



CRIMINAL JUSTICE  
COMMISSION

REPORT  
ON AN INQUIRY  
INTO ALLEGATIONS  
OF POLICE  
MISCONDUCT  
AT INALA  
IN NOVEMBER 1990

NOVEMBER 1991

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Dear Sirs

In accordance with Section 2.18 of the Criminal Justice Act 1989, the Commission hereby furnishes to each of you its Report into the investigation of complaints against members of the Queensland Police Service arising out of an incident at the Wandarrah Aboriginal Pre-School Community Centre, Inala and subsequent events.

Yours faithfully

**SIR MAX BINGHAM QC**  
Chairman



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## **EXECUTIVE SUMMARY**

A licensed function was held on Friday 2 November 1990 at the Wandarrah Aboriginal Pre-School Community Centre at Azalea Street, Inala. Although the function was "open" and a small number of white people attended, most of the patrons were of Aboriginal, Torres Strait Islander or Maori descent and included women and children. It is estimated that up to 200 people attended.

Minor disturbances occurred throughout the course of the evening which were controlled by committee members and security staff. At around midnight it appeared that there was an adverse reaction by certain sections of the crowd upon liquor ceasing to be sold. Some of the patrons had consumed considerable quantities of alcohol.

By the time the first police arrived on the scene most of the patrons were outside the Centre and many were on the street. A violent confrontation subsequently took place between police and Aborigines. A total of twenty (20) people were arrested and placed in the Inala Watchhouse. Of those arrested, six (6) alleged that they were assaulted by police during the riot and five (5) complained of maltreatment by police in the watchhouse. A further five (5) people who were not arrested made complaints regarding the actions of police on the night.

There was a further disturbance on Sunday 4 November 1990 outside the skating rink at Inala, as a consequence of which three (3) Aboriginal persons were arrested and detained in the Inala Watchhouse. Of these, two (2) subsequently complained to the Commission of police maltreatment.

The matters were investigated by the Commission following the receipt of information from the Commissioner of the Queensland Police Service concerning complaints about various police actions at Inala and complaints made by representatives of the Aboriginal Community who attended the offices of the Commission on 7 November, 1990.

### **The Jurisdiction of the Criminal Justice Commission**

The Criminal Justice Commission is empowered under the Criminal Justice Act to investigate allegations of, inter alia, all cases of alleged or suspected misconduct by members of the Police Service that come to its notice from any source, including information from an anonymous source.

## **The Conduct of the Investigation**

Following the initial meeting with members of Inala's Aboriginal community at the Commission's office in November 1990, the majority of interviews with Aboriginal persons were not conducted at Commission premises or other Government offices to minimise the potential for intimidation of the witnesses. The Commission found that this approach, although time consuming, reduced the risk of witnesses being inhibited by their physical surroundings. A total of 125 witnesses were interviewed in the course of the investigation. All interviews were conducted by Commission officers and recorded by means of either audio tape or audio video tape.

The investigation proved more difficult as time progressed due to the reluctance on the part of many members of the Aboriginal community to co-operate with the Commission. Upon initial assessment of the evidence gathered, serious problems became apparent, for example, the effect of extreme alcohol consumption upon the ability of witnesses to recollect events. Conflicts between Aboriginal witnesses as to significant issues such as the identification of alleged assailants also emerged. Further problems surfaced when witnesses were re-interviewed in connection with the more serious allegations, and provided different versions of events on each separate interview.

## **The Police Perspective**

Two uniformed Constables were the first to arrive on the scene following the complaints received. Approximately 150 persons were observed on the footpath, road and park opposite the Wandarrah Centre and several fights were in progress. Certain sections of the crowd were unruly and appeared to be adversely affected by alcohol. Bottles were being broken and abuse was directed at the police officers. The officers moved amongst the crowd urging people to return to the Centre or to move on. They did not directly intervene in any of the altercations that were in progress, instead requesting other members of the Aboriginal community to intercede to break up the fights. This tactic appeared to be successful initially.

As further officers arrived the crowd became more vocal. One person, Stephen Coghill, emerged from the crowd and struck one of the police officers in the chest. The officer attempted, in company with another officer, to arrest Coghill who dropped to the ground, apparently deliberately, taking the two officers with him. At this point the crowd converged and commenced to kick and punch the officers. Other police present moved in to assist and attempted to form a defensive semi-circle. These officers found themselves attacked as well. Two of the officers had drawn their batons and used them to fend off attackers.

Some six to eight officers were present at this point. It is unclear precisely how many Aborigines were involved in the physical confrontation with the officers. In any event, the police were seriously outnumbered and the senior officer present, a Senior Constable, ordered a retreat. In response, the crowd fanned out across the road and advanced on the police in a straight line, hurling bottles, sticks and rocks. Branches were torn off trees and two police vehicles were set upon and damaged.

In the midst of the melee one of the officers managed to make an urgent call for assistance and additional police began to arrive in response to that call. A police inspector from the Mt Gravatt station arrived and in the company of a member of the Aboriginal community approached the crowd and attempted mediation. This was not successful. The Inspector then ordered the police, who by then numbered approximately 30, to disperse the crowd. Some Aborigines ran off with the police approach, others stood their ground. It appears the police targeted those whom they had previously observed committing offences, such as wilful damage to the police cars and assaults on police during the confrontation involving Coghill. Others arrested members of the group for obscene language and on drunk and disorderly conduct charges.

All police concerned insist that no excessive force was employed, either in the dispersal of the crowd or in effecting arrests. Those who admitted to using batons stated that they were used strictly in accordance with police procedure taught to them at the Academy. Seven police officers were injured and their injuries ranged from cuts and scratches through to a black eye and a suspected broken jaw.

### **The Aboriginal Perspective**

The accounts received from Aboriginal witnesses were generally consistent with those of the police up until the incident involving Coghill. Thereafter wide disparities occur, not only as against the police evidence but also as between Aboriginal witnesses themselves. The complaints appear to centre around the use of batons. Allegations were received from several Aboriginal witnesses that excessive force was used in the dispersal of the crowd and that the indiscriminate use of batons resulted in Aboriginal children being injured. Allegations that excessive force was also used by police in the arrest of Aboriginal people were also made. In essence, Aboriginal witnesses alleged that police used obscene language and that the initial "over-reaction" by the police officers to the incident with Coghill provoked the crowd and that the subsequent behaviour of the police only served to escalate the situation. Medical evidence confirmed that an eleven (11) year old child sustained a minor injury to the back, whilst an adult male complainant produced evidence of bruising to his back. There was no other medical evidence of injuries.

## **Evidence of Other Witnesses**

Residents in the area state that the police behaved with moderation and considerable restraint. No witness observed police using excessive force at any stage on the night and all observed the crowd to be unruly and abusive. These witnesses confirmed that obscenities in the terms alleged by the police were being used by Aborigines and that the crowd was hurling bottles, bricks and other objects at the police in addition to tearing branches off trees. Two ambulance officers called to the scene also confirmed the police account of the proceedings.

## **Complaints Received**

The complaints received in connection with the Wandarrah Centre incident ranged from police swearing at Aboriginal people to police gratuitously striking Aboriginal people with batons. It appears that no Aboriginal complainant suffered any serious injuries; indeed very little medical evidence was provided in support of the allegations. In other instances it appeared on the evidence that the level of force used by the police was not excessive. Other complaints could not be substantiated due to conflicts in the identification evidence provided or the absence of identification evidence. In most instances the Commission was not able to find sufficient evidence to support the allegations.

The complaints regarding subsequent events in the watchhouse were in similar terms and ranged from police swearing at Aboriginal prisoners to allegations of assault. Most claims were not supported by medical evidence. The police involved all denied that any unnecessary force was used at the watchhouse with regard to the prisoners. Similar conflicts in terms of identification evidence and other evidence emerged as between the prisoners, for example two (2) who allege an assault occurred give conflicting evidence as to the particulars of the assault, or where two (2) give a consistent version of events regarding the assault, they are unable to agree on the identity of the assailant.

Serious allegations of assault, including an allegation that an Aboriginal prisoner was assaulted by a police officer who was wearing a balaclava, were made following the arrests at the skating rink on 4 November, 1990. Similar problems, however, emerged in connection with the evidence obtained in relation to these allegations and hampered the Commission in its search for the truth.

There is little doubt that as a general proposition the witnesses involved were grossly affected by alcohol and as a consequence were not in a position at a later stage to recollect events with any clarity. This was further complicated by the witnesses themselves who provided different versions of events on each occasion they were interviewed. Despite serious allegations of assault in the watchhouse, medical evidence of only two minor injuries which may have been consistent with

the complaints, was produced. Due to the conflicts in the evidence obtained the Commission was not able to substantiate the allegations.

