs, a rehabilitation centre established by the Northern Territory Government for child offenders in the southern region. At one stage the Committee was attracted to its being used by the South Australian courts for children in the North-West of the State. Apart from the fact that Giles House is small and invariably filled to capacity, there are technical difficulties precluding serious consideration of such an arrangement.

On the other hand, concerned individual Pitjantjatjara in the North-West have attempted to establish their own centres, the most oft-cited of which is Angatja, some 90 kilometres west of Amata. It is here that the husband and wife team of Charlie Ilyatjari and Nganyintja have attempted, with the aid of some State and Commonwealth money, to establish a centre to which child offenders may go, and, as it were, be redirected into the ways of their own culture. The Committee has, and still does, support the principle of the venture but its practice has proved something of an enigma. While observers generally support the concept, there is no convincing evidence that it has achieved anything of value except of a transient nature. In part, this may be due to problems associated with bringing together irreconcilable behavioural elements of the two cultures.

Again, this has to do with the use of force - however much it may be viewed as a last resort. But the very idea of a remand centre implies the real, or potential, unilateral exercise of force in order to keep the offending child located there for the time specified. However it is virtually impossible for a Pitjantjatjara to exercise such force without incurring the disputation described in the last chapter.

As for rehabilitation, schemes like those at Angatja seem to be making assumptions about the transferability of exotic scenarios to the Pitjantjatjara. Principally, these relate to re-education by concerned peers. But again such programs require the majority of people to subscribe to values ultimately legitimating the coercion necessary to make the treatment stick. Rehabilitation from petrol sniffing is something which would hold widespread interest among Pitjantjatjara parents - particularly mothers - but the possibility of this being achieved in circumstances such as those prevailing at Angatja should be viewed sceptically since restraints on movement would be required. In any event, schemes in their various forms still beg the question of whether rehabilitation works at all, even in ideal circumstances.

At the same time, punishment, and possibly rehabilitation is often initiated by courts in respect of offences which the majority of people do not necessarily see as genuine - typically, the violation of European property by children. Property, stigmatized by Pitjant-jatjara children as "only belonging to a whitefella", is not subject of the respect and the associated values of proprietorship held by Europeans. Violation therefore does not necessarily occasion serious social disapproval. In these circumstances, a Pitjant-jatjara may not even acknowledge that there is a condition to punish or rehabilitate.

It is at these fundamental levels of values that there is a wide departure between Pitjant-jatjara and Western Europeans with comparatively little by way of common ground when it comes to dealing with punishment and rehabilitation. Ultimately, the Committee would see problems like remand, punishment and rehabilitation being dealt with in the context of environments yet to be created in the North-West. Given time, it may be entirely appropriate for the Government to re-establish its presence in places like Amata or Ernabella, perhaps under the provisions of Local Government legislation and conventions.

In such circumstances it would seem desirable that a remand centre be established which, while providing means of incarceration, would put the emphasis on activities rather than rehabilitation, and do this in conjunction with the Community Resources Task Force proposed elsewhere in this Report. But whatever happens, we are strongly of the view that, except in exceptional circumstances, children should not be sent outside the lands for remand or punishment even though the present alternatives may be less than satisfactory.

The Report now turns to a consideration of several steps which we believe to be practical, and whose implementation would do much to ameliorate the problems so far described.



PLATE 14 - ANGATJA OUTSTATION

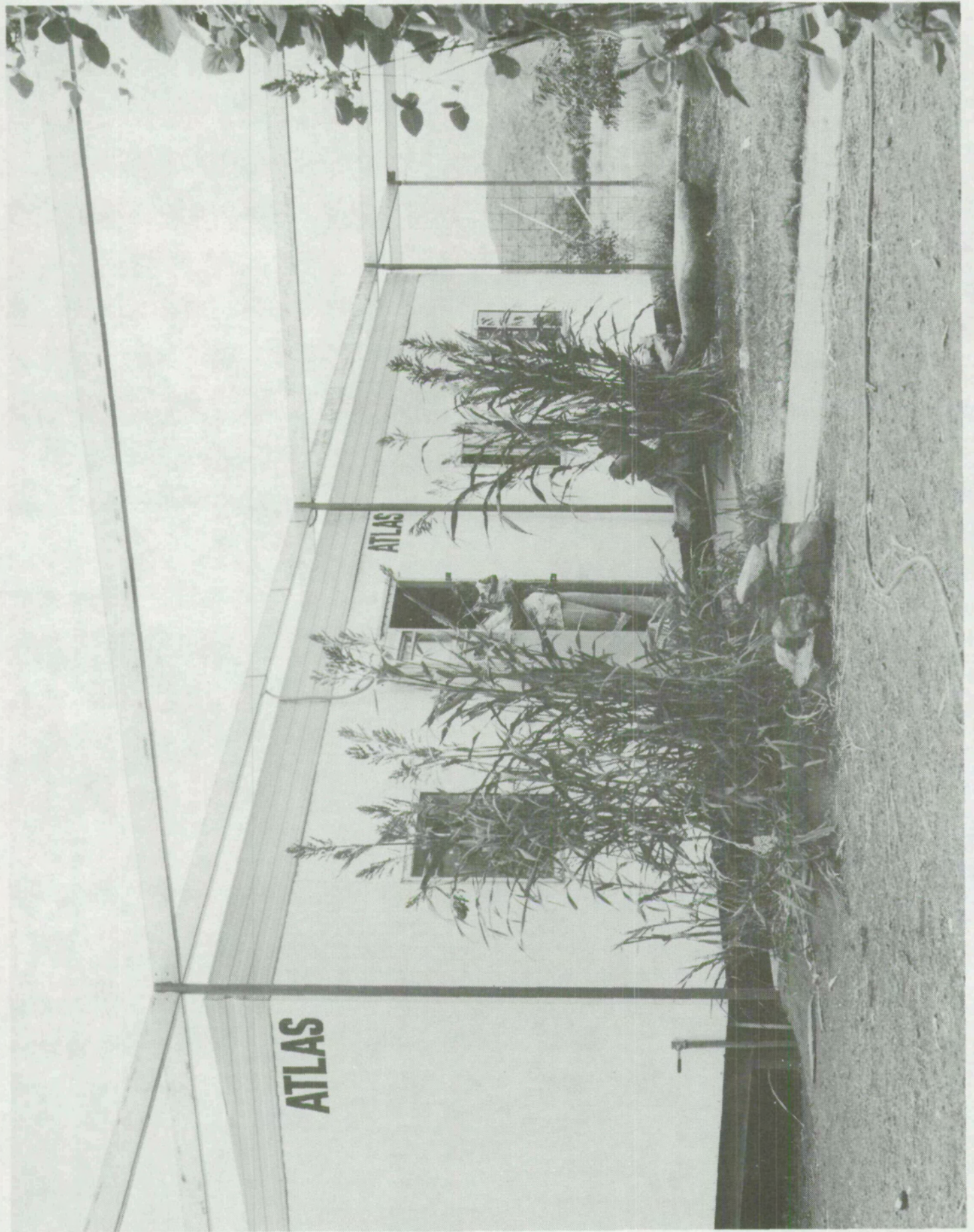


PLATE 15 - KALKA HOSPITAL, NO BARRED WINDOWS

## CHAPTER 7

RECOMMENDED APPROACHESPRINCIPLES

Recommended approaches to law and order in the North-West have been formulated in accordance with the following principles:

- . The present system of policing works well and is generally respected.
- . The major problems are, in the first instance, not essentially police matters.
- . It is a mistake to conceive law and order in isolation from other social issues and problems.
- . The fundamental issue is an anomaly in the operation of authority in the major settlements, where children have been able to create new but inappropriate norms of behaviour.
- . There is a need to establish procedures for policy development and review in respect of all issues bearing on State Government interests in the North-West.
- . So far as possible, any innovation should both be consistent with Pitjantjatjara autonomy, and have a flow-on benefit to the wider South Australian Community by enhancing at least some aspect of it.



- . The provision of measures now proposed for Pitjantjatjara communities should be seen as nothing more remarkable than an extension of the conventional role of government in servicing the needs of communities within the State.

As well as taking into account the factors so far mentioned, the proposals to follow reflect, more generally, the need to keep the perspective focussed on cause rather than effect, and on the need to encourage the development of appropriate community expectations and values so that effective coping institutions will develop locally. It should be added that we are conscious of the Pitjantjatjara desire to be directly involved in policing of the area but as already argued, we fear there to be real difficulties in the practice. This is not to say that in an ideal world we would be opposed to the introduction of police aides. In fact, in grappling with this question we have been at times inclined to support it as a measure worth at least a try. However, when considered both in relation to the evidence derived from our visit to Central Australia in June/July 1984, and to the sensible use of resources, we now feel compelled to see other initiatives as having greater priority.

The following proposals are conceived as inter-dependent and designed in recognition of the futility of providing "single solutions". Equally, it is advanced that each proposal should be able to develop in accordance with changing needs and in the light of experience.

ESTABLISHMENT OF A NORTH-WEST POLICY BUREAU

In consultation with the Pitjantjatjara Council, the South Australian Government should establish a North-West Policy Bureau, in order to provide the Government with policy advice, and to review matters affecting the North-West without prejudicing Pitjantjatjara autonomy.

Such a bureau should be conceived as providing, in part, the means of continuity in policy formulation in a situation long characterised by succeeding generations of observers investing resources in rediscovering similar solutions to old problems. In part, it should ensure consistency of policy formulation among observers of the same generation, each independently proposing solutions to the same problems from their own specialist perspective. Finally, the Bureau would act in a broking capacity in order to facilitate the sensitively effective handling of issues in Pitjantjatjara/State relationships.

The Bureau would therefore record and evaluate developments, and where appropriate, coordinate proposals and initiatives as they emanate from Government (State and Commonwealth), semi-government, and community sources.

The need for such an arrangement is illustrated by the petrol sniffing issue. At the time of writing there are initiatives approaching the matter from police, health, socio-legal, and community welfare perspectives. If Government intervention is to be sought, then presumably there would have to be guidelines to check the adequacy of the various approaches in terms of consultation, the opportunity for involvement of appropriate Pitjantjatjara and government instrumentalities, reference to relevant documents, their positions in Commonwealth/State arrangements, and their relations to existing Government priorities. There would then need to be machinery for information handling, preparation of any ancillary submissions and investigations, and the dovetailing of decisions into the administrative processes of the State.

On the face of it, it need not be a big office, although exact size (and location) would have to be subject of determination by the Public Service Board. But it would not seem unreasonable to allocate one or two senior public servants to deal with an area as large and complex as the Pitjantjatjara lands, and to monitor the diverse issues which occur in respect of them.

PITJANTJATJARA ADELAIDE OFFICE

Discussions should be convened with the Pitjantjatjara at Ministerial level with a view to establishing a permanent Pitjantjatjara office in Adelaide for the purposes of:

- Communications concerning Pitjantjatjara/ Government affairs and liaison with the proposed North-West Policy Bureau.
- Cultural interchange.
- Liaison with the public on entry, environmental, and cultural issues.
- Purchasing and transport.
- The development of appropriate accommodation for Pitjantjatjara families and individuals visiting Adelaide.
- The monitoring of developments in communications, education and legislation as they affect the Pitjantjatjara.

