CRIMINAL JUSTICE
COMMISSION

REPORT ON THE INVESTIGATION INTO THE COMPLAINTS OF KELVIN RONALD CONDREN AND OTHERS

NOVEMBER 1992

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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 on the investigation into the complaints of Kelvin Ronald Condren and others.

Yours faithfully

SIR MAX BINGHAM QC
Chairman

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FOREWORD

As a result of its investigation into the complaints of Kelvin Condren and others, the Commission believes that it is possible to reduce the risk of unfair treatment of Aborigines and Torres Strait Islanders and others who may be under a disability during the course of police investigations.

This report concludes by listing recommendations for proposed amendments to the Queensland Police Service General Instructions and to the *Evidence Act 1977*. The issues raised by the proposed recommendations are clearly important and likely to be of interest to diverse groups within the community.

Prior to finalising its recommendations and forwarding them to the appropriate authorities for consideration, the Commission would like to receive public submissions on the issues raised by the recommendations.

The Commission would particularly welcome submissions from members of the Aboriginal and Torres Strait Islander communities.

The Commission intends to hold a public hearing in relation to these issues, at which time oral and written submissions will be received, with a view to public discussion of the proposed recommendations. This hearing will be chaired by Mr Lew Wyvill QC, presently a part-time Commissioner of this Commission, and formerly a Royal Commissioner appointed to enquire into Aboriginal deaths in custody in Queensland.

Written submissions in this matter should be sent to the Criminal Justice Commission, PO Box 137, Brisbane, Albert Street, Queensland 4002, by 31 December 1992.

(Submissions marked "Confidential" will be treated as such and not made available for public inspection. All other submissions received will be copied and made available for public viewing in the Commission's Library at 557 Coronation Drive, Toowong).

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Background

At 5.40am on 1 October 1983, Patricia Rose Carlton was found unconscious and seriously injured in a car park located at the rear of the Mt Isa Hotel. Ms Carlton died later that evening at the Mt Isa Hospital without having regained consciousness.

On the same day, police investigating the attack on Ms Carlton spoke to an Aborigine called Kelvin Ronald Condren. Mr Condren later took part in the making of a Record of Interview in the presence of a Justice of the Peace (JP), and as a result of admissions allegedly made during that interview was later charged with Ms Carlton's murder.

Police at Mt Isa also took witness statements from several Aborigines. The accuracy of these statements was later the subject of some controversy.

Mr Condren was convicted of the murder of Patricia Carlton on 15 August 1984, but on 26 June 1990, the Court of Criminal Appeal set aside his conviction and ordered a retrial. On the recommendation of the Director of Prosecutions, the charge of murder against Mr Condren was subsequently withdrawn in the Supreme Court on 27 July 1990, and Mr Condren was freed.

Complaints to the Criminal Justice Commission

Following Mr Condren's release from custody, he and three of the witnesses who had given statements to the police about the murder -- Louise Brown, Stephen McNamee and Noreen Jumbo -- made complaints to the Criminal Justice Commission.

Mr Condren complained that prior to taking part in the making of the Record of Interview he had been subjected to assault and intimidation by police. He also complained that the Record of Interview had been largely fabricated by police, as had evidence of alleged oral admissions made by him prior to the making of the Record of Interview. Noreen Jumbo, Louise Brown and Stephen McNamee made complaints to the Commission that their police statements in the Condren matter were false and had been obtained from them by intimidation, duress and, in the case of Stephen McNamee, by assault.

Scope of the Hearing

The Commission assessed the complaints and determined that the allegations about police misconduct were within the Commission's jurisdiction and should be the subject of an investigative hearing.

In deciding to investigate the allegations in this matter, the Commission was mindful of some of the difficulties likely to be encountered. Several of the witnesses were dead, the murder and the investigation took place almost nine years ago, and, by and large, the allegations of police misconduct came down to one witness's word against another's. But in view of the fact that Mr Condren had suffered the most serious repercussions as a result of his arrest and conviction, the Commission determined that it was appropriate to conduct investigative hearings, despite the likely difficulties.

The hearing was restricted to issues relevant to allegations of police misconduct, and the Commission stressed from the outset that no determination was going to be made about who killed Patricia Carlton, or whether or not Mr Condren was rightly convicted of the murder.

The Jurisdiction of the Criminal Justice Commission

The Criminal Justice Commission is empowered under the *Criminal Justice Act 1989* to investigate alleged or suspected misconduct by members of the Queensland Police Service. It is also empowered to provide the Commissioner of the Queensland Police Service with policy directives, based on research and investigation, on topics including law enforcement priorities, education and training of police, revised methods of police operation, and the optimum use of law enforcement resources.

The Commission considered that the allegations made against the police by Mr Condren and the other complainants amounted to allegations which, if proven, could amount to official misconduct and/or misconduct.

The Commission was required at the completion of its investigation to consider whether any report should be made to an appropriate authority with a view to prosecution proceedings, or disciplinary proceedings for official misconduct or misconduct.

The Conduct of the Investigation

The first step in the Commission's investigation of these complaints was to obtain all relevant material from the Queensland Police Service, the Office of the Director of Prosecutions, the Office of the Solicitor–General, and the Aboriginal Legal Service (ALS). Transcripts and records were obtained of all previous court proceedings in the original and appeal jurisdiction. The Commission briefed counsel to assess the material, settle Terms of Reference, and prepare a list of witnesses who could give evidence relevant to the allegations of police misconduct.

On 9 April 1992, the Commission resolved to hold public hearings before the Chairman of the Commission, Sir Max Bingham QC, into the allegations which had been made by Mr Condren and others. The Terms of Reference which the Commission resolved were as follows:

(a) An allegation by Kelvin Ronald Condren that police investigating the allegation of murder against him brought into existence a false document, namely a Record of Interview, which was used in evidence against him during his trial, and that police subjected him to intimidation and assault in order to obtain the alleged confession and his signature on the document.

(b) An allegation by Kelvin Ronald Condren that the police investigation of the murder of Patricia Carlton was not conducted in a fair, adequate or efficient manner.

(c) An allegation by Louise Elizabeth Brown and Stephen Wayne McNamee that statements taken from them by police during the investigation of the murder of Patricia Rose Carlton were taken under circumstances of duress, and that the statements were almost entirely false and were manufactured by police.

(d) An allegation by Noreen Rose Jumbo that the statement supplied by her to police investigating the murder of Patricia Rose Carlton was inaccurate, and was signed by her because of intimidation by police.

(e) Whether any member of the Police Service has been guilty of misconduct or neglect or violation of duty in relation to the matters referred to in paragraphs (a) to (d).

In view of the Commission's responsibility to provide the Commissioner of the Police Service with policy directives based on research and investigation, a sixth Term of Reference was included to consider generally the issue of QPS policy

directives, statutory provisions, and case law governing the taking of statements from witnesses and the questioning of suspects:

(f) A consideration generally of any policy directives, statutory provisions, or relevant case law in relation to Police treatment of Aboriginal suspects and witnesses, with respect to both the situation as it existed in 1983, and the present situation.

Shortly after the hearings commenced, the Chairman ruled that witnesses who were the subjects of allegations could be named in evidence, but he made a suppression order forbidding publication of their names. The officers and the JP who attended the police interview with Mr Condren are therefore referred to in anonymous terms in the report. Mr A, a man who allegedly confessed to the murder of Patricia Carlton, is also referred to anonymously as some of the material canvassed with respect to him could prejudice any future court proceedings against him.

General Issues About Evidence Before the Commission

Some general problems in taking evidence in this matter became apparent during the course of the hearing, including:

1. The Time Factor

Because the events the subject of these allegations took place almost nine years ago, many witnesses had no memory of facts and circumstances outside the scope of their original statements or evidence. This lack of memory after so many years is not surprising, but it certainly made the Commission's task more difficult.

2. Witnesses' Previous Evidence

Many of the witnesses called before the Commission had already given evidence on oath about the matters the subject of the hearing in other courts. This, coupled with the fact that most witnesses could not recall anything outside the scope of their original evidence, meant that the most likely outcome was what in fact occurred: most witnesses simply repeated before the Commission their former evidence with respect to the relevant issues.

3. **Assessment of Credibility**

Aboriginal Witnesses

In relation to the Aboriginal witnesses, the Commission was mindful of cultural differences which would exacerbate the tension and fear felt by any witness in a formal legal proceeding. It was clear that the Aboriginal witnesses were not at ease in the formal setting of the hearing. As the hearing progressed, they often disagreed with or failed to recall facts contained in statements attributed to them. Some of the witnesses disagreed with both their police statements and with statements which had been prepared for the defence by legal officers or field officers of the ALS.