## **Observations**

Allegations of assaults by police are cause for grave concern. In regard to the present inquiry, the Commission is of the view that it is possible that a number of people may have been the subject of unlawful assaults by police although no charges can be laid due to the gross inconsistencies and inadequacies in the evidence of witnesses on vital issues. The standards of proof for criminal proceedings or disciplinary proceedings, namely proof beyond reasonable doubt or on the balance of probabilities simply could not be met. In making its findings the Commission is not to be taken as certifying that the allegations were necessarily untrue and that the police version was accepted without question. There is evidence that assaults did occur; it is simply not possible to ascertain on the available evidence whether these assaults were lawful under the circumstances, or, if unlawful, who was responsible.

It would appear on the evidence that no Aboriginal person suffered any serious injury and that the general level of force used by police to make arrests was not unreasonable. There is no independent evidence of the use of excessive force, although there is independent evidence that some persons actively resisted arrest. The Commission acknowledges the extreme stresses of the situation which confronted the junior officers upon their arrival at the scene and accepts that they were subjected to attack whilst seriously outnumbered by members of the crowd. Injuries sustained by police officers were, on the whole, more serious than those suffered by members of the Aboriginal community.

## **Towards a Lasting Truce - The Vexed Question of Police/Aboriginal Relations**

The Commission is of the view that any meaningful and positive change in police/Aboriginal relations can only be brought about once an appreciation of the following factors has been reached by both groups:

- An understanding by police officers of the cause of the resentment Aborigines feel towards police;
- An understanding by police officers of the distinct problems experienced by urban Aborigines;
- An understanding by urban Aborigines of the problems that their lifestyles and behaviour produce for effective policing in the community; and

- The creation and monitoring of open and trusted channels of communication between urban Aborigines and police.

It must be accepted that this was a racial incident in so far as most of the people who attended the dance were Aborigines and all of the police officers involved were Caucasian. Hostility towards police is widely shared amongst Aboriginal communities throughout Australia, the legacy of a sorry history of conflicts between Aboriginal people and whites. Unresolved areas of conflict make a harmonious relationship between Aborigines and police difficult to achieve and great harm is done by the tendency on the part of both groups to negatively stereotype each other as a consequence both of historical turmoil and of present antagonisms. The problems can only begin to be addressed through education and the opening of effective channels of communication.

### **Proactive Community Policing Initiatives - Inala**

The Queensland Police Service has a commitment to community policing and asked for the assistance of the Criminal Justice Commission in the development of a proactive community policing initiative for the Inala area in the recognition that should the present tensions between police and Aborigines be allowed to proceed unchecked, the Inala area will become a "no go" area for police and others, similar to Redfern in New South Wales. This research program is currently under way. In broad terms, the desired outcome of the research project and the implementation of any strategy for multi-cultural policing in Queensland would be to ameliorate the racial tensions within Inala and reduce the crime rate generally.

This report also deals with recent initiatives in police training in Queensland, specifically with respect to race relations, mediation and crowd control training.

### **Recommendations**

The Commission recommends that:

- **The Aboriginal and Torres Strait Islander and Ethnic Liaison Section of the Queensland Police Service be increased in size. Its staff should be trained to deal with and give advice regarding incidents such as that which occurred outside the Wandarrah Centre, in addition to liaison work with specific minority groups.**
- **A network of trusted representatives of various indigenous and ethnic communities should be established so that these representatives could be called upon where necessary to assist in defusing potentially dangerous situations involving police and minority groups.**

- **Junior officers should be instructed not to become actively involved in incidents such as that which occurred outside the Wandarrah Centre unless and until an Inspector is in attendance and directing the operation, except where immediate intervention is necessary to prevent serious injury/other serious crime.**
- **A protocol or agreement should be reached between the Aboriginal community and police regarding the conduct of future functions in the Inala area.**
- **Continuing regular liaison between police and the Aboriginal community should be promoted.**
- **All Queensland police should receive appropriate training to ensure that they have a working understanding and appreciation of Aboriginal issues and the ability to relate in a positive way to Aboriginal people.**
- **All Queensland police should receive appropriate training in mediation and crowd control.**
- **Procedures should be put in place to ensure that where a large number of persons are arrested in the Inala area, they should be conveyed, where possible, to the City or Holland Park watchhouses, so as to ensure that the prisoners can be adequately controlled and supervised.**

In making its Report the Commission would wish to emphasise that its recommendations are designed as a platform for change and are intended to foster and enhance, and not to limit, the consultation process between police and Aborigines in Queensland that is already underway.





## CHAPTER 1

### INTRODUCTION

On Friday 2 November 1990 a licensed function took place at the Wandarrah Aboriginal Pre-School Community Centre at Inala. The purpose of the function was to raise funds for the Centre. Approximately 150 - 200 persons attended the function. The persons who attended were predominantly, although not solely, Aborigines and included women and children.

A large number of those who attended the Wandarrah Centre on the night in question had consumed a considerable quantity of alcohol. Some altercations amongst patrons erupted just prior to and at the conclusion of the function.

At around 12.30am (3 November 1990) police were called by both the function organiser, Lorna Tyson, and neighbours concerning the disturbance. At the time the police first arrived on the scene, most of the patrons were outside the Centre and many were on the street. A confrontation which lasted about 30 minutes subsequently took place between police and Aborigines. Complaints were later received that ten (10) persons were assaulted by police during the confrontation.

A total of 20 people were arrested and placed in the Inala Watchhouse. All were Aboriginal. Of those arrested, five (5) complained that they were maltreated by police at the watchhouse.

On Sunday 4 November 1990, following a disturbance at a skating rink at Inala, three Aboriginal persons were arrested and detained in the Inala watchhouse. Further complaints of assault were received, including a complaint that an Aboriginal person detained in the watchhouse had been assaulted by police officers wearing balaclavas.

The matters were investigated by the Criminal Justice Commission following its receipt of information from the Commissioner of the Queensland Police Service concerning complaints about various police actions at Inala, including events at the Wandarrah Centre on 3 November 1990 and complaints made by representatives of the Aboriginal community who attended the offices of the Commission on 7 November 1990.

## CHAPTER 2

### GENERAL BACKGROUND

#### Location

The Wandarrah Centre is situated on the corner of Azalea and Poinciana Streets, Inala. The premises encompasses a pre-school, community hall and medical service and is used predominantly by the Aboriginal community of Inala. The Centre is comprised of a low set "L" shaped brick building with a concreted car park facing Azalea Street and playground facing the Azalea and Poinciana Streets corner.

The main pedestrian and vehicular access to the centre is from Azalea Street, although there is also a driveway leading from Poinciana Street. The property boundaries are delineated by a wooden and wire fence.<sup>1</sup>

#### The Function

The function on 2 November 1990 was organised by the pre-school committee presided over by Mrs Lorna Tyson. Similar functions had been held previously at the Centre. Although the function was "open" and a small number of white people attended, most of the patrons were of Aboriginal, Torres Strait Islander or Maori descent.

Admission fees of \$5.00 for adults, \$3.00 for high school children and \$2.00 for younger children were charged. Four (4) private security officers were hired to assist the committee and operated under the direction of committee members on the night. Liquor was sold at the function, a Ball Permit having been obtained previously by the committee.<sup>2</sup> Some of the patrons, however, stated that they brought their own liquor to the function. Mrs Tyson said that she sent letters to the Oxley Criminal Investigation Branch and the Inala Police advising them of the function, although no replies to the letters were received.

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<sup>1</sup> A scale plan of the area appears at Appendix A

<sup>2</sup> See Appendix B

The function started at about 7.30pm and took place in the pre-school area of the Centre. Some minor disturbances occurred on the premises but they appear to have been controlled by committee members and security staff. It was suggested that there was an adverse reaction by certain sections of the crowd upon liquor ceasing to be sold at around midnight. Mrs Tyson telephoned the police at approximately 12.30 to 12.40am as she felt police assistance could ensure the smooth departure of some of the patrons.

At around this time one of the security officers, John Patrick Brady, spoke to two youths who wanted to have a fight and sent them to fight at the oval across the road. Brady and some of the other patrons went to watch the fight, which occurred at about 12.30am. Shortly thereafter, the first police officers arrived and at that time it appears that there were a number of patrons on the footpath in Azalea Street, on the roadway and on the oval, in addition to those people still within the Centre's perimeters and in the building. Considerable noise was being generated.