COMMUNITY RESOURCES TASK FORCE

Essentially this proposal is directed at normalizing the conduct of children, and is conceived as a small, mobile Task Force which would be cross-cultural, interdisciplinary, and powerful.

The role of such a Task Force would be preventative. Members should be prepared to work as a team in conjunction with other specialists. They would also need to speak Pitjantjatjara and have had some experience and training in the anthropology of remote areas. They should be prepared to work in the closest collaboration with the Pitjantjatjara Council, Community Councils, the proposed North-West Policy Bureau, as well as all other relevant government and community based instrumentalities in the North-West. In the first instance there would need to be a top level approach on the part of the Pitjantjatjara Council and the Minister of Community Welfare to the Commonwealth, for the funds set out below, such an approach being justified on three major grounds:

- The Pitjantjatjara have for four years been making pleas for positive assistance in the field of child offending.
- The problems, from a Pitjantjatjara perspective, are intractable since they are non-traditional in character.
- Land Rights and self management notwithstanding, the evolution of events in the North-West is locking the Pitjantjatjara more and more into cross-cultural cul-de-sacs, and in that context they are looking increasingly to the Government for assistance.

. Aim

To provide services, disburse resources, conduct research, disseminate information, obtain assistance, and give physical support to measures reducing the incidence of petrol sniffing and the commission of offences by children in the Pitjantjatjara lands: to develop structures and conventions which - to the extent effective in dealing with child problems - would survive the turnover of particular personalities.

. Composition

Male community worker/sociologist: Ideally an older person with the capacity of being sensitively authoritative.

Female community worker: Ideally mature age with background in sociology/anthropology/politics.

Pitjantjatjara community worker: Ideally mature male of good standing in the community.

. Duties

- In the first instance to publicise for six months in advance, the proclamation of the proposed legislation making petrol sniffing an offence by holding specified adults responsible (see p.

- To liaise and consult with community councils and women's groups to devise recreational, educational, and social strategies to reduce the incidence of petrol sniffing and child delinquency.
- To liaise and consult with the Pitjantjatjara Council to obtain its views on any planned innovation.
- Disburse funds provided by the Minister to individuals and groups having been assessed as having viable proposals to help children.
- Work among parents and children to discourage petrol sniffing by providing counselling and facilitating activities programs.
- Write and disseminate information aimed at discouraging petrol sniffing.
- Liaise with the Department of Community Welfare and the Department of Further Education with a view to devising "critical hours programs" to occupy children in centres between the hours of 6 pm and 12 midnight.
- To assist the South Australian Police Force in identifying offenders and those responsible under the proposed petrol sniffing legislation, and to advise courts of relevant kinship relationships for the purposes of fixing penalties.

- To discuss with communities the practicality of demolishing vandalised buildings which may afford convenient places for petrol sniffing.
- To identify the incidence of petrol sniffing and delinquency by locality: to quantify the extent of the problems, and recommend ameliorative measures to relevant local groups and the Minister.
- Provide statistics and relevant sociological and anthropological information on relevant aspects of the behaviour and aspirations of children.
- Report annually to the Minister of Community Welfare.

#### Structure

- To be set up as a Task Force on the basis of a three year life, with members on yearly contracts. To report direct to the Minister of Community Welfare and Aboriginal Affairs. Operation to be reviewed annually by the Minister.
- Required to consult at all times with North-West Policy Bureau, the Pitjantjatjara Council, the Department of Community Welfare Northern Region, Oodnadatta Police, S.A. Courts Department and Commonwealth Department of Aboriginal Affairs.



. Funds

- Salaries

1 @ \$35,000	
1 @ \$35,000	
1 @ <u>\$20,000</u>	\$90,000

<u>Allowances</u>	\$20,000
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Recurrent

Travel	12,000	
Office expenses	5,000	
Projects	50,000	
Accommodation	10,000	
Maintenance	<u>5,000</u>	\$82,000

Capital

2 4x4 Motor vehicles with long-range tanks, SSB radios, and spares	<u>\$30,000</u>
<u>TOTAL</u> .....	<u>\$222,000</u>

ALCOHOL

The action indicated for South Australia seems clear - i.e.,

- Promulgate regulations under the provisions of the Pitjantjatjara Land Rights Act 1981, prohibiting the carrying or consumption of liquor on the lands.
- Control liquor outlets South-East of Indulkana.
- Act while there is agreement among the Pitjantjatjara communities that the measure should be taken.

It would seem to the Committee that if Europeans working in South Australia with the Pitjantjatjara were to oppose prohibition on the grounds of some infringement of their rights, this should be taken as an indication of an incapacity or unwillingness to serve in that part of the State. It was noted by some observers that in the Northern Territory the greatest obstacle communities face in dealing with the liquor problem, comes from the belief by Europeans that their "democratic rights" were being prejudiced. This seems to us to be almost unbelievably hypocritical.

The promulgation of rules proscribing the consumption and carrying of alcohol should be carried out quickly as an act which is both within the realm of the possible and one which would receive popular support from the Pitjantjatjara. The Committee sees its involvement in the drafting of the rules as appropriate.

#### PETROL SNIFFING

We recommend that petrol sniffing be made an offence in accordance with the general instructions now given. It is emphasised, however, that the drafting of any legislation would require the full consideration of details to ensure complete legal workability.

- The offence of inhalation of toxic substances (as scheduled by the legislation) be created.
- The schedule, in the first instance, should include petrol.

- Cases may be heard summarily regardless of the age of the defendant.
- Any penalty determined by a court must not be levied in respect of any child as defined in S.4 of the Children's Protection and Young Offenders Act 1979 as amended.
- In respect of any children convicted of the offence penalties must be levied at either
  - .. Father
  - .. Mother
  - or
  - .. a person recognised by the Pitjantjatjara as a person loco parentus.
- Penalties to be to the order of \$100 for 1st; \$200 for 2nd and \$500 thereafter.

#### TRAINING

In the Committee's view attention should be given to the question of training of all judicial officers. At the September, 1983 Seminar on Aborigines and Criminal Justice held by the Australian Institute of Criminology, it was recommended, inter alia, that,

*"All police officers should undergo a compulsory course in Aboriginal studies which shall be an examinable part of the normal overall curriculum throughout the duration of their police career and that use should be made of existing educational institutions which have specialised in Aboriginal studies (for example, South Australian Task Force at the South Australian Institute of Technology), to prepare the educational material needed."*<sup>26</sup>

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26. Australian Institute of Criminology Seminar, "Aborigines and Criminal Justice.", September, 1983. Recommendations. See Appendix 3.

The Seminar also thought that special attention should be given to "suitability of persons appointed to the Aboriginal Reserves and other places having high Aboriginal populations".

Further, the Seminar felt that officers appointed to such areas ought to undergo suitable induction training which would familiarise them with the duties they will be expected to perform in that particular community.

We would add that judicial officers and police be expected by their Departments to be able to converse in the Pitjantjatjara language, and that the relevant training be provided.

At the same time, it would make considerable sense if the suggestion offered by Professor C.D. Rowley were built into any developments in policing settlements - that is, that the old edifices of assimilation, the now crumbling administrative centres like Amata, could be used as centres for Europeans to learn about the Pitjantjatjara culture. In the Committee's opinion, this is certainly not far-fetched.

In 1981 there was a remarkable offer from the people of Amata inviting Europeans to go to Amata and then to Angatja to be taught Pitjantjatjara culture, by the Pitjantjatjara. That particular theme, of course, has a wider applicability than the police - though there would be nothing to prevent their being the first to take advantage of it.

If young police were to have their early experience of Aborigines and Aboriginal culture in this way, it is probable that they could do much to inculcate fresh values and conventions within the Force, which might well take the considerable amount already being done a further step ahead to improve Police-Aboriginal relations.

#### COURTS

A further element of any strategy to improve life changes for the Pitjantjatjara lies in the role of the courts. In the context of this Report the courts should work in cooperation with the proposed Community Resources Task Force in dealing quickly with offences - particularly the proposed offence of petrol sniffing.

#### - Frequency of Convening the Court of Summary Jurisdiction

It is proposed that the current arrangements for the administration in the North-West lands be altered to the extent:

- .. That the court be convened on six occasions per year at each of the existing circuit places - Amata, Ernabella and Indulkana and be extended to include hearings at Pipalyatjara and Fregon: and that at least three of the circuits per year be convened by a judge or acting judge of the Children's Court.

- .. That the arrangements outlined by Mr. W.C. Chivell S.M. in his report of the 18th July, 1983, be implemented and particularly that the circuit be conducted by road and not air.  
(See Appendix 3)

- Remand

Notwithstanding the absence of satisfactory alternatives, courts be directed not to send child offenders to centres outside the Lands for remand, assessment, or sentence, notwithstanding the provisions of the Children's Protection and Young Offenders Act, 1979 as amended.

- Punishment

That courts be asked to direct, where at all possible, punishment in respect of juvenile offenders, to parents and guardians.

#### EXPANSION OF POLICE SERVICES

Pitjantjatjara wishes notwithstanding, no hard case is in evidence for the establishment of Police Stations in the lands or the introduction of police aides. We feel the present system is elegantly conceived, works well, and has an enviable reputation. However, should the Pitjantjatjara judge there to be the need, then any arrangements should be formulated only as a result of their giving an account of their requirements to government direct, and at the same time being prepared to provide at least some of the extra resources needed.

In this regard, it should be noted that the Pitjantjatjara have developed effective bargaining institutions and a great deal of expertise in negotiating Grants-in-Aid funding from the Commonwealth government. That, in conjunction with the State Grant for Aboriginal advancement, gives the Pitjantjatjara genuine scope to exercise its independent judgment.

## CHAPTER 8

CONCLUSION

The Pitjantjatjara of South Australia, are highly traditional people who are benefitting from a renaissance lifestyle made possible by the homelands movement, and Government facilitation of self-management. The maintenance of law and order still owes much to the effectiveness of traditional modes of dispute resolution, and to the unobtrusive but effective deployment of the S.A. Police Force on a mobile basis.

Serious problems, however, are emerging in the case of children. Here, the generation benefitting from a lowered infant mortality rate, is only partly integrated with the life enhancing possibilities offered through the return, made by their parents and grandparents, to the traditional culture. Participation in alternatives seems to be bringing the worst of all worlds - though curiously enough the way is perfectly legal - petrol sniffing, obesity, VD, and consumerism, and for some, an over consumption of alcohol. Coping with these problems has tended to address effects rather than causes, with the result that a disproportionate number of the State's child offenders are to be found in the North-West, having committed petty theft, breaking and entering, indecent language, illegal use of motor cars, and some assaults.



Many of the contemporary ideas for solutions carry the familiar stamp of good intentions combined with a perception of the problem, believed by the person purporting to solve it, to be a breakthrough in insight and understanding. This Report calls for an end to reinventing the same solutions to old problems, and the establishment of the capacity of Government to act and intervene not only where required, but with due reference to a considered policy framework. Having said that, two things are plain: firstly, that the Pitjantjatjara, as citizens of South Australia, have a real problem. Secondly, they are calling for assistance, and the assistance they want has much to do with restoring into the hands of parents authority to control their children.