Much of the analysis of the evidence in this report consists of references to inconsistencies between various statements which have been made by the Aboriginal complainants. While the Commission is well aware of the many factors which might contribute to inconsistencies between the statements, including the length of time since the incidents occurred and the relative inexperience of the Aboriginal witnesses, it would be remiss of the Commission not to refer to these inconsistencies when assessing the complainants' evidence. It is impossible for the Commission to ignore conflicts or inconsistencies in the evidence, particularly where criminal charges or serious charges of misconduct could follow.

Police Witnesses

In contrast to the Aboriginal witnesses, most police officers are experienced witnesses, much more likely to be at ease with courtroom procedure. Many of the police witnesses in this matter had refreshed their memories from witness statements and transcripts before giving evidence.

These factors were relevant to the evaluation of their evidence before the Commission.

Evidence Relating to Term of Reference (a) and (b)

Term of Reference (a)

An allegation by Kelvin Ronald Condren that police investigating the allegation of murder against him brought into existence a false document, namely a Record of Interview, which was used in evidence against him during

his trial, and that police subjected him to intimidation and assault in order to obtain the alleged confession and his signature on the document.

In a 25–page statement to the Commission dated 24 August 1990 Mr Condren alleged that he had been subjected to intimidation and assault by police prior to taking part in a Record of Interview on 1 October 1983, and that the Record of Interview had been largely manufactured by police.

The Allegation of Intimidation and Assault

In relation to the allegation of intimidation and assault made by Mr Condren, a positive finding would rest entirely upon Mr Condren's evidence. There was no medical evidence before the Commission which went to the issue of the alleged assault, and the assault was denied by the police officers. Although Mr Condren alleged in his evidence before the Commission that he was assaulted by being hit in the face with a telephone book, it was apparent that the allegation of assault with a telephone book did not appear in any of Mr Condren's statements made prior to 24 August 1990. Mr Condren did not complain to a doctor who saw him at the watchhouse on 4 October 1983 about being assaulted prior to the making of the Record of Interview, and there was no clear evidence that he had complained of such an assault to his first solicitor or to the barrister who appeared for him at the committal proceedings.

In a statement taken in November 1983, Mr Condren did complain of an assault by a blow to the ear, but there was no reference to the use of a telephone book.

The Allegation that the Record of Interview was a False Document

Mr Condren's evidence about the fabrication of the Record of Interview is clearly in conflict in some regards with the evidence given to the Commission by the JP who was present at the interview. There is also some conflict between the evidence of the police officers and the JP about the making of the Record of Interview. The JP agreed in evidence that "prompting" questions were asked by police on a number of occasions, but he stated that the answers in the Record of Interview were given by Mr Condren and accurately recorded. The JP said that there was never an occasion where Mr Condren did not answer at all and a reply was fabricated, or that Mr Condren answered in a certain way, and the opposite of what he said was typed down.

The JP's evidence that prompting occurred during the Record of Interview is a matter of great concern to the Commission, as, in its view, any omission of

prompting or clarifying questions from a Record of Interview is intolerable in a criminal investigation. In assessing the JP's evidence about this issue, the Commission took into account the fact that he has on previous occasions repeatedly denied that any prompting occurred during the Record of Interview. In the circumstances, the Commission is of the opinion that his evidence should not be relied upon to support a conclusion that prompting occurred.

In view of the seriousness of this issue, however, the Commission has made a recommendation to the Commissioner of the QPS that he circularise to all police officers a warning that editing interviews, or omitting any question or answer, or anything said during the making of a Record of Interview, is not an acceptable practice.

Conclusion

The allegations which Mr Condren has made about assault and fabrication of evidence with respect to the making of the Record of Interview are allegations of criminal offences, and to justify referring these matters for consideration of criminal charges, the Commission would have to be satisfied that the available evidence could support a charge to the criminal standard of proof. The allegations could also amount to official misconduct or misconduct, and the Commission would have to be satisfied in that case that the available evidence could support those charges to the reasonable satisfaction of a tribunal, taking into account the serious nature of the allegations and the likely adverse consequences of a positive finding to the police officers.

In view of the inconsistencies between Mr Condren's various statements and his evidence before the Commission, the Commission is of the opinion that the available evidence does not support the reference of a report on this matter for consideration of criminal or disciplinary charges.

Term of Reference (b)

An allegation by Kelvin Ronald Condren that the police investigation of the murder of Patricia Carlton was not conducted in a fair, adequate, or efficient manner.

Four matters were raised during the course of the hearing about the manner in which the police investigated the murder of Patricia Carlton. These allegations related to:

1. The Treatment by Police of the Confession of Mr A (a person who allegedly confessed to the murder of Patricia Carlton)

Prior to Mr Condren's committal proceedings police in Mt Isa became aware that another man, Mr A, had allegedly confessed to murdering an Aboriginal woman in Mt Isa in late September 1983. In January 1984 a senior police officer involved in the investigation travelled to the Northern Territory to interview Mr A, but Mr A refused to speak to the officer at that time.

There was, in the Commission's view, an inappropriate delay between the receipt of the information about Mr A's alleged confession and the trip to Darwin to interview him. But there is no evidence before the Commission to suggest that the investigating officer did not seek permission to interview Mr A once the information about the confession was known. Any delay in his travelling to the Northern Territory was caused by the need for his travel to be approved by the Commissioner's office.

In the Commission's view, it is difficult to say that the investigating police officer did not respond properly to the information about Mr A's alleged confession. Mr A's confession showed some knowledge of the facts surrounding the attack on Patricia Carlton, but there were also several major inconsistencies between the details provided by him and the facts of the Carlton murder. In any case, Mr A was called as a witness at Mr Condren's murder trial, but refused to repeat under oath his alleged out–of–court confession to murder.

2. The Police Failure to Interview Further Witnesses

During the hearing, counsel representing Mr Condren questioned police about their failure to interview bar staff or other potential witnesses at the Mt Isa Hotel about whether Patricia Carlton had been sighted in the bar after Mr Condren's arrest for drunkenness on 30 September 1983. He also questioned the failure of police to interview other employees of a pharmacy located near the scene of the attack.

It is clear from examination of the ALS file in this matter that very shortly after the murder of Ms Carlton a lot of misinformation and gossip was circulating in Mt Isa about alleged sightings of her on the night of 30 September 1983. The file contains several witness statements from people who claimed to have seen Ms Carlton at a time when they could not have. These statements highlight the fallibility of human perception and memory.

In the Commission's view, it is not clear that further reliable information about Ms Carlton's movements on the night in questions could have been obtained by further investigations by police.

In relation to evidence from witnesses at the pharmacy, a senior police officer involved in this matter gave evidence that he interviewed one witness from the pharmacy who gave him useful information about the case. He did not interview any other people from the pharmacy and could not explain his failure to do so.

Evidence from two other people from the pharmacy was largely responsible for the decision of the Court of Criminal Appeal to order a retrial. If they had been more thorough, the police would have spoken to these witnesses during the investigation and the witnesses would not have provided their first statements many years after the event.

3. The Use of the Justice of the Peace as a Witness to Mr Condren's Record of Interview

In 1983 the General Instructions in the *Queensland Policeman's Manual* set out the steps police should take to have an independent person present when they interviewed an Aborigine or Torres Strait Islander "under disability". The Instruction provided that an Aborigine or Islander under disability should be questioned in the presence of "an independent adult person concerned with the welfare of those races".

In the Commission's view, a non–Aboriginal JP previously unknown to Mr Condren was not within the terms of the General Instructions.

On the other hand, neither of the solicitors who had been acting for the ALS was available to attend the interview, and if the police evidence is accepted, neither was Mr Crowley, an Aboriginal field officer.

The use of the JP as an independent person did not, in the Commission's view, substantially comply with the General Instructions. But in view of the unavailability of the persons from the ALS who would normally have been called, the Commission considers that the police did not deliberately fail to comply but, rather, erred in judgment.

4. The Interview of Darryl Cherry in 1987

The Commission heard that a senior police officer involved in the original Condren investigation had arranged in 1987 to interview a witness called Darryl Cherry about evidence which Mr Cherry had given at Mr Condren's murder trial. In his trial evidence, Mr Cherry had testified that the police officer who had taken his original statement had applied pressure to him, with the result that he had said things in his statement which were untrue.

