CRIMINAL JUSTICE
COMMISSION

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

NOVEMBER 1992

ISBN 0-7242-4989-3

Printed by Goprint, Brisbane.

CRIMINAL JUSTICE COMMISSION
QUEENSLAND

Telephone: (07) 360 6060
Facsimile: (07) 360 6333

Your Ref.:
Our Ref.:
Contact Officer:

The Hon Dean Wells MLA
Attorney–General and Minister for Justice
and Minister for the Arts
Parliament House
George Street
BRISBANE Q 4000

The Hon Jim Fouras MLA
Speaker of the Legislative Assembly
Parliament House
George Street
BRISBANE Q 4000

Mr Ken Davies MLA
Chairman
Parliamentary Criminal Justice Committee
Parliament House
George Street
BRISBANE Q 4000

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

557 Coronation Drive, TOOWONG, QLD. 4066
PO Box 157, NORTH QUAY, QLD. 4002

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).

CONTENTS

PAGE

CHAPTER 5

CHAPTER 6

CHAPTER 7

PAGE

CHAPTER 8

CHAPTER 9

CHAPTER 10

PAGE

APPENDICES

EXECUTIVE SUMMARY

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

---

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

---

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,

---

[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,

---

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.

---

[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]

---

[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

---

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.

---

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

In her book Dr Eades suggests that any police officer or legal officer who is taking a statement from or questioning an Aborigine about a legal matter should be aware of the pitfalls in eliciting information without regard to cultural differences.

In the Commission's view, inaccurate witness statements may be a consequence of the intimidation many Aboriginal defendants or witnesses feel when interviewed by any white professional. The deference to authority which is spoken about as one of the problems in dealing with Aboriginal suspects or witnesses is not limited to a deference to police authority. Many Aboriginal witnesses would be just as likely to agree with matters suggested to them by a legal representative, for the reasons Dr Eades outlined in her evidence to the Commission and in her book. The Commission was left with an overwhelming impression that any person questioning an Aboriginal suspect or witness would have to take great care to ensure that the version obtained was actually that person's best recollection uninfluenced by the form of the questions or the venue or the atmosphere of the interview. Care should be taken whoever the interviewee may be -- one of the witnesses before the Commission who seemed to exhibit many of the signs of gratuitous concurrence was not an Aboriginal person. This particularly compliant witness was categorised by Mr Condren's counsel, perhaps with some justification, as a person whom a "puff of wind" could make change direction.

When considering its recommendations, and the problems inherent in questioning witnesses and suspects, the Commission has, in this report, specifically referred to the problems of Aborigines, but the principles are generally applicable to any disadvantaged person being questioned as a suspect or a witness. The Commission also recognises that an increasing number of Aborigines and Islanders are now educated to tertiary level; some are qualified lawyers. In speaking about the problems facing Aborigines in the criminal justice system, the Commission is referring to the great majority of Aborigines who would come within the category of persons under disability.

A major disadvantage to Aboriginal witnesses caused by inaccuracy in statements taken from them is, of course, that they are vulnerable to cross-examination which suggests that they have changed their stories substantially or that some of their evidence is the product of recent invention. Taking inaccurate statements from witnesses is an effective way of allowing the credibility of those witnesses to be destroyed under cross-examination, because their evidence in court will not be consistent with what is in their statements.

Inconsistencies in the Complainants' Evidence

A large portion of the analysis of the evidence in this matter consists of references to inconsistencies between the various statements and transcripts of evidence which relate to the complainants. The Commission is well aware of the many factors which might contribute to inconsistencies between the statements and the evidence of the Aboriginal witnesses; the length of time since the incidents occurred, the relative inexperience of the Aboriginal witnesses, and the obvious cultural differences are all matters which would have to be taken into account in assessing the witness's credibility.

On the other hand, serious allegations have been made in this matter against police officers, and it would be remiss of the Commission not to refer to inconsistencies in the complainants' evidence. In outlining those inconsistencies the Commission does not necessarily mean to suggest that the witnesses were lying. However, the Commission cannot ignore conflicts or inconsistencies in witnesses' evidence, particularly when there is a possibility that criminal charges or serious charges of misconduct could follow. To ignore the inconsistencies would be to ignore reality: if any charges resulted from Commission recommendations, the witnesses would be cross-examined about their previous evidence and such inconsistencies could destroy their credibility as witnesses.

2. Police Witnesses

Several of the witnesses who were the subjects of allegations and gave evidence before the Commission were serving or former police officers. The Commission considered that special factors needed to be taken into account in assessing the credibility of these witnesses.

"Professional Witnesses"?

In contrast to the Aboriginal witnesses, most police officers are experienced witnesses, much more likely to be at ease with courtroom procedure and the process of giving evidence. Their demeanour in the witness box and their response to questions is obviously going to be, in general terms, of an entirely different nature from that of the Aboriginal witnesses. They are also a lot less likely to give evidence inconsistent with previous accounts of events, for the simple reason that they are much more likely to be aware of the ramifications of varying from their previous statements.

Preparation

It became clear during the course of the investigative hearing that all of the police witnesses had had access to the bulk of the previous witness statements in the matter, and transcripts of former proceedings. Most of the officers who gave evidence had used this material to refresh their memories.

This was a factor relevant to the evaluation of their evidence before the Commission.

CHAPTER 6

EVIDENCE RELATING TO THE TERMS 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.

This Term of Reference was based largely on the complaint made by Mr Condren to this Commission in a 25-page statement dated 24 August 1990.

The Allegation of Intimidation and Assault

Pages 11 to 24 of that statement contain a detailed account of what Mr Condren says occurred from the time he was picked up by police at the creek bed at Mt Isa at about lunch time on 1 October 1983, until the completion of a Record of Interview at the Mt Isa police station on the same day.

The allegations made by Mr Condren in that statement, and in his evidence before the Commission, are:

- That he was picked up at the creek bed by three police officers on 1 October 1983, and was asked by one of them, "*Did you damage a girl last night?*", and replied, "*No, I only slapped a girl last week*" or "*No, I only slapped a girl the other day*". He denied assaulting Patricia Carlton.

- That the evidence of the three police officers that he had admitted damaging Patricia Carlton the previous evening was untrue, and that the evidence subsequently given by those police officers under oath to the effect that he had orally confessed to them was false.

- That once back at the Mt Isa police station, he was questioned forcefully by several police officers, and it was suggested to him by police that he was responsible for assaulting Patricia Carlton. He denied any knowledge of the assault.

- That a senior police officer present had continually accused him of bashing Patricia Carlton, and would not accept his repeated denials.

- That after an exchange during which he kept denying being responsible for bashing Patricia Carlton, the senior police officer grabbed a telephone book and "*whacked*" him across the face in the presence of about four other police officers.

- That he was also threatened by another police officer prior to the making of the Record of Interview, in the terms, "*If you don't tell the boys what they want to know, well that's your problem*".

Mr Condren's Previous Accounts

The 25-page statement provided to the Commission by Mr Condren was one of a number of statements, both written and oral, provided by him over the years since he was charged with the murder of Patricia Carlton.

The Commission had in evidence before it three written statements from Mr Condren:

1. The 25-page statement prepared for the Commission dated 24 August 1990.

2. An unsigned and undated statement prepared by his legal advisers in November 1983.

3. An unsigned statement dated 15 January 1985 prepared by his legal representatives (subsequent to his conviction).

One of Mr Condren's earliest statements about the Carlton matter was made orally to Dr John Warren when he was seen by him on 4 October 1983, at the request of solicitors acting on behalf of the ALS. Mr Condren told Dr Warren about an assault which he said had occurred when he was arrested for drunkenness on 30 September 1983, and also gave some details about his questioning by police on 1 October 1983. But Mr Condren said nothing to Dr Warren about being hit with a telephone book, or assaulted in any other manner, when he was questioned by police about the Patricia Carlton matter. Mr Condren was asked about this at the investigative hearing. He said that he had not told Dr Warren about the assault on 1 October 1983 because he was "*in the horrors*" (following his withdrawal from alcohol), but he agreed that he had told Dr Warren in significant detail about the alleged assault the day before at the watchhouse.

Mr Condren could not recall whether he told the first ALS solicitor he saw that he had been assaulted before the Record of Interview, nor could he recall whether he told the barrister who appeared for him at the committal proceedings about this assault.

The barrister who appeared for Mr Condren at the committal proceedings could not recall Mr Condren talking about an assault prior to the Record of Interview, but could not be sure that the allegation was not made.

In evidence before the Commission, the solicitor said that he could not recall Mr Condren making a complaint to him that he had been struck prior to the Record of Interview, but he could not be sure that the allegation was not made.

One of the earliest written statements taken from Mr Condren was an unsigned statement, apparently prepared by his legal advisers in late November 1983, before the committal proceedings. This statement contains a shorter version of the allegations Mr Condren made during the hearing. In it he says that at the police station police officers suggested to him that he was responsible for the assault on Patricia Carlton, which he denied. It also contains the following statement: *"The Detective Senior Sergeant hit me in the left ear and said 'tell me the truth'"*. This statement contains no reference to an assault on Mr Condren with a telephone book.

A statement dated 15 January 1985 was also taken from Mr Condren. In that statement Mr Condren spoke about being taken back to the police station on 1 October 1983 and questioned by four policemen and a policewoman, who suggested that he had assaulted Patricia Carlton, although he denied it. He said that the detectives had yelled at him before the JP arrived at the police station to witness the making of the Record of Interview. He makes no reference in this statement to being assaulted prior to the Record of Interview.

It is clear from the suggestions which were put by Mr Condren's counsel during his murder trial that his instructions at that time were that he had been given a *"hit in the left ear"* at the police station, but nothing was ever put to any of the police witnesses in relation to the use of a telephone book. It seems clear that at the time of his trial Mr Condren did not allege that he had been hit with a telephone book by the police.

The Allegation that the Record of Interview was a False Document

Mr Condren's statement to the Commission deals in some detail with the question of how police made the Record of Interview. He stated that the typed Record of

Interview was not a true account of what was said during the interview, and that, in fact, many of the answers typed down were exactly the opposite of what he had said to police. It was Mr Condren's evidence before the Commission that on several occasions when questions were asked of him during the making of the Record of Interview he did not reply at all, but an answer was concocted and typed into the Record. For example, when he was asked about question 24 in the Record of Interview, which is "*What caused you to hit Patricia Carlton with a steel picket?*", and for which the answer recorded is "*Cause she play up with other men*", Mr Condren stated that he did not give that answer and had in fact said nothing in response to the question.

Mr Condren was also asked about question 15 in the Record of Interview, which is "*What can you tell me about the assault on Patricia yesterday?*". In his statement to the Commission, Mr Condren said that he had not given the answer recorded, which is "*I hit her with the iron picket*". When questioned during the hearing, Mr Condren said that he had given that answer, but it was not true. He said that he had given the answer because the police had suggested it to him.

Evidence from the Justice of the Peace

The Commission heard evidence from the JP who was called to witness the making of the Record of Interview about how the Record of Interview was made. It is clear that Mr Condren's evidence about the manner in which the Record of Interview was made is in conflict, in several respects, with that of the JP.

The effect of the evidence of the JP before the Commission was that the Record of Interview was not an entirely verbatim account of the questions asked and Mr Condren's responses to them during the interview. In relation to some questions which referred to the time of the alleged assault and the number of blows struck, the JP agreed with a proposition put to him by Mr Condren's counsel that the answers recorded were elicited by means of multiple questions in the nature of "prompting". For example, he agreed that Mr Condren did not respond immediately to the question "*How many times did you hit her?*" and that the police officer said something like, "*Well was it ten, six, seven?*", and that Mr Condren then responded, "*Oh about seven times*". In relation to the question about what time the assault had happened, he agreed that initially Mr Condren had made no reply, and that the police officer had then said, "*Well was it three, four, quarter past four?*", and that Mr Condren replied, "*Oh about quarter past four*".

On these occasions, only the initial question and the eventual answer were recorded, not the further questions suggesting numbers and times. The JP said that Mr Condren was very quiet, and that prompting was required in about 10 to 15

percent of the questions. It was the effect of his evidence, however, that there was never an occasion when a reply was fabricated, or when Mr Condren gave an answer, but the opposite of what he said was typed down.