## CHAPTER 3

### ALLEGATIONS

A total of 25 allegations of police misconduct have been investigated in connection with this matter. The complaints are summarised below. The Commission is aware that other statements have been made to the effect that unidentified Aboriginal persons had been assaulted by unidentified police, however in the absence of further evidence it was not possible to take these non-specific allegations further.

#### Events at the Wandarrah Centre on 3 November 1990

- (i) Lorna Tyson complained that the police response and subsequent confrontation between police and Aborigines had been a "set up" instigated by police in response to the theft of a police firearm at the Richlands Tavern about a month earlier. (This incident was the subject of a separate investigation).
- (ii) Darren Michael Costello stated that he was struck on the legs by a police officer on the football field opposite the Wandarrah Centre.
- (iii) Stephen Charles Coghill stated that he was attacked by police and hit with a baton outside the Community Centre. He did not wish to make a formal complaint.
- (iv) Cyril Clevens stated that he was abused and sworn at by a police officer outside the Wandarrah Centre. This officer also struck him on the elbow with a baton.
- (v) Cyril Clevens also stated that he was struck by police with batons whilst attempting to assist a man (probably Coghill) being assaulted by police outside the Community Centre.
- (vi) A juvenile aged 16 years, AB, complained that he was struck on the arm and back with a baton by Constable Pemberton outside the Wandarrah Centre.

- (vii) Tyrone John Boyd lodged a complaint regarding the circumstances of his arrest at the Wandarrah Centre. He alleged that when arrested he had been struck on the chest with a baton by a police officer.
- (viii) A male juvenile aged 14 years, GH, complained that during the melee between police and Aborigines at the Wandarrah Centre, he had a baton shoved into his stomach by a police officer and was kicked in the leg by a police officer.
- (ix) A female child aged 11 years, EF, complained that she was struck across the back with a baton by a police officer whilst outside the Wandarrah Centre.
- (x) Robert Bruce Swan complained that during the disturbance outside the Wandarrah Centre he was struck on the head and back with a baton by a police officer.
- (xi) Rodney Rex Currie stated that at the time of his arrest at the Wandarrah Centre he was dragged over a fence and struck on the back with a baton by a police officer.
- (xii) Norman Arthur MacDonald complained that whilst outside the Wandarrah Centre he was struck on the back with a baton by a police officer.

#### **Events at the Inala watchhouse following arrests at the Wandarrah Centre**

- (i) Tyrone John Boyd complained that he had been kicked and punched by police as he was taken from the police van on the morning of 3 November 1990.
- (ii) Tyrone John Boyd said he was abused by police upon arrival at the Inala watchhouse on the morning of 3 November 1990.
- (iii) Tyrone John Boyd complained that whilst he was in custody (possibly on Sunday 4 November 1990) he was punched, kicked and kneed by three police officers.
- (iv) Tyrone John Boyd complained that he was punched in the stomach by a police officer on Tuesday 6 November 1990.

- (v) Robert Bruce Swan also complained that upon being arrested and taken to the Inala watchhouse on the morning of 3 November 1990, he was punched in the face several times by a police officer.
- (vi) Robert Bruce Swan complained that a police officer had called him a "black cunt" and offered to fight him whilst he was at the watchhouse on the morning of 3 November 1990.
- (vii) Charles Christopher Saunders stated that he had been punched by Constable Pemberton outside the Inala watchhouse on 3 November 1990, however he did not wish to make any formal complaint.
- (viii) CD, a male juvenile aged 16 years, complained that he was assaulted at the Inala watchhouse counter on the morning of 3 November 1990 by a police officer. He was struck to the head and ribs. He also complained of being punched in the face by an officer at the door of the watchhouse.
- (ix) Matthew David Solomon complained that after having been arrested at the Wandarrah Centre on 3 November he was taken to the Inala watchhouse where a police officer assaulted him by slamming his head into the counter. He did not wish to make a formal complaint.

**Events at the Inala watchhouse following arrests at the Inala Skating Rink on 4 November 1990**

- (i) AB complained that he was assaulted by Constable Angus whilst in his cell at the Inala watchhouse on the evening of 4 November 1990. He stated that he was punched in the jaw.
- (ii) Robin Glendon Conlon complained that following his arrest he was assaulted by Constable Angus whilst being taken from the police car to the Inala watchhouse on the evening of 4 November 1990.
- (iii) Robin Glendon Conlon complained that he was assaulted by Constable Angus at the Inala watchhouse counter on the evening of 4 November.
- (iv) Robin Glendon Conlon also complained of being assaulted by two police officers wearing balaclavas on the evening of 4 November or early on the morning of 5 November 1990.

## CHAPTER 4

### THE JURISDICTION OF THE CRIMINAL JUSTICE COMMISSION

Under the Criminal Justice Act 1989, the Criminal Justice Commission is empowered to investigate allegations of corruption and official misconduct by public officials and others who, by their conduct, adversely effect or could adversely effect the honest and impartial discharge of duties by public officials.

The Act provides that it is the function of the Official Misconduct Division of the Commission to investigate, inter alia, all cases of alleged or suspected misconduct by members of the police force that come to its notice from any source, including information from an anonymous source.<sup>3</sup>

Further, it is also the responsibility of the Commission to monitor the performance of the police force with a view to ensuring that the most appropriate policing methods are being used, consistently with trends in the nature and incidence of crime, and to provide to the Commissioner of Police policy directives based on the Commission's research, investigation and analysis.<sup>4</sup> Such directives may cover law enforcement priorities, education and training of police, revision of police operation method and the optimum use of law enforcement resources.

Section 2.23(1) of the Act defines the general nature of Official Misconduct. It provides, inter alia, that official misconduct is -

- (a) Conduct of a person, whether or not he holds an appointment in a unit of public administration, that adversely effects or could adversely effect, directly or indirectly, the honest and impartial discharge of functions or exercise of powers or authority of a unit of public administration or any person holding an appointment therein;
- (b) Conduct of a person while he holds or held an appointment in a unit of public administration that involves the discharge of his functions or exercise of his powers or authority in a manner that is dishonest or not impartial;

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<sup>3</sup> Criminal Justice Act, Section 2.20(2)(e)(i)

<sup>4</sup> Criminal Justice Act, Section 2.15(g),(h)

and in any such case, constitutes or could constitute a criminal offence or disciplinary breach that provides reasonable grounds for termination of the person's services in the unit of public administration.

Under the Police Service Administration Act 1990, misconduct is defined as:-

- (a) Any disgraceful, improper or other conduct unbecoming an officer or that shows unfitness to be or continue as an officer;
- (b) Conduct that does not meet the standard of conduct reasonably expected by the community of a police officer.<sup>5</sup>

For the purposes of this investigation, the Commission determined that it had jurisdiction to investigate allegations of unlawful assault, arrest and abuse of Aboriginal members of the community by police officers. If proven, such conduct would clearly constitute misconduct for the purposes of the Commission.

In considering issues in relation to possible disciplinary charges of official misconduct or other charges, the Commission must make determinations at the conclusion of its investigations, subject to the appropriate standard of proof. The Criminal Justice Act is silent on the question of the standard of proof to be applied, although Section 3.21 of the Act is of assistance. The Section provides:

*"(1) The Commission is not bound by rules or the practice of any court or tribunal as to evidence or procedure in the discharge of its functions and responsibilities, or the exercise of its powers or authorities, but may inform itself on any matter and conduct its proceedings as it thinks proper.*

*(2) The Commission shall, at all times -*

- (a) act independently, impartially, fairly and in the public interest;*
- (b) act openly, except where to do so would be unfair to any person or contrary to the public interest;*
- (c) include in its Reports -*

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<sup>5</sup>

Police Service Administration Act 1990, Section 1.4(1)



- (i) *its recommendations with respect to the relevant subject matter;*
- (ii) *an objective summary and comment with respect to all considerations of which it is aware that support or oppose or are otherwise pertinent to its recommendations."*

Section 2.43(1) of the Act provides that a Misconduct Tribunal is not bound by rules or the practice of any court or tribunal as to evidence or procedure in the exercise of its jurisdiction, but may inform itself on any matter and conduct its proceedings as it thinks proper. There is clear authority<sup>6</sup> that such a clause distinguishes disciplinary proceedings from criminal proceedings in that a tribunal constituted to hear disciplinary charges of official misconduct would not be required to apply the criminal standard of proof beyond reasonable doubt and could make its findings on the balance of probabilities according to the civil standard.

The Commission considers that, by analogy, it is not required to apply the criminal standard of proof in making its investigative findings or in proceedings before it.