The recommendations of the Report have been concerned to address these fundamental issues.



PLATE 16 - ERNABELLA CREEK

THE UNIVERSITY OF AUSTRALIA

APPENDIX 1

MEETINGS, INSPECTIONS AND TRIPS UNDERTAKEN  
between December 1981 and June 1984

1. Public Meeting, Amata 14 April, 1981: between some 150 representatives of the Pitjantjatjara people residing at Amata and Commissioner Bruce de Belle, Australian Law Reform Commission. (Judge J. Lewis, Mr. A. Collett, Sgt. F. Warner, and Mr. D. Hope - observers)

This meeting was convened in the course of consultations conducted in 1981 by the Australian Law Reform Commission's Aboriginal Customary Law Reference, in respect of Discussion Paper 17. In essence, the meeting proposed that consideration might be given to the localisation of procedure in courts of summary jurisdiction - with local Aborigines taking a prominent part in the work of the bench. At the same time it was intimated there should be a modification of customary law to bring practices into line with the common, and statute, law of the wider Australian community.

2. The Engagement of Maru Consultants

Mr. J.G. Tregenza was retained between 17 April, 1983 and 15 May, 1983, to report on issues in law and order in the North-West. The terms of reference together with Mr. Tregenza's report appear as Appendix III.

3. Field Trip - David Hope, 15 May 1983 - 30 May 1983

The purpose of this trip was to follow-up work undertaken by Maru consultants, and to extend it further to

the West to people of Pitjantjatjara and to concentrate on the collection of relevant ethnographic and statistical data.

4. Oodnadatta - Sgt. Warner with Sgt. Gerharday,  
2 December, 1981

Here the question of Aboriginal involvement in Juvenile Aid Panels was raised, statistics were obtained - and are included in this report at page        A review was made of the current state of law and order. In essence, this confirmed juvenile offenders as the major offenders as the major area of difficulty.

5. Wednesday 9 December, 1981

Meeting between Judge Lewis, Judge Kingsley Newman, Chief Judge Adelaide Children's Court, Mr. J. Anderson SSM, Senior Magistrate, Adelaide Magistrate's Court; Mr. M. Harris, Assistant Director, Department for Community Welfare. The meeting discussed the unsatisfactory state of arrangements concerning ways and means of dealing with juvenile offenders. Judge Lewis expressed concern that the magistrate's visits were infrequent, and that remand facilities for juveniles were inappropriate and inadequate.

6. Field Trip - Aboriginal Customary Law Committee - 2 -  
20 November, 1981

Participants were Judge Lewis, Sgt. Warner, and David Hope. The report and diary of the trip appear as Appendix II. In substance the trip noted problems created by the demographic shift which followed upon the homelands movement of the second half of the '70s. With people moving out of the major centres, the administration of justice becomes more difficult. Parents

are finding it increasingly difficult to cope with problems of juvenile behaviour - particularly petrol sniffing.

In accordance with custom, children did not necessarily reside continuously with their parents, and may, in some cases gravitate to the major settlements where in the absence of real supervision, they engage in deviant behaviour. Principally this takes the form of petrol sniffing, which has become widespread among children of all ages of both sexes. As noted in the 1981 Report, it has become more visible, and, it would seem, more tolerated.

During the trip it became apparent that the Pitjantjatjara were also concerned with what amounts to an authority vacuum created by the impotence of customary modes of dealing with modern offences, and a good deal of uncertainty, mixed with wishful thinking, on the part of observers and the Pitjantjatjara alike as to how new ways and means might be created. In this context wardens have been talked to about ad nauseum, and are subject of further discussion of this Report (see page 56).

7. Aborigines and Criminal Justice Seminar, 12 - 16 September, 1983; Australian Institute of Criminology, Canberra.

David Hope attended. Submitted the paper "Contemporary Issues in the Management of Law and Order in South Australian Pitjantjatjara Communities" now included as Appendix IV.

8. Port Augusta with Mr. Wayne Chivell, SM, magistrate to the North-West

Attending were Judge Lewis, Sgt. Frank Warner, and

David Hope - 1 October, 1983. The meeting discussed propositions already forwarded by Mr. Chivell to the Attorney General on 18 July, 1983 for a review of the frequency and extent of visits of magistrates to the North-West. This matter is referred to more fully in the body of the Report see

9. Pitjantjatjara Council Solicitor, Mr. Phil Toyne - 19 October, 1983.

The meeting was held by Judge Lewis. The meeting discussed the current constitution of the Pitjantjatjara Council and the Executive of the Anangu Pitjantjatjaraku. The meeting emphasised the paramountcy of concern relating to the regulation of alcohol consumption on the Pitjantjatjara lands. At the time of the meeting there were no effective regulations in force.

10. Presence of Yankunjara Council Meeting at Wintuwintujara 14 December, 1983.

Judge Lewis attended, and in addition held discussions with community representatives from Indulkana, Kenmore Park, and Ernabella. Judge Lewis posed questions relating to the desirability of instituting a system of Aboriginal wardens in the North-West.

11. Sgt. Frank Warner and the Pitjantjatjara Council Executive, 17 December, 1983.

At this meeting the Pitjantjatjara revived the notion of wardens being created to deal with local offenders.

12. David Hope - Alice Springs and Papunya, June 1984.

Field trip aiming to solicit views and obtain information concerning the role of police in Aboriginal lands.

LAW AND ORDER - ABORIGINAL COMMUNITIES -  
PITJANTJATJARA LANDS AND YALATA - STATISTICS

F. WARNER

1. INTRODUCTION

This examination of statistics relating to the extent and age grouping of offenders against law and order within the Pitjantjatjara Lands and Yalata Aboriginal Communities covers the twelve month period 1.7.82 to 30.6.83.

To facilitate comparison the data has been collated in similar format to that used in a previous paper (dated October 1981) which dealt with the period 1.1.80 to 21.12.80. However, two changes since the study of the 1980 period are noteworthy:-

"PUBLIC PLACE" OR "ROAD" OFFENCES

With the enactment of the Pitjantjatjara Lands Act, 1981, it was considered that the status of the area altered through it no longer being accessible to the general public. Accordingly, provisions under the Motor Vehicles and Road Traffic Acts having a 'road' element and Police Offence Act sanctions with a 'public place' element no longer apply.

DATA COLLECTION UNIT VARIATION

D.C.U. 5740 originally encompassed the Amata, Fregon and Pipalyatjara settlements together with the adjoining and surrounding areas within the North-West Reserve. Three distinct data collection units have been created to identify those three settlements, D.C.U. 5808 Pipalyatjara, D.C.U. 5809 Amata and D.C.U. 5810 Fregon. The three areas have been excised from the original D.C.U. 5740 which is retained to identify the remainder of the area - in effect, the total of these four D.C.U.'s is that previously identified by D.C.U. 5740.

2. SOURCE AND APPLICATION OF STATISTICAL DATA

2.1 The statistical data relating to offenders is derived from the South Australian Police Department computer print-out of "P.D. S28-A Crime Statistics Current Offender Report by UCC Category" for the period 1.7.82 to 30.6.83. It provides detail of the number of persons involved in offences cleared up with a breakdown by sex and age at the time the offence was committed.

The original information is provided in an 'Apprehension Report' by the personnel responsible for the arrest or report of the offenders.

Instances of the 'apprehension report' indicating that an offender is responsible for multiple offences are processed as:-

- . when the offences are a series of a like nature - indicated as one offence.
- . when the offences are of an unrelated variety or a mixture of some unrelated and some of a like nature - indicated by the numbers of unrelated types of offences.

The information has been collated to provide eleven tables.

Nine of the tables provide information on the number of persons involved in offences cleared up - by detailed category of offence and age group:

<u>TABLE NO.</u>	<u>D.C.U. AND AREA INVOLVED</u>
1	(5808 (Pipalyatjara)
	(5809 (Amata)
Combined	(5810 (Fregon)
	(5740 (North West general area)
1.1	5809 (Amata)
1.2	5810 (Fregon)
1.3	5808 (Pipalyatjara)
1.4	5740 (North West general area)
2	5741 (Ernabella)
3	5743 (Mimili)
4	5745 (Indulkana)
5	5774 (Yalata-Nundroo)

Two further tables provide information on the number of persons involved in offences cleared up - by the type of offence - Against Persons, Against Property, Behavioural or Motor Vehicle and Road Traffic:

Table 6	- totals for all D.C.U.'s examined for year 1.7.82 to 30.6.83.
Table 7	- totals for all D.C.U.'s examined for year 1.1.80 to 31.12.80 and year 1.7.82 to 30.6.82.



2.2 Statistical data relating to offences reported to police is contained in the computer print-out "P.D. S25-A Crime Statistics Current Period Offence Report by UUC category for the period 1.7.82 to 30.6.83.

It provides detail of the actual offences reported to or observed by police. The original information being submitted in a "Crime Report" to the police records section by the personnel receiving the report from a member of the public or as a result of observing an offence being committed.

<u>Locality</u>	<u>Offences Reported</u>	<u>Offenders Arrested/ Reported</u>
Pitjantjatjara Lands (all communities)	138	186
Yalata-Nundroo	194	189

### 3: PITJANTJATJARA LANDS COMMUNITIES

The offenders within the Pitjantjatjara Lands Communities show a significant tendency towards the child, youth and young adult age groups.

The total number of offenders from all communities, (Tables 1,2,3 & 4), includes only two females, 1 x 16 and 1 x 16-17 years.

#### Age groups of offenders x percentage:-

. Under 16 years	- 27.4%
. 16 and 17 years	- 21.5%
. 18 to 21 years	- 36.6%
. Over 21 years	- 14.5%

Primarily, the type of offence being committed are those against property; break enter and steal through to wilful damage 79%; behaviour offenders 9.7%; offenders against the person some 11.2%. (Table No. 6).

#### 4. YALATA COMMUNITY

The Yalata-Nundroo data collection unit will include some Caucasian offenders because of the Eyre Highway and Nundroo being outside the Yalata Aboriginal settlement area. However, it is considered that the great majority of the offenders recorded are Aborigines from Yalata. Only 7.9% of these offenders are females.

The most significant variance from the Pitjantjatjara Lands pattern is that a very large proportion of the offenders are mature adults.

##### Age groups of offenders x percentage:-

. Under 16 years	- 6.3%
. 16 and 17 years	- 12.7%
. 18 to 21 years	- 12.7%
. Over 21 years	- 68.3%

There is a more even spread in the types of offences being committed; behaviour 31.7%, against property 26.5%, motor vehicles and road traffic 22.2% and offences against the person accounting for 19.6% (Table 6).

#### 5. COMPARISONS 1980-1982/3

Comparison of the number of offenders, within four broad types, during 1980 and 1982/3 years are provided within Table No. 7.