In fact, it was the gist of the JP's evidence that Mr Condren's answers were accurately recorded in the Record of Interview, although prior to some answers there were prompting questions which were not recorded. Mr Condren, on the other hand, stated that several of the answers recorded were not given at all, or that the opposite of what he said was typed down. Mr Condren also stated that during the Record of Interview the JP himself asked some questions and at one stage directed Mr Condren to pick up the steel bar for a demonstration. The JP denied this, and said that the only part he took in the interview was to ask Mr Condren a question when the police, Mr Condren and he visited the scene of the alleged assault. When the police resumed making the Record of Interview after this visit to the scene, they typed into the Record the questioning of Mr Condren which had allegedly taken place at the scene. There is no mention in this account of a question being asked by the JP at the scene.

Both police officers who were present during the making of the Record of Interview gave evidence to the effect that the Record of Interview was a complete and accurate record of all questions and answers put to Mr Condren on the day in question. Each officer conceded that he remembered other occasions during the making of records of interview where questions had been put or comments made to a witness, and those questions or comments were not included in the Record of Interview, but said that it had not occurred on this occasion.[12]

Was there Prompting During the Record of Interview?

The JP's evidence at the hearing that prompting occurred during the making of the Record of Interview is a matter of great concern to the Commission, as was the admission by the two police officers that on other occasions questions asked or comments made during the making of a Record of Interview had been omitted from the Record.

In the Commission's view, any omission from a Record of Interview of anything said during the interview in the presence or hearing of the interviewee is bad police

---

12 Examples given by the police officers of unrecorded questions or comments during an interview included an interviewee being asked, "*What did you say*?" or "*What do you mean*?", when an answer was not heard or understood, and an interviewer telling an interviewee who was speaking too quickly to wait to answer until the typist was ready.

practice and not to be tolerated. Editing of an interview in this way can give a completely false picture of the interview. Where prompting questions are omitted, for example, answers may appear to follow readily after the questions. It may appear as though the interviewee had no difficulty in understanding the question, recollecting the subject of inquiry, or formulating a response, when this may not in fact be the case.

It is a matter of concern to the Commission that at least some police officers seem to consider that, as long as a Record of Interview contains the gist of what was said and accurately records an accused's answers, it does not matter that some questions are paraphrased, edited or omitted or that no indication is given that a question was repeated before a response was made. If the Commission was satisfied that prompting of the sort outlined in the JP's evidence occurred in the present case, the behaviour of the police involved in the interview would be viewed very seriously, and the reliability of the interview would certainly be open to question.

In order to assess the JP's evidence about prompting during the making of the Record of Interview, the Commission had regard to his previous statements and evidence on this topic.

It is a cause for some concern to the Commission that the JP's evidence at the investigative hearing, many years after the event, is the first occasion on which he has agreed with the proposition that there may have been prompting during the making of the Record of Interview.

During Mr Condren's Supreme Court trial, the JP gave evidence that the questions asked by the police had been typed exactly as they were asked. He said that although there may have been a few typographical errors, the questions recorded were the questions asked, and the answers recorded were the answers given.

Significantly, in 1988 the JP was interviewed on tape by one of Mr Condren's legal representatives about the case. At that time he was asked several questions about the issue of the use of prompting or multiple questions by police to elicit answers, and would not concede that there had been any prompting. He was asked, for example, at page 5 of the transcript of that interview:

> Question: *... saying "Did you then hit her three times with the bar?" and then he said, "Yes", but then that was interpreted and typed down as "I hit her three times with the bar".*

Answer: *Well I'll be, I'll be quite honest, it was, my recollection of it was that almost word for word as it was said, it was typed as it was said ...*

Again at page 14 of the transcript:

Question: *Because at the voir dire you just, the Barrister didn't ask you really, didn't ask you a few questions that probably would be asked of you now, like the questions I'm asking about those words being important you know, the words being put into Kelvin's mouth ...*

Answer: *But as I said I've got to look at a situation at any time, I was down there and I did take the record of interview and as far as I was concerned it was done as a normal procedure which as I have seen other ones done. Um the questions that were asked they were typed down and the answers were typed in, um even typed in with the language and all, as I just said ...*

At page 21:

Question: *... You were there and you say that hasn't happened sure, but you know we still say the words were put in his mouth by Detective [X] and whether that happened before the interview, or during ...*

Answer: *Well look I say not whilst I was there. I stick by my story, I've done it from the word go the fact that it was carried out as per the book, simple as that and the defendant was very co–operative and uh made no uh, and there was no pressure put on him whatsoever and I mean that like I said there was not pressure.*

At page 26, the specific issue of "prompting" questions being asked was put to him in the following terms:

Question: *... We're saying that the words that Condren used were words that were put to him, put in his mouth and he might've even just said, "Yes" and then what was typed down was, you know, he was asked a question, "Then did you hit her?", or "Did you hit her three times?", and he says "Yes" and what was typed*

down was, "Did you hit her?", then, "Yes I hit her three times". That's what we're saying ...

Answer: *No, to my full recollection there was, there was nothing like that.*

In view of the JP's previous repeated denials that prompting occurred, and taking into account that these denials were made closer to the events (when presumably his memory of what occurred was fresher), the Commission is of the opinion that his evidence should not be relied upon to support a conclusion that prompting occurred during the making of the Record of Interview.

In view of the seriousness of this issue, however, the Commission considers it appropriate to make a recommendation to the Commissioner of the QPS that he circularise to all police officers a warning that editing interviews, or omitting a question, answer or anything said in the presence or hearing of the interviewee during the making of a Record of Interview, is not an acceptable practice. It should be noted that time has, to a certain extent, overtaken the significance of this issue. Nowadays interviews regarding serious indictable offences are usually electronically recorded. The opportunity for and the likelihood of editing is thus considerably reduced.

Mr Condren's Evidence about the Record of Interview

In relation to Mr Condren's memory about what occurred during the making of the Record of Interview, counsel for the police submitted, perhaps with some justification, that Mr Condren's memory about this issue seems to have improved over the years. Mr Condren's first written instructions in relation to the making of the Record of Interview appear in his statement taken in November 1983, where he talks about the Record of Interview in the following terms:

I didn't know what to do and I didn't want to get into the trouble I got in the night before. I told them anything that they wanted me to tell them.

There was no solicitor there when I was being questioned but a white Justice of the Peace came in after. I don't know what I said because I'd been drinking that afternoon. [Emphasis added]

In his statement to the Commission the barrister who acted for Mr Condren at the committal proceedings said that he could not recall Mr Condren's explanation for the existence of the Record of Interview. However, it seems clear that Mr Condren did not give him detailed instructions about the making of the Record of Interview,

certainly not the detailed account which subsequently appeared in Mr Condren's statement to this Commission.

Similarly, although Mr Condren gave quite a detailed statement to the Commission about his movements on the day that Patricia Carlton was attacked, his barrister recalled that his instructions at the committal proceedings were vague:

> *As is obvious, these events occurred eight years ago, and my only recollection of the whole matter is based on the fact that I never subsequently appeared for him at the trial. Over the succeeding years, I heard reports in the press that it was said that he was saying that he did not commit the offence, and my recollection is that, from when I first heard those reports, that he was unable to tell me that.*

When the barrister was questioned further about what Mr Condren was able to say about Ms Carlton's death, the following exchange occurred:

> Question: *Yes and that meant effectively that he, to you, as at December 1983, could not deny that he had killed Patricia Carlton or he did not deny to you that he had killed Patricia Carlton?*
>
> Witness: *Well, he could not.*
>
> Question: *He could not? and his explanation to you?*
>
> Witness: *I do not know whether there is any difference.*
>
> Question: *His explanation to you was that he said he was too drunk to remember?*
>
> Witness: *Yes.*

In his statement dated 15 January 1985, Mr Condren said that on 1 October 1983 he had been questioned for an hour or so by the police before the JP arrived. In relation to the Record of Interview, he stated:

> *I didn't know what was going on, that's why I signed the record of interview.*

He gave no further details about what had occurred during the making of the Record of Interview.

Issues Raised by the Evidence about Term of Reference (a)

1. Mr Condren's Allegation of Assault and Intimidation Prior to the Record of Interview

A positive conclusion in relation to these allegations would rest entirely upon Mr Condren's evidence. There is no medical evidence which goes specifically to the issue of the alleged assault, and the assault has been denied by the police officers allegedly present at the time it occurred. It appears that the allegation that the assault involved the use of a telephone book did not appear in any of Mr Condren's statements made prior to 24 August 1990. The only direct reference to any such assault is a blow to the ear mentioned in the statement taken in November 1983, but there again there is no reference to the use of a telephone book.

Mr Condren did not complain to the JP about being assaulted before or during the Record of Interview, nor to the doctor who saw him at the watchhouse on 4 October 1983.

2. The Allegation that the Record of Interview was a False Document

There is some conflict between the evidence of the police officers and the JP about the making of the Record of Interview. There is also some conflict between the JP's evidence and Mr Condren's. While the JP agreed in evidence before this Commission that the police asked prompting questions on some occasions (he estimated in 10 to 15 percent of the questions) the two police officers present have consistently denied that any such prompting occurred. It was the JP's evidence that, while prompting questions were asked on some occasions, the answers recorded were the answers which Mr Condren gave. The JP's evidence about prompting, even if it were accepted as reliable, certainly does not support Mr Condren's allegation of fabrication of evidence by the police. While Mr Condren said there were occasions when he did not answer a question and police concocted one, it was the JP's evidence that the answers recorded in the Record of Interview were Mr Condren's and were accurately recorded.

As noted earlier, there are compelling reasons why questions which prompt an answer by suggesting a number of alternative answers should not be used during interviews with vulnerable people like Mr Condren. Dr Eades[13]

---

[13] See p. 71 ff.

suggested in her evidence that it was very common for an Aborigine faced with such questions to seize on the last alternative offered as the answer to the question, whether or not it was true. Generally, prompting of the sort alleged is bad police practice because it may encourage a suspect to make a statement that is not within his knowledge and may be untrue.

Counsel for Mr Condren submitted that the Commission should take a strict view of what would constitute a "false" Record of Interview. In his submission, the document would be false if the Record of Interview did not contain every word said or if any answers were obtained by prompting. In the Commission's view, excluding prompting or clarifying questions from a Record of Interview would render it "false" within the meaning of the Term of Reference. In the present case, however, it is the Commission's view that the evidence that prompting occurred during the Record of Interview is so unsatisfactory that it should not be relied upon to conclude that prompting occurred.

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 charges, the Commission would have to be satisfied that the available evidence could support a charge to the criminal standard of proof. These allegations and the allegation of intimidation could also amount to official misconduct or misconduct on the part of the police officers. In the Commission's view, if the allegations were viewed as misconduct, the Commission would have to be satisfied 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 grave 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.

Conclusion

In relation to Term of Reference (a), 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 (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.

Some of the specific allegations in the Terms of Reference go to the general issue of the manner in which the police investigated the murder of Patricia Carlton. These include Mr Condren's allegation that police fabricated the Record of Interview and his other allegations of intimidation and assault, which have already been addressed.

Terms of Reference (c) and (d) also go to the manner in which this matter was investigated. These allegations by Ms Brown, Mr McNamee and Ms Jumbo that their statements were false and were obtained under duress are also addressed separately.[14]

The other allegations put to the police during the course of the hearing in support of the claim that their investigation was not fair, adequate and efficient, related to:

1. Their treatment of the confession by Mr A (a person who allegedly confessed to the murder of Patricia Carlton);

2. Their failure to interview other people in a search for potential witnesses, in particular their failure to interview employees of the pharmacy near the site of the murder about whether they saw or heard anything at the times in question;

3. The suitability of the JP to be the independent person present during the questioning of Mr Condren;

4. The manner in which one of the police officers involved in the Carlton investigation re-interviewed a witness in 1987. This witness had given evidence at Mr Condren's trial that the police officer had pressured him into making a false statement during the investigation.

---

[14] See p. 45 ff.

The Police Investigation

An examination of the police running sheets in relation to the investigation of the murder of Patricia Carlton shows that shortly after the discovery of Ms Carlton in an unconscious state a technical officer visited the scene of the crime. Photographs were taken, specimens of blood and vegetation at the scene were taken, and a metal rod believed to be the assault weapon was taken for scientific examination and fingerprinting. Numerous photographs were taken of the scene and items located at the scene.

Details of Ms Carlton's injuries were obtained from a doctor at the hospital, and inquiries were made at nearby local hotels and at the pharmacy which bordered the scene of the crime. The running sheet records that inquiries at Boyd's Hotel and the Mt Isa Hotel in relation to possible witnesses were negative, but that a female witness was located at the Menzies Pharmacy. This witness gave information about seeing a woman lying in the car park area at about 7.40pm on 30 September 1983.