The civil standard of proof varies according to the gravity of the finding to be made. Sir Owen Dixon in Briginshaw -v- Briginshaw (1938) 60 C.L.R. 336 defined the standard of reasonable satisfaction necessary before findings should be made and in doing so, nominated a series of factors which could effect a variation of the standard of proof. At pages 361 - 362 he stated:

*"Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether an issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect references ... this does not mean that some standard of persuasion is fixed intermediate between*

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<sup>6</sup> Per Carter J in Re: Seidler (1986) 1 Q.R. 486 at 491

*the satisfaction beyond reasonable doubt required upon a criminal inquest, and to the reasonable satisfaction which in a civil issue may, not must, be based on a preponderance of probability. It means that the nature of the issue necessarily affects the process by which reasonable satisfaction is attained."*

The Commission also finds support for its view that the requisite standard of proof for matters which it investigates is that of "reasonable satisfaction" in the adoption of that standard by Inquiries such as the Royal Commission appointed to inquire into the loss of the Australian Naval Ship "Voyager" and the recent Commission of Inquiry into certain allegations concerning the then Mr Justice Vasta, conducted by Sir Harry Gibbs, Sir George Lush, and the Honourable Michael Helsham.

## CHAPTER 5

### INVESTIGATION

The investigation commenced with the attendance of a deputation of members of Inala's Aboriginal community at the offices of the Criminal Justice Commission on 7 November 1990. Further interviews thereafter were, as far as possible, conducted with Aboriginal persons away from Commission premises or other government offices such as police stations, so as to minimise the potential for intimidation of the witnesses. This approach, although time-consuming, was certainly beneficial for the Commission's purposes, as complainants were less likely to be inhibited by virtue of their physical surroundings.

A team of eight (8) Commission police officers, supervised by a senior lawyer, was assigned to the investigation.

Forty-five Aboriginal persons were interviewed.<sup>7</sup> Most of the interviews were conducted at the Wandarrah Centre and private residences. Whenever possible, interviews were conducted at a place convenient to both Commission officers and the person to be interviewed. Informants were encouraged to utilise the legal aid facilities available. In order to facilitate identification, five (5) photo identification boards containing photographs of 60 police officers were compiled from police photographs. The photo identification boards were shown to complainants and potential witnesses in order to assist them to identify police officers who allegedly engaged in unlawful or improper behaviour.

Apart from the community representatives, almost no Aboriginal persons volunteered to attend. Some witnesses did eventually co-operate after receiving individual requests to attend. Persons interviewed were asked to advise others to come forward, however this request met with little success.

In order to locate independent witnesses, a door knock in the immediate vicinity of the Wandarrah Centre was conducted. Thirteen additional witnesses were thus interviewed, generally at their own homes.

A total of 65 police officers were interviewed.

All interviews conducted by Commission officers were recorded by means of either audio tape or audio-video tape and then summarised or transcribed in full. A total

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7

A complete Schedule of all persons interviewed appears at Appendix C

of 4000 hours was expended in the investigation of this matter and in the compilation of this Report.

### **Difficulties Experienced in Conducting this Investigation**

Investigators experienced a number of difficulties which resulted in the investigation becoming complex and protracted.

Of the large number of Aboriginal persons present at the Wandarrah Centre on the night in question, very few volunteered to come forward with information and problems were experienced in ascertaining the identity of persons attending the function. As a consequence the Commission was placed in the somewhat unusual position of having to seek out complainants.

The Commission arranged to utilise the Wandarrah Centre to conduct interviews. The Aboriginal Legal Service undertook to locate Aboriginal people for interviews but few persons came forward. Appointments made through the Aboriginal Legal Service for witnesses to attend for interview on 14 and 17 December 1990 were not kept and promised medical certificates failed to materialise.

Difficulty was experienced in enlisting the services of field officers to assist in locating witnesses and due to the lack of assistance from within the Aboriginal community itself, it was necessary for Commission investigators to locate and convey witnesses to the Community Centre for interviews. A hostile reception by Aboriginal persons was received on several occasions, with some Aboriginal witnesses refusing to be interviewed. Commission officers were abused by some Aborigines when attempting to locate witnesses and generally encountered an admixture of apathy and active non-co-operation, e.g. some members of the community were simply not interested; some residents turned police away when the witness was hidden inside their homes etc.

Other serious problems of an evidentiary nature, such as the adverse effect on witnesses' abilities to recollect events due to the effect of alcohol, and conflicting versions of events provided as between Aboriginal witnesses and conflicting identification evidence, also emerged.

Problems associated with the identification and location of police officers who attended the incident and the co-ordination of police interviews to suit their legal representatives compounded the difficulties already being experienced by investigators and contributed to the time delays.

## CHAPTER 6

### CHRONOLOGICAL SUMMARY

- 2 November 1990                      7.30pm - Persons commenced arriving at the function at the Wandarra Centre, Azalea Street, Inala.
- 3 November 1990                      12.30am - Constables Hunt and Batterham receive a call from Police Operations to attend a disturbance at Azalea Street, Inala.
- 12.34am - Constables Hunt and Batterham arrive at the Centre. A large crowd is observed in the Centre grounds, on the road and footpath, and in the football field opposite. Several fights are in progress. Constables Hunt and Batterham request assistance at the Community Centre. Batterham and Hunt attend to two Aboriginal persons fighting on the football field. No arrest is made. In company with a function security officer, they move about the crowd making requests that people move on. Police officers Angus, Pemberton, Jones and Bull all arrive at the scene. A violent confrontation between Stephen Coghill and two of the officers occurs. A large crowd gathers around the incident. Police attempt to arrest and handcuff Coghill. Coghill resists and he and the officers fall to the ground. The crowd moves in around the three men. The police attending to Coghill are kicked and punched by the surrounding crowd. Other police come to their aid and a defensive circle is formed. Attempts are made to remove a police firearm from its holster by members of the crowd. Some officers use police batons to fight back the crowd. Police officers are injured.
- 12.43am - Additional police assistance at the scene is sought. Coghill escapes. Police retreat. The crowd becomes increasingly violent and vocal. Rocks, bottles and sticks are being thrown at police. The crowd fans out across Azalea Street

and advances towards the police in a straight line. Many of the people are obviously affected by alcohol. Rocks, bottles and sticks are still being thrown and branches are being torn off trees in the surrounding area. Damage to police vehicles occurs.

12.47am - Urgent assistance is then requested by the police at the scene. Police and Aborigines are stationary in two groups, which remain separated. Numerous police units respond by radio that they are proceeding to area. Police arrive intermittently.

12.50am - A Police Inspector, Inspector Firman, is dispatched from Upper Mount Gravatt.

12.57am - Inspector Firman arrives at scene.

Between 12.57am and 1.06am

- \* Inspector Firman approaches crowd in company with a member of the Aboriginal community and attempts to speak with the crowd. Firman is abused and threatened. He requests that the crowd disperse. No-one leaves.
- \* Police are directed by Inspector Firman to disperse the crowd, which is still disorderly and congregated on the roadway and footpath.
- \* By this time approximately 30 police, who have gathered in Azalea Street (towards the intersection with Archerfield Road), move forward. As the police move forward some Aborigines flee the scene whilst others stand their ground and continue to be abusive to police. Some Aborigines move down side streets and into private yards.

- \* Police arrest a total of 20 persons for various offences. Those arrested are placed in police vans. A television crew has arrived by this stage and films one person being placed in a police van.

1.06am

- \* Inspector Firman advises Police Operations that the crowd has been dispersed after an attempt at mediation.
- \* A sizeable group of Aboriginal youths and children remain in the area and is quite vocal.
- \* The persons arrested are conveyed to the Inala watchhouse.

1.20am - Sergeant 1/c Symes leaves the scene and proceeds to the Inala watchhouse to supervise the processing of the prisoners.

1.30am - Constables Hunt and Batterham leave the scene and proceed to the Inala watchhouse.

1.37am - The first prisoner, Darren Broderick, is charged at the Inala watchhouse.

4.15am - Last person charged.

5.00am - Sergeant 1/c Symes apparently departs the watchhouse and returns to the Upper Mount Gravatt station.

12.04pm - The remaining prisoners have been fingerprinted and photographed. Except for Tyrone John Boyd, who is kept in custody by virtue of outstanding Warrants of Commitment and Robert Bruce Swan, who is apparently kept in custody as he had no fixed place of abode, all have been released on bail.

10.05pm - Acting Inspector Palmer makes an inspection of the watchhouse. No complaint is made to him by any Aboriginal prisoner.