##### Pitjantjatjara Lands Communities

A significant reduction in 'behaviour' type offenders is no doubt due to the change in legislation and the 'public place' element. Despite this, there are increases in the offenders against persons and property to create an overall increase of offenders by 20.8%. However, the total number of offenders for the whole area, 186, is only 3.6 per week for the year 1982/83 as against 3 per week for 1980.

##### Yalata Community

The data shows a significant reduction of offenders against property within the Yalata-Nundroo area. However, increases in each of the other types of offenders; against the person, behaviour and motor vehicle/road traffic, account for an overall increase in the total of offenders by 14.5%. An increase from 3.2 to 3.6 offenders per week.

Community Affairs &  
Information Service

24 January, 1984

\*S.A.P.D. CRIME STATISTICS - OFFENDER REPORT D.C.U's 5809 (Amata), 5810 (Fregon), 5808 (Pipalyatjara) and 5470 (The North-West area D.C.U., now minus the three settlements enumerated).

PERIOD 1/7/82 to 30/6/83.

PERSONS INVOLVED IN OFFENCES CLEARED UP - BY OFFENCE CATEGORY & AGE AT THE TIME OF OFFENCE

Offence Description	Age In Years At Time Of Offence				Total
	Under 16	16 - 17	18-21	Over 21	
Assault O.A.B.H.			1		1
Minor Assault		2	2	3	7
Break enter & steal	6	8	14	2	30
Arson	1	1			2
Larceny	1	1	1		4
Receiving/Unlawful possession		1			1
Unlawful use m/vehicle	3	4	10	1	18
Wilful damage	4	5	4	4	17
Escape custody				1	1
Interfere with m/vehicle		1			1
Unlawfully on premises	1	1			2
Totals:	16	24	31	13	84

Only 2 female offenders - 1 x under 16, 1 x 16-17 - Unlawful use of motor vehicle offence.

\* Data reproduced from P.D. S28-A Print-out.

Total offences reported for period 63 per PD, S25-A.

Community Affairs & Information Service.  
15.12.83

F. Warner, Senior Sergeant No.925/4.

\*S.A.P.D. CRIME STATISTICS - OFFENDER REPORT D.C.U. 5809 - AMATA

PERIOD 1/7/82 to 30/6/83.

PERSONS INVOLVED IN OFFENCES CLEARED UP - BY OFFENCE CATEGORY & AGE AT TIME OF OFFENCE

Offence Description	Age In Years At Time Of Offence				Total
	Under 16	16-17	18-21	Over 21	
Assault O.A.B.H.				1	1
Larceny	1	1	1	1	4
Unlawful use m/vehicle	1		3	1	5
Wilful damage	2	2	2	2	8
Escape custody				1	1
Unlawfully on premises		1			1
<b>Totals:</b>	<b>4</b>	<b>4</b>	<b>6</b>	<b>6</b>	<b>20</b>

-101-

All offenders male.

\* Data reproduced from P.D. S28-A Print-out  
 Total offences reported for period 20 per PD, S25-A.  
 Community Affairs & Information Service.

15.12.83

F. Warner, Senior Sergeant No. 925/4

\*S.A.P.D. CRIME STATISTICS - OFFENDER REPORT D.C.U. 5810 - FREGON

PERIOD 1/7/82 to 30/6/83.

PERSONS INVOLVED IN OFFENCES CLEARED UP - BY OFFENCE CATEGORY & AGE AT TIME OF OFFENCE

Offence Description	Age In Years At Time Of Offence				Total
	Under 16	16-17	18-21	Over 21	
Break enter & steal		1			1
Unlawful use m/vehicle			2		2
Totals:		1	2		3

All offenders male.

\* Data reproduced from P.D. S28-A Print-out.

Total offences reported for period 6 per PD, S25-A.

Community Affairs & Information Service.

15.12.83.

F. Warner, Senior Sergeant No. 925/4.

\*S.A.P.D. CRIME STATISTICS - OFFENDER REPORT D.C.U. 5808 - PIPALYATJARA.

PERIOD 1/7/82 to 30/6/83.

PERSONS INVOLVED IN OFFENCES CLEARED UP - BY OFFENCE CATEGORY & AGE AT TIME OF OFFENCE

Offence description	Age In Years At Time Of Offence			Total
	Under 16	16-17	18-21	
Minor assault			1	1
Break enter & steal		1	3	4
Totals:		1	4	5

All offenders male.

\* Data reproduced from P.D. S28-A Print-out.

Total offences reported for period 6 per PD, S25-A.

Community Affairs & Information Service.

15.12.83.

F. Warner, Senior Sergeant No.925/4.

\*S.A.P.D. CRIME STATISTICS - OFFENDER REPORT D.C.U. 5740 (The North-West area now minus - 5809 (Anata), 5810 (Fregon), and 5808 (Pipalyatjara).

PERIOD 1/7/82 to 30/6/83.

PERSONS INVOLVED IN OFFENCES CLEARED UP - BY OFFENCE CATEGORY & AGE AT TIME OF OFFENCE.

Offence Description	Age In Years At Time Of Offence				Total
	Under 16	16-17	18-21	Over 21	
Minor assault		2	1	3	6
Break enter & steal	6	6	11	2	25
Arson	1	1			2
Receiving/Unlawful poss:		1			1
Unlawful use m/vehicle	2	4	5		11
Wilful damage	2	3	2	2	9
Interfere with m/vehicle		1			1
Unlawfully on premises	1				1
<b>Totals:</b>	<b>12</b>	<b>18</b>	<b>19</b>	<b>7</b>	<b>56</b>

Only 2 female offenders - 1 x Under 16. 1 x 16-17 - Unlawful use motor vehicle offence.

\* Data reproduced from P.D. S28-A Print-out.

Total offences reported for period 31 per PD, S25-A.

Community Affairs & Information Service.

15.12.83.

F. Warner, Senior Sergeant No. 925/4

## \*S.A.P.D. CRIME STATISTICS - OFFENDER REPORT D.C.U. 5741 - ERNABELLA.

PERIOD 1/7/82 to 30/6/83.

## PERSONS INVOLVED IN OFFENCES CLEARED UP - BY OFFENCE CATEGORY &amp; AGE AT TIME OF OFFENCE

Offence Description	Under 16	16-17	18-21	Over 21	Total
Assault G.B.H.			1		1
Minor assault			2		2
Indecent assault on female			1		1
Break enter & steal	1	1	2		4
Receiving/Unlawful possession	1		2	1	4
Larceny	1	1	1		3
Unlawful use m/vehicle	1	2	4		7
Wilful damage			2		2
Discharge f'arm/throw stones			1		1
Escape custody		1	2		3
Unlicensed/Unregistered f/arms			1	1	2
Sell liquor w'out lic.				1	1
Interfere with m/vehicle		1			1
Totals:	4	6	19	3	32

All offenders male.

\* Data reproduced from P.D. S28-A Print-out.

Total offences reported for period 29 per PD, S25-A.

Community Affairs &amp; Information Service.

15.12.83

F. Warner, Senior Sergeant No. 925/4



\*S.A.P.D. CRIME STATISTICS - OFFENDER REPORT D.C.U. 5743 - MIMILI.

PERIOD 1/7/82 to 30/6/83.

PERSONS INVOLVED IN OFFENCES CLEARED UP - BY OFFENCE CATEGORY & AGE AT TIME OF OFFENCE

Offence Description	Age In Years At Time Of Offence				Total
	Under 16	16-17	18-21	Over 21	
Minor assault				2	2
Break enter & steal	1		2		3
Receiving/Unlawful possession	1		1		2
Larceny	1				1
Wilful damage	2	1	5	1	9
Behavioural offences				2	2
Pitjantjatjara Lands Act				2	2
Totals:	5	1	8	7	21

All offenders male.

\* Data reproduced from P.D. S28-A Print-out.  
 Total offences reported for period 19 per PD, S25-A.  
 Community Affairs & Information Service.

15.12.83

F. Warner, Senior Sergeant No. 925/4

\*S.A.P.D. CRIME STATISTICS - OFFENDER REPORT D.C.U. 5745 - INDULKANA.PERIOD 1/7/82 to 30/6/83.PERSONS INVOLVED IN OFFENCES CLEARED UP - BY OFFENCE CATEGORY & AGE AT TIME OF OFFENCE

Offence Description	Age In Years At Time Of Offence				Total
	Under 16	16-17	18-21	Over 21	
Assault O.A.B.H.			1		1
Minor assault	3	1	1		5
Break enter & steal	10	3	6		19
False pretences				1	1
Receiving/Unlawful possession	1				1
Larceny	1	2		1	4
Unlawful use m/vehicle	4	1			5
Wilful damage	5	1	2		8
Behavioural offences				1	1
Pitjantjatjara Lands Act				1	1
Unlawfully on premises	2	1			3
<b>Totals:</b>	<b>26</b>	<b>9</b>	<b>10</b>	<b>4</b>	<b>49</b>

All offenders male.

\* Data reproduced from P.D., S28-A Print-out.

Total offences reported for period 27 per PD, S25-A.

Community Affairs &amp; Information Service.

15.12.83.

F. Warner, Senior Sergeant No. 925/4

## \*S.A.P.D. CRIME STATISTICS - OFFENDER REPORT D.C.U. 5774 - YALATA-NUNDRROO.

PERIOD 1/7/82 to 30/6/83.

PERSONS INVOLVED IN OFFENCES CLEARED UP - BY OFFENCE CATEGORY & AGE AT TIME OF OFFENCE

Offence Description	Age In Years At Time Of Offence				Total
	Under 16	16-17	18-21	Over 21	
Assault G.B.H.			2	2	2
Assault O.A.B.H.			4	4	4
Minor assault		1	5	25	31
Break enter & steal	7	9	4	3	23
Larceny		2		1	3
Unlawful use m/vehicle		5		2	7
Cultivate/possess drugs	1		2	2	5
Wilful damage	3	4	1	9	17
Assault police			1	4	5
Escape custody				1	1
Resist/Hinder police			1	4	5
Refuse name & address				3	3
Self inflicted injury		1		1	2
Behavioural offences		1	6	13	20
Drunkness			1	17	19
Drive under influence liquor			1	2	3
M/Vehicle,D/Licence & R.T.Offences		1	2	36	39
Totals:	12	24	24	129	189

Only 15 female offenders

\* Data reproduced from P.D., S28-A Print-out.

Total offences reported for period 194 per PD, S25-A

Community Affairs &amp; Information Service.

15.12.83.

Table No. 6.

\*S.A.P.D. CRIME STATISTICS - OFFENDER REPORT D.C.U's 5809 (Amata), 5810 (Fregon), 5808 (Pipalyatjara), 5740 (N-W other), 5741 (Ernabella), 5743 (Mimili), 5745 (Indulkana) and 5774 (Yalata-Nundroo).

PERIOD 1/7/82 to 30/6/83.