During the course of the police investigation over 40 statements were taken from prospective witnesses, although some of these witnesses were unable to give useful information and were not called in subsequent court proceedings. It is clear from the police file that many other people were interviewed, but statements were not taken from them because they could provide no useful information of any kind. A "Sexual Offences – Medical Protocol" kit was prepared in relation to Ms Carlton, which is standard procedure where an offence has been committed which may involve a sexual assault.

Arrangements were made for a forensic scientist to examine the murder weapon and other items located at the scene, and a report was obtained on the likely origin of samples of blood found on the murder weapon and on a motor vehicle parked near the scene of the attack on Ms Carlton.

The police arranged for Mr Condren to be medically examined, and medical reports were also obtained in relation to Ms Carlton. The police file in this matter shows that police inquiries continued after Mr Condren had allegedly made admissions when interviewed on 1 October 1983. The file shows, for example, that on 12 October 1983 police received an anonymous letter indicating that a certain person might have information about the attack on Ms Carlton, and that, as a result, that person was interviewed by police, with negative results.

It is clear from the statements obtained that police continued to interview potential witnesses in relation to this matter between the time of the discovery of Ms Carlton on 1 October 1983 and the commencement of Mr Condren's trial in August 1984.

The Confession of Mr A

One of the senior police involved in the Carlton murder investigation stated in evidence before this Commission that he became aware of an alleged confession by Mr A prior to the committal proceedings against Mr Condren on 7 December 1983. He considered that some of the information which Mr A provided in his alleged confession to Northern Territory Police to be inconsistent with the known facts of the Carlton murder.

The police officer said that he nevertheless considered it imperative that he speak to Mr A about the matter, and that he was prepared to fly to Darwin immediately to do so. He said that he provided a report on the matter to his Inspector, but that it was necessary to apply to the Commissioner's Office for permission to fly to Darwin. Permission was eventually received and, in January 1984, he travelled to the Northern Territory to interview Mr A. Mr A refused to speak to him.

The delay in interviewing Mr A was the subject of critical comment during the Court of Criminal Appeal hearing in 1990. In the Commission's view, this delay was inappropriate when one considers the seriousness of the charge involved and the nature of Mr A's alleged involvement. 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. Nor is there any evidence to suggest that the delay in his travelling to the Northern Territory to interview Mr A was caused by any reason other than the need for the travel to be approved by the Commissioner's office. The delay in granting that approval is inexcusable.

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. Whilst it is clear that Mr A's alleged confession showed some knowledge of the facts surrounding the attack on Patricia Carlton, there were also several major inconsistencies between the details provided by him and the known facts of the Carlton murder.

As the matter developed, Mr Condren had the benefit of Mr A's evidence at his trial, and also of the evidence of the Northern Territory police officers involved in the investigation of Mr A's confession. As was later stated during the Court of Criminal Appeal proceedings, the jury had an opportunity to assess Mr A and his evidence. It is doubtful that further action by the Mt Isa police could have led to Mr A's evidence being presented before the jury in any better form than it was.

The Police Failure to Interview Further Witnesses

During the hearing, counsel representing Mr Condren asked police about their failure to interview bar staff or other potential witnesses at the Mt Isa Hotel about whether Patricia Carlton had been seen in the bar after Kelvin Condren's arrest for drunkenness on 30 September 1983. He also questioned their failure to interview other employees of the Menzies Pharmacy, which is located near the scene of the attack, about what they saw or heard on the night in question.

Much of the controversy following Mr Condren's conviction centred on the issue of whether Ms Carlton was seen alive on the night of 30 September 1983 after Mr Condren had been arrested for drunkenness at about 5.50pm. 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 about alleged sightings of her on the night of 30 September 1983. The ALS file contains several statements from people who claim to have seen Ms Carlton late on the night of 30 September 1983, either in one of the hotels or walking in the streets of Mt Isa. There is reliable evidence that Ms Carlton was lying seriously injured and unconscious in a vacant lot near the Menzies Pharmacy from at least about 7.40pm on the night in question. Despite this fact, several people came forward to provide statements that they had seen Ms Carlton walking around at much later times during the evening. Although these people would have effectively provided Mr Condren with an alibi, as he was in custody at the time Ms Carlton was allegedly seen uninjured, they were never called by the defence, because it was obvious that their evidence was unreliable.

The fact that a number of people were convinced they had seen Ms Carlton at a time when they could not have highlights the fallibility of human perception and memory and may also indicate just how much ill-informed gossip was circulating in the weeks following Ms Carlton's death.

In the Commission's view, it is not clear that further reliable information about Ms Carlton's movements on the night in question could have been obtained by further investigations by police. There has been no suggestion that police failed to speak to further potential witnesses either because they thought their evidence might harm their case, or because of any other improper motive.

In relation to the people from the Menzies Pharmacy, a senior police officer involved in the investigation gave evidence to the hearing that he had interviewed one person from the pharmacy who gave information about seeing an unconscious female, presumably Ms Carlton, in the vacant lot at about 7.40pm on the night in question. The officer said he did not interview any other people from the pharmacy. He did not offer an explanation for failing to interview other witnesses.

Later 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.

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 steps police should take to have an independent person present when an Aborigine or Torres Strait Islander who could be classified as a person "under disability" was interviewed.

In 1983, General Instruction 4.54A(c) read as follows:

> *Questioning of Aborigines and Torres Strait Islanders:*
>
> *Whilst many Aborigines and Torres Strait Islanders would fall into the category of persons under disability, pigmentation of the skin or genealogical background should not be used as a basis for this assessment. Whilst all of the factors outlined above should be considered, particular attention should be given to suspect person's educational standards, knowledge of the English language, or any gross cultural differences.*
>
> *Aborigines and Torres Strait Islanders who come within the category of persons under disability will be questioned in the presence of an independent adult person concerned with the welfare of those races, in whom the person being questioned has confidence and by whom he feels supported, and who can act as an interpreter during the period of interrogation, if necessary. The Aborigine or Torres Strait Islander should not be overborne or oppressed in any way by the person present.* [Emphasis added].[15]

The JP who attended Mr Condren's interview at the request of the police did not, in the Commission's view, fulfil all of the criteria in the General Instruction. He

---

15 See Appendix D, which reproduces in full General Instruction 4.54A(c) in 1983 and the present General Instruction 4.54A(c).

was not a person "concerned with the welfare" of Aboriginal people in the context of the instruction. As a non-Aboriginal JP, previously unknown to Mr Condren, he was not a person by whom Mr Condren was likely to feel "supported" in terms of the instruction.

On the other hand, neither of the solicitors who had been acting for the ALS was available to attend the interview. If the police evidence in this regard is accepted, nor was the Aboriginal field officer, Mr Crowley. Although on some evidence police had a list of other Aboriginal persons who could have attended the interview, at least they made some effort to obtain an appropriate person from the ALS.

It is the Commission's view that the police, in using the JP as the independent person, did not comply with the General Instructions. However, 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.

The Interview of Darryl Cherry in 1987

During the hearing the Commission heard that in 1987 a senior police officer involved in the original Condren investigation arranged to interview a witness called Darryl Cherry about evidence which Mr Cherry had given at Mr Condren's murder trial in 1984.

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 said things in his statement which were untrue. The same police officer conducted a Record of Interview with Mr Cherry in 1987 about his evidence at the murder trial.

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. It must be said, however, that the practice of officers involving themselves in investigations in which they had a personal interest was certainly not isolated to this case, and appears to have been quite common. In fact, on 25 September 1990, the Commission informed the Commissioner of the QPS that several police officers were involving themselves in investigations in which they had a personal interest, and advised that the Commission considered it highly undesirable for officers to take an active part in the investigation of a matter in which they had some personal interest or in which they could not be impartial.

As a result, the Police Commissioner issued a Commissioner's Circular in November 1990. This Circular reminded all police officers that Clause 5.3 of the Police Code of Conduct required officers to perform their duties impartially, and stated that officers should not involve themselves in matters in which they had a personal interest.

The fact that this practice was common does not excuse the behaviour, but to some extent it explains the serious error of judgment made by the police officer in involving himself in the further investigation of Mr Cherry's evidence.

Issues Raised by the Evidence About Term of Reference (b)

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

It is clear that there were some unsatisfactory aspects to the investigation, and some matters perhaps could have been further or better investigated.

Of the four issues raised by Term of Reference (b), the Commission considers the issue of who is an appropriate independent person to attend interviews with Aborigines under disability to be the most important. In the Commission's view, this issue is best addressed by fine-tuning the General Instructions. General recommendations about that matter are made later in the report.[16]

Conclusion

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.

---

[16] See chapter 10 at p. 87 ff.

CHAPTER 7

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 outlined her complaints about her treatment by the police in a statement to the Commission dated 24 September 1990.

The Commission had before it evidence of three other statements made by or attributed to Ms Brown:

1. Her police statement dated 1 October 1983.

2. A file note prepared at the ALS dated 5 October 1983.

3. An undated and unsigned statement prepared by Mr Condren's defence team prior to his trial.

In order to examine the allegations made by Ms Brown, the Commission has considered the contents of those statements and Ms Brown's evidence before the Commission.

Ms Brown's Statement to the Commission

In her statement to the Commission Ms Brown made the following allegations:

- That police spoke to her at about 10.00am on 1 October 1983 and asked whether she knew anything about the "bashing" of Patricia Carlton.

- That she told the police that she knew nothing about it, and they left but returned about two hours later.

- That one of the police indicated that Ms Brown, Susan Gilbert, Michael Johnny, and Fabian Butcher should go with the police to the Station.

- That she was questioned at the police station by a senior police officer and a policewoman, and although she denied knowing anything about Patricia Carlton being assaulted, the officers yelled at her and insisted that she was there.

- That she was frightened and upset, and after some time one of the police officers typed "*a couple of pages*".

- That police told her that she must have been present when Patricia Carlton was assaulted as Kelvin Condren had already given a statement saying she was there.

- That she signed the typed statement because she was frightened.

- That police took her into another room and showed her an iron bar and some clothing, and she was then allowed to go home.

Ms Brown said that she did not see Kelvin Condren hit Patricia Carlton, and that she said she had because police forced her to make the statement.

Ms Brown's Evidence to the Commission

In her evidence before this Commission, Ms Brown said:

- That, contrary to her police statement, she had not said anything to police about seeing Mr Condren hit Patricia Carlton with a bar.

- That she had never known Kelvin Condren to be living with, or having a relationship with, Patricia Carlton.

- That she did not even know several of the people supposedly named by her in her police statement. In particular, she denied knowing a Michael Scanlan or Michael Scam, and a Rona, or Roma, Punch.

Ms Brown's Unsigned Defence Statement

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. In view of the contents of that statement, it is difficult to escape the conclusion that Ms Brown, in an effort to dissociate herself from the contents of her police statement, has falsely denied providing several of the facts contained in the police statement.

At page two of the defence statement, Ms Brown talks about being in the company of Michael Scanlan and his girlfriend, Rona Punch, on the day in question. However, at the investigative hearing she denied knowing Michael Scanlan or Rona Punch.

The defence statement also contains this passage:

> *I never at any time saw Kelvin fight Patricia. Kelvin was Patricia's boyfriend. They had been going together for about two or three weeks. Patricia always played up when she got drunk.*

Despite the fact that this appears in the statement prepared for Mr Condren's defence, Ms Brown denied emphatically before this Commission that she had ever known Kelvin Condren to be Patricia Carlton's boyfriend.

One of the difficulties of this case is that several witnesses disagree not only with their police statements, but with other statements prepared by field officers or legal representatives. Ms Brown in particular seemed as keen to distance herself from the statement taken for Mr Condren's defence as she was to disagree with the police statement. In fact, it is impossible not to be struck by the similarity of some of the information in the defence statement with information in the police statement, which Ms Brown told the Commission was completely fabricated by police.

The Complaint to the Aboriginal Legal Service

Ms Brown gave evidence to the Commission that she went with her defacto husband, Stephen McNamee, to the ALS on Monday 3 October 1983, to complain that she had been forced by police to make a false statement on 1 October 1983. The Commission heard evidence from Mrs Evelyn Dawn Johnson, a field officer employed by the ALS at that time, who said that four Aborigines, including Louise Brown, came to the ALS early on Monday 3 October 1983. Mrs Johnson said that Ms Brown and Mr McNamee made complaints about being forced to give false statements to police, and that Mr McNamee also complained about being threatened with assault by the police.