4 November 1990

A television station news vehicle is damaged outside the skating rink. Police are called to the area. AB is subsequently arrested and charged with wilful damage and obscene language. Robin Glendon Conlon and KL, a male juvenile aged 15 years, are arrested at about the same time for drunkenness.

AB, Conlon and KL are all conveyed to the Inala watchhouse by Constables Angus and Murphy.

8.13pm - AB is charged by Constable Angus at the Inala watchhouse with wilful damage and obscene language.

8.17pm - Robin Glendon Conlon is charged by Constable Angus at the Inala watchhouse with being drunk.

8.25pm - KL is charged by Constable Angus at the Inala watchhouse with being drunk.

Tyrone Boyd alleges that he was punched, kicked and kneed by police officers whilst in his cell at the Inala watchhouse.

Between 8.25pm and 1.42am - Conlon alleges he was assaulted by two police wearing balaclavas.

5 November 1990

12.25am - AB is released from the Inala watchhouse.

12.35am - KL is released from the Inala watchhouse.

12.45am - Acting Inspector Johannssen inspects the watchhouse. No complaints are made to him.



1.42am - Robin Glendon Conlon is charged by Constable Cook with serious assault on Constable Jones, which is alleged to have occurred at the Wandarrah Centre on 3 November 1990.

11.35am - Robin Glendon Conlon is released from custody.

6 November 1990

Tyrone Boyd alleges that he was punched in the stomach by police at Inala watchhouse.

The Commissioner of Police, Mr Newnham, submits a report to the Criminal Justice Commission concerning some matters of complaint.

Complaints are received by the Criminal Justice Commission from Santa Unmeopa, Lorna Tyson and William Bonner concerning police actions at the Community Centre and subsequent incidents. These are the only formal complaints made to this Commission by Aboriginal persons.

## CHAPTER 7

### RELEVANT LEGISLATION

Offences under Sections 335 (Common Assault), 339 (Assault occasioning bodily harm) and 355 (Deprivation of liberty) were considered in addition to disciplinary offences under the Police Service Administration Act 1990 and the Queensland Police Service Code of Conduct.

General Instruction 2.25 of the Queensland Policeman's Manual provides instructions to police on the use of batons and states that they are primarily to be used for protection if violently attacked -

- (a) For the purpose of using such force to an assailant as is reasonably necessary to make effectual defence against an unlawful assault;
- (b) Using such force as is necessary to prevent the escape or rescue of a person who has been lawfully arrested.

General Instruction 2.27 provides that in dispersing a riotous mob, members of the Police Force should move through the crowd, breaking it up, and should not use force unless it becomes absolutely necessary.

## CHAPTER 8

### THE ISSUES

Given the conflicting evidence provided with respect to the confrontation at the Community Centre and its aftermath, it has proved impossible in most instances to define events with any degree of certainty.

Whilst a reasonably uniform account of the events preceding the attempted arrest of Coghill has emerged on the evidence, there is a marked divergence in the accounts of police and Aborigines regarding later activity. Further, there are marked inconsistencies as between the accounts of Aboriginal witnesses and in some cases contradictions. Some independent evidence has been supplied by local residents and ambulance officers, which has been supplemented by video film footage taken after the crowd was broken up.

- **Is there evidence that the confrontation between Police and Aborigines at the Wandarra Centre was instigated or orchestrated by Police?**

Upon arriving in response to calls from Lorna Tyson and residents, the first two police officers on the scene called for immediate assistance upon appraisal of the situation. The officers apparently attempted to persuade other Aborigines to break up a fight which was in progress on the football oval near the Community Centre. A group of people leaving the function had gathered to watch the fight. The police endeavoured to persuade the crowd, which by this time had spilled out onto the roadway and across into the football oval, to return inside the Centre's perimeters or leave the area entirely. By this stage of the evening some patrons had already departed. Others were leaving, however some still remained within the pre-school and its perimeters.

Police say that Stephen Charles Coghill began inciting other Aborigines to resist the police presence and Coghill subsequently assaulted Senior Constable Jones by hitting him in the chest. The accounts of police and Aborigines differ from this point onwards.

The police account is that an attempt was then made to take Coghill into custody. He struggled with police and was near the gutter when he dropped to the ground. The police fell with him. Coghill allegedly continued to struggle and was lying on his stomach with one of his arms handcuffed. It allegedly took considerable effort to place the handcuff on his other arm. During this time a crowd formed around the incident and Constables Angus and Jones were abused, punched and kicked

whilst they were on the ground attempting to handcuff Coghill. Other police came to their assistance and endeavoured to form a semi-circle around them, some fending off the group with batons. Attempts were made to remove a police weapon from its holster during the melee. The group of Aborigines, who outnumbered the police, persisted with the attack and it was decided to abandon Coghill. A hasty retreat was then effected. It is alleged that members of the group were screaming "Get the white bastards", "Kill them" and similar threats and obscenities. Such threats were heard by neighbours in the immediate vicinity. Officers later said that they were "in fear of their lives".

The accounts of the Aboriginal witnesses are less consistent. In general, Aboriginal witnesses say that Coghill abused police, who then effected a violent arrest of him, striking him to the ground and beating him with batons. The arrest was witnessed by Coghill's daughters, one of whom became distressed and made statements to the effect that the police had killed her father. The crowd reacted to the display of force and attempted to free the man.

At the time of this incident the police allege that there were six (6) to eight (8) police officers present. One went to radio for help. When he returned Coghill had been freed and the police had retreated with the crowd advancing upon them, brandishing tree branches and hurling rocks, sticks and bottles. One police officer had fallen and was dragged by the collar by other officers so that he was not left behind. The group of Aborigines then advanced and damaged a police car with branches and rocks, breaking its windows and headlights and denting the panels. A second police car was similarly damaged. Bottles were being smashed on the roadway and branches torn from trees. The police stopped near another police car and the crowd, which greatly outnumbered them, did not pursue or attempt to surround them. Other Aborigines remained in the area about the Community Centre. Additional police continued to arrive.

Some 20 minutes after the first police attended the scene an Inspector arrived. He initially spoke with the function organiser and then in company with a member of the Aboriginal community, addressed the crowd for about 30 seconds to one minute, requesting that they disperse. The group did not break up. Firman then signalled for the police to advance in order to disperse the crowd, which included women and children.

The police advanced, walking towards the group. The Aborigines moved into side streets, private yards and the football field. Police pursued certain individuals, whom they allege were involved in offences such as wilful damage to the police cars, drunkenness and obscene language. Nine minutes after he arrived the Inspector reported that the crowd was dispersed after an attempt at mediation.

The basis for Mrs Tyson's allegation of a "set-up" is the allegedly quick arrival of large numbers of police armed with "riot" equipment and the orderly progress taken by police during the dispersal of the crowd. The accounts from other Aboriginal witnesses are not at all uniform, although common factors have emerged, namely that the police arrived quickly and in great numbers and appeared to be well organised, being armed with "riot gear" such as batons and, on some accounts, shields. They then advanced into the crowd using excessive force to drive people off. Upon consideration of the evidence it emerged that the significant response by police was due to the emergency call following the incident with Coghill when the police were seriously outnumbered and under attack, which indicated that officers required urgent assistance.

It is estimated that about 30 police took part in the actual dispersal of the crowd although more officers arrived after the street had been cleared.

Interviews with independent witnesses did not disclose any evidence of the use of riot equipment although witnesses indicated some police were in possession of batons or torches. These witnesses did not observe any improper or excessive use of batons or force in general. Standard issue batons are normally carried by police performing night patrol duties. The video film of police taken after the dispersal shows that police were carrying large torches and three styles of baton. All three styles were police issue.

A few motor cycle police were in attendance. These officers were wearing helmets. No officer used or was in possession of a shield during the dispersal of the crowd.

The Commission is aware that a previous incident at the Richlands Tavern involving the theft of a police firearm may have contributed to a perception on the part of some Aboriginal persons that the police action was in retaliation for this prior event. A thorough investigation of this issue has disclosed that no Aborigines or police involved in the Richlands incident were involved in the events at the Wandarrah Centre and that this incident was unrelated.

- **Is there evidence that Police used unnecessary force including the use of batons in handling the events and dispersing the crowd?**

Police state that batons were used to fend off persons who, in an attempt to rescue Coghill, were assaulting police. It seems that batons were also used by some police in an attempt to effect arrests. Police allege that they attempted to use the batons on the legs of those people in accordance with accepted police procedure.

Injuries were reported by seven (7) officers. These included scratches, abrasions, one black eye, cuts to the head, bruises to face, neck, arms, legs, ribs and a suspected broken jaw (this last injury was found to be severe bruising only, following an x-ray).