In the Commission's view, it was entirely inappropriate for the police officer to, in effect, investigate himself by interviewing Mr Cherry in this manner. The practice of police officers involving themselves in matters in which they had a personal interest appears to have been quite common and eventually became the subject of a Commissioner's Circular. The fact that the practice was common does not excuse the behaviour, but to some extent explains the serious error of judgment made by the police officer.

Conclusion

Term of Reference (b) was formulated to allow the Commission to examine the manner in which police investigated the murder of Patricia Carlton, with a view to considering whether there had been any misconduct or impropriety.

Although it is clear that there were some unsatisfactory aspects to the investigation, in the Commission's view an allegation that inadequacies in the police investigation were caused by misconduct or impropriety on the part of the police officers cannot be substantiated.

In relation to Term of Reference (b), the Commission is of the opinion that the available evidence does not justify referring a report on this matter for consideration of criminal or disciplinary charges.

Evidence Relating to Terms of Reference (c) (d) and (e)

Term of Reference (c)

An allegation by Louise Elizabeth Brown and Stephen Wayne McNamee that statements taken from them by police during the investigation of the murder of Patricia Rose Carlton were taken under circumstances of duress, and that the statements were almost entirely false and were manufactured by police.

Louise Brown

Louise Brown complained to the Commission in a statement dated 24 September 1990 that her witness statement in the Condren matter had been fabricated by police.

Ms Brown said she was questioned at the police station on 1 October 1983, and that police officers had insisted she was at the scene of the assault on Patricia Carlton. She said that although she had not been present and knew nothing about the matter, she had signed a statement because she was afraid.

In her evidence before the Commission, Ms Brown said that she had not made any of the statements attributed to her in her police statement. She said that apart from a few personal particulars, all of the facts in the statement were made up by police.

A typewritten, unsigned and undated statement which was attributed to Louise Brown was prepared by Mr Condren's legal representatives some time prior to his trial. Although Ms Brown denied before the Commission providing any of the facts contained in her police statement, the defence statement contained many of the same facts.

Ms Brown complained to the ALS on 3 October 1983 that her police statement was false, but there was some evidence to suggest that her visit to the ALS may have been prompted by fear of "pay-back" from Patricia Carlton's relatives because she had been present at the scene of the assault. Ms Brown denied that this was the cause of her visit to the ALS, but statements and evidence provided by her defacto husband suggest that there may have been some agitation by Patricia Carlton's relatives prior to the visit to the ALS on 3 October 1983. Conflicts in the evidence about what caused the visit to the ALS make it difficult for the visit to be used to corroborate Ms Brown's allegations that her police statement was false.

Stephen McNamee

Stephen McNamee provided a statement to the Commission alleging that he had been forced by police to make false statements about Kelvin Condren's involvement in Patricia Carlton's death and that he had been assaulted by police and threatened with a shovel at the police station.

In evidence before the Commission the police denied any intimidation of or assault on Mr McNamee at the police station. They also denied suggesting matters to Mr McNamee during the taking of his statements.

The Commission had before it several statements from Mr McNamee, and several conflicting versions of the alleged assault upon him. In one statement the assault was described as a "slap across the table"; in another as a "punch". In another statement, Mr McNamee allegedly said that he was hit with a shovel at the police station, although in evidence before the Commission he said that he was threatened with the shovel but never hit with it.

Conclusion

In relation to the allegations of Ms Brown and Mr McNamee that their police statements were fabricated, and in the case of Mr McNamee that he was assaulted by police, the Commission is of the opinion that the available evidence does not justify referring a report on this matter for consideration of criminal or disciplinary charges.

Term of Reference (d)

An allegation by Noreen Rose Jumbo that the statement supplied by her to police investigating the murder of Patricia Rose Carlton was inaccurate, and was signed by her because of intimidation by police.

In the Commission's view, there are some fundamental problems in accepting Ms Jumbo's evidence to support the allegations she has made.

Ms Jumbo gave evidence that at 3.00pm on 1 October 1983 police told her that a murder had been committed. At the time Ms Jumbo refers to, Ms Carlton was not yet dead. Ms Jumbo also gave a statement to the ALS saying that police forced her to put in her statement that she had seen Kelvin Condren assaulting Patricia Carlton. However, her police statement contains no such allegation.

Conclusion

There are substantial conflicts between the known facts in this case and Ms Jumbo's evidence, and in the circumstances, the Commission is of the opinion that the available evidence does not justify referring a report on this matter for consideration of criminal or disciplinary charges.

Term of Reference (e)

Whether any member of the Police Service has been guilty of misconduct or neglect or violation of duty in relation to the matters referred to in paragraphs (a) to (d).

It will be apparent from what has been set out in relation to each of the particular Terms of Reference (a) to (d) that the Commission does not consider that the available evidence in relation to these matters justifies referring a report for disciplinary action against any police officer in relation to the matters contained in those specific Terms of Reference.

Conclusion

In relation to Term of Reference (e), the Commission is of the opinion that the available evidence does not justify referring a report on this matter for consideration of disciplinary charges.

Aborigines and the Criminal Justice System

The Commission's investigation found that in the days preceding her death Patricia Carlton, like many Aborigines in Mt Isa in 1983, was living a life of drunkenness and homelessness where violence was rife.

The pattern of alcoholism and violence in Ms Carlton's life was echoed to some extent in the subsequent history of three of the five Aboriginal witnesses who gave statements to the police about Kelvin Condren.

One of the witnesses was dead at 28 years of age, apparently a victim of suicide. Another witness died in Darwin in 1985, aged 28 years. Her death was caused by cancer, which had evidently spread untreated for some time.

A third witness was serving a term of imprisonment for manslaughter at the time of her appearance before the Commission. She had become involved in a drunken assault on another Aboriginal woman in the Brisbane Watchhouse, resulting in the woman's death.

Viewing the pattern of these lives, it seems somehow grotesque to expect people who have been living on the edge of society in every way to fit into the rigid structure of the criminal justice system.

The Commission has, in this report, examined some of the difficulties Aborigines face in their dealings with the police and the courts and made recommendations for changes to relevant practices and procedures.

Term of Reference (f)

A consideration generally of any policy directives, statutory provisions or relevant case law in relation to police treatment of Aborigines in custody, with respect to both the situation as it existed in 1983, and the present situation.

The Commission heard expert evidence about the problems Aborigines face during police interviews and during the process of giving evidence before formal court proceedings. Dr Diana Eades, a senior lecturer in linguistics at the University of New England, gave evidence before the Commission about the way Aborigines use language and convey information. She spoke in particular about the communication problems Aborigines face in dealing with concepts of time and distance, their unease in a formal interview situation and the problems caused by their "deference to authority".

The Commission also heard evidence from Mr Paul Richards, a solicitor who has worked with Aboriginal and Islander people for 20 years, about the problems Aboriginal people experience during police interview, and in the court system.

Dr Monika Henderson, the Director of Policy Research and Evaluation for the Queensland Police Service, gave evidence about some of the research and special projects being undertaken by the Queensland Police Service. Of great importance to the present case was the introduction of the requirement that police officers electronically record all formal interviews about indictable offences. Dr Henderson also gave evidence about introduction of Aboriginal and Torres Strait Islander cultural awareness training as part of studies undertaken by Queensland Police Service recruits.

Dr Henderson told the Commission that the Queensland Police Service was currently reviewing all of its operational instructions and procedures, including the *Queensland Policeman's Manual,* which contains general instructions about interviewing Aboriginal and Islander suspects.

The Commission considers it timely to make recommendations about amending the General Instructions during that review.

Confessional Evidence - How Reliable Is It?

Kelvin Condren was convicted of murder largely on the basis of his alleged confession to police. His case squarely raises the issue of how much reliance courts can or should place on confessional evidence.

This report reviews the position in England, Australia, and other jurisdictions, with respect to the admissibility of confessional evidence, and, in particular, considers the question of whether or not interviews which are not electronically recorded or otherwise corroborated should be admissible.

Recommendations

As a result of its investigation into the complaints of Kelvin Condren and others, the Commission is of the opinion that the risk of unfair treatment of Aborigines and Torres Strait Islanders and others who may be under a disability during the course of the police investigative process can be reduced and, to this end, proposes to recommend amendments to the QPS General Instructions and to the *Evidence Act 1977*.