It is clear from evidence before the Commission that Ms Brown and Mr McNamee were upset on Monday 3 October 1983, and went to the ALS to say that the statements they had given to police about the Carlton murder were false. Several motives for their recanting the version in the police statements have been suggested during the course of the hearing. The most obvious motive, of course, is that the statements were false and that the complainants took the first opportunity to go to their legal advisers to withdraw the statements. Other possible motives were, however, suggested during the hearing.

"Relations Were Accusing Me" -- Did the Witnesses Fear "Pay-back"?

The concept that the relatives of an Aborigine who has been injured or killed by another Aborigine may exact some form of revenge is well-accepted in traditional Aboriginal culture. The Commission heard evidence that traditional Aborigines could have feared "pay-back" from Patricia Carlton's relatives.

Ms Brown told the Commission that she had been assaulted by Patricia Carlton's brother, who was upset about the death of his sister. Ms Brown also said that neither this assault nor fear of "pay-back" by Patricia Carlton's relatives caused her to go to the ALS to change her statement. She said the assault by the brother did not occur until after she had been to the ALS on the Monday. The question of exactly when Patricia Carlton's relatives became upset and made threats against the people who were supposedly present when Patricia Carlton was attacked is obviously an important one, and it is interesting to note that in Stephen McNamee's statement to the Commission the following passage appears:

> *On Sunday we were at the camp. We found out that Patricia had been killed. Relations were accusing me of being involved because the police took us.*

When questioned about this matter at the hearing, Mr McNamee confirmed that the "relations" he spoke about in that paragraph referred, at least in part, to Patricia Carlton's brother, and that both he and Louise Brown were being accused at the same time of some involvement in Patricia Carlton's death. When cross-examined about the matter, Mr McNamee said that he thought the incident actually occurred on a Monday or Tuesday, not on the Sunday before he and Louise went to the ALS.

Whatever specific threats may have been made to the witnesses, Mrs Johnson, the Aboriginal field officer, gave evidence before the Commission about the general concept of "pay-back" in the following terms:

Question: *Now you say there were – the rumours about this pay-back business arose around the committal – at the time of the committal?*

Answer: *Yes, around that time ...*

Question: *But whether or not there were rumours to the same effect, it is the case, is it not, in Aboriginal culture, that when there is a murder, it is a cultural thing that there will be pay-backs?*

Answer: *Yes, that is, an ...*

Question: *... And Aboriginals all know that?*

Answer: *Yes, that is – that is true, yes.*

Question: *And especially, perhaps, Doomadgee Aboriginals?*

Answer: *Yes.*

Question: *So that seeing that Patricia Carlton was murdered, whether they were rumours or not, all the Aboriginal community would have been worried about pay-backs?*

Answer: *Yes, I guess so. Yes. Traditional people, yes.*

There is conflicting evidence about whether the assault on Louise Brown by Patricia Carlton's brother occurred before or after Ms Brown and Mr McNamee went to the ALS to withdraw their police statements. Ms Brown and Mr McNamee certainly deny that fear of pay-back was the reason for their visit to the ALS. There is evidence from Mr McNamee, however, which suggests that there was some agitation by Patricia Carlton's relatives prior to him and Louise Brown going to the ALS.[17]

The attendance of Ms Brown and Mr McNamee at the ALS on Monday 3 October 1983 in an upset state is consistent with their wanting to withdraw their police statements because they were false. It is also consistent with their wanting to distance themselves from their police statements because the version contained in those statements placed them at the scene of the assault upon Patricia Carlton, and they feared some form of pay-back from Ms Carlton's relatives. This makes it

---

[17] See p. 54 ff.

difficult for the visit to the ALS to be used to corroborate Ms Brown's allegations that her police statement was false.

Louise Brown's Police Statement

Ms Brown's police statement is a five-page document containing a very detailed account including names, details of places visited, drinking habits, and a particularly detailed account of Mr Condren's alleged assault on Ms Carlton and its aftermath. Ms Brown told the investigative hearing that apart from a few personal particulars all of the details in this statement were made up by police, and not provided by her at all. This is in conflict, to a certain extent, with her statement to the Commission, which says at page four:

> *I never saw Kelvin Condren hit Patricia Carlton on the day before. The reason why I told the police that I saw this is because I was forced to make the statement.* [Emphasis added]

It is also at odds with her unsigned and undated defence statement, which says at page three:

> *[A police officer] asked me whether I had seen Kelvin use the bottle and the bar and the stone on Patricia. I told [him] that I had seen Kelvin use these things on Patricia. I told [him] that I had seen Kelvin put the stone in Patricia's vagina. I told him this because I was frightened.* [Emphasis added]

In both of these statements, Ms Brown says that she did tell the police that she had seen Mr Condren assault Ms Carlton (although she says the police statement was not voluntary), whereas she now says that police completely fabricated her statement.

Bearing in mind the fact that some of the same details which appear in Ms Brown's police statement also appear in her defence statement, and her previous inconsistent statements about whether or not she provided any details about the assault to the police, it is difficult to accept that Ms Brown's police statement was fabricated as she has alleged.

Stephen McNamee

Stephen McNamee provided the Commission with a statement dated 24 September 1990 about his allegations against police.

The Commission had in evidence before it four other statements from Mr McNamee:

1. His police statement dated 1 October 1983.

2. His police statement dated 3 October 1983.

3. A file note about his allegations prepared by the ALS.

4. An undated and unsigned statement prepared for Mr Condren's defence before his trial.

In order to assess the allegations made by Mr McNamee, the Commission has considered the contents of those statements and Mr McNamee's evidence during the hearing.

Mr McNamee's Statement to the Commission

In his statement to the Commission, Mr McNamee made the following allegations:

- That at about midday on 1 October 1983, he returned home to the cottage where he was staying at Yallambie Reserve and was told that police had taken his defacto wife Louise Brown and some other women from the camp.

- That at about 5.00pm he started walking towards the police station.

- That as he was walking towards the station a police car pulled up beside him and a male police officer in the car asked him to accompany police to the station to help "*straighten out*" Louise, as she was a bit "*mixed up*".

At the Police Station--

- That he was taken to the police station where he saw Kelvin Condren, who looked upset.

- That he was later taken to a separate room out the back and questioned by a policewoman and a bearded police officer whose name he did not know.

- That he was shown Louise Brown's statement, which he skimmed through quickly and gave back to the police.

- That he was also shown statements by Susan Gilbert, Timmy Doolan, and Kelvin Condren.

- That the police kept insisting that he was present when Kelvin Condren assaulted Patricia Carlton, but that he said he was not there and had been home at the time.

- That one of the police officers walked into the room on one occasion and said that if Mr McNamee did not "come across" with a statement he could be charged with being an accessory to the murder.

- That he decided that he would give the police a statement, but report them to the ALS on the next Monday.

- That the police were shouting at him and saying, *"You were there, you live with Louise Brown, so you must've been there because she was there".*

- That he was then punched in the face by the officer with the beard, in the presence of the policewoman. After he agreed that he had been present at the scene of the assault he was given a cup of tea.

- That he was then taken into the office of a senior police officer who told him that he knew Mr McNamee had been present with Louise Brown when Ms Carlton was assaulted, and said, *"So don't bullshit".*

- That this officer became angry when he denied being there and he was then taken back to the other room.

- That the same bearded police officer who had punched him previously then brought a shovel into the room and said that every time Mr McNamee did not tell the truth he would *"Get it over the head".*

- That the police officer questioning him typed a statement for him from other statements, and asked him about various things saying, *"Did that happen?"*, and that on each occasion he said *"Yes".*

- That he read the statement after it was typed (although he did not read it properly), and that he signed it out of fear.

- That he and his defacto wife Louise left the police station at about 8.00pm.

- That the next day, he and Louise were at the camp when they found out that Patricia Carlton was dead.

- That "*relations were accusing*" him of being involved because the police had taken Louise and him away from the camp.

Mr McNamee's Second Statement--

- That he and Louise Brown went to the ALS at 9.00am on Monday 3 October 1983, spoke to field officers there, and told them what had happened at the police station.

- That he and Louise were picked up again by police at midday on the same day and taken back to the police station.

- That a policeman whose name he did not know said that his first statement would have to be "*straightened out*" as it did not conform with Louise's statement.

- That the policeman typing his new statement kept saying that the story he was telling was not right because it was "*not in Louise's statement*".

- That after the new statement was typed he signed it.

- That on the day on which the second statement was taken he went with several police officers to the scene of the alleged assault and was shown where the assault had allegedly taken place.

- That during the drive back from the scene the policewoman told him that if he did not watch himself she would put "*druggies*" on to him.

Police Evidence before the Commission

The police officer who took Mr McNamee's first statement gave evidence before this Commission. He stated that he did not have a beard at the time he spoke to Mr McNamee, but may have had long sideburns and a long moustache, perhaps going down as far as the end of his chin. The police officer denied that he had in any way intimidated or assaulted Mr McNamee during the taking of his statement.

The policewoman who Mr McNamee said was present denied seeing any intimidation of, or assault on, Mr McNamee. In fact, she said that she could not recall being present when the statement was taken.

The police officer who took the second statement from Mr McNamee gave evidence before the Commission that he had not been involved in taking the first statement from Mr McNamee, and he could not recall why the second statement was taken. He denied suggesting matters to Mr McNamee during the taking of the statement and said that all of the information in the statement had been provided by Mr McNamee.

Mr McNamee's Evidence before the Commission

In relation to the visit to the scene of the assault on Patricia Carlton, Mr McNamee said in evidence before the Commission that the person who threatened to put "*druggies*" on to him was actually the policeman with the beard, not, as he said in his statement to the Commission, the policewoman. When questioned further, he said that he was sure it was the man with the beard who had made the threat.

The Complaint to the Aboriginal Legal Service

A suggestion was put to Mr McNamee during his evidence that he and his defacto wife, Louise, were threatened by relatives of Patricia Carlton on Sunday, which may have prompted their visit to the ALS on Monday to change their statements. Mr McNamee agreed that his statement contained the paragraph which referred to relations accusing him on Sunday of being involved with Patricia Carlton's death. When questioned further about the matter he said he could not really be sure whether it was a Sunday, but rather, thought that it was the Monday or Tuesday of the next week that an incident had occurred where Andy George, Patricia Carlton's brother, had punched Louise Brown. He denied that the visit to the ALS had been caused by fear of pay–back from Patricia Carlton's relatives.

Mr McNamee's evidence to the Commission about the assault on Louise Brown by Patricia Carlton's brother provides some support for the suggestion that fear of retribution from Patricia Carlton's relatives may have prompted the visit to the ALS. The following passage appears in the evidence:

Question: *You went back to Aunt Kate's place, is that correct?*

Answer: *Yes.*

Question: *On the Sunday did you see any relatives of Ms Patricia Carlton?*

Answer: *Yes, be all the family.*

Question: *Who did you see on the Sunday?*

Answer: *Would've been the mother and father and everything there.*

Question: *That is Morris Carlton and Nancy Carlton?*

Answer: *Yes.*

Question: *Were they were angry about what had happened to Patricia Carlton?*

Answer: *Oh, I would not know.*

Question: *Did you see any of the children of the Carlton's – that is Patricia's brothers or sisters?*

Answer: *Yes, Rita, yes.*

.....

Question: *Yes how about Andy George, did you see him?*

Answer: *No, I cannot recall.*

Question: *Well did something happen to Miss Brown on the Sunday?*

Answer: *I do not know whether it was a Sunday. It might've been a Monday.*

Question: *Well was there a confrontation, do you know what a confrontation is?*

Answer: *Yes, with Andy George.*

Question: *Right, well when do you recall that happening?*

Answer: *Well, probably on a Monday or a Tuesday or something.*

Mr McNamee then gave a description of the assault on Louise Brown by Patricia Carlton's brother, and when he was questioned further about the matter the following exchange took place:

> Question: *Did you try to tell Mr Andy George that you and Louise Brown had nothing to with Carlton – the assault on Carlton?*
>
> Answer: *No.*
>
> Question: *What happened after that? Did you have anything more to do with any relatives being angry about what had occurred with Patricia Carlton?*
>
> Answer: *No.*
>
> Question: *Well what is the next thing that happened after Andy George struck Ms Brown? What is the next thing that happened in terms of – did you go to the Legal Service? What did you do?*
>
> Answer: *We walked away from him and left him there. And then first thing Monday morning then we went to the Legal Aid to report it.*
>
> Question: *And was that after Andy George had struck Miss Brown that you went to the Legal Service?*
>
> Answer: *Yes, that was Monday morning.*
>
> Question: *And at the Legal Service what time did you get there Monday morning?*
>
> Answer: *It would be first thing in the morning, I think.* [Emphasis added.]