### **Evidence of Aboriginal Witnesses**

Aboriginal witnesses allege excessive and indiscriminate force was used. Particulars of the individual assaults are as follows:-

- Darren Michael Costello alleged that he was hit with a police baton across his legs in the football park opposite the Community Centre. He identified Constable Angus as committing this assault. Several days later Costello was arrested by Constable Hunt and charged with one count of serious assault against Constable Hunt on 3 November 1990, particulars being that Costello spat at Constable Hunt during the attempted arrest of Coghill.

Costello presently resides in Proserpine and has not been shown the photo identification boards although he states that he knows Angus personally.

On 11 December 1990 Costello pleaded guilty to assault and was convicted and fined \$200 in default 8 days imprisonment. He was allowed three (3) months to pay the fine.

- Steven Charles Coghill alleged that he was outside the Wandarrah Centre when he was rushed at by police and knocked down and handcuffed. He was dragged away and then claims he lost consciousness. He denied assaulting Senior Constable Jones and said that he did not assault any police except in self defence.

An Aboriginal witness stated that she saw Coghill handcuffed and assaulted by police and that the crowd had surrounded the police. Coghill then got into a bus belonging to a person by the name of Conlon and was driven to Conlon's house, where the handcuffs were removed. Coghill denied this.

It appears that Coghill was not ultimately charged with any offence arising out of the incident.

- Cyril Clevens alleged that he was abused and sworn at by a uniformed police officer outside the Wandarrah Centre. He was unable to identify the

officer concerned. He alleged that this officer struck him on the elbow with a baton.

Clevens also alleged that he went to assist a person (probably Coghill) who was being struck with batons and handcuffed by police. In doing so he pushed a police officer he believed to be Constable Pemberton. He was then grabbed by Angus who subsequently placed a baton across his throat. He alleges he was also struck on his legs with a baton. Clevens escaped from the melee and avoided being arrested. He did not seek medical attention.

Christopher Conlon said that he witnessed the assault on Clevens with the baton. He identified the officer using the baton as being named "Chris" (Pemberton's full name is Christopher Peter Pemberton, Angus' full name is Stephen Matthew Angus). Clevens was later shown the photo identification boards and identified Constable Pemberton as being a police officer who assaulted members of the crowd with a baton outside the community centre. He identified Constable Angus as the person who struck him with a baton and held a baton to his throat. Both Pemberton and Angus deny using batons on the night.

It appears that Clevens was not ultimately charged with any offence arising out of the incident.

- AB stated that he was struck by Constable Pemberton with a baton just prior to his arrest outside the Wandarrah Centre on 3 November 1990. He said that after the initial blow to his arm, he fell to the ground and felt several other blows to his back. He could not see who was hitting him.

AB was charged by Constable Pemberton with one count each of using obscene language, resist arrest, assault police and wilful damage (police car).

- Tyrone John Boyd alleged that he was struck on the chest with a baton. He was unable to identify the police officer concerned from the photo identification boards put to him. Boyd's girlfriend Zoe Sands, who witnessed the incident refused to be interviewed by investigators from the Criminal Justice Commission. In a statement taken by Aboriginal Legal Service Officers she states that an assault took place but does not identify any particular police officer.

Boyd was charged by Constable Sucic with one count of behaving in a disorderly manner, to which Boyd later pleaded guilty in the Inala Magistrates Court and was convicted and fined \$75.

- A male juvenile aged 14 years alleged that he had a baton shoved into his stomach and was kicked in the leg by a police officer. When shown photo identification boards he was unable to identify his assailants. He later identified two officers as being responsible, neither of whom attended the scene that night.

IJ said that he saw Constable Angus striking GH on the back with a baton. GH identified Constable Angus as being an officer known to him, but did not identify him as the person who assaulted him. AB said he witnessed the assault on GH but could not identify the police involved. Angus denies the allegation.

- EF was allegedly struck across the back with a baton outside the Community Centre. Medical evidence confirmed an injury to the back of the complainant, although she did not sustain any bruise or cut. EF said she had been standing in the pre-school premises and had seen a man being chased by the police. The man ran towards her and possibly around her. One of the police officers swung a baton at the man. The man either ducked or fell over, the baton missed him and EF was hit across the back. EF stated that the blow was accidental and that she believed that the police officer concerned did not know that he had struck her. EF's aunt stated that after EF complained to her, she heard persons within the Wandarrah Centre saying "Call the media, call the media".

A male juvenile aged 13 years, IJ, identified Constable Pemberton as being responsible for the assault on EF. Cyril Clevens stated that he was being pursued by a plain clothes police officer when he ran around EF. EF was standing behind Clevens and was struck when Clevens ducked to avoid being hit with the baton. In Cleven's opinion, the blow to EF was accidental. Pemberton, who was in uniform, denied IJ's allegation, stating that he was not in possession of a baton that night.

- Robert Bruce Swan alleged that he was struck on the back of the head and on the back by a uniformed police officer during the melee. He also said that he was struck on the back with a baton after becoming involved in the scuffle when police attempted to effect arrests. Swan stated that he was drunk at the time and cannot identify the officer who struck him. He was



shown photo identification boards of police who attended the incident, but could not identify the persons who allegedly assaulted him.

Swan was charged by Constable D'Hotman De Villiers with behaving in a disorderly manner and by Constable Hunt with wilful damage (police vehicle). He was convicted in the Inala Magistrates Court on 3 October 1991 and fined \$50 in default two (2) days imprisonment with respect to the first charge, and convicted and fined \$350 and ordered to pay \$811.50 restitution, in default 50 days imprisonment with respect to the second charge.

- Rodney Rex Currie claimed that he was struck on his back with a police baton by a plain clothes officer whilst he was being arrested at the Wandarrah Centre. He states that he was dragged across a fence by five (5) police officers. He was shown photo identification boards but could not identify the police officer who struck him. He identified Constable Angus as being the police officer who assisted in his arrest. Angus was in uniform.

This incident was apparently witnessed by a Beryl Smith. She could not identify the police officer concerned from the photo identification boards. Currie did receive medical attention for a bruised back and supporting medical evidence is available. The arresting officer, Constable Batterham, denied that Currie was assaulted in his presence.

Currie was charged by Constable Batterham with one count of using obscene language and one count of resisting arrest. He entered pleas of guilty to the charges in the Inala Magistrates Court and was convicted and fined \$40.00 and \$75.00 respectively.

- Norman Arthur MacDonald claimed that he was struck by a baton on the back whilst outside the Wandarrah Centre. He did not know the officer responsible.

Investigators have been unable to show MacDonald the photo identification boards as he could not be located after the incident.

MacDonald was charged by Constable Pemberton with being drunk. He forfeited bail.

## **Evidence of Police Officers**

The accounts of the principal police officers involved are summarised as follows:

- Constable Stephen Matthew Angus stated that he was in attendance at the Inala Police Station when he heard over the police radio that Constables Hunt and Batterham required assistance at Azalea Street, Inala. As a result of this request Angus and Constable Pemberton proceeded to the Wandarrah Centre. On his arrival he observed about 150-200 Aboriginal persons in Azalea Street and Constables Hunt and Batterham already in attendance.

Angus observed a number of fights taking place in the area and described the crowd as unruly and using obscene language. He also stated that liquor was being consumed. He observed Constables Jones, Bull, Guthrie and Cook arrive in Azalea Street. The crowd was calling the police "White Captain Cook cunts". Stephen Coghill was inciting the crowd to riot and using obscene language. Coghill was observed by Constable Angus to punch Constable Jones to the chest.

Coghill was arrested by Constable Jones and Constable Angus assisted him in the arrest.

The situation then turned very violent and police were attacked by the Aborigines. Constable Angus saw Constable Jones punched in the jaw and also observed Constable Batterham being assaulted. When police retreated Angus saw the police vehicle of Constable Jones being damaged and the windscreen smashed. He also observed the headlights of the vehicle being kicked in. He observed AB smash the rear window of a police vehicle with the limb of a tree.

After Inspector Firman arrived and motioned the police contingent to move through the crowd, Angus made a number of arrests. He states that he was not in possession of a firearm. Angus was in possession of a small baton which he states was not removed from his pocket that night.

He denied the allegation that he struck Darren Costello at any time and he stated that he did not see Costello at any stage during that evening.

Constable Angus stated that he did not use excessive force in effecting any of the arrests or whilst assisting in arrests that evening. He received

injuries to the rib area, but did not seek medical treatment as a result of the injuries.