The Commission's present view of the proposed amendments is set out below. These recommendations will be reviewed after input from interested parties through public submissions and a public hearing to be chaired by Commissioner Lew Wyvill QC.

Interview of Aboriginal and Torres Strait Islander Suspects (in the category of persons under disability)

Mr Condren's case clearly raises the important issue of who is a suitable independent person to attend a police interview with an Aboriginal or Islander suspect. In the Commission's view, this investigation shows that the independent person would, ideally, be someone with legal qualifications.

The QPS is currently undertaking a major review of both the form and content of the General Instructions.

1. As presently advised, the Commission would recommend that the new instructions contain provisions in the following terms:

   (1) When a police officer intends to question an Aboriginal or Islander suspect under disability, unless the police officer is aware that the

suspect has arranged for a legal practitioner to be present during questioning, the officer must:

(a) immediately inform the suspect that a representative of an Aboriginal legal aid organisation will be asked to attend the interview; and

(b) notify such a representative accordingly.

(2) A police officer should not question an Aborigine or Islander under disability who is suspected of committing an offence unless an "interview friend" is present while the suspect is questioned.

"Interview friend" means:

(a) a representative of an Aboriginal legal aid organisation; or
(b) a legal practitioner acting for the suspect; or
(c) a relative or other person chosen by the person.

(3) A relative or other person chosen by the suspect should be used as an "interview friend" only if:

(a) neither a representative of an Aboriginal legal aid organisation nor a legal practitioner acting for the suspect is available, or

(b) the suspect has clearly and expressly indicated that she/he does not wish a representative from an Aboriginal legal aid organisation or other legal practitioner to attend the interview.

The Commission is aware that the QPS intends incorporating the *Anunga Rules* in its new instructions. (Originally enunciated by Mr Justice Foster in the Northern Territory Supreme Court, the *Anunga Rules* set out guidelines for the interrogation of Aborigines by police.) The provisions suggested above expand and clarify some of the principles obtained in the *Anunga Rules* and specify how police should apply them when interviewing Aborigines and Islanders.

The Commission considers that the new instructions can usefully accommodate both the Anunga principles and this recommendation and looks forward to reviewing the revised instructions before they are finalised.

2. The Commission would also recommend that the General Instructions be further amended to specify that Aboriginal and Islander suspects under disability must be informed that the purpose of the "interview friend" attending is to give the suspect support and/or legal advice, and that an opportunity to confer privately with the "interview friend" will be provided prior to any interview taking place. This information should be provided to the suspect in the presence of the "interview friend" and in clear, simple language which the suspect can understand.

3. Although an attempt has been made in the present General Instructions to define generally who is a "person under disability", the Commission would recommend that the General Instructions should be amended to contain a specific checklist of matters to be canvassed by police prior to making a decision about whether or not an Aborigine or Islander is under disability; for example, age, educational standard, knowledge of the English language, cultural background and work history.

4. Alcohol abuse is a real problem for many Aborigines and Torres Strait Islanders. The Commission would recommend that the revised General Instructions provide clear directions to police officers that, if there is any indication that a suspect may be under the influence of alcohol or a drug, no interview should proceed until the issue is resolved to the officer's satisfaction by questioning the suspect as to recent alcohol/drug intake. This questioning should be electronically recorded in all circumstances where electronic recording equipment is available. In suitable cases, once it is established that the suspect may be under the influence of alcohol or drugs, the interview should be postponed, even if this requires requesting the suspect to attend for questioning at another time.

   In cases involving a serious offence, e.g., murder, where it is not considered appropriate to postpone the interview, real difficulty arises. One option could be to allow police the right to a reasonable period of pre-arrest detention until the suspect is fit to be interviewed. Submissions have recently been made about this matter in response to the Commission's issues paper on police powers. It is clear from those submissions that police favour some power of pre-arrest detention, while others strongly oppose allowing police any right to pre-arrest detention. The Commission recommends that this matter be considered as part of the general review of police powers presently being undertaken.

Interview of Aboriginal and Torres Strait Islander Witnesses (in the category of persons under disability)

5. Much of the controversy in the case the subject of this report revolved around Aboriginal witnesses disputing the accuracy of their police statements. Some of the problems inherent in dealing with Aboriginal witnesses and suspects have already been referred to in this report. The Commission is of the opinion that the General Instructions should be amended to provide that witness interviews with Aborigines and Torres Strait Islanders under disability in respect of suspected indictable offences be electronically recorded in all circumstances where electronic recording equipment is available. The witness should be allowed to provide a narrative, following which clarifying questions could be asked. (The results of these electronically recorded interviews would have to be reduced to statement form to comply with the provisions of s. 110A of the *Justices Act 1886*. It may be possible in future, with minor amendment of that Act, for the transcripts themselves to be admissible, if suitably certified.) If no electronic recording equipment is available, the witness should still be allowed to provide a narrative, and the witness' own words should be used in the witness statement.

6. During the Commission's hearing in this matter, there was no clear evidence in relation to several of the witness statements as to which police officer took the statement, or what time the statement was taken. The Commission recommends that the General Instructions be amended to require every police officer taking a witness statement to record therein his name as the officer taking the statement, the time and date at which the taking of the statement began, the time and date at which the statement was completed, and the names of any police officers or other witnesses present during that period.

Uncorroborated Confessions

7. The dangers inherent in accepting an uncorroborated confession as sufficient to support a conviction for a crime have already been referred to in this report, the Commission therefore would recommend that the *Evidence Act 1977* be amended to include:

   A provision whereby confessions which are not recorded or confirmed either by video tape or audio tape, or confirmed in writing as accurate by an interviewee, or supported by evidence of a non-police witness, should not be admissible as evidence in a criminal proceeding for an indictable

offence. A proviso could be made that evidence of a confession which did not conform to those requirements could be admitted at the discretion of the court, if the court was satisfied that there were exceptional circumstances and that the admission of the evidence was justified.

8. There have been a number of cases in which it has been found that even electronically recorded confessions were unreliable, because they were either induced by improper behaviour on the part of police officers or were falsely made because of psychological or medical problems of the suspect. The Commission would therefore recommend that the *Evidence Act* be further amended to provide that a confession which is electronically recorded or confirmed in writing or supported by evidence of a non-police witness may at the discretion of the court be rejected if it was made in circumstances which render it likely that the confession is unreliable. (This would be a provision in similar terms to s. 76(2)(b) of the English *Police and Criminal Evidence Act 1984*.)

Accurate Recording of Written Records of Interview

9. During the hearing the Commission heard evidence that in some cases clarifying or prompting questions had been asked of an accused during the making of written Records of Interview, but not recorded in the interview. One police officer gave an example that if during an interview he asked a question, and the suspect did not appear to understand, the question would be repeated, but it would not be typed in the interview that it had been repeated. He also said that if an accused made a reply which the officer could not understand, he would say, *"What did you say?"*, but that only the eventual reply would be typed down, not his clarifying question. Although in most interviews involving indictable offences nowadays an officer would be required to electronically record the interview, there may still be some instances, particularly in remote areas, where interviews will be recorded in writing, either by typewriter or handwriting. In the Commission's view, it is entirely inappropriate that any editing or omission of clarifying questions should take place during such written interviews.

The Commission recommends that the Commissioner of the QPS circularise to all police officers in the State a direction that <u>all</u> conversation must be recorded during a written Record of Interview, and that no editing of any kind should take place.

CHAPTER 1

INTRODUCTION

The Death of Patricia Carlton

At 5.40am on 1 October 1983, Patricia Rose Carlton was found unconscious and seriously injured in a car park located at the rear of the Mt Isa Hotel. Ms Carlton died that evening at the Mt Isa Hospital, without having regained consciousness.

At about 12.30pm on 1 October 1983, police investigating the attack on Ms Carlton spoke to an Aborigine called Kelvin Ronald Condren, who was located drinking with other Aborigines in a dry creek bed at Mt Isa. Mr Condren was questioned briefly when he was located and later in the afternoon took part in the making of a written Record of Interview at the police station in the presence of a Justice of the Peace (JP). As a result of admissions he allegedly made during that interview, he was arrested and charged with attempted murder and later, following Ms Carlton's death, with murder.

Mr Condren had been in Mt Isa for only a short time prior to the death of Patricia Carlton, probably about a month. He had been released from prison in Townsville in May 1983 and had been reporting to a Probation Officer until 10 August 1983, when he was due to report but failed to do so. For some period in July 1983, he had attended an Aboriginal rehabilitation centre for alcohol abuse in Townsville. Any benefits of this attendance must have been shortlived, however, as watchhouse records show that he was picked up five times for public drunkenness in Townsville during August 1983.