Although Mr McNamee said in evidence that he believed the assault by Patricia Carlton's brother did not precede or cause the visit to the ALS on Monday, there is a clear statement in his evidence quoted above that Louise Brown was assaulted prior to the visit to the ALS.

While the evidence is not sufficient to support a positive finding that fear of retribution from Ms Carlton's relatives caused the visit to the ALS, it certainly

raises the suggestion that the visit, and the witnesses' desire to withdraw their police statements, may have been caused by factors other than falsity of the statements.

Mr McNamee's Allegation of Assault by the Police

In his statement to the Commission, Mr McNamee alleged that a police officer had assaulted him at the Mt Isa police station because he refused to say he was present when Patricia Carlton was attacked. A slightly different version of the alleged assault on Mr McNamee appears in his unsigned defence statement. A third version appears in a file note which was made on the occasion of Mr McNamee's visit to the ALS on 3 October 1983 and included in the brief to counsel on Mr Condren's murder trial.

When he went to the ALS on 3 October 1983, Mr McNamee spoke about the alleged assault to Mrs Evelyn Johnson, an ALS field officer. That visit led to the preparation of a file note, which summarised the allegations Mr McNamee made about the assault by police. The file note was dated 4 October 1983 and was probably prepared by one of the field officers working at the ALS.

Mr McNamee said in evidence that he believed he told Mrs Johnson on 3 October 1983 that a police officer had punched him. It was Mrs Johnson's evidence before the Commission, however, that when Mr McNamee came to the ALS on Monday 3 October 1983 he complained to her that police had threatened him with a shovel, but he did not allege that he had been hit or punched.

In his evidence before the Commission, Mr McNamee said that he did not give the version of the assault which appears in the ALS file note dated 4 October 1983. The file note says that Mr McNamee alleged that a police officer hit him with a shovel, although later in the file note Mr McNamee says that he was punched in the face and threatened with a shovel.

In his statement to the Commission, Mr McNamee said that he was punched by a police officer on 1 October 1983. Under cross-examination during the hearing, Mr McNamee agreed that in his unsigned defence statement he had stated that the assault was in the form of a "*slap across the table*", not a punch. He later said he could not recall whether he had in fact been punched or slapped.

Like several other issues examined by the Commission, Mr McNamee's allegation of assault has been the subject of a bewildering assortment of statements. Because of the inconsistencies in these statements, no tribunal properly directing itself as to

the exigencies of proof could comfortably be satisfied as to what had occurred when Mr McNamee alleges he was assaulted.

Issues Raised by the Evidence About Term of Reference (c)

Fabrication of the Witness Statements

In relation to the issue of whether police falsified the statements of Louise Brown and Stephen McNamee, the only positive evidence that this occurred is provided by Ms Brown and Mr McNamee.

Although, on one view, their visit to the ALS on Monday 3 October 1983 to make a complaint that their police statements had been falsified could be seen as corroborating their allegation, there is also evidence to suggest another motive for this visit: fear of retribution from Patricia Carlton's relatives if it were known that they had been at the scene of the murder.

There were some unsatisfactory aspects to Ms Brown's evidence about the falsification of her police statement. In particular, it is a matter for concern that some of the details which she said were fabricated by police in her police statement also appear in a statement prepared for Mr Condren's defence.

The Allegation of Assault Upon Mr McNamee

The only direct evidence of any assault upon Mr McNamee is that provided by him in his statements and in his evidence during the hearing. In assessing Mr McNamee's credibility, the Commission had to consider some of the inconsistencies in his evidence, which were referred to during the hearing. The complaints made by Mr McNamee and Ms Brown contain allegations that police intimidated them and falsified their police statements and, in the case of Mr McNamee, that he was assaulted by police. These are very serious allegations, and to make positive findings a court hearing charges based on these allegations would have to be satisfied by evidence to the criminal standard of proof.

Although it is clear that Mr McNamee made some complaint to the ALS on Monday 3 October 1983, it is Mrs Johnson's recollection that he did not complain of actually being assaulted, although he said he was threatened. There is also the conflict about whether he was assaulted by a punch or a slap.

Mr McNamee is clearly mistaken in one or other of his statements as to which officer was responsible for the alleged threat about putting "*druggies*" on to him, as

on separate occasions he has nominated the offending officer as being either the officer with the beard or the policewoman.

Taking into account all of the circumstances in relation to the evidence given by both Ms Brown and Mr McNamee, the Commission is of the view that a report for consideration of criminal or disciplinary charges in relation to these allegations is not justified.

Reference has already been made to some of the substantial problems faced by Aborigines in giving evidence before a formal proceeding. The Commission does not intend its decision in this matter to indicate that it considers that Mr McNamee and Ms Brown have deliberately told untruths; rather, that faced with conflicting versions about what is alleged to have occurred at the police station, the Commission is of the view that no further procedures are justified.

Conclusion

In relation to Term of Reference (c), 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.

Noreen Jumbo supplied a statement to the Commission dated 18 January 1991, in relation to her complaint, and also gave evidence before the Commission. In the Commission's view there are some fundamental problems in accepting Ms Jumbo's evidence to support the allegations she has made.

In her statement to the Commission, Ms Jumbo stated that she was drinking down at the river bed at Mt Isa at about 3.00 o'clock on the afternoon of 1 October 1983 when the police came looking for Kelvin Condren. She says that the police stated at the time, *"There's been a murder done about 1.00 o'clock in the morning"*. At the time Ms Jumbo refers to, Ms Carlton was not dead, and it is difficult to see why a police officer would have told Ms Jumbo that there had been a murder committed.

Ms Jumbo says that she asked to be allowed to go to the police station with Mr Condren and that she was taken to the police station in a police car. She says she was questioned in a room by three policemen and that the police tried to tell her that Mr Condren had killed Patricia Carlton and that, when she said, *"No"*, one of them said, *"He killed her"*.

Again, at the time Ms Jumbo refers to, Patricia Carlton was not dead.

Ms Jumbo says in her statement that police threatened her to try to make her say that Mr Condren had assaulted Patricia Carlton. She also said that one of them asked her whether Kelvin Condren had said, *"I damaged Patricia last night"* and threatened her to make her say that he had. She said she could not remember how they threatened her, but they did. She said that after some time some paper was brought in to her and she signed it, but that the statement she signed was wrong and contained lies.

Ms Jumbo also signed a "statement" in the form of a memorandum to a solicitor at the ALS dated 3 October 1983. It appears that this memorandum was prepared by a field officer at the ALS. In the memorandum Ms Jumbo stated that:

> *The police forced me to admit seeing Kelvin Condren flogging Patricia Carlton and threatened to put me in jail. I was asked the same questions over and over again, and they pressured me into answering yes, and I signed some papers.*

In the Commission's view, there is a real problem in accepting this evidence from Ms Jumbo. It is clear that her police statement dated 1 October 1983 does not contain a statement from her that she saw Kelvin Condren assaulting Patricia Carlton. The evidence in her police statement is to the effect that on the morning of 1 October 1983, Mr Condren admitted to her that he had *"damaged Patricia last night"*. There is no reference at all in her police statement to her seeing the assault upon Patricia Carlton.

In relation to whether the reference in her police statement to Mr Condren admitting he *"damaged Patricia"* was manufactured by police, Ms Jumbo was questioned by counsel for Mr Condren at the hearing in the following terms:

> Question: *Well how did it come about that in the statement you have got the words that Kelvin said to you – I damaged Patricia last night. Who said those words first?*
>
> Answer: *I said those words first.*

Question: *And where did they come from?*

Answer: *From me, they came because, sorry, it never came from me. It, I just said it because they were telling me, they were telling me to say these things about Kelvin.*

Later in her evidence Ms Jumbo made an allegation -- it appears for the first time in any statement she has provided -- that a male police officer, whom she named, had produced a gun during her interview and that this had scared her. However, she later conceded that she had no real basis upon which to believe that the police officer involved was the officer she had named. She said that she had just *"got a suspicious feeling"* that the name she provided was in fact the officer's name.

Issues Raised by the Evidence About Term of Reference (d)

There are substantial conflicts between the known facts in this case and Ms Jumbo's evidence about what was said to her by police and what happened at the police station. In the Commission's view, Ms Jumbo's evidence was so unsatisfactory that no properly directed tribunal could be satisfied that the evidence substantiates her allegations.

Conclusion

In relation to Term of Reference (d), 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.

CHAPTER 8

ABORIGINES AND THE CRIMINAL JUSTICE SYSTEM

Opening his final address before the Commission, Mr Gaffney, counsel for Mr Condren, spoke about the demeanour of the Aboriginal witnesses and the Commission having had the "invaluable opportunity" of seeing and hearing those witnesses.

Mr Gaffney's point is well taken. The lessons to be learnt from watching the Aboriginal witnesses give evidence were, in a way, more compelling than any of the text books and expert evidence to which the Commission was referred.

Without exception, the Aboriginal witnesses appeared unsophisticated and uneducated, people respectful and deferential to authority, people for whom cross-examination was a bewildering experience. On several occasions a witness would quite confidently in his narrative evidence give an estimate of, say, a time, but when cross-examined would be all too easily led to depart from that evidence.

Perhaps what was more striking than the matters which caused complaint in this case were the matters which seemed to be accepted without complaint by the Aboriginal witnesses as a routine way of life. The statements in this matter paint a picture of a life which revolved around finding the next drink, a life of overcrowded sub-standard living conditions, a life of relying on the kindness of relatives for a place for the night. Days were spent drinking until unconsciousness and squabbling with relatives and friends over matters which would not matter when they were sober. More than anything, a picture emerged from the evidence of the relentless tyranny of living every day from drink to drink.

While the Commission is aware of the historical genesis of the present-day living conditions and lifestyle of many Aborigines, the description of that day-to-day lifestyle which emerged during the hearing underlines the distance which still exists between the two cultures.

The Last Days of Patricia Carlton

It appears from police statements obtained at the time of the original investigation that in the days preceding her death Patricia Carlton, like many Aborigines in Mt Isa at that time, was living a life of drunkenness and homelessness where violence was rife. Some of the statements describe, in an off-hand way, assaults on Ms Carlton by different men during the days leading to her death -- being knocked to

the ground by a jealous drunk, or slapped in the face for saying the wrong thing. These assaults seem to have produced no great concern in those who witnessed them and certainly no complaint from Patricia Carlton.

Dead at Bottle Tree Bore

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

One witness was dead at 28 years of age. He was found on 16 April 1984 at Bottle Tree Bore in Western Australia hanging from a windmill tower with a rope around his neck. The local police considered that he was probably a victim of suicide. (It is ironic in view of the subsequent history of black deaths in custody that the investigating police officer wrote at the time, *"There does not appear to be any suspicious circumstances, but it is very unusual for an Aboriginal to hang himself"*.)

Another witness died in Darwin on 2 February 1985, aged 28 years. Her death was caused by cancer, which had evidently spread untreated for some time.

At the time of giving evidence before the Commission, a third witness was serving a term of imprisonment for manslaughter. Whilst drunk, she had become involved in an altercation with another Aboriginal woman in the Brisbane Watchhouse. The woman died, and the witness was convicted of manslaughter.

Of the five, only Stephen McNamee and Louise Brown, who continue to live in a defacto relationship with their three children, appear to have achieved any degree of stability in their lives.

When one views 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. Even the formal safeguards put in place in the system seem to provide little real protection.

Police Interviews -- "A Solemn Farce"

During the Commission's hearing, Mr Robert Walkley, a clinical psychologist who has worked extensively with Aborigines and Torres Strait Islanders, said that even a well-meaning police officer could fail to provide real protection for an Aboriginal suspect in an interview situation. He said that some police officers

seemed to think that as long as they found an Aborigine or Islander to serve as the "independent person" during an interview, they would be doing the right thing by an Aboriginal or Torres Strait Islander suspect.