NUMBER OF PERSONS INVOLVED IN OFFENCES CLEARED UP - BY TYPE OF OFFENCE

D.C.U.	Locality	Agnst. Persons	Type Of Offence Agnst. Property	Behavioural	M/Vehicle & R/Traffic	Total
5809	Amata	1	17	2	-	20
5810	Fregon	-	3	-	-	3
5808	Pipalyatjara	1	4	-	-	5
5740	N-W Other	6	49	1	-	56
	<u>Sub-total:</u>	<u>8 - 9.5%</u>	<u>73 - 87%</u>	<u>3 - 3.5%</u>	-	<u>84 - 100%</u>
5741	Ernabella	5	21	6	-	32
5743	Mimili	2	15	4	-	21
5745	Indulkana	6	38	5	-	49
	<u>Sub-total:</u>	<u>21 - 11.3%</u>	<u>147 - 79%</u>	<u>18 - 9.7%</u>	-	<u>186 - 100%</u>
5774	Yalata-Nundroo	37 - 19.6%	50 - 26.5%	60 - 31.7%	42 - 22.2%	189 - 100%
Totals:		58 - 15.5%	197 - 52.5%	78 - 20.8%	42 - 11.2%	375 - 100%

\* Data reproduced from P.D. S28-A Print-out.

Total offences reported for period 332 per PD, S25-A.

Community Affairs & Information Service.

15.12.83.

F. Warner, Senior Sergeant No. 925/4.

Table No. 7.

\*S.A.P.D. CRIME STATISTICS - OFFENDER REPORT D.C.U's 5809 (Amata), 5810 (Fregon), 5808 (Pipalyatjara), 5740 (N-W other), 5741 (Ernabella), 5743 (Mimili), 5745 (Indulkana) and 5774 (Yalata-Nundroo).

PERIOD 1/1/80 to 31/12/80 compared with 1/7/82 to 30/6/83.

NUMBER OF PERSONS INVOLVED IN OFFENCES CLEARED UP - BY TYPE OF OFFENCE per 12 month period.

D.C.U.	Locality	Agnt. Persons 1980 - 1982/3	Type of Offence			Totals 1980 - 1982/3
			Agnt. Property 1980 - 1982/3	Behavioural 1980 - 1982/3	M/Vehicle & R/Traffic 1980 - 1982/3	
5809	Amata	1	17	2	-	20
5810	Fregon	-	3	-	-	3
5808	Pipalyatjara	1	4	-	-	5
5740	N-W Other	6	49	1	-	56
<b>** 5740 as defined 1980 &amp; sub-total for 1982/3:</b>						
		6	64	22	2	94
5741	Ernabella	2	21	7	-	32
5743	Mimili	-	4	1	-	5
5745	Indulkana	4	13	4	1	22
<b>Sub-total:</b>						
		12	105	34	3	154
5774	Yalata-Nundroo	26	81	35	23	165
<b>Totals:</b>						
		38	186	69	26	319
						375

\* Data reproduced from P.D. S28-A Print-out.

\*\* For the 1980 period, D.C.U., 5740 included the localities now identified separately under D.C.U's 5809, 5810 & 5808. The sum total of the four units for the 1982/3 period therefore provides a comparison with the 1980 D.C.U. 5740 locality.

P.O. BOX 45  
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LOCAL COURT HOUSE

PORT AUGUSTA 5700

..... 18 July ..... 1983

J. P. Anderson Esq. S.S.M.,  
Local Court of Adelaide,  
301 King William Street,  
ADELAIDE 5001

Dear Sir,

I confirm that, between 25 June and 2 July inclusive, I toured the Aboriginal communities in the North-West of the State with Don Pedder, Supervisor, Services to Young Offenders, Department for Community Welfare, and Sergeant Frank Warner, Aboriginal Liaison Officer, Community Affairs Section, S.A. Police Department. Both of these people have extensive experience of the area, and the issues involved in the 'delivery' of Court Services to the area.

Sergeant Warner is a member of a committee, of which Judge Lewis is the Chairman, appointed by the Attorney-General to inquire into various issues concerned with Aboriginal people and the law, and I understand that some of the matters I propose to report upon are of interest to that Committee. I therefore seek your approval to supply a copy of this report to Judge Lewis.

As you know, I have been to the North-West communities several times, and often deal with people from the area in Port Augusta. I propose to set out in this report a number of observations and proposals which I suggest may improve the service this Department presently provides to the area. I suggest that such an improvement is very necessary and highly desirable. My conclusions are based upon discussions I had with many people in the area and, in particular, with Mr Pedder and Sergeant Warner. In case it may be thought that I have elevated myself to the status of an 'instant expert' on the subject, (which is the most dangerous of all types of person concerned with such matters) I should point out that I have relied heavily upon the experience and knowledge of all of these people.

We attended community meetings at Pipalyatjara, Amata, Ernabella, Fregon, Mimili and Indulkana throughout the week. All meetings were well-attended, and much interest was shown by the people in the issues raised.

A. PETROL SNIFFING.

As you may know, this is extremely widespread and of great concern. Eighty to ninety per cent of children between the ages of 10 - 18 (those of interest to the Children's Court) were thought to be

involved, with varying degrees of frequency and severity. It is a chronic and serious problem, and the parents are clearly worried and somewhat nonplussed about it. From my experience, it has been a factor in almost all offences which have come before the Court involving children in these areas. It is doing great damage to family structures and community life generally, not to mention the serious health problems with the children involved and material damage to community facilities which has resulted.

The following matters were discussed:

- (1) The Police could not arrest or charge children for sniffing alone.
- (2) Petrol sniffing is clearly a sign that the child is in need of help, and that preventative and rehabilitative action is clearly indicated, as offending is so often associated with the phenomenon.
- (3) The programmes described in my letter of 28 February, the 'Children's Camps' were showing good indications and needed support and encouragement from the community. (Such programmes were either operating or about to get under way in nearly all of the places we visited, and were receiving support and financial assistance from the Government in various forms).
- (4) It is clearly inappropriate and ineffective to deal with the problem except in the case of the most extreme offenders, by using anything other than community based programmes because:-
  - (a) there is a lack of staff in 'secure care' institutions who can speak the Pititjantjara language and who know the culture;
  - (b) the unsophisticated nature of the offending, compared with that of the inmates of institutions in Adelaide.
  - (c) traditional cultural attitudes and modes of dealing with children are undermined, as is the authority of parents and others whose traditional responsibility it is to deal with children, when such offenders are institutionalized;
  - (d) A trip to Adelaide is something of an 'adventure,' especially if one remembers that petrol sniffing is basically escapism anyway.

#### B. COMMUNITY ATTITUDES TO OFFENDING, AND THE JUSTICE SYSTEM GENERALLY.

I formed the view from our discussions that many of the people in these communities are confused and ill-informed about the function of the court and its place in the wider community.

It seems that there is a dichotomy between community attitudes to offending, as it is known to those who are familiar with the British system of justice, and offending against traditional, or customary law. As to the latter, there seem to be few problems. Such offending is probably infrequent, and is dealt with quickly and effectively. However, with such offences as stealing, breaking and entering, illegal use of motor vehicles, offences which are unfamiliar to traditional law, the attitude seems to be that they are the concern of the Police and the

Courts, and that they have little to do with the Aboriginal people themselves. I think a number of factors have influenced this:-

- (1) Crimes against property were virtually unknown in customary law.
- (2) Such offending was always dealt with by the white staff (it usually did not involve the property of an Aboriginal person) who reported the matter to the Police.
- (3) The offenders were usually arrested and refused bail, and were not dealt with in the community where the offence occurred.
- (4) The penalty was often institutionalization or imprisonment, which was also an unfamiliar phenomenon, and which deprived the local community of applying sanctions to the offenders.
- (5) Offending against property, even community property, did not involve a loss to the people which was appreciable to them. It was noticeable that, even though the people understood that they, as a community, owned the store, for example, the fact that the store is broken into or damaged has not been seen as a community problem.

#### C. PROBLEMS WITH THE PRESENT SYSTEM

It seems to me that if such offending is dealt with in the place where it occurs, and within a reasonable period, the people will then be more able to appreciate that the Court is not something separate from the community, with powers and purposes of its own, but rather that it is an instrumentality of the community which enforces rules simply (and, perhaps, hopefully) to enable people to live in greater security.

- (1) Presently, the Court visits once every four months to Amata, Ernabella and Indulkana.
- (2) It is not uncommon for cases to be dealt with more than one year after the offence occurred. This, combined with unfamiliarity with the system, language barriers, and changes of personnel, makes the whole procedure extremely unsatisfactory, particularly in relation to children.
- (3) People in Pipalyatjara, Fregon, Mimili and other places must travel 300 kilometres and more over the most atrocious roads to attend court, yet an indication of how seriously they treat the system is that there is surprisingly little 'absenteeism'. It is as relevant to the community to hear a case in Amata concerning an offender who has broken a window at Pipalyatjara, as it is to hear a case in Adelaide about an offender who has committed the same offence at Mount Gambier.
- (4) In the last few years there have been a number of different Magistrates visiting these areas. Some inconsistencies in attitude and approach have resulted. The whole object of having Courts visit these places is so that people can see and, perhaps, understand how the British system of Justice works. Inconsistency is undesirable anywhere, but in communities where



the people are so unfamiliar with the system and what it is trying to achieve it can be disastrous.

- (5) Ignorance of the community in which he sits is an absolute disadvantage for a Magistrate. In the wider community, a Magistrate simply reflects, as a natural process, the ideas and values of the community by virtue of the fact that he lives in it. He knows what constitutes a danger to it, what worries the people who live in it, what may motivate people to commit offences, who are the incorrigibles and who may be likely to benefit from an effort at rehabilitation. This knowledge is not absolute, and it varies from person to person. But a Magistrate going to, say, Amata for the first year or two, under the present system, knows none of these things about the community in which he sits, and there are few opportunities for him to find out:-
- (a) He needs to be able to talk to the local people - both those in authority, (Community Chairmen and the like, Community Advisers, School teachers, Community Welfare workers, Police Officers) and most importantly, the people themselves;
- (b) He cannot simply announce a meeting - that would be (and would be seen to be) arrogant and insensitive. Some time is required in order to make it known that he is available to talk, and is interested in doing so;
- (c) There are various people in each community who are motivated, interested, and willing to talk, and to assist in various ways. They may be in positions of authority, but often they are not. Rivalries and community politics are important, and must be understood and worked with. Knowledge of the place generally, some of its history, and the personalities of some of its inhabitants is vital in order to gain valuable insights into the area;
- (d) Such experience is also vital in being able to assess information put before the Court. Police prosecutors and defence Counsel are often as ignorant of local matters as the Magistrate is, and, particularly when trying to assess conflicting submissions, ignorance on the part of the Magistrate deprives him of his proper role.
- (6) I noticed that, when travelling by road, local people were much more ready to 'open up' and, perhaps, invite us to their home for a meal or cup of tea where a very useful discussion always took place.
- (a) Travelling by road allows more flexibility, and, I think, gives less of the impression that we are always in a hurry to jump into the aeroplane and move on to the next place. Ground transport is also useful, as the ability to move in and about the Community and to visit the camps where some of the programmes were operating was particularly informative;
- (b) It was also patently clear that the use of road transport enabled us to take proper sleeping, food storage, cooking and eating equipment with us, which is not possible in the aeroplane. I have described the visitor's accommodation in previous correspondence. It is inadequate, to say the least;

The ability to be somewhat 'self sufficient' and not have to rely on the facilities provided made our stay much more comfortable.