Mt Isa Watchhouse records show that Mr Condren was arrested for drunkenness in Mt Isa on 20 September 1983, about two weeks before Patricia Carlton's death. The watchhouse records also show that he was arrested for drunkenness at 5.50pm on 30 September 1983 (the day Patricia Carlton was assaulted) and held in custody overnight.

Some of Mr Condren's time in Mt Isa was spent drinking with groups of friends and acquaintances at some of the drinking places around the town then favoured by Aborigines. These included the creek bed; an area behind the Civic Centre; an area near the "low-level bridge"; and, on some evidence, a vacant lot behind the Mt Isa Hotel. On at least some of these occasions, the drinking group included Noreen Jumbo (a former girlfriend of Mr Condren), Louise Brown and Stephen McNamee (who were defacto husband and wife), and Susan Gilbert and Fabian Butcher (who were both cousins of Louise Brown).

These five people were all later to sign police statements implicating Mr Condren in the murder of Patricia Carlton. Louise Brown, Stephen McNamee and Susan Gilbert signed statements indicating that they had witnessed Mr Condren assault Ms Carlton with a steel bar behind the Mt Isa Hotel. Noreen Jumbo and Fabian Butcher both signed statements indicating that Kelvin Condren had confided to them that he had "damaged" Patricia Carlton.

As a result of the statements obtained from the Aboriginal witnesses and Mr Condren's alleged admissions in the Record of Interview, the charge of murder against Mr Condren proceeded to trial in the Supreme Court at Mt Isa on 6 August 1984. On 15 August 1984 he was found guilty of murder and sentenced to life imprisonment.

That conviction has been the subject of two hearings in the Court of Criminal Appeal,[1] one Application for Special Leave to Appeal to the High Court, and two Petitions for Pardon to the Governor of Queensland.

Mr Condren's appeal to the Court of Criminal Appeal in 1984 was unsuccessful. But on 26 June 1990 the Court of Criminal Appeal, after hearing evidence called on a Reference to it by the Attorney-General, ordered that Mr Condren's conviction be set aside and, by a majority, recommended a retrial. On 25 July 1990, the Director of Prosecutions reported to the Attorney-General that, in his opinion, the matter should not be the subject of a retrial, that a nolle prosequi[2] should be entered on the indictment against Mr Condren and that he should be released from custody. The indictment charging Mr Condren with murder was subsequently withdrawn in the Supreme Court on 27 July 1990, and Mr Condren was freed.

Complaints to the Criminal Justice Commission

Following Mr Condren's release from custody, he and three of the witnesses who had given statements to the police about the murder made complaints to the

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1 The first was an appeal by Mr Condren against his conviction, which was heard in 1984, and the second was a Reference to the Court of Criminal Appeal by the Attorney-General under s. 672A of the *Criminal Code* in 1990. The Attorney-General's Reference was the result of a petition for pardon from Mr Condren to the Governor of Queensland.

2 A nolle prosequi is a formal acknowledgment by the Crown that it does not intend to proceed further with a charge before a court. It is, in effect, a discontinuance of a charge, but is not equivalent to an acquittal.

Criminal Justice Commission. The witnesses who lodged complaints were Noreen Jumbo, Louise Brown and Stephen McNamee.

Mr Condren complained that prior to taking part in the making of the Record of Interview he had been subjected to assault and intimidation by police. He also complained that the Record of Interview had been largely fabricated by police, as had evidence of alleged oral admissions made by him to police prior to the Record of Interview.

Noreen Jumbo, Louise Brown and Stephen McNamee all made complaints that their police statements were false and had been obtained from them by use of intimidation, duress, and, in the case of Stephen McNamee, by assault.

Some of the police statements implicating Kelvin Condren in the murder were the subject of controversy very soon after they were taken. Within days of signing their police statements, several witnesses provided further statements indicating that the police statements were false. By the time the committal proceedings commenced on 7 December 1983, only one Aboriginal witness was still available and willing to give evidence against Kelvin Condren in accordance with his police statement. That witness did not live to give evidence at Mr Condren's Supreme Court trial. He was found dead on 16 April 1984, hanging from a windmill tower at Bottle Tree Bore in Western Australia. Another witness who had given a statement implicating Kelvin Condren died in Darwin in 1985.

The Commission was faced with complaints from the remaining three Aboriginal witnesses that their police statements had been improperly obtained and were false, and allegations by Mr Condren that his Record of Interview had been largely fabricated by police and that he had been assaulted and intimidated prior to the Record of Interview.

Some of the difficulties in attempting to investigate these allegations were immediately apparent. Several of the witnesses were dead, the murder and the investigation took place almost nine years ago, and, by and large, the allegations of misconduct against the police came down to one witness's word against another's.

On the other hand, Mr Condren had suffered the most serious repercussions as a result of his arrest and conviction. The Commission therefore determined that it was appropriate to conduct investigative hearings. Although the issues had been canvassed many times in the preceding nine years in various jurisdictions, the Commission could examine evidence which may not have been admissible in criminal proceedings and could also use its compulsory powers to require the giving of evidence which could not be required in criminal proceedings.

The Scope of the Hearing

The Commission is empowered under the *Criminal Justice Act 1989*, indeed it is one of its functions, to investigate allegations of misconduct and/or official misconduct by members of the Queensland Police Service (QPS) that come to its notice from any source.[3]

The Commission also has a responsibility under the Act to provide the Commissioner of the QPS with policy directives, based on the Commission's research and investigation, on topics including law enforcement priorities, education and training of police, revised methods of police operation, and the optimum use of law enforcement resources.[4]

The investigative hearing in this matter was conducted pursuant to its powers under the Act and the Commission always intended that as far as practicable the hearing would be restricted to issues relevant to allegations of police misconduct or relevant to research and investigation about QPS policy directives and education and training of police.

From the outset the Commission stressed that it was not the purpose of its inquiries to resolve the question of who killed Patricia Carlton, or whether or not Mr Condren was rightly convicted of the murder.

There were two compelling reasons why the Commission could not make findings on those matters. The first was a jurisdictional issue. The Commission has no statutory power to try, or retry, the issue of who was responsible for the murder of Patricia Carlton, and cannot act as a further level of appeal against Mr Condren's conviction.

The second issue was more complex: was the identity of Patricia Carlton's murderer relevant to the issues of possible police misconduct? It might seem a simple proposition to say that a person would not confess to a serious crime which he did not commit, and that, therefore, if the Commission were able to show that Mr Condren could not have committed the murder, it would necessarily follow that he did not confess in the terms which the police alleged. The difficulty with this line of reasoning is that there are many well-documented cases where apparently sane people have confessed to serious crimes which they could not have committed, and the Commission was later to hear expert evidence during the

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3 *Criminal Justice Act*, s. 2.20(2)(d).

4 *Criminal Justice Act*, s. 2.15(h).

investigative hearing about this matter. Apart from the general reasons for false confessions, another factor in this case was the phenomenon of "gratuitous concurrence". Clinical psychologist Robert Walkley, who previously gave evidence at Mr Condren's murder trial, gave evidence about this issue before the Commission. In simple terms, gratuitous concurrence means that a vulnerable person, like Mr Condren, might agree with suggestions that he had been responsible for a crime, without his admissions necessarily being true.

Apart from the practical and legal difficulties in deciding who may have been responsible for the murder, it was clear that deciding that issue was unlikely to help the Commission to assess whether police had fabricated Mr Condren's admissions. The converse is also true: even if it could be shown that Mr Condren was responsible for the murder, it would not necessarily follow that his admissions had not been fabricated or that he had not been assaulted.

Procedure of the Hearing

Kelvin Condren's case was unlike many which proceed to hearing before the Commission: several of the issues to be decided by the Commission had already been the subject of criminal proceedings, and most of the witnesses called before the Commission had already given evidence under oath and been cross-examined at those proceedings. The Commission decided that the previous trial and appeal records would be tendered at the hearing and would be taken into account in making determinations.

The Commission resolved the Terms of Reference for the investigative hearing on 9 April 1992.[5] There were six in all.

The first four Terms of Reference related to the specific allegations of police misconduct made by the complainants. The fifth Term of Reference concerned a general consideration of possible misconduct or a breach of duty by police. The sixth Term of Reference considered QPS policy directives, statutory provisions and case law related to the police treatment of Aboriginal suspects and witnesses.