This simplistic approach overlooked many of the delicate relationship systems in the culture. For example, police would often call in a relative whose presence might be more overpowering for the suspect than a neutral person, or a field officer whom the suspect did not like or get along with.

The interview which police conducted with Mr Condren is a classic example of how police attempts to protect a disadvantaged person can result in a procedure where, on the surface, much is done appropriately, but in reality little or no protection is provided.

Reference was made during the hearing to the judgment of Mr Justice Dowsett in *R v W and Others*,[18] a leading Queensland case about the treatment of disadvantaged people during police interview. In that case five young Aborigines were questioned by police about a serious offence.

Even though the youths were questioned in the presence of Aboriginal JP's, Mr Justice Dowsett excluded the confessions obtained, and said in relation to the questioning of the boys:

> *He* [a reference to one of the accused] *was interviewed in the presence of Nelson Gavenor. Gavenor seemed to me to be a better choice as prisoner's friend than Barney, in that he was more articulate, or so it seemed to me. However, this is of little relevance, because he also did not speak at all to the accused. One wonders what role the police really attribute to Gavenor and Barney. It seems little more than a solemn farce to have these men sitting there like statues while these children cope unassisted with the niceties of the criminal law.*

Mr Justice Dowsett's words eloquently demonstrate that an interview can be conducted with all due ceremony, but provide no real protection for the rights of a disadvantaged suspect. The criminal justice system is reasonably adept at dealing with circumstances where something has clearly gone wrong, where procedures have clearly not been followed. However, there seems to be little recognition of the insidious formalism which seems to protect, but is really a facade.

---

18 [1988] 2 Qd.R. 308.

In Mr Condren's case, the police conducted an interview which, on the surface, substantially complied with the rules of law designed to protect the rights of an accused: the police gave Mr Condren a warning and a JP attended to witness that what Mr Condren said was accurately recorded and that he was not assaulted or apparently overborne.

The difficulty is that, with a person under disability, even where there is no violence and no "verballing", and an interview is conducted in a formally appropriate manner, there is still an overwhelming likelihood that the information obtained may be unreliable and will not be voluntary in any real sense of the word.

Lost in the Criminal Justice System

Once an Aboriginal suspect moves from police custody into the courts and, perhaps, the correctional system, he has little prospect of faring better. Many Aborigines feel totally lost in a labyrinthine system which is entirely alien to their culture.

Aborigines dealing with their own legal advisers may still suffer the consequences of inaccurate statements and poorly understood evidence if the legal representatives do not understand the Aborigines' culture or their communication problems.

Mr Paul Richards, a solicitor who has worked for 20 years in the Aboriginal community, gave evidence before the Commission about some of the problems inherent in appearing for Aboriginal clients. He said that Aboriginal clients often took the blame for offences they did not commit in order to protect relatives. Contrary to a popular European myth, Aborigines do not "like" prison (as the many black deaths in custody show); but to many there is less shame attached in going to prison than in letting down a family member. In Mr Richards' opinion, Aborigines are easily led into making statements which accord with what they believe a legal representative wants to hear, rather than what they believe to be the truth.

For many Aborigines their only substantial contact with mainstream Australian culture will be their contact with the police or the court system. Unlike mainstream white Australians, who also may find the process of being questioned by the police or going to court a frightening experience, many Aborigines are unlikely to have had any positive experience of the criminal justice system — no relatives in the QPS, no cousins working in the court system, no jury duty.

The European-style criminal justice system is not only alien to Aboriginal culture, but is founded on laws which often conflict with Aboriginal customary law.

Because of this, Aborigines are really "outsiders" in relation to the criminal justice system, but they continue to be over-represented in both the courts and the prison system. A research unit of the Royal Commission into Aboriginal Deaths in Custody (RCIADC) found during the Royal Commission that:

- Aboriginal people constituted 29 percent of the persons held in custody, but only 1.1 percent of the Australian population aged 15 years and above.
- Aborigines are conservatively estimated to be at least 10 times more likely than non-Aborigines to be in prison.
- Between 1980 and 1988, Aborigines were 23 times more likely to die in custody than were non-Aborigines.[19]

This situation continues today. The following table comes from a recent study of Aboriginal imprisonment levels during and since the RCIADC:

TABLE 1: Aboriginal Prisoners[20]
(Prison Census, 30 June 1987 - 30 June 1991)

State	30/6/87 No.	30/6/91 No.	Increase %
NSW	369	664	80
VIC	52	91	75
WA	503	624	24
SA	147	150	2
QLD	354	346	-2
NT	334	328	-2
TAS	7	10	43
AUS	**1766**	**2213**	**25**

19 McNamara, Luke (1992), Autonomy-based solutions and criminal justice reform, *Aboriginal Law Bulletin*, vol. 2, no. 54.

20 Cunneen, Chris (1992), Aboriginal imprisonment during and since the Royal Commission into Aboriginal Deaths in Custody, *Current Issues in Criminal Justice*, vol. 3, no. 3.

These figures show that there have been staggering increases in the imprisonment rate of Aborigines in New South Wales and Victoria between 1987 and 1991, and an overall national increase of 25 percent. While Queensland and the Northern Territory show slight decreases, the level of imprisonment is still unacceptably high and disproportionate to the imprisonment rate of the general population.

The Federal Initiative -- "The Process of Reconciliation"

Some of the factors contributing to the over-representation of Aborigines in the criminal justice system include alcoholism, unemployment, lack of education, and housing and health problems.

In June 1992, the Federal Government announced a major initiative to improve conditions for Aborigines and Islanders in Australia. The initiative has several components:

1. development of an innovative response to alcohol abuse, including education, detoxification, rehabilitation and after-care services;

2. establishment of a job-creation scheme for Aboriginal communities;

3. establishment of a 25-person council comprising Aboriginal, Torres Strait Islander and non-Aboriginal people which will:

    - progressively address disadvantages of Aborigines and Islanders in areas of housing, law, education, employment, health and economic development;

    - create an ongoing public awareness program for non-Aboriginal Australians; and

    - initiate community consultation about "the process of reconciliation".

In an area where there are no easy solutions, an initiative which attempts to address some of the problems facing Aborigines and Islanders by looking to the underlying causes is a good start. The Commission commends this initiative.

Towards a Better Criminal Justice System

Miscarriages of justice may occur in any criminal justice system. But where Aboriginal and Torres Strait Islander people are involved, the odds of injustice occurring increase dramatically because they have little or no stake in the system and it has little relevance to their lives.

An equitable criminal justice system must be able to offer fair treatment to all citizens regardless of their particular circumstances and possible disadvantages.

The last two chapters of this report examine some of the difficulties inherent in the criminal justice system's dealings with Aboriginal suspects and witnesses, and make recommendations for changes in practices and procedures.

CHAPTER 9

EVIDENCE RELATING TO TERM OF REFERENCE (f)

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.

Many of the substantive issues in this investigation concern the veracity and accuracy of Records of Interview, statements and evidence given by Aborigines. During the hearing, the difficulties in interrogating and interviewing Aborigines and, in particular, the problems which police may face in taking statements and Records of Interviews from Aborigines, were recurring themes.[21]

The report has already referred to some of the serious repercussions for an Aborigine when an interviewer, for whatever reason, takes an inaccurate statement or Record of Interview. But the problem of inaccurate statements has another equally serious consequence: not only do individuals suffer, so too does the integrity of our system of justice. On both counts, the special problems that Aborigines face are of grave concern.

This chapter attempts to define the sources of these problems and, in doing so, shed some light on how the criminal justice system might anticipate the problems and reduce their impact.

Interviews, Statements and Evidence -- Aboriginal and Legal Perspectives

The evidence before the Commission identified a number of factors which inhibit effective communication between an interviewer and Aboriginal interviewees. Some of the factors which contribute to problems in an interview or court situation are:

---

21 Some of the information in this chapter with respect to problems in police interrogation of Aborigines has been taken from Report no. 31 of the Australian Law Reform Commission (1986), *Recognition of Aboriginal Customary Law.*

1. The Use of Language

As Dr Eades explained to the Commission, the "question/answer" method adopted in interview situations puts Aboriginal people at a serious disadvantage:

- Aboriginal people do not usually impart important information through the "question/answer" method, and they do not have the same experience and competence in this process as most mainstream white Australians.

- Interviewers can easily misunderstand the responses Aborigines may make to questions about legal issues, especially if the questioner does not recognise aspects of Aboriginal culture and mistakenly assumes that an Aborigine is speaking "standard English".

- Unlike Western society, where silence creates suspicion or concern and may be taken to indicate a communication breakdown, in Aboriginal culture silence is an important and positively valued part of conversation; it often indicates a speaker's desire to think. Aborigines' silence in legal interviews can easily be misinterpreted as evasion, ignorance, confusion, insolence, or even guilt.

- Eye contact during a conversation has different significance for whites and Aborigines. Aborigines can consider it threatening or rude, and often avoid it. White Australians are apt to interpret this as rudeness, evasion or dishonesty.

- Aboriginal English speakers are often confused by "either/or" questions, questions which ask the interviewee to choose one of two or more alternatives. Aborigines often choose the last alternative proffered when asked this kind of question.

- Aboriginal English speakers often have difficulty with "how/when/where"-type questions. Their answers to these questions are frequently either non-specific or vague, or alternatively, specific to another situation. When interviewers ask quantitative questions, Aborigines' answers are often inaccurate because of their relative lack of familiarity with quantifiable specifications.

- Official transcripts of police interviews and court hearings do not record hesitations or other interruptions to the flow of a conversation. This means that the difficulties a witness may have in answering

questions go unrecorded. This omission could disadvantage any witness, but it is particularly relevant to Aboriginal witnesses, many of whom lack basic communication competence in the questioning process.

- Aboriginal suspects often do not understand the explanation of specific legal concepts, such as the right to remain silent, which may be an alien concept to them. As Mr Justice Forster of the Northern Territory Supreme Court noted in *R v Anunga and Others*:[22]

> *Some Aboriginal people find the standard caution quite bewildering, even if they understand that they do not have to answer questions, because if they do not have to answer questions, then why are the questions being asked?*

2. Concepts of Time and Distance

It is clear from the evidence of a number of the Aboriginal witnesses before the Commission and the evidence of Dr Eades, that many Aborigines do not use numbers when they are being specific about time and distance.

When asked to describe the length of something, an Aborigine is more likely to compare it with an immediate object and say that it is shorter or longer than that article. Similarly, rather than use a calendar date to pinpoint an event in their lives, Aborigines would tend to relate that event to other occasions in their social calendar.

If forced to give a quantifiable estimate of time in an interview or a court proceeding, many Aborigines would face great difficulty. This occurs frequently during the course of police interviews. Given this difficulty, it is obviously highly undesirable that Aborigines should be required to be specific in European terms.

---

22 (1976) 11 ALR 412.

3. Deference to Authority

As Mr Justice Forster stated in *R v Anunga*:[23]

> *Most Aboriginal people are basically courteous and polite and will answer questions by white people in the way in which they think the questioner may want. Even if they are not courteous and polite there is the same reaction when they are dealing with an authority figure such as a policeman. Indeed their action is probably a combination of natural politeness and their attitude to someone in authority.*

Robert Walkley told the hearing about the phenomenon of "hunting". He said that an Aborigine would often try to calculate the intent of questioners by interpreting non–verbal communication signals such as eye contact and body position. The Aborigine's response would be based on that interpretation rather than the content of the question.

Motivated by fear, this kind of behaviour usually represented an Aboriginal person's attempt to get out of a threatening situation by agreeing with an interviewer and, in the process, minimise any negative consequences. Mr Walkley said that "hunting" was very common among Aboriginal and Torres Strait Islander suspects.

This kind of behaviour is similar to the phenomenon of "gratuitous concurrence" referred to by Dr Eades. Gratuitous concurrence is a process whereby Aboriginal people or other vulnerable people might agree to suggestions being put to them regardless of whether or not they believed the suggestions to be true.

Dr Eades said the likelihood of gratuitous concurrence increased under the following conditions:

- repetitious questioning
- denial of the opportunity to use silence in a comfortable way, and
- use of a raised voice or glaring eye contact during an interview.

---

[23] Ibid at p. 414.

4. Perception of the Criminal Justice System

Mr Paul Richards, a solicitor who has worked with Aboriginal and Islander people for twenty years, gave evidence before the Commission that, in his opinion, Aboriginal people are often treated differently by the police. Aborigines continue to be disproportionately represented in the criminal justice system, and it is likely that there will be continuing difficulties with police/Aboriginal relations.