- (7) I consider that it is desirable that the Magistrate's Clerk should be a male person. Many Aboriginal children (most offenders are male) are extremely reticent, if not forbidden by custom, to speak in the presence of a female. This is particularly so if there are tribal matters relevant to their offending, as there often is. Many of these lads are at a very sensitive stage of their development, the pre-initiation stage, and it is likely that the presence of a female is highly embarrassing to them. It is one more factor which adds to the strangeness and confusion involved in their situation.

#### D. CONCLUSIONS.

It is desirable, I suggest, that visits should be as frequent as possible, but in any case, not less than once every two months.

- (1) Police, Community Welfare and Aboriginal Legal Rights Movement resources will have to stretch to meet the increased demand for their services.
- (2) Such frequency can not be justified in terms of case workload, but I suggest that there are special circumstances which apply:
  - (a) the remoteness of the area;
  - (b) the 'out of Court' time which needs to be spent with the community to keep up with current events;
  - (c) the need for the local people to become familiar with and confident in the Court system;
  - (d) 'justice delayed is justice denied' is even more apt in these Communities than it is generally;
  - (e) there are benefits involved in allowing the Magistrate to become familiar with an experienced in the Communities in which he is sitting, and to get to know valuable sources of information and assistance.
- (3) The Court should visit, as the need arises, all the larger Communities in the area, namely Pipalyatjara, Amata, Ernabella, Fregon, Mimili and Indulkana every two months. It may be that from time to time there will be no cases from a particular Community to be dealt with, but if that is due in some way to a Community programme, a visit to reinforce and applaud such a situation would still be useful in terms of resources utilization.
- (4) The Magistrate and his Clerk should travel by road in a properly equipped vehicle, separately from all other agencies involved. The advantages in this are:-

6.

- (a) flexibility,
  - (b) convenience,
  - (c) the ability to carry proper and appropriate equipment for the area,
  - (d) an improvement in the image of the Court.
- (5) That the Magistrate's Clerk be a male person. I realize that there are few male Clerks available but I am convinced that a Clerk of Court would be perfectly capable of doing the job:-
- (a) there are few trials and committals;
  - (b) remarks on penalty and evidence could easily be taken on a portable tape recorder (I understand these are presently available in Adelaide for use on views and the like) and transcribed later;
  - (c) weight restrictions make it difficult to take a typewriter on the aeroplane anyway;
  - (d) a Clerk of Court would also be familiar with warrants, bonds, etc. whereas most Magistrate's Clerks are not.
- (6) That there be not more than one or two Magistrates with a similar degree of experience, interest and commitment to the area to ensure that their attitudes and outlook are as consistent as possible, that they have the greatest opportunity to consult, and that, perhaps most importantly, they become familiar with the area, and become familiar faces to the people who live in it.

I have not discussed detailed proposals as to the logistics of such a venture, but I would suggest that the above proposals are feasible and involve only moderate cost. They would involve only minor realignment of present circuit responsibilities, and the provision of an appropriate amount of equipment. I would be very pleased to discuss the contents of this report with you further, when the opportunity arises. I thank you and the Department for making the time available so that I could participate in this very enjoyable and valuable trip.

Regards,



W. C. CHIVELL

SPECIAL MAGISTRATE

TO: ABORIGINAL CUSTOMARY LAW COMMITTEE.

RE: REPORT ON FIELD WORK FOR THE COMMITTEE  
IN THE NORTH-WEST, 27/4/83 to 15/5/83.

FROM: J.D. TREGENZA OF MARU CONSULTANTS.

JUNE, 1983

TO: ABORIGINAL CUSTOMARY LAW COMMITTEE.

RE: REPORT ON FIELD WORK FOR THE COMMITTEE  
IN THE NORTH-WEST, 27/4/83 to 15/5/83.

FROM: J.D. TREGENZA OF MARU CONSULTANTS.

I. METHODOLOGY OF CONSULTATION:

Having mind to the Terms of Reference (see attached Appendix B), and the limited time in the area, the approach adopted was simply to enter the Pitjantjatjara lands in the east, Indulkana, and to visit all communities travelling west to Pipalyatjara/Kalka, and then to return to Indulkana visiting once again all the communities travelling east. (See Diary, Appendix A). The initial aim was to outline the exercise and areas for consideration and have preliminary discussions (on the western journey), and, on the return eastern journey, to have more detailed and lengthy discussions with the people and the Communities.

This plan needed to be adapted as the programme progressed, due to the fact that the people had obviously been considering the issues to be raised for a long time and the introductory aspect of the plan was largely unnecessary. In fact, most of the detailed discussions occurred on the outward leg, and the return trip was used to clarify and add secondary details to the main points already made.

The Terms of Reference were used as a guide to discussions, except when talking with non-Aboriginal community workers and the Pitjantjatjara Council lawyer when they were discussed in sequence. It was felt inappropriate that the Terms of Reference be used as the basis for discussion in meetings, but rather that the people, without prejudice, express their own priorities in the area of law, law enforcement and perceptions over conflict. However, it should be noted that the vast majority of the areas in the Terms of Reference were in fact covered by the people in all of the communities.

## II. URGENCY OF NEED FOR SUPPORT:

Special emphasis and comment needs to be made on the issue of immediate responses and support by the 'authorities' on the social problems and suggestions of possible approaches to these problems by the people. Every community, group of people and individual made the comment that they recognize some serious problems in relation to the maintenance of order and control of social problems, that they have been expressing their concern to various authorities for many years, and, that they have been making recommendations about possible solutions or approaches to alleviate some of these problems for a long time. In view of this situation, the attitudes to another 'consultation' varied between enthusiasm, resignation, frustration and anger. All people said that the talking has to finish and the action has to start. To support this, every group made positive, concrete suggestions and recommendations. There was a remarkable degree of independent agreement and consensus on these suggestions. The message was clear: "Support us to act now, or the results may be irreparable social damage."

## III. ANANGU COMMENTS AND RECOMMENDATIONS:

The following are Anangu comments and suggested approaches concerning the issues of most concern to them. This report will deal with each issue separately whilst acknowledging that most are inter-related and often expressed within that framework. There is no attempt to order these categories on a priority basis, although the more immediate problems would appear to be in the areas of the use of alcohol, and petrol-sniffing, and the impact of related anti-cultural behaviour as a result of these activities. The priorities for action in relation to these categories largely reflected the immediate or recent problems experienced by each community - i.e. the alcohol issue and powerlessness of wardens was paramount at Indulkana, whereas the issue of petrol-sniffing related disruption was a high priority at Fregon.

### A). ALCOHOL AND RELATED PROBLEMS:

The abuse of alcohol is viewed primarily as a 'young fellas' problem. Whilst there are obvious exceptions, this view was generally expressed throughout the area. There appear to be two aspects of the alcohol issue:

3.

- 1) The consumption of alcohol away from the community (it can be assumed this means away from the freehold land).

Generally, the comments were along the lines that: if the drinkers wanted to drink they should go to Alice Springs and keep their problems and fights to themselves; Come home sober and it's okay, not good, but acceptable. Distance is a matter for consideration in that there should be no alcohol outlets nearby. This issue is of particular relevance to Indulkana where they have Marla less than an hour's drive away. This means that there is ready access to alcohol and that the drinkers usually end up at home drinking. The view that the Anangu people have been let down by the law over the issue of a licence at Marla was forcefully expressed.

The fact that there were two deaths as a result of this access to alcohol during the period of the field trip underlines the peoples' concern.

- 2) The consumption of alcohol in the community, and the return of drinkers to the community in a drunken state.

This is the most serious aspect of alcohol use as perceived by the communities. The fears expressed as a result of this behaviour are associated with rowdiness and disruption to community life, disorderly behaviour, anti-cultural behaviour (talking and singing non-public matters and overlooking appropriate relationship behaviour, etc.), violence and assaults, disputes which involve non-Anangu weapons or stances, the driving of motor-vehicles in a manner which puts people, particularly children, at risk, etc. It should be noted that not only are these aspects of behaviour unacceptable, but also, that they in turn can cause a chain reaction of responses through the whole community, which in themselves have the potential to be extremely disruptive, and the cause for further 'offences'.

4.

These alcohol related problems, over the whole region, have reached a point where the people are now demanding the power to cope with them locally. The suggested approach to these issues may appear a little draconian, but merely reflects the level of exasperation. Every community meeting stated that disruptive drunken behaviour should be dealt with immediately and with force. Every community wants to have the mechanism available to apprehend the offenders, incarcerate them overnight, or for whatever time is appropriate, and to deal with the 'offence' on the spot, immediately. This has, of course, implications for the power of wardens and the status of local community courts. (See below).

It was stated in all communities that not only did they wish to have these powers but also they believed that by confiscating the offenders' vehicles and either destroying them or re-selling them for community benefit would they completely discourage abuses of alcohol in the community.

It should be recognized by non-Anungu authorities that the degree of severity of 'punishment' is dependent upon many factors, and that this suggestion is the most extreme action, outside proper Anungu mechanisms, which is proposed.

The implications for legislators and the judicial system is obvious. The people in the area want the ability to respond in this manner and to carry out such dissuading action to be supported and legitimized under European law.

There was also expressed in several communities the need for an alcohol re-habilitation programme along the lines of WOMA.

B). PETROL SNIFFING AND RELATED PROBLEMS:

Petrol sniffing by children and adolescents is of major concern to all communities. There appears to be an ambivalence towards the act itself. Most people believe that it is somehow 'dangerous' to the children involved, but do not understand how this may be and, it would seem that, whilst the sniffers do not cause trouble for others, it is easier to turn a blind-eye. However, there is no ambivalence toward petrol-sniffers who cause a disturbance or act in an anti-social or anti-cultural way. There is genuine and deep concern about the problem of petrol sniffing and for the sniffers themselves.



5.

This is particularly so now that the age range of active sniffers is from as young as five years to initiated adult males, and now includes adolescent girls. The greatest number of regular sniffers is in the 10-15 years old male range. The act of petrol sniffing is still generally perceived to be a childhood/adolescent phenomenon and the very few adults who still persist are viewed as exceptions. This 'new development' of adult male sniffers, should perhaps be monitored as a possible indicator of a change in the trend and pattern of sniffing.

As with alcohol, the reaction to petrol-sniffers is strongest when they disrupt the harmony of society. This disruption ranges from the nuisance factor of the wandering and noisy groups of children, the need to be on the alert to prevent sniffers stealing petrol from vehicles, to the problem of breaking and larceny from the school, store or white-peoples' houses.

All of the Communities want to have local power to deal with these sorts of offences when they occur. This includes the power and facilities to apprehend and hold offenders (which may mean a relatively large number in some cases (6-12)), to deal with the 'offence' immediately and to impose community 'punishment', not only affecting the children but in the form of fines on the parents or responsible adults, and, if some individuals persist, to demand of the system they be removed from the community for a set period of time. The removal of offenders not only refers to removal to places like Angatja (Umbukulu - see next section), but also to European institutions. This last option is seen as maybe the only effective course for a community, and an individual, when all other options have been tried or are unavailable.