This last Term of Reference was included to allow the Commission to consider the specific allegations in the larger context of police treatment of Aboriginal suspects and witnesses generally. By examining the broader issues of the education and training provided to police officers about Aborigines and Torres Strait Islanders,

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[5] See Appendix A, Resolution to Hold An Inquiry and Conduct Public Hearings.

the Commission could, if necessary, recommend reforms which go beyond the factual limits of this case.

The Report

The chapters in this report outline the course of the Commission's investigation and the results of the investigative hearings. They also summarise some of the evidence given before the Commission and set out the conclusions and recommendations made as a result of that evidence.

The chapters on those formal matters make up the main body of the report. But it is impossible to examine the case of Kelvin Condren without being struck by how badly Aborigines are likely to be served by the criminal justice system, even a well-intentioned system which makes allowances for and tries to protect disadvantaged people. The Commission recognises that ensuring fair treatment for Aborigines in the criminal justice system is a complex issue. Any analysis of the problem in a report like this must, of necessity, be superficial and inadequate in some respects, but the Commission has taken the opportunity to introduce the discussion of Term of Reference (f) with a general discussion of Aborigines in the criminal justice system.

The Commission considers that the treatment of Aborigines and Torres Strait Islanders during the course of the police investigative process can be changed for the better. This report concludes by making recommendations which the Commission considers could make our system of justice more responsive to the needs of the vulnerable, the weak and the disadvantaged in the community.

CHAPTER 2

JURISDICTION

As stated earlier, under the *Criminal Justice Act 1989*, one of the functions of the Official Misconduct Division of the Criminal Justice Commission is to investigate allegations of misconduct and/or official misconduct by members of the QPS that come to its notice from any source.[6]

The Commission also has a responsibility to provide the Commissioner of the QPS with policy directives, based on the Commission's research and investigation, on topics including law enforcement priorities, education and training of police, revised methods of police operation, and the optimum use of law enforcement resources.[7]

Section 2.23(1) of the Act defines the general nature of official misconduct as:

> *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 and authority in a manner that is dishonest or not impartial ... 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 s. 1.4(1) of the *Police Service Administration Act 1990*, misconduct is defined as:

> *(1) Any disgraceful, improper or other conduct on becoming an officer or that shows unfitness to be or to continue as an officer;*
>
> *(2) Conduct that does not meet the standard of conduct reasonably expected by the community of a police officer.*

The Commission considers that the allegations referred to in Terms of Reference (a) to (e), which amount to allegations of assault, fabrication of evidence,

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6 *Criminal Justice Act*, s. 2.20(2)(d).

7 *Criminal Justice Act*, s. 2.15(h).

intimidation of witnesses, and perjury, would, if proven, amount to official misconduct and/or misconduct.[8]

The Commission considers that Term of Reference (f), which involves a general consideration of QPS policy directives, statutory provisions and case law in relation to police treatment of Aborigines during the course of an investigation, is within the ambit of the Commission's responsibility under the Act to provide policy directives to the QPS based on its research and investigation.

Subsections (1) and (2) of s. 2.17 of the Act respectively authorise the Commission to conduct a hearing in relation to any matter relevant to the discharge of its functions or responsibilities and provide that when the Commission (other than a Misconduct Tribunal) is conducting a hearing for the purpose of discharging its functions or responsibilities allotted to the Official Misconduct Division, it may be constituted by the Chairman alone.

Upon the completion of a Commission investigation into alleged or suspected misconduct a decision must be made as to whether the evidence received by the Commission is sufficient to support:

1. a criminal charge;

2. a disciplinary charge of official misconduct; or

3. a disciplinary charge of misconduct.

If it is considered that the evidence is sufficient to support a criminal charge, a report is made to the Director of Prosecutions with a view to such prosecution proceedings as he considers warranted.

If it is considered that the evidence is sufficient to support a charge of official misconduct a report is made to the appropriate principal officer with a view to a disciplinary charge of official misconduct being brought.

If it is considered that the evidence is sufficient to support a disciplinary charge of misconduct against a police officer, a report is made to the Commissioner of the Police Service with a view to disciplinary action being taken.

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[8] The Terms of Reference are reproduced in full on p. 15.

In the present case, the Commission was required at the completion of its investigation to consider whether any report should be made to an appropriate authority with a view to prosecution proceedings, or disciplinary proceedings for official misconduct or misconduct.

In considering whether the evidence received by the Commission in the course of its investigation was sufficient to support criminal or disciplinary charges, the Commission was mindful of the standard of proof which would be applied in the determination of any such charges by the court or tribunal before which they might be heard.

CHAPTER 3

BACKGROUND

"Aunt Kate's Cottage"

In September 1983, Kelvin Condren, Louise Brown, Stephen McNamee and Noreen Jumbo (the complainants in this matter) were all living at Mt Isa. At that time, many members of the Aboriginal community at Mt Isa lived at the Yallambie Camping Reserve or at the Orana Park Reserve. Stephen McNamee and Louise Brown were living together in a defacto relationship, camping near "Aunt Kate's" (Louise Brown's Aunt's) cottage at Yallambie Reserve. In the fine weather, many of the Aborigines in the area camped outside the cottages at Yallambie, sleeping in sleeping bags or "swags". There is evidence to suggest that at some stage both Kelvin Condren and Patricia Carlton had been sleeping near Aunt Kate's cottage.

Louise Brown called Patricia Carlton her "Aunty" in the Aboriginal way, although it appears that Ms Carlton was actually her mother's cousin. Fabian Butcher, who was Louise Brown's cousin, also considered Patricia Carlton his "Aunty". Stephen McNamee arrived in Mt Isa in August 1983, met Louise Brown there, and began living in a defacto relationship with her, camping near Aunt Kate's cottage. Kelvin Condren probably arrived in Mt Isa in late August or early September, and there is credible evidence that he had been having a relationship with Patricia Carlton for possibly two to three weeks prior to her death on 1 October 1983.

"Boydie's Special"

Alcohol and alcoholism were recurring themes during much of the evidence given to the Commission during the hearings. Around the time of Patricia Carlton's death, Aboriginal drinking parties at which the participants drank until they passed out, or "choked down" as it was called, were not uncommon in Mt Isa.

There were several drinking places favoured by Aborigines in Mt Isa at that time, including the creek bed, an area near the low-level bridge, an area behind the Civic Centre, and, on some accounts, the vacant lot behind the Mt Isa Hotel where Patricia Carlton was eventually discovered unconscious on 1 October 1983. Groups would form and re-form during the day, depending on the availability of alcohol and the need to travel to one or other of the town's hotels to buy more supplies. Sometimes the groups numbered 20 to 30 people; on other occasions, smaller groups would break off to go and drink elsewhere. Many of the witnesses

in this inquiry favoured a cheap red flagon wine called "Boydie's Special", available from Boyd's Bottle Shop.

According to Kelvin Condren's statement to this Commission, at some stage on the day Patricia Carlton was attacked he had been drinking with a group which included Stephen McNamee, Louise Brown, Fabian Butcher, Patricia Carlton, Timmy Doolan and others.

The Police Investigation

Patricia Carlton was found seriously injured in the car park at the rear of the Mt Isa Hotel in the early hours of 1 October 1983. She died later the same evening at the Mt Isa Hospital. Prior to Ms Carlton's death, police had already begun an intensive investigation into what was then considered a very serious assault. Police received information that Kelvin Condren had been "keeping company" with Patricia Carlton for a short period prior to her death. At about 12.30pm on 1 October 1983, several police officers went to the creek bed behind West Street in Mt Isa and located Mr Condren with a group of about 12 Aborigines who were drinking in the creek bed.

Mr Condren was taken back to the Mt Isa police station, as was his friend Noreen Jumbo, who asked to be allowed to accompany him. At the police station, a senior police officer spoke to Mr Condren, and Mr Condren allegedly confessed to assaulting Patricia Carlton.

Police made attempts to locate a solicitor from the Aboriginal Legal Service (ALS) to be present whilst Mr Condren was formally interviewed about the matter. Unfortunately, no solicitor from the Legal Service was available. The solicitor whose retainer with the ALS had finished the day before Mr Condren's arrest had left Mt Isa. The solicitor who was taking over the retainer was also out of town. According to police, they also made an unsuccessful attempt to contact a Field Officer from the ALS.

Arrangements were then made for a JP to attend the making of a Record of Interview.