Mr Walkley said that many Aboriginal people were afraid of the criminal justice system; they saw it as something which definitely did not work in their favour. He considered that there were cultural factors which justified special measures being implemented to protect Aborigines in their dealings with the criminal justice system.

5. The Formality of the Interview

It seems clear that a formal interview process is a very unusual, and perhaps ineffectual, way for Aborigines to impart information. As Dr Eades pointed out, most Aboriginal people are not comfortable in a formal interview and, as a result, are often disadvantaged.

Dr Eades suggested that one way to improve the situation would be to reduce the formality of the occasion by conducting interviews in a more relaxed setting than a police station -- perhaps at an ALS office. She said that rather than being subject to a rigid question and answer process, the interviewee should be allowed the time to give a narrative.

6. Physical and Mental Disability

Interviews conducted with suspects and witnesses under the influence of alcohol may lead to unreliable confessions and/or statements. Because many of the offences committed by Aborigines are alcohol-related, the presence of alcohol and the possibility of alcoholism should always be considered when Aborigines are being questioned.

Mr Richards told the hearing that a significant number of Aboriginal people in north Queensland have poor hearing due to medical causes. He said it was not uncommon for Aboriginal people to agree to matters during an interview when they had not heard the question or had heard it inaccurately.

Queensland Police -- General Instructions About Questioning Aborigines

The *Queensland Policeman's Manual* contains general instructions which deal specifically with the questioning of Aboriginal and Islander people.

In 1983 s. 4.54A(c), which deals with the questioning of Aborigines, read:

> *Aborigines and Torres Strait Islanders who come within the category of persons under disability will be questioned in the presence of an independent adult person concerned with the welfare of those races, in whom the person being questioned has confidence and by whom he feels supported, and who can act as an interpreter during the period of interrogation, if necessary. The Aborigine or Torres Strait Islander should not be overborne or oppressed in any way by the person present.*

As a result of a recommendation by the Criminal Justice Commission arising from the investigation of another complaint, the General Instruction was amended in February 1991, and the relevant portion now reads:

> *Aborigines and Torres Strait Islanders who come within the category of persons under disability will be questioned in the presence of a solicitor or other legal adviser or a person concerned with the welfare of those races.*
>
> *Where this is not practicable, any such person will be questioned in the presence of an independent adult person in whom the person being questioned has confidence and by whom he/she feels supported, and who can act as an interpreter if necessary.*[24]

The main effect of this amendment was to include legal qualifications among the criteria to be used in selecting persons to assist Aborigines and Torres Strait Islanders during police questioning. But the instruction still did not make clear that any preference was to be given to legal qualifications. Mr Condren's case clearly shows the futility of having an independent person present who has little more legal knowledge than the suspect.

---

[24] Appendix D presents s. 4.54A(c), revised in 1991, in full.

Electronic Recording of Interviews

During the hearing a great deal of time was spent discussing what Mr Condren may or may not have said during the course of the making of the Record of Interview. Electronic recording would have disposed of much of this argument.

As a result of Government and QPS policy, electronic recording of interviews has been progressively implemented State-wide since 1989. Under this policy, police officers who have reasonable access to video and/or audio recording equipment are required to record all formal interviews with persons reasonably suspected of having committed an indictable offence. Instructions are set out in the QPS's *Electronic Recording of Interviews and Evidence Manual*, issued in July 1989.

Electronic recording will not, however, cure all problems. There may still be allegations, justified or not, of assault or some other "softening up process" before the recording began. Although electronic recording will not avoid these problems, it at least precludes the paraphrasing or editing of questions and answers during the Record of Interview and provides an accurate record of what took place during the interview.

Dr Monika Henderson, the Director of Policy Research and Evaluation for the QPS, gave evidence before the Commission about some of the research and special projects being undertaken by the QPS, including the initiative to introduce electronic recording of interviews. Dr Henderson told the hearing that 114 police stations/establishments have been equipped with audio/video rooms and all Criminal Investigation Branches, Stock Squads and Juvenile Aid Bureaus across the State have been supplied with electronic recording equipment.

Projects undertaken in other jurisdictions have proved the worth of electronic recording of police interviews. On 30 June 1991, the Western Australia Police Force published a report on the results of a two-year trial project relating to video-recording of police interviews.[25] The author of that report noted in the introduction:

> *Results obtained from the trial project have demonstrated that the video-recording of confessional evidence is an unqualified success surpassing even the most optimistic expectations.*

---

25 Lienert, Detective Inspector EG (1991), *Video-Recording of Police Interviews - A Two-Year Trial Project - Final Report*, Western Australia Police Force, Perth.

The report also noted:

> *The trial project has demonstrated that video-recording of police interviews is far more than merely cost efficient. Video-recording provides a "window" to the Police Force. A video-recording can be used to demonstrate that suspects are treated fairly and impartially during interrogation by police.*

In relation to electronic recording in other jurisdictions, the report noted:

> *In a report to the Minister of Justice in New Zealand [November, 1988] submitted by Sir David Beattie on his research into the electronic recording of police interviews [which included visits to the United Kingdom, Canada, and Australia], he wrote that the introduction of video-recorded police interviews "singularly represents the most monumental advance in decades, not only to traditional methods of criminal investigation, but to those who serve, administer, and preserve our system of justice".*

Police and Aboriginal/Torres Strait Islander Relations

Amendments to the General Instructions and the requirement to electronically record interviews will obviously go a long way to ensuring that suspects are questioned fairly. But officers determined to indulge in misconduct can always find ways to subvert such procedures, and it is often very difficult for a court to determine whether an electronically recorded interview has been induced by prior threats or improper suggestions. This is a much larger problem which is hopefully being addressed by police training and education.

Mr Condren's case highlights the importance of training and education programs specifically designed to improve police relations with Aborigines and Torres Strait Islanders.

All QPS recruits now undertake Aboriginal and Torres Strait Islander social/cultural awareness training during their studies. This section of the course gives students an insight into these cultures and discusses the impact of white settlement in Australia. It also gives students a basic outline of the beliefs and language of Aboriginal and Torres Strait Islander people.

Aboriginal and Torres Strait Islander issues are also integrated through other recruit course units. Staff and recruits from the Police Academy visit the Aboriginal Culture Centre at Inala on a regular basis.

This emphasis on awareness of Aboriginal and Torres Strait Islander issues has been extended to in-service training. A cultural awareness training program is currently being developed by the QPS, following State-wide consultation with Aboriginal and Torres Strait Islander communities. The training will become a module in the Competency Acquisition Program, and successful completion of the subject will be a prerequisite to wage increases for non-commissioned officers.

Another part of the cultural awareness training is the development of an induction training package directed specifically at police who are to serve in communities with significant numbers of Aboriginal and Torres Strait Islander people. QPS policy already specifies the inclusion of Aboriginal or Torres Strait Islander community representatives on selection panels for police officers promoted to Aboriginal or Torres Strait Islander communities. Under a one-month full-time trial program operating at Cherbourg since mid-1991, first-year constables live in the community and get involved in all aspects of community life with Aboriginal community members.

Recruitment of Aborigines and Islanders to the Queensland Police Service

In 1991, the Commission released a report on its investigation into allegations of police misconduct at Inala in November 1990. The allegations had followed a clash between police and Aborigines at Inala after a licensed function at the Wandarrah Aboriginal Pre-school Community Centre.

As part of that report, the Commission examined the progress that QPS had made in implementing police reforms recommended in the *Fitzgerald Report*, specifically the concept of "community policing", which Mr Fitzgerald considered required recruiting officers from ethnic groups within the community.

At that time, the report noted that, although there was no specific requirement that a proportion of new recruits were of Aboriginal or Islander descent, the QPS "looked favourably" on these applicants.

The recruitment of Aborigines and Islanders to the QPS is an important part of the reform of police relations with the Aboriginal and Torres Strait Islander communities. Ten Aborigines and Torres Strait Islanders recently began a police recruit training course at the Academy -- eight of them after graduating from an Innisfail college. The Commission commends this development.

Proposed Review of the General Instructions

Dr Henderson said that the QPS is currently reviewing all of its operational instructions and procedures. The revised operational instructions will replace the *Queensland Policeman's Manual* and the Commissioner's Circulars. Aboriginal and Torres Strait Islander issues are being addressed during this review. The new instructions will contain a section dealing specifically with cross-cultural issues. The draft revised instructions specify as departmental policy that members should *"treat disadvantaged persons with understanding"* and *"adopt appropriate interviewing methods"*. This applies equally to suspects, witnesses and victims of crime. The Commission has not reviewed the revised instructions, but Dr Henderson said that they will make specific reference to the *Anunga Rules* and how they are to be applied.[26]

Dr Henderson spoke about the impact of the RCIADC on the QPS. She said that the QPS fully supports almost all of the RCIADC recommendations relevant to policing. Dr Henderson said that although the implementation of some recommendations was contingent on the availability of additional funding, many of the RCIADC's recommendations had already been implemented or were being developed at the time the RCIADC's final report was completed.

Dr Henderson said that over the past two years the QPS had progressively implemented revised instructions on the care and management of prisoners. The QPS is currently finalising a Custody Manual which consolidates policies and procedures with respect to prisoners. The Manual will provide guidelines for identifying "at risk" prisoners and details of "duty of care" obligations, which were developed jointly by the QPS and the Health Department. QPS will consult with Aboriginal and Islander communities prior to finalising the Manual.

Dr Henderson said that she believed that the QPS had a strong commitment to improving relations between police and all minority community groups. Noting that she had been with the QPS only 18 months, she said that, in her opinion, there was an increasing rejection within the QPS of negative attitudes and practices against minority groups.

Many of the recommendations which the Commission makes in the following Chapter are directed to the QPS, and it is timely that these recommendations be considered as part of the general reform of the entire manual of police procedure which is presently being undertaken within the QPS.

---

[26] 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.

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.

For many years courts have excluded from evidence confessions which were not shown to be voluntary, for example, confessions which were obtained by assaults, intimidation, threats or inducements.

It is clear from expert evidence before this Commission and research in other jurisdictions that confessions which are voluntary may still be unreliable, in the sense that, although voluntary, the confessions are untrue.[27]

The English Experience

In 1984, a radical and far reaching statute called the *Police and Criminal Evidence Act 1984* became law in England. The Act was the product of recommendations made by the Royal Commission on Criminal Procedure, which was established in 1977 following a great deal of public concern about a number of confessions which led to convictions and were found to be either improperly obtained or unreliable, in the sense that the confessions were voluntarily given, but were false.[28]

Prior to the Act, the test for admissibility of confessional material had been solely that the confession was voluntary, although trial judges retained a discretion to reject a confession if it was obtained by improper or unfair means. The Act created two tests of admissibility for confessions. The first rendered a confession inadmissible if it was obtained by oppression, including torture, inhuman or degrading treatment and the threat or use, of violence.[29] Under the second, a confession was rendered inadmissible if it was obtained *"in consequence of*

---

27 See p. 84 ff.

28 The information in this report relating to the English situation and the *Police and Criminal Evidence Act* has been taken from two sources: an address by Sir Patrick Russell, Lord Justice of the English Court of Appeal, to the Third International Criminal Law Conference, Hobart; and Zander, Michael (1992), the *Police and Criminal Evidence Act 1984*, 2nd edn, Sweet and Maxwell, London.

29 *Police and Criminal Evidence Act 1984* (UK) s. 76(2)(a).

anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might have been made by him in consequence thereof".[30] Reliability of the confession, in effect, took the place of the voluntariness test. If it is represented to the court that the confession was or may have been obtained by oppression or in circumstances which make it unreliable, the court is required under the Act not to allow the confession in evidence unless the prosecution proves beyond reasonable doubt that the confession was not obtained by such means. English courts now look not so much at the state of mind of the suspect, who may have any number of reasons to confess, including suggestions by the police or even his own lawyer, but rather whether, in the circumstances, the confession can be safely relied upon as evidence against the suspect.