C). HOMELANDS FOR JUVENILES - ANGATJA:

Angatja is an established homelands community receiving funding from the Department of Aboriginal Affairs through the Homelands Council, and some funding from the Department for Community Welfare for its role in caring for juveniles referred there by the Court. In May 1983 there were three such juveniles supposed to be living at Angatja but in fact only one was resident at the time of the visit. (The parents of this child expressed an interest in moving to Angatja to live and work there. The other children at Angatja at the moment are members of the extended family of Charlie and Nganintja). Angatja is a relatively well established homelands community with a series of sheds, stock yards and fences, garden, entertainment area and small generator for lights and the video machine. Further developments are planned.

6.

It was stated, both at Amata and at Angatja, that the petrol sniffers do not cause trouble when they are at Angatja and that this is primarily because there are many things to occupy them there, and that by doing work in the community they feel more a part of it.

Charlie and Nganintja stated that they need more support from the Government. They need funding for the on-going supply of food for the children, and for clothes and blankets which are now supplied by Charlie. He also requests an increase in his salary. It was pointed out that Homes in Adelaide fulfilling a similar function receive funding for salaries, bedding, clothing, ablution facilities, schooling etc. and that the Government should support Angatja in the same way.

One of the difficulties is that the Government only supports Angatja for the juveniles referred by the courts, whereas the people in the area see it as for all petrol sniffers and other children who may wish to go there. Some parents in Amata want their children to go to Angatja but this is not possible due to lack of funds to support the larger numbers. It would appear that many children enjoy going to Angatja and whilst there, do not sniff petrol, but when they return to Amata they rejoin the petrol sniffing group.

It was quite clearly stated throughout the north-west that places like Angatja should be supported so that all children have a chance to get out of the larger settlements and participate in useful community activities. The people believe that if the children have something like this to do, the problems associated with petrol sniffing will be alleviated, and many of the juvenile court appearances avoided. Each large community (i.e. Indulkana, Mimili, Fregon, Ernabella and Pipalyatjara) expressed the need for 'an Angatja' out from their own community. They all have specific places in mind and in some instances have made moves to begin. In addition, in several communities individual adults have been charged with the responsibility for caring for and supervising the behaviour of some petrol sniffers (e.g. Tommy Yaltjangki at Indulkana), and some adults are making special efforts to involve juveniles in community activities (e.g. Yaltja Young and the cattle project at Amata).

.../7

D) THE COURT SYSTEM:

The application of the South Australian justice system through the sittings of Court in the area is seen as a necessary, last resort to problem solving in the area. However, the people in all communities made several comments about the operation of these courts and made suggestions for changing the system.

One of the main criticisms of the current Court system is that quite often matters do not get dealt with by the Court until well after the events which precipitated the necessity for a court appearance, and hence, become less relevant to the community and the individual. In general, it would seem that the European justice system is only invoked when anangu systems can no longer manage a situation and a crisis exists which necessitates the calling for police intervention. It is the crisis that needs immediate attention, but the police intervention and the following justice system deal primarily with the individual, and, at a later time.

In addition, the action of the court is often seen to be inappropriate. If courts are viewed as a last solution to a problem then decisive action is expected. All communities made comments about the apparent leniency of courts in not jailing or 'sending away' some individuals who have been causing crises in their communities. Short periods sent away are generally seen to be of more use than bonds.

The court itself is viewed by the people as a way of applying community wishes on an individual rather than an opportunity for the individual to receive 'justice' from the Magistrate. The Pitjantjatjara Council Solicitor commented on the problem he has in representing a client in a community which expects the community interests to be the first consideration. Some Magistrates have discussed matters with the community and/or Council, before making orders, but it would appear that the people would still desire to have more input and influence on the application of justice.

There are certain categories of offences that the people do not intend the Community Council to consider. In general, they wish to be able to deal with most alcohol and petrol sniffing related offences and the less serious driving, and breaking and larceny offences.

8.

E) SOUTH AUSTRALIAN POLICE INVOLVEMENT:

The people are not satisfied with the current arrangements (concerning the involvement of the Police Department), and wish to see changes. The major criticism of the police is they are too far away at Oodnadatta and because of this are unable to respond to crises in the communities and be present when needed. At every community meeting it was clearly stated that the police should be present when requested and assist the community to control difficult situations. The apparently frequent police response of "that is community business, you should handle that yourselves" to requests for action, is generally viewed as counter-productive.

The problem of the police base being so far away from the communities is compounded by the fact that apart from Mimili and Indulkana, none of the communities have normal and efficient telephone facilities which makes even contacting the police a difficulty. It was pointed out that although there are police facilities (in which there may be police radios), in each community, no-one in the community, not even the Wardens had access to these facilities. In addition, whilst the police department may very well have access to an aircraft based in Adelaide, it was pointed out that the majority of instances requiring police presence are at night when access to the aircraft is irrelevant.

In view of these difficulties, the communities requested a local police presence in the form of small police stations staffed by one or two empathetic non-Aboriginal police officers: these to be located near Amata, Indulkana and Kenmore Park. The rationale behind the locations for the facilities is that the Kenmore Park police station can readily cover the central area including Fregon and Ernabella, and that each station covers one of the major access roads into the area. The suggestion for the Kenmore Station initially came from the Fregon and Ernabella communities and was readily agreed to by the Kenmore people.

Apart from supplying police assistance at hand, it is thought that the presence of the police nearby will in itself be a positive factor in controlling some disrupting behaviour. The people also see an important role for these police officers in training of Aboriginal wardens with whom they should work.

9.

Some negative aspects of immediate police presence were acknowledged and several communities discussed the possibility of having the police officers seconded to the communities for the period of their stay in the area. This concept requires further development and discussion.

F) ABORIGINAL WARDENS:

All of the large communities in the area have at least one resident warden employed by the community councils. These wardens have a peace-keeping role but the current system is viewed as unsatisfactory to all concerned. At all of the community meetings the wardens described the difficulties that they have very forcefully and, in Amata and Indulkana, made separate submissions to the Committee through the field worker.

The peace-keeping role of the wardens is currently seen to be necessary in attempting to control the level of petrol sniffing and maintaining a presence of authority at night to prevent trouble or illegal acts by the petrol sniffing group. Their presence is also required to deal with issues related to the bringing of alcohol into the community and dealing with disturbances caused by those affected by alcohol. The wardens are also expected to be the liaison between the community and the police during routine visits as well as during any crisis.

At present the wardens have no special power to deal with the problems which arise and this factor coupled with the fact that the job expected is just too much for one person, is the main complaint. The lack of formal authority to apprehend and hold an individual causing disruption in the community, is viewed as a major weakness in the system. In addition, the wardens do not have access to the police facilities such as the radio and lock-up which further weakens their position. As the funds for the warden have to be found within tight community budgets, there is no vehicle generally available for the wardens' use which severely restricts their range of operations. Nor do the wardens receive any training to fit them with special skills that they may require, and nor is their position recognized or supported by the supplying of special uniforms. Finally, the communities generally, and more particularly the wardens themselves, do not believe that the police visiting the area accord the wardens the status that will assist the wardens to perform the job expected of them. Police visits are seen to be too brief, and often the wardens are not the first point of contact for the police, and in some reported instances, the wardens have not been contacted at all.

The people in the area see a need for a warden-type role in their communities. They believe that for that role to be effectively fulfilled, all of the weaknesses and criticisms as outlined above should be rectified. Of immediate assistance would be the official recognition of the role of wardens by supplying uniforms and vehicles and giving the wardens access to use of the existing police facilities in the communities.

G) NON-TRADITIONAL ASPECT OF OFFENCES:

In the area of defining what kinds of offences should be dealt with by the court system, it would seem that a general rule of thumb is that if an act falls outside the cultural ability of the people to control it or respond to it, then that matter should be dealt with by the courts. Conversely, Aboriginal things should be dealt with in a traditional manner. In deciding which issues should be dealt with by the courts, each one is dealt with separately, taking into account all of the circumstances surrounding the issue. For example, assaults by one individual upon another which lead to a reciprocated assault in accordance with traditional behaviour are generally considered finished and not the concern of the court system. Exceptions to this are if the assault involves more than one person upon another or if non-traditional weapons (e.g. knife, axe or steel crowbar) are used.

During the trip, the field worker witnessed an incident at Mimili during a football match which began with an argument between two men, developed into a general dispute with people aligning themselves in accordance with Aboriginal custom, climaxed with the first combatant driving his car around the oval and roads at high speed and in a dangerous manner after he had managed to get in one or two blows on the back and shoulders of the other, and was finished by the brother of the second man who struck and broke the fore-arm of the first with a steel crowbar in a final melee. The general comments by the people present was that the unacceptable behaviour was the dangerous driving, which could have injured somebody, and the fact that the final blow was struck with a non-traditional weapon. At no time during or after the incident was a serious suggestion made to call in the police.

There are a range of non-traditional offences relating to alcohol, petrol-sniffing and motor vehicles which, because there may not be traditional responses available to the community to deal with the issues, may need to be dealt with by the court system.

As mentioned above in Section (C), the people propose that most of these issues should be dealt with by local community courts, and the Magistrates Court used to deal with matters that the Community Court feels are beyond its capabilities.

H) POST MORTEMS:

There is general concern about the performing of post mortems. It would appear that there are strong objections to the act itself which is upsetting to the people, and this is further aggravated by the fact that the post mortems have to be performed away from the communities, leading to long delays between death and burial. The people want to be able to hold funerals on the day after a death. Long delays interrupt and distort the traditional mourning procedures. Comments were also made that people are unhappy that the coffin is sealed when it arrives back from the post mortem and that rather it should be open.

The necessity for holding post mortems is not very well understood and they are generally viewed as unnecessary interference. Some of the problems relating to post mortems may be alleviated when the new health service is established in the area with doctors and small operating theatres in the major communities.

I) DISRUPTIVE-BEHAVIOUR PATTERNS AND TRENDS:

The people expressed concern that the problems associated with alcohol and petrol sniffing were increasing. Whilst this generally may be true, it would appear the pattern is that incidents and crises come in cycles and occur at different times in different places. A series of incidents and offences related to alcohol or petrol sniffing extending from a couple of days to several weeks may occupy the communities' attention and energies and cause severe disruption to normal life until it is brought under control. This is usually achieved by the removal of key offenders from the community. Life then tends to return to normal until the next outbreak of unacceptable behaviour.

As mentioned earlier, alcohol related offences are generally viewed as adult mis-behaviour and petrol sniffing and related offences is the domain of the juveniles. Young men tend not to offend after initiation in areas other than alcohol related offences. Whether these offenders were previous petrol sniffing offenders is unclear without further investigation. There is an expectation that petrol sniffing will cease after initiation and, with some exceptions, this is the case. The converse argument that initiation will stop petrol sniffing and related offences, sometimes put in the past, appears to be under reconsideration. This proposition was not put to the field worker during the trip, and some people suggested that perhaps the application of this solution with some offenders before they exhibited appropriate maturity, could be the reason for their continuing offending as adults.