- Constable Christopher Peter Pemberton stated that he attended the disturbance in Azalea Street in company with Constable Angus. There he observed Constables Hunt and Batterham standing near their car with a number of Aborigines gathered around them. There were several fights going on.

Two vehicles from the Oxley Police Station arrived containing Constables Guthrie, Cook, Bull, and Senior Constable Jones. Constables Guthrie and Cook were performing duty in plain clothes and driving an unmarked police vehicle.

It was decided by police to have a talk with the Aboriginal group and ask them to move off the road. The police then walked through the crowd in pairs asking people to stop fighting, to move off the road and to keep the language down. Most of the people remained on the road although some started to move off. The majority were using obscene language.

One person now known to Pemberton as Stephen Coghill emerged from the crowd and punched Jones in the chest. Angus or Jones effected an arrest on Coghill and started to lead him off towards the police car. Coghill went limp and all three men fell to the ground. The crowd then moved forward using obscene language and started kicking Angus and Jones while they were on the ground trying to handcuff Coghill.

Police formed a semi-circle around them. Angus attempted to close the handcuffs on Coghill however a number of people were kicking and punching them. Pemberton stated that he jumped over the top of the group and tried to push people back. He was punched and kicked. Police with batons were trying to fend people off and it was decided to abandon Coghill and retreat. Pemberton was not carrying a baton or wearing a firearm.

Pemberton recalls being pushed to the ground and kicked and punched by an Aboriginal person. One of his shoes was lost and stolen. Pemberton states that he was punched and kicked to the chest, legs and back. He recalls the group moving in a straight line towards the retreating police officers. He heard the words "Let's stick together we can kill these Captain Cook cunts".

Pemberton believes that if police had broken up they would have been chased and killed. Jones fell over at one point and was dragged by Pemberton by his collar. He believes that if any police had been left behind they would have been killed.

Pemberton stated that Constable Cook got into the unmarked police car and tried to start it. He observed AB throw a tree branch through the back windscreen. Cook then got out and retreated with the other police.

Upon Inspector Firman attending and giving the order to move into the group, Pemberton observed AB standing in the street and using obscene language. In company with Constable Angus, Pemberton walked towards AB and informed him that he was under arrest. AB then ran into the Community Centre with the police officers in pursuit. He was caught and arrested there, and struggled violently with police.

Pemberton did not receive any medical attention for injuries received although he sustained bruising to the side of the chest.

- Constable Stephen Robert Batterham stated that he attended at a reported disturbance at Azalea Street, Inala on the night in question in company with Constable Hunt. They were the first unit to respond and arrive at the location. He observed about 200 Aboriginal persons on the roadway, in the grounds of the pre-school and in the park opposite. The Aborigines were drinking stabbies and there were numerous fights in progress.

He recalls speaking to two people fighting in the park and to security officers. It appeared to Batterham that the group, which was abusing the officers, was "pumped up". He heard Coghill incite the crowd to riot or to take the "coppers". He further observed a struggle between Constables Jones and Angus with Coghill on the roadway.

He observed the Aborigines move closer and appear to get ready to charge the police. He stated that he was then about one (1) metre away from Jones, Angus and Coghill. Batterham drew his aluminium baton and was watching that no one else became involved in the struggle. He stated that he had drawn his baton in front of him for the purpose of preventing any attack upon himself or other officers.

He stated that he had to use his baton when the Aborigines started attacking the police by kicking them. He struck an Aboriginal person in the knee cap area with reasonable force but did not hit the person on the

upper body. This was a crowd control procedure taught to him at the Academy. Whilst protecting Jones and Angus he was punched to the side of the face. He did not see his assailant. He also chased an Aboriginal person across Azalea Street, whom he admitted striking in the legs at least ten times with the baton.

During the attack on the police, Batterham said he feared for his life. He judged that there were eight (8) police to approximately 150 Aborigines and said that he had never experienced anything like it before. He also observed an Aboriginal person attempting to remove an officer's gun from its holster during the struggle. Batterham stated that he received injuries to the chest, neck and stomach.

When Inspector Firman later signalled to police to disperse the crowd, Batterham arrested Rodney Rex Currie for obscene language and resisting arrest.

He denied the allegation that Currie was dragged over the fence by five police officers and struck with a baton to the back. He said that no excessive force was used in effecting the arrest on Currie.

In the opinion of Constable Batterham, police adhered to correct procedures on the evening.

- Constable Martin Andrew Hunt was performing duty at Inala Police Station on 2 November 1990. He was rostered from 12.00mn to 8.00am with Constable Stephen Batterham. He was the senior officer.

He stated that at about 12.25am he received a radio call concerning a disturbance in Azalea Street. He arrived there in company with Batterham at about 12.30am. Upon arrival he saw a group of about 150-200 Aborigines. Some were in the pre-school grounds, a few were in the street, and others in the park opposite. There was a fight between two persons in the park. Hunt asked other Aborigines to break up the fight, which they did.

Hunt stated that he and Batterham did not attempt to break up the fight themselves as they felt it would have provoked the crowd.

Other police arrived and he spoke to Constable Jones about arresting a particular person in the crowd who was "playing up a bit". Jones advised

him not to as the situation was hostile and they (the police) should try to calm it down.

He then moved back to the vicinity of the parked police cars. There were about eight (8) police present. They decided to attempt to move the crowd off the road. As they attempted to do so they were abused by the crowd and told to "Fuck off Captain Cook cunts", and similar abuse.

Hunt stated that he saw a person he believed to be Stephen Coghill punch Russell Jones to the chest area. Constables Angus and Jones started struggling with this person. Coghill fell to the ground. Hunt believes Coghill did this to make it hard for police to remove him.

He stated that about five (5) or six (6) Aborigines started moving to where Jones and Angus were trying to lift Coghill off the ground. He said that Jones and Angus were being punched and hit. Hunt stated that he had drawn his aluminium baton. He stood with Angus, Jones, Coghill and the others behind him and held his baton up, attempting to prevent about eight (8) to ten (10) Aborigines in front of him from attacking. Members of the crowd were jumping back and forwards at him. One person came close and Hunt states that he struck him with the baton on the knee. The person jumped back. Hunt states that he did not use full force and denied using excessive force.

He said that he had been trained in the use of batons and believed that if he had not used the baton he would have been assaulted. He also believed that if this person had taken hold of him other persons in the crowd would have moved in and overwhelmed the police.

He stated that whilst the police were holding the Aboriginal group back, Darren Costello spat at him. The spittle landed on his chest. Costello then ran into the pre-school. Hunt knew Costello and as he (Costello) ran off Hunt called out that he had identified him.

Hunt later took part in the dispersal of the crowd. He observed Batterham and Angus attempting to arrest Currie, while Beryl Rosetta Smith held Batterham saying, "leave him alone, leave him alone". Currie was on the footpath side of the pre-school fence. He was violently resisting arrest. Hunt arrested Beryl Smith for aiding Currie to resist.

Hunt stated that he did not see Currie struck with a baton nor did he see Angus or Batterham with their batons drawn.

Hunt also stated that he had earlier seen Robert Swan, who was a person known to him, smash the window of a police car. A number of other persons were also kicking the vehicle. He later recognised Swan at the watchhouse and arrested and charged him with wilful damage.

Hunt denied taking part in the arrest of Swan at the Wandarrah Centre as alleged. He did not recall seeing any other police using batons that night.

He stated that he arrested Darren Costello in relation to the assault on himself some days later and that Costello had pleaded guilty to this charge.

Hunt stated that the police at the scene acted in a professional manner. He denied speaking with Costello on the night. He did not see Angus strike Costello with a baton. Hunt suffered a black eye as a result of his involvement in this matter.

- Senior Constable Russell David Jones stated that on Friday 2 November 1990 he was rostered for duty from 11.00pm to 7.00am with Constable Lloyd Bull.

He stated that he had attended the incident at the Wandarrah Centre, Azalea Street, Inala. On arrival there he saw 100 to 150 Aboriginal persons. There were groups fighting and drinking in the street and there were stubbies on the roadway.

A fight was underway near the football field. He instructed Constable Hunt to leave the fight and to attempt to calm the group down and move off the road and inside the grounds of the pre-school.

He spoke to one of the security officers to enlist his assistance to encourage the people to move back inside the grounds.

Jones stated that he spoke to a number of persons on the roadway requesting that they return to the Centre, but they did not take any notice of him.

Jones also stated that whilst he was addressing the group an Aboriginal male, Stephen Coghill, was calling out abuse to the police and inciting other Aborigines to fight and not listen to the "coppers". Coghill then emerged from the group and punched Jones to the centre of the chest. The blow forced Jones backwards. He and Constable Angus had then

approached the group and arrested Coghill. Coghill was grabbed by each arm and walked towards the police car.