The Witnesses

On 1 October 1983, at the same time that arrangements were being made for a Record of Interview to be taken from Mr Condren, police were taking witness statements from many of the local Aborigines about the assault on Patricia Carlton.

All available police at the Mt Isa police station were working on the matter; some officers who were off duty were either called in or came in to assist in taking statements.

Louise Brown and her defacto husband, Stephen McNamee, signed statements saying that the previous day they had seen Kelvin Condren attack Patricia Carlton with an iron bar after an argument had developed about her "playing up" with other men.

Susan Gilbert, a cousin of Louise Brown who had been staying at Aunt Kate's cottage at Yallambie Reserve, signed a statement indicating that she had seen Kelvin Condren hit Patricia Carlton with a long steel bar behind the Mt Isa Hotel.

Noreen Jumbo, who described herself as a former girlfriend of Kelvin Condren, signed a statement saying that on the morning after Patricia Carlton was attacked, Kelvin Condren had told her that he had "damaged" Patricia Carlton the previous night.

Fabian Butcher, who was related to Patricia Carlton, signed a statement saying that on the morning after Patricia Carlton was assaulted, Kelvin Condren told him that on the previous night he had "bashed up" a girl with a stick.

Based on the admissions allegedly made in the Record of Interview and the witness statements implicating him, Kelvin Condren was charged with attempted murder of Patricia Carlton. After Ms Carlton's death, the charge was changed to murder.

Chronology of Case: Committal, Trial, and Appeals

The significant events subsequent to Mr Condren's arrest are set out in the chronology below:

1 October 1983

After allegedly confessing to the crime, Kelvin Ronald Condren is charged by police at Mt Isa with the attempted murder and, subsequently, the murder of Patricia Rose Carlton.

7 December 1983

Committal proceedings in respect of the murder charge are held at the Mt Isa Magistrates Court. Stephen McNamee and Louise Brown attend the court, but refuse to sign their statements under the Oaths Act, saying that the statements are not correct. Fabian Butcher's statement about Mr Condren's alleged confession to him is tendered, Butcher gives evidence implicating Mr Condren and is cross-examined by Mr Condren's counsel.

6 August 1984

Mr Condren's trial on the murder charge commences in the Supreme Court at Mt Isa before Kneipp J.

15 August 1984

Mr Condren is found guilty of murder and sentenced to life imprisonment.

2 March 1987

The Court of Criminal Appeal begins a four-day hearing of an appeal against Mr Condren's conviction based on previously undiscovered or "fresh" evidence of alleged sightings of Ms Carlton after the time of the alleged attack by Mr Condren, and expert evidence that the language of the Record of Interview was not consistent with Mr Condren's normal language.

8 May 1987

The Court of Criminal Appeal dismisses Mr Condren's appeal.

September 1988

Mr Condren unsuccessfully petitions the Queensland Governor, Sir Walter Campbell, for a pardon on the basis of further fresh evidence. The Attorney-General, Mr Clauson, indicates he will not refer the case to the Court of Criminal Appeal. Mr Condren lodges an Application for Leave to Appeal to the High Court against the dismissal of his appeal by the Court of Criminal Appeal.

16 November 1989

The hearing in the High Court of Mr Condren's appeal is adjourned after an undertaking is given by the then Director of Prosecutions, Mr Sturgess QC, indicating that he will speak to the Attorney-General about new evidence raised during the appeal.

6 December 1989

The Attorney-General, Mr Dean Wells, announces that Mr Condren's Petition for Pardon will be referred to the Court of Criminal Appeal to review the fresh evidence.

21 December 1989

A second petition seeking a pardon for Mr Condren is presented to the Queensland Governor, Sir Walter Campbell.

24 April 1990

The Court of Criminal Appeal reserves its decision on the reference by the Attorney-General after having heard evidence in relation to Mr Condren's case.

26 June 1990

The Court of Criminal Appeal orders that Mr Condren's conviction be set aside and, by a two to one majority, recommends a retrial.

25 July 1990

The Director of Prosecutions, Mr R Miller QC, prepares a report to the Attorney-General advising that, in his opinion, a nolle prosequi should be entered forthwith on the indictment against Mr Condren.

27 July 1990

The charge of murder against Mr Condren is withdrawn in the Supreme Court, and Mr Condren is released from custody.

The Allegations

Following Mr Condren's release from custody, the Criminal Justice Commission received written complaints from Kelvin Condren, Louise Brown, Stephen McNamee and Noreen Jumbo.

The complaints were assessed and several allegations of police misconduct were identified as being within the jurisdiction of the Commission and proper for investigation by it. These allegations eventually formed the Terms of Reference for the public hearings held in this matter, and are as follows:

(a) An allegation by Kelvin Ronald Condren that police investigating the allegation of murder against him brought into existence a false document, namely a Record of Interview, which was used in evidence against him during his trial, and that police subjected him to intimidation and assault in order to obtain the alleged confession and his signature on the document.

(b) An allegation by Kelvin Ronald Condren that the police investigation of the murder of Patricia Carlton was not conducted in a fair, adequate or efficient manner.

(c) An allegation by Louise Elizabeth Brown and Stephen Wayne McNamee that statements taken from them by police during the investigation of the murder of Patricia Rose Carlton were taken under circumstances of duress, and that the statements were almost entirely false and were manufactured by police.

(d) An allegation by Noreen Rose Jumbo that the statement supplied by her to police investigating the murder of Patricia Rose Carlton was inaccurate, and was signed by her because of intimidation by police.

(e) Whether any member of the Police Service has been guilty of misconduct or neglect or violation of duty in relation to the matters referred to in paragraphs (a) to (d).

Because the accuracy of both the Record of Interview and various witness statements was called into question, the Commission considered it appropriate to formulate a general Term of Reference with respect to reviewing QPS directives, statutory provisions, and case law governing the taking of statements from witnesses and the questioning of suspects. This Term of Reference was included in the following terms:

(f) A consideration generally of any policy directives, statutory provisions, or relevant case law in relation to Police treatment of Aboriginal suspects and witnesses, with respect to both the situation as it existed in 1983, and the present situation.

CHAPTER 4

INVESTIGATION

The first step in the Commission's investigation of the complaints of Kelvin Condren and others was to obtain all relevant material from the QPS, the Office of the Director of Prosecutions, the Office of the Solicitor–General, and the ALS. Transcripts and records were obtained of all previous court proceedings in original and appeal jurisdictions.

Within the Commission, an investigative team headed by a lawyer handled the preparatory work for the hearing. During the process of preparing the Terms of Reference and the witness list, the Commission consulted solicitors acting for the complainants and solicitors acting for the police officers the subjects of the allegations. Solicitors for the complainants suggested additions to both the Terms of Reference and the witness list, and some witnesses were added as a result of these submissions.

Prior to the commencement of the hearing, the Commission briefed senior and junior counsel, who assessed the material and assisted the Commission by settling draft Terms of Reference and preparing a list of witnesses who could give evidence relevant to the allegations of police misconduct.

The Commission attempted, from its earliest correspondence with the parties, to make it clear that the proposed hearing would not consider any issues outside the scope of the allegations of police misconduct.

The Hearing

On 9 April 1992, the Commission resolved to conduct public hearings before the Chairman of the Commission, Sir Max Bingham QC, into the allegations which had been made by Mr Condren and others. The hearings were scheduled for two weeks beginning 13 April 1992. They were not completed within that period and were eventually adjourned for a further four hearing days in May. During the hearing, 21 witnesses appeared before the Commission and 81 exhibits were tendered.[9]

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[9] See Appendix B, Witness List, and Appendix C, Exhibit List.

The witnesses called to give evidence before the Commission included the complainants and other witnesses who had been interviewed by police during the investigation, the police officers accused of misconduct, and expert witnesses in the fields of psychology, psychiatry and linguistics.

Counsel Assisting the Commission during the hearing were Mr R O'Regan QC and Mr M O'Sullivan. Mr Condren and the other complainants were represented by Mr P Gaffney of Counsel, and the police officers the subject of the allegations were represented by Mr A MacSporran of Counsel.

Procedure of the Hearing

Almost every witness called to give evidence before the investigative hearing had given statements to the police or to Mr Condren's defence team or had given evidence during the trial or the appeal process. This evidence was placed before the Commission as each witness was called. Witnesses gave oral evidence before the Commission and were examined and cross-examined generally and about previous statements or evidence.

Significant Rulings During the Hearing

1. Public or Private ?

When the hearing commenced on 13 April 1992, the first issue to be decided was whether the hearing would be open or closed to the public.