J) PROBLEMS WITH EUROPEANS:

The Aboriginal communities did not identify specific offences by Europeans, either between themselves or against Aboriginals, but did make the point that all people living in a community should be bound by the same laws relating to offences. Therefore, Europeans, if offending, should be also dealt with in the Community Court. Some of the general areas of problems relating to Europeans are issues surrounding the sale of motor vehicles by Europeans, abuse of alcohol by some, entry to the lands without permission and permits, and some actions by European employees which people suspect are dishonest (e.g. theft of community money and/or property).

The Pitjantjatjara Council lawyer reported that there were constant white offences committed that do not reach the courts because no complaints are made by the Aboriginal party, whereas when the Europeans are the victims there is always a complaint made. The advisor at Indulkana concurred with this opinion and also made the comment that the outback lax attitude to the law held by many Europeans does not assist the community to maintain law and order. This is most serious where some Europeans openly flout the European law introducing an element of conflict and confusion in the Aboriginal community. He also made the comment that the more relaxed 'bush police' approach is not appropriate and that the police should be forceful, firm and equal in the application of their duties in the area.



The Aboriginal cattle stations reported that there was cattle duffing in their cattle going on beyond what is generally accepted as a normal level, and the manager of Kenmore Park suspects that the regulations of the various pastoral Acts and rules are not being as stringently applied to neighbouring white owned stations as they are on the Aboriginal properties.

#### IV. CONCLUSIONS:

The approach to the problems of the inter-relationship of Aboriginal Customary Law and European Statutory Law taken by the people in the area would appear to be that of avoiding analysis of the two systems, but rather by making practical suggestions as to how the problems caused by the current situation could be over-come. As can be seen from the body of this report, the people agree on a range of suggestions to alleviate troublesome areas in the present system that would allow the two systems to co-exist in a co-operative setting. They now want action along those lines.

The principal areas of concern are those of juvenile offences largely related to petrol sniffing and adult offences related to the use of alcohol. To cope with the issues they want a police presence in the area, a formalizing and strengthening of the power and role of the Aboriginal wardens, and the instituting of a Community Court system supported by the police and European judicial system.

The people believe that in relation to juvenile offences the Community Courts can act immediately and should have the power to fine parents or the appropriate adults and/or to send the children to one of the homelands communities especially run for this purpose. If a child continually offends and cannot be managed under this system (it was suggested after three appearances), he should then be referred to the European court which should take firm action and incarcerate the offender for a period of time (generally expressed as three months). They also suggested that the same basic system be applied to adults appearing before the community courts with two alterations, these being that the sending of adults to homelands is inappropriate and, that for alcohol related offences involving a motor vehicle, the Court has the power to confiscate and dispose of the offender's vehicle.

Given these changes, the people are confident that they can control the disrupting and damaging social aspects causing problems for them. The people are asking for assistance from the European system to support them and their survival as Aboriginal people. They want the application of the European systems to be as culturally compatible as possible with their system.

14.

Finally, it should be recognised that whilst this report dwells upon problems and some of these are quite acute, community life and positive developments in the area continue, and life goes on in a generally peaceful manner.

As the Committee has previously noted, the producing of Kulpitja makes the point that the continuing existence of Aboriginal knowledge and law is of paramount importance to the people, but that now it may be under pressure from a direction that is beyond the immediate control of the people. They are now asking for support from the European system to back up their law to ensure survival.

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# AUSTRALIAN INSTITUTE OF CRIMINOLOGY

Director: ~~William Gilford~~

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Telephone: 82 2111 Telegraphic: AUSTCRIM

31 January 1984

Senior Lecturer in Charge  
Aboriginal Task Force  
SA Institute of Technology  
North Terrace  
ADELAIDE SA 5000

Dear David

Last September this Institute conducted a seminar on the subject of Aborigines and Criminal Justice. During a plenary session on the final day of the seminar a number of recommendations were approved.

A copy of those recommendations is enclosed herewith for your information.

Should you require any further information on the topic, please do not hesitate to contact me.

Sincerely

A handwritten signature in cursive script, appearing to read 'Colin Bevan'.

Colin Bevan  
Assistant Director (Training)

CONFERENCE RECOMMENDATIONS

PREAMBLE

THIS CONFERENCE expresses its concern at the disproportionate representation of Aborigines in the various criminal justice systems and calls upon all governments - Territorial, State and Federal - to improve those systems insofar as they disadvantage Aborigines.

THIS CONFERENCE accepts that the causes of the high level of Aboriginal involvement in the criminal justice systems are complex. Further research must be undertaken into those causes. However, this Conference recommends certain measures for immediate implementation in order to reduce the level of disadvantage currently incurred by Aborigines within the criminal justice system.

THIS CONFERENCE recognises that although financial and policy responsibilities for reform primarily attach to governments, Aboriginal involvement in relevant decision making is crucial to sound policy development and implementation.

EDUCATION

THIS CONFERENCE considers the lack of knowledge presently existing at all levels of the community concerning Aboriginal culture and customs is cause for concern and recommends:

School children

- \* THAT all school children receive comprehensive instruction concerning the culture and customs of Aborigines.

Criminal justice personnel

- \* THAT all judicial officers attend training courses concerning the culture and customs of Aborigines.
- \* THAT all court officers, solicitors employed by Aboriginal Legal Aid organisations, custodial officers and other appropriate staff receive similar instruction.
- \* THAT all police officers receive examinable instruction concerning Aboriginal culture and customs in the normal course of their career training.
- \* THAT existing educational resources possessing expertise in Aboriginal culture and customs, eg, Aboriginal Task Force, South Australian Institute of Technology, should be consulted on the preparation of material.

Funding

- \* THAT the Federal Government provide additional funds in order to permit the education of school children and criminal justice employees concerning Aboriginal culture and customs.

COMMUNICATION

THIS CONFERENCE notes the continuing need for Aborigines to be informed concerning their rights and obligations with regard to criminal justice matters generally and recommends:

Rights & obligations

- \* THAT information be made available to Aboriginal groups concerning their rights and obligations in the sphere of criminal justice, eg, tape recordings, videotapes, etc.

Aboriginal media systems

- \* THAT the greatest possible use be made of Aboriginal media systems in disseminating such information.

DANGEROUS SUBSTANCE ABUSE

THIS CONFERENCE expresses its concern about the rate of alcoholism and petrol sniffing in Aboriginal communities and recommends:

Assistance

- \* THAT appropriate assistance and support be provided Aboriginal communities so as to enable them to better cope with such problems.

ABORIGINAL-POLICE RELATIONS

THIS CONFERENCE notes the importance of good relations existing between Aborigines and officers serving in the various State and Territory agencies throughout the Federation and recommends:

Police selection & training

- \* THAT special consideration be given to the selection of suitable officers for assignment to Aboriginal Reserves (or similar areas) and other places possessing large Aboriginal populations.
- \* THAT police officers assigned to Aboriginal communities be suitably prepared for such postings.

JUSTICES OF THE PEACE

THIS CONFERENCE recommends:

Appointment of stipendiary magistrates

- \* THAT stipendiary and other magistrates be appointed as a matter of urgency to serve in those locations at which justices currently exercise judicial functions.

SENTENCING DATA

THIS CONFERENCE recommends:

Funding of sentencing decision database

- \* THAT the Federal Government fund the placing on computer file of reasons given for judgment of all cases heard, initially in the various Supreme Courts and, subsequently, in other courts.

Sentencing data for judicial officers

- \* THAT sentencing data be made available to holders of judicial office in all jurisdictions.



Crime statistics

- \* THAT detailed and current uniform crime statistics be made available to the judiciary, crown prosecutors and legal aid organisations.

ABORIGINES UNDER SENTENCE

THIS CONFERENCE recognises that Aborigines in Australia are among the most imprisoned people in the world and expresses concern regarding the likely or actual effectiveness of prison dispositions and recommends:

Alternatives to imprisonment

- \* THAT whenever imprisonment or fine (default of payment of which could result in imprisonment) is considered by a judge or magistrate, alternatives to imprisonment, such as community service orders and probation, be specifically considered in respect of Aborigines.
- \* THAT, whenever possible, Aborigines sentenced under community service order schemes work for Aboriginal organisations and interests.

- \* THAT Aboriginal community organisations be identified and utilised in expanding community service order schemes.
- \* THAT Aboriginal fine defaulters be permitted to work their fines out through community service.

#### Drug & alcohol problems

- \* THAT gaol sentences NOT be seen as treatment for alcoholism or other addiction.
- \* THAT awareness programs (where not already available) be instituted in respect of Aborigines in correctional establishments so as to:
  - promote knowledge concerning drug and alcohol problems
  - facilitate contact between Aborigines and relevant treatment agencies.

#### Placement

- \* THAT particular care be taken in the placement of Aboriginal prisoners within the various correctional systems so as to optimise the effects of imprisonment.

Aboriginal advice on decision making bodies

THAT parole boards, classification committees and indeterminate sentence committees, as well as other decision making bodies, have either Aboriginal representation or access to Aboriginal advice when reviewing Aboriginal cases.

Assessment

- \* THAT consideration be given to evaluating the efficacy of psychiatric, psychological and other forms of assessment of Aboriginal prisoners.

Prisoner education

- \* THAT in order to utilise time spent in gaol by Aborigines to the best advantage, industrial training be expanded. It is desirable the Aboriginal section of the federal Department of Employment and Industrial Relations as well as local Aboriginal organisations assist in this regard.
- \* THAT community resources be utilised for the education of Aboriginal prisoners and that they be permitted day leave

for study on exactly the same basis as other prisoners.

Remission

- \* THAT current remission systems be reviewed so as to remove any possibility of disadvantage being experienced by Aboriginal prisoners.

ABORIGINAL EMPLOYMENT IN CORRECTIONS

THIS CONFERENCE expresses the view that all prison and probation & parole agencies should undertake a firm commitment to the principles of equal employment opportunity and affirmative action in respect of Aboriginal employment and recommends:

Recruitment

- \* THAT every effort be made to ensure the professional and administrative staffs of all prison and probation & parole agencies comprise at least two per cent Aborigines by the year 1990.
- \* THAT advertisements for Aboriginal corrections workers make maximum use of Aboriginal networks.

Development

- \* THAT consideration be given to exchanging Aboriginal correctional officers between States, for six to 12 months, as part of their occupational development.

Aboriginal field officers

- \* THAT greater use be made of Aboriginal field officers to assist communication between Aboriginal prisoners and professional support staff.

Criminal history

- \* THAT a criminal record not be an automatic disqualification for employment of Aborigines in the correctional area.

Work release

- \* THAT correctional authorities employ Aborigines to be responsible for placing Aboriginal prisoners in work release schemes.

Halfway houses/bail hostels

- \* THAT Aborigine-controlled halfway houses be established (where not already available) to assist Aborigines in settling back into society upon their release from gaol.
  
- \* THAT Aborigine-controlled bail hostels be provided (where not already available) for Aborigines on remand as well as their families, where removal from normal place of residence occurs.

Resources

- \* THAT consideration be given by correctional authorities to the establishment of Aboriginal Resource Units within their respective agencies (where not already implemented) with a view to promoting Aborigine-specific initiatives.