Whilst walking Coghill went limp and started to drag his feet. His weight was too much for the officers and Coghill fell face down onto the roadway taking Angus and Jones with him.

As Coghill continued to struggle on the ground, an Aboriginal person named Solomon emerged from the crowd and punched Jones to the side of the head.

Jones stated that the assaults continued on the police and as they were outnumbered, the police retreated along Azalea Street to await further assistance from other units.

The prisoner Coghill was left on the roadway.

Jones then observed the group of Aborigines to congregate in lines across the road and move forward towards the police. The crowd was throwing stubbies, rocks, and "whatever they could get their hands on". He also observed them to break off tree branches.

These branches were used to damage the police vehicles which were parked in Azalea Street.

Inspector Firman arrived at the Wandarrah Centre. Jones spoke to Inspector Firman and explained the situation to him.

He stated that Inspector Firman then walked down to the group of Aborigines to attempt to calm the group. The attempt failed. The Inspector, with a waving motion, indicated to the police to walk down and disperse the crowd.

Jones arrested Elaine Isabel Queary, Matthew David Solomon, Brian Carpenter and George Cassius Currie and stated that he remained at the scene for about one and half hours.

He did not see any unlawful assault committed on any Aboriginal person that night, nor did he carry a baton.

Jones suffered injuries to the chest, ribs and jaw area as a result of the incident. His injuries were treated at the Inala Medical Centre.



- Constable Lloyd Gregory Bull was rostered with Senior Constable R Jones from 11.00pm to 7.00am on 2 November 1990.

He attended the incident at Azalea Street in response to a call from another unit. Bull and Jones arrived at approximately the same time as Constables Cook and Guthrie.

He observed a large number of Aborigines in the park, on the roadway and near the pre-school. There were numerous fights and scuffles going on in the area. The total number of eight (8) police were present at that time.

Bull estimated that between 150 to 200 Aborigines were present at Azalea Street. Obscene language was being shouted at the police group.

It was decided by the police that they should not make any arrests as they were outnumbered.

He observed a large male person near the driveway of the pre-school using obscene language calling the police "white Captain Cook cunts". Constable Jones and Angus went over to this person and he saw Jones move backwards. He then observed a struggle take place and the male person being handcuffed by the police.

Bull stated that he then proceeded to the police car and opened the door for the purpose of assisting Jones and Angus to put the prisoner in the vehicle. Whilst standing at the vehicle he was struck with a stubbie to the knee.

This injury to the knee was later examined at the Inala Medical Centre.

He stated that he then saw about 60 to 70 Aborigines converging on Constables Jones and Angus. Members of the group began kicking Constables Jones and Angus. Coghill was handcuffed and lying on his stomach with his hands behind his back. He also observed sticks being brandished.

In Bull's opinion, Jones and Angus did not use excessive force on Coghill to handcuff him. Bull stated that he then saw an ambulance drive through the crowd. Further assistance was requested from Police Operations. The police retreated up Azalea Street near the intersection of Frangipani Street.

Bull observed a number of Aborigines damaging the police vehicles which were parked in Azalea Street.

Upon arriving, Inspector Firman walked down to the group and to one of the elders. A short time later Inspector Firman waved the police group down and more bottles and bricks were thrown at the advancing police group. Persons in the crowd were then arrested.

Bull stated he arrested a Gary Couchy for drunkenness.

He remained at the scene until about 3.00am assisting the Scenes of Crime Officer, Damien Wegner.

He did not see any Aboriginal person assaulted that evening at the watchhouse or the scene. He did not have a baton in his possession that night.

### **Other Evidence**

Residents confirm that Aboriginal persons were shouting abuse and using obscene language during the evening. Some were observed breaking branches from trees. One witness observed a group of six (6) to eight (8) police officers to the side of the road on the football ground. The officers were together in a group, stood back and did not appear to react to the provocation offered by the group of Aborigines. The witness observed Aboriginal persons throwing bottles, rocks and sticks at the police.

The group of Aborigines that had gathered in the middle of Azalea Street grew larger and some incited others to fight the police. There was another group of Aborigines situated outside the pre-school and this group also shouted abuse at the police. The police group relocated towards Archerfield Road to avoid being hit by objects being thrown. The witness did not see any batons in the hands of police but noticed that some police were wearing motor cycle helmets. The police attempted to calm the crowd and at no time did the witness hear police yell obscenities at the Aboriginal people.

The witness saw the police disperse the crowd and observed that police appeared to be identifying and arresting certain Aborigines. The police seemed to be well organised and were not observed to use any undue force. In the witness' opinion the police "handled the situation in a professional and restrained manner". She did not observe any police misconduct and was astonished by the press coverage of the incident the following day. This witness would appear to have no particular sympathies with either faction involved (her son is serving a term of imprisonment).

Other witnesses observed Aboriginal people fighting and abusing each other and one saw Aboriginal people urinating in her yard and asleep on her front verandah. This witness did not see any confrontation between Aborigines and police but heard someone yell "get the white bastards". Other witnesses stated that they could not sleep because of the noise of the function, others told of arguments, women screaming and glass being smashed. One resident reported hearing a police officer call out "leave me alone, leave me alone" and somebody else reply "leave him alone mate, there is no need to kick him like that". This resident also heard a person say "we're in the fight with you Robbo, kick the mongrel, kill him".

Evidence was also taken from two ambulance officers who attended the scene. They were forced to drive through part of the group on the road and as they did so some Aborigines abused them and punched the vehicle. The officers were present when Inspector Firman approached the crowd, attempted to negotiate and later ordered the police to disperse the group. They did not see any physical confrontation between police and Aborigines and it appeared to them that the police acted with great restraint.

A video tape recording taken shortly after the dispersal disclosed a vocal group of Aboriginal youths and children standing apart from police and not obviously distressed or subdued. The picture demonstrates their failure to respond to the forceful demands of a security officer employed at the function to return to the Community Centre.

- **Is there evidence of assaults by Police occurring at the Inala watchhouse after the incident at the Wandarrah Centre?**

It took approximately three (3) hours to process the twenty people arrested through the Inala Watchhouse<sup>8</sup>. Many were charged with drunkenness and public order offences. The processing was supervised by Sergeant 1/C Symes at the order of Inspector Firman.

- Tyrone John Boyd is unable to identify the officers whom he alleges kicked and punched him upon his arrival at the watchhouse or afterwards.

In a statement given to the Aboriginal Legal Service, Boyd said that upon alighting from the police van (presumably at the Inala Watchhouse) he had been handcuffed, kicked and punched. He stated that one of the

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<sup>8</sup>

A Schedule of Charges appears at Appendix D

officers responsible was named "Mick" and was of a large build with short spiked blonde hair. Constable Sucic was the arresting officer and does not fit this description.

Boyd further stated that on around the evening of 4 November 1990 he was punched, kicked and kneed by police officers whilst in his cell at the Inala watchhouse. There is no evidence to corroborate this allegation and Boyd was unable to identify the officers responsible. Boyd also stated that on Tuesday 6 November 1991 whilst in his cell he was punched in the stomach by a police officer. He was unable to identify the officer responsible and there is no evidence to corroborate this allegation. Boyd did not seek medical attention for any injuries.

When interviewed by officers of the Criminal Justice Commission, however, Boyd alleged only that he had been pushed around and shoved in the back of the head at the watchhouse. No other allegations were made in this regard. He could not identify any of the officers concerned.

A woman, Elaine Queary, who travelled in the police van with Boyd, states that she saw Boyd grabbed by the hair by police when taken from the van. She was shown photo identification boards of the police known to have attended the scene but was unable to identify the police concerned. Queary did not see anyone "bashed" at the watchhouse.

Robert Bruce Swan states that he saw another prisoner (probably Boyd) taken from his cell to be fingerprinted and that when he returned some time later he had a bleeding and swollen lip. Boyd does not refer specifically to this incident.

Boyd made no complaint to Inspector Palmer, who inspected the watchhouse on the evening of 3 November 1990, or to Inspector Johannssen on the morning of 5 November 1990. Boyd also alleged that he was abused by police at the Inala watchhouse. No corroboration has been found of this later incident and he was unable to identify the officer concerned.

Boyd's arresting officer, Constable Sucic, has denied any knowledge of any improper conduct regarding the treatment of Boyd.

- Charles Christopher Saunders alleges that he was "king hit" by a police officer outside the Inala watchhouse. He identified Constable Pemberton as committing the assault and Constable Angus as being present during the