The allegations in this case focused on significant aspects of the administration of criminal justice in Queensland. The inclusion of Term of Reference (f) also meant that specific issues arising from the original allegations could be reviewed in the general context of police policy and practice regarding the treatment of Aborigines. The Commission felt it was important that those issues receive public exposure.

The Commission was concerned, however, that if public hearings were held the police officers who were the subject of allegations might be adversely named in reporting of the proceedings. This could prejudice any subsequent legal proceedings, or could cause undue damage to the officers' reputations even if eventually no allegation of misconduct was substantiated.

After hearing submissions from all parties, the Chairman ruled that the hearings would be conducted in public. He decided that police officers the subject of allegations could be named during evidence, but a suppression order was made forbidding publication of their names in media reports of the proceedings. This procedure was acceptable to all parties.[10]

2. Whether or Not to Call Mr A

The Chairman was required to rule on the relevance of potential evidence from Mr A, who is presently serving a term of imprisonment in the Northern Territory.

The transcript of Mr Condren's trial showed that Mr A had allegedly made out-of-court confessions to having killed an Aboriginal woman in Mt Isa at the end of September 1983. Although he gave evidence at the murder trial in 1984, Mr A would not repeat under oath his alleged out-of-court confession to having committed a murder in Mt Isa.

Mr Gaffney, counsel for Mr Condren, submitted that Mr A should be called before the hearing, as should the police officers to whom he allegedly confessed. The thrust of Mr Gaffney's submission was that if it could be shown that someone other than Mr Condren murdered Patricia Carlton, there would be an inescapable inference that Mr Condren's Record of Interview was false.

The Chairman ruled that Mr A should not be called to give evidence before the Commission, for the following reasons:

1. The Commission had material before it about the incidence of false confessions by people who, for various reasons, were at a disadvantage in their dealings with the criminal justice system. The evidence suggested that such disadvantaged persons might agree that they had committed an offence even if it were not true. Therefore, even if evidence could be found which proved that Mr Condren could not have

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10 In view of this suppression order, all police officers and the Justice of the Peace who attended the police interview with Mr Condren are referred to in anonymous terms in this report. Mr A, a man who allegedly confessed to the murder of Patricia Carlton, is also referred to in anonymous terms, as some of the material canvassed with respect to him could be prejudicial in any future court proceedings against him.

committed the offence, it would not necessarily mean that his Record of Interview was fabricated.

2. There was information before the Commission to suggest that Mr A would not be a credible witness. This included information about his psychiatric condition, and about his alleged confessions to other killings, some of which confessions were considered to be false.

Mr Gaffney also submitted that Mr A and the police officers to whom he allegedly confessed could give evidence relevant to the issue of whether or not the Mt Isa police reacted properly to information about Mr A's confessions. It is clear that the police who charged Mr Condren learned about Mr A's alleged confession prior to the committal proceedings in December 1983. Their reaction to that information was relevant to Term of Reference (b), which concerned the adequacy of the police investigation generally.

In response to this submission, the Chairman ruled that evidence from the Northern Territory police officers about the contact they had with the Mt Isa Police might be relevant, but Mr A's evidence could not take the issue of how police reacted to his alleged confession any further. Mr Gaffney indicated that if Mr A was not to be called, he did not consider it appropriate to call the police officers to whom Mr A had allegedly confessed.

In the circumstances, the Chairman decided that neither Mr A nor the Northern Territory police officers would be called to give evidence before the Commission.

CHAPTER 5

EVIDENCE BEFORE THE COMMISSION (GENERAL ISSUES)

The Commission heard evidence from 21 witnesses over 12 sitting days, and had placed before it thousands of pages of documentary evidence.

When the decision was made to conduct public hearings, the Commission was mindful of the problems likely to be encountered. These included the age of the allegations and the fact that most of the allegations came down to one person's word against another's. The effect of these problems became obvious as the hearing progressed.

Before the report reviews the evidence about specific allegations, this chapter provides some general observations about the witnesses and the evidence they gave.

The Time Factor

The evidence strikingly demonstrated the frailty of human memory when recalling events which occurred nearly nine years ago. Many of the witnesses seemed to have no memory at all of any facts or circumstances outside the scope of their original statements or previous sworn evidence. A good example of this is found in Louise Brown's evidence.

Ms Brown remembered being taken to the police station at Mt Isa on 1 October 1983, as was her defacto husband Stephen McNamee. She had absolutely no memory, however, of being taken back to the Mt Isa police station with him on 3 October 1983. It seems clear from the evidence of both the police and Stephen McNamee that she was at the police station on the second occasion, but Ms Brown simply had no memory of it. Her attendance at the police station is not pivotal to any degree, and she would appear to have no reason to dissemble about her memory of the occasion. The most likely explanation is that she had simply forgotten because of the passage of time.

This inability of various witnesses to recall events was a real cause for concern, and was not restricted to the Aboriginal witnesses. Several of the police witnesses seemed to recall nothing at all outside the fairly basic details contained in their statements. Most of them could not recall with any certainty which witnesses they spoke to and had no memory of times or movements which were not recorded in their statements.

Their lack of memory after so many years is not surprising and cannot be the subject of criticism, but it certainly made the Commission's task more difficult.

Witnesses' Previous Evidence

An unusual feature of this investigative hearing was the fact that most of the witnesses had already given evidence on oath about the matters the subject of the hearing and had been cross-examined about their evidence. This, coupled with the fact that most witnesses could not recall anything outside the scope of their original evidence, meant that the most likely outcome was what in fact occurred: most witnesses simply repeated before the Commission their former evidence with respect to the relevant issues.

Assessment of Credibility

1. Aboriginal Witnesses

In assessing the credibility of the evidence given by Mr Condren and other Aboriginal witnesses, the Commission was mindful of the cultural differences which would exacerbate the tension and fear often felt by witnesses in a formal legal proceeding. Some of the general problems with taking evidence from these witnesses are set out below:

Unease with Formal Hearing Procedures

Investigative hearings before the Commission are of necessity formal; giving evidence before an investigative hearing is not very different from giving evidence before a court or other tribunal. The Commission made some effort to put the Aboriginal witnesses at ease: the Chairman allowed a friend or relative to sit beside the witness while he or she gave evidence, and he invited counsel representing the Aboriginal complainants to make submissions about ways in which the proceedings could be made less daunting to the witnesses. It is doubtful, however, that these procedures did much to put the witnesses at ease.

Dr Diana Eades, a senior lecturer in linguistics at the University of New England at Armidale, gave evidence before the Commission. Her recently

published book, *Aboriginal English and the Law*,[11] focuses on many of the same issues which confronted the Commission during the hearing. She said that formal legal proceedings were unlikely to elicit accurate evidence from Aboriginal witnesses. Being asked questions, often leading questions, as opposed to being allowed to give a narrative of their evidence, was not, in Dr Eades' opinion, likely to put the witness at ease.

A real problem facing the Commission, and the criminal justice system in a broader sense, is that counsel appearing for those who have been accused of wrongdoing must be entitled to cross-examine witnesses -- no witness may be allowed to simply give a narrative without that account being tested under cross-examination. Dr Eades acknowledged that this was a significant problem, and, as a legal problem, outside her area of expertise.

It was certainly clear during evidence before the Commission that some of the Aboriginal witnesses would agree to a certain proposition when it was put to them by one counsel, but, a short time later, would agree with a contrary proposition put by another counsel. Whether this malleability is caused by "gratuitous concurrence" or a general deference to authority, it may be a real problem for any tribunal before which an Aboriginal witness appears.

The Difficulty of Obtaining Accurate Statements from Aboriginal Witnesses or Suspects

Aboriginal witnesses who appeared before the hearing often disagreed with or failed to recall facts contained in statements attributed to them. They disagreed with statements they had allegedly given to police; in some cases they also disagreed with statements prepared for the defence by legal officers or field officers of the ALS. While it should be noted that several of the disputed defence witness statements were not signed, the Commission has no reason to think that the statements were not prepared in good faith as an honest attempt to record the witness's version of events. But the fact that even statements prepared by Mr Condren's former legal representatives have not been accepted as accurate by some witnesses highlights the difficulties in taking an accurate statement from any witness, and in particular, from an Aboriginal witness, unless the person taking the statement is aware of potential problems and proceeds with caution.

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11 Eades, Diana (1992), *Aboriginal English and the Law*, Queensland Law Society, Brisbane.