The Act greatly extended the power of the police to arrest and detain suspects for questioning and investigation. At the same time, it introduced the concept of the "custody officer". The custody officer, who must be independent of the investigation, is required to keep a "custody record". This record is required to be kept for every person arrested in England. The custody record must contain a considerable volume of information about the circumstances of any person's detention, including:

1. the grounds of detention;

2. the suspect's signature acknowledging receipt of a notice of rights, or the custody officer's note that the suspect refused to sign;

3. any waiver of the suspect's right to have legal advice;

4. details of any intimate search, including the reason for it and its result;

5. any requests to inform a relative or friend of the fact of the arrest and any action taken on such a request;

6. details of all visits to detained persons;

7. action taken on any request for legal advice;

8. grounds for delaying access to legal advice;

---

30 *Police and Criminal Evidence Act 1984* (UK) s. 76(2)(b).

9. when a suspect has been allowed to call a solicitor, grounds for commencing the interview before the solicitor arrives;

10. details of any complaint made by a suspect regarding treatment while in custody and details of any medical treatment or action taken regarding a condition requiring medical treatment; and

11. the time and place of any caution given to the suspect.

Failure to comply with these requirements may lead to the exclusion of any confession obtained from a suspect, on the grounds that the confession has been tainted and may be unreliable.

The Act provides that any interview in a police station must be contemporaneously recorded unless it is impractical to do so, in which case a record must be made of why it was impractical. If still in custody at the time the interview is completed, the interviewee must be shown the record and may then note by hand any objections to the record. A failure to comply with these rules has led the English courts to exclude interview evidence on a number of occasions.

The Act also contains provisions, which have now been implemented, providing for the electronic recording of interviews. In some cases, the use of tape–recorded interviews has prolonged trials, because of the time that must be taken to listen to the often lengthy tapes in court. This would no doubt be offset by the reduction in hearing time by pleas of guilty.

Should Uncorroborated Confessions Be Admissible As Evidence?

Despite the legislative safeguards referred to above, a conviction in England may still be based upon confessional evidence which is not corroborated by independent testimony.

In contrast, in all but a few United States jurisdictions an out–of–court confession by a defendant without corroboration is not considered sufficient to sustain a conviction.

In India the safeguards are even more drastic. Section 25 of the *Indian Evidence Act 1872* provides that no confession made to a police officer can be admitted in evidence against a person accused of any offence. Section 26 permits a confession by a person in custody of a police officer to be admitted, but only if made in the immediate presence of a Magistrate.

The Queensland Situation

Queensland courts have always had a duty to exclude confessions not shown to have been obtained voluntarily; that is, confessions which were obtained as a result of assault, threats, intimidation or inducements. The High Court of Australia recently took the question of the use which can be made of confessional material one step further. In *McKinney v The Queen*[31] the court ruled that where police evidence of a confessional statement allegedly made by an accused person while in police custody without access to a lawyer or other independent person is disputed and its making is not reliably corroborated, a warning should be given to the jury as to the danger involved in convicting upon the basis of that evidence alone.

A confessional statement could be "reliably corroborated" by electronic recording or by any other independent material which unmistakenly confirms its making. Although signing of the Record of Interview by the interviewee usually constitutes reliable corroboration, this will not always be the case.

Even in cases where the judge is required to give a warning to the jury, the confession is still admissible evidence. Although this decision is an important step forward in protecting the rights of the accused, as noted earlier in the discussion of electronic recording of interviews, there may still be problems. The English experience with electronic recording has shown that even video–taped confessions made voluntarily by an accused may be unreliable because of a number of factors.[32]

One could therefore have a situation where an accused has signed a Record of Interview, or has been video–taped confessing to a crime, but the confession is still not reliable, in the sense that it is not true and should not be sufficient to ground a conviction.

Proposed Amendments to the *Evidence Act 1977* (Qld)

In July 1990, the Queensland Cabinet decided that the *Evidence Act* should be amended to regulate the admissibility of non–recorded confessions relating to indictable offences. The Attorney–General's draft of the proposed amendment provided that in any proceeding for an indictable offence evidence of a confession or admission alleged to have been made to a police officer would not be admitted

---

31 (1991) 65 ALJR 241.

32 See p. 84 ff.

unless they were tape-recorded at the time or, in certain circumstances, confirmed in substance and such confirmation had been recorded. However, the proposed amendment contained a proviso that even if the confession or admission had not been recorded or confirmed, it could still be admitted at the discretion of the court, if the court was satisfied on the balance of probabilities that there were exceptional circumstances and that the admission of the evidence was justified.

In March 1992 the Attorney-General advised the Commission that he preferred not to proceed further with the proposal until the completion of the Commission's review of police powers and the receipt of advice from the Criminal Law Officers' Committee on the electronic recording of police interviews.

Submissions by the Royal College of Psychiatrists

Concern about the issue of voluntary but unreliable confessions has led the Royal College of Psychiatrists to make a submission to the Royal Commission on Criminal Justice presently being held in England.[33] The submission pointed out that although it is rare for a "genuine false confession"[34] to occur, there have been a small number of reported cases where convincing admissions were made by people who were subsequently positively proven to be innocent.

In many of these cases the accused was neither mentally ill nor mentally handicapped. In one case a suspect made tape-recorded self-incriminating admissions, apparently not under duress, which led to a charge of murder. The charge was later withdrawn because of DNA fingerprinting evidence. In another case after the implementation of the *Police and Criminal Evidence Act*, a suspect retracted detailed admissions in the presence of a solicitor, but later repeated the admissions to the police. In the aftermath of the murder of an English police constable at Broadwater Farm, arrests and interrogation produced unreliable self-incriminating testimony from many suspects against whom there was no other evidence. Reports indicate that one suspect produced detailed and convincing revelations in an interview 50 pages long. It was later proven that the suspect was miles away at the relevant time.

---

33 Information in this section has been taken from the interim submission and the submission in March 1992 by the Royal College of Psychiatrists to the Royal Commission on Criminal Justice.

34 The term "genuine false confession" refers to a confession which can be independently proven to have been genuinely made, but can be shown by other conclusive evidence to be false.

The College considered that the *Police and Criminal Evidence Act* had improved some aspects of the protection of the rights and welfare of detainees in police custody and had probably reduced the dangers of producing unreliable self–incriminating testimony. But the College also said that some issues had not been addressed:

1. Even when a suspect is given an appropriate caution and information about access to a solicitor, these rights are not always understood.

2. A review of some Records of Interview showed that the independent persons called to assist the suspects often adopt a passive role when active intervention is needed.

3. The experience of being in police custody is so stressful to most people that obedience to authority and conformism can dramatically affect behaviour. The College considered that even some psychiatrists grossly underestimate how readily normal and responsible people would act on instructions and against their better judgment. In the College's view, it was very hard for an average person to maintain the right to silence in stressful situations.

4. The submission pointed out that psychiatrists, as trained interviewers, know how easily the answers one expects from an interviewee can be obtained, for example, by shaping the behaviour of the interviewee. It was considered that training of police to minimise the use of leading questions and to take care to avoid provoking particular responses was essential. The College recommended that police officers should undergo training in proper techniques of interviewing suspects, as many experienced police officers still express scepticism about the phenomenon of genuine false confessions.

   Such training should emphasise the importance of appreciating the subjective experience of a suspect questioned in police custody and the dangers of inadvertently giving a defendant clues which may make convincing, but misleading, false self–incriminating statements more likely. In difficult cases interview techniques should be adaptable to the circumstances, including exceptional precautions such as using an interviewing officer who is "blind" to knowledge about the offence. The training should also emphasise how important it is for an officer to try to assess, through initial questioning, whether an interviewee is a vulnerable person and should cover the recognition of mental illness and mental handicap in suspects. It was also recommended that detainees should be asked to paraphrase their understanding of the cautions and the rights read to them by police.

With respect to the issue of the admissibility of confessions, the College recommended that it should no longer be possible for a person to be convicted of an indictable offence where such conviction would be based solely on uncorroborated self-incriminating statements. The effect of this recommendation would be that, even if a confession was video-taped, if there was no other independent evidence capable of corroborating the fact that the accused was responsible for the crime, no conviction should result.

There has been a spate of recent appeal decisions, particularly in England, where confessions which resulted in persons spending lengthy periods in prison were found to be either improperly obtained or unreliable. This is a cause for real concern. But in the Commission's view, the total exclusion of all confessions which are not independently corroborated is a drastic step.

CHAPTER 10

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:[35]

   (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:

---

[35] These instructions would accord generally with the 1991 amendments to the *Commonwealth Crimes Act* in relation to the questioning of Aborigines and Islanders about Commonwealth offences, *Crimes (Investigation of Commonwealth Offences) Amendment Act 1991*, s. 23H.

(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. 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.[36] The Commission is of the opinion that the General Instructions should be amended to provide that

---

[36] See p. 64 ff.

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* 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.

APPENDICES

APPENDIX A

CRIMINAL JUSTICE COMMISSION

RESOLUTION TO HOLD AN INQUIRY AND CONDUCT PUBLIC HEARINGS

The Criminal Justice Commission (the Commission) constituted under the ***Criminal Justice Act 1989*** (the Act) HAS RESOLVED in the discharge of its function under Section 2.20(e)(i) of the Act to investigate all cases of alleged or suspected misconduct by members of the Police Force, and in the discharge of its responsibilities under Section 2.15(h) of the Act to provide the Commissioner of the Police Service with policy directives based on the Commission's research, investigation and analysis, including with respect to law enforcement priorities, education and training of police, revised methods of police operation, and the optimum use of law enforcement resources, to undertake an investigation into allegations of police misconduct which have been made by Kelvin Ronald Condren, Louise Elizabeth Brown, Stephen Wayne McNamee and Noreen Rose Jumbo, and to conduct hearings open to the public presided over by the Chairman of the Commission, **SIR EARDLEY MAX BINGHAM Q.C.** sitting alone, and assisted by Mr R. O'Regan Q.C. in respect of the following matters:

(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).

(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.

In this resolution the term "member of the Police Service" includes not only current members of the Police Service under and within the meaning of the ***Police Service Administration Act 1990*** but also any person who was during the period 1st January, 1983 to the date of the completion of the investigative hearings in this matter, a member of the Police Service of the State of Queensland.

AND TO FURNISH A REPORT of the Commission signed by the Chairman to the Chairman of the Parliamentary Criminal Justice Committee, to the Speaker of the Legislative Assembly and to the Minister, the Honourable the Premier and Minister for Economic and Trade Development and Minister for the Arts pursuant to the provisions of Section 2.18 of the Act.

D A T E D the 9th day of April, 1992.

SIR EARDLEY MAX BINGHAM Q.C.

JOHN JAMES KELLY

DR. JANET RICKORD McCALL IRWIN

PROFESSOR JOHN STUART WESTERN

APPENDIX B

WITNESS LIST

1. Kelvin Ronald CONDREN
2. Louise Elizabeth BROWN
3. Michael JOHNNY
4. Stephen Wayne MCNAMEE
5. Evelyn Dawn JOHNSON
6. Justice of the Peace
7. Brian Charles HOATH
8. Police officer
9. Diana Mary EADES
10. Noreen Rose JUMBO
11. Police officer
12. Darryl William CHERRY
13. Dennis James McCORMICK
14. Robert Michael WALKLEY
15. Police officer
16. Police officer
17. Monika HENDERSON
18. Police officer
19. Police officer
20. Joan Margaret LAWRENCE
21. Paul RICHARDS

APPENDIX C

EXHIBIT LIST

Exhibit No.	Description
1798	Authorities and Terms of Reference
1799	Depositions, committal proceedings, Mt Isa Magistrates Court, 7 December 1983
1800	Record of proceedings, Criminal Appeal No. 12 of 1990 (3 volumes)
1801	Notice of Summons – Kelvin Ronald Condren
1802	Record of Interview between Kelvin Ronald Condren and police officer dated 1 October 1983
1803	Statement of Kelvin Ronald Condren dated 24 August 1990
1804	Statement of Kelvin Ronald Condren taken at Stuart Prison (undated)
1805	Notice of Summons – Louise Elizabeth Brown
1806	Statement of Louise Elizabeth Brown dated 1 October 1983 (to police)
1807	Statement of Louise Elizabeth Brown dated 24 September 1990
1808	Memo to Dennis James McCormick re Louise Elizabeth Brown dated 5 October 1983
1809	Statement of Louise Elizabeth Brown undated (from brief)
1819	Notice of Summons – Michael Johnny
1820	File note dated 5 October 1983, memo to Dennis James McCormick re: Michael Johnny

Exhibit No.	Description
1821	Statement of Valentine Crowley (undated)
1822	Transcript of interview dated 14 April 1992 between Criminal Justice Commission officers and Michael Johnny
1823	Summons – Stephen Wayne McNamee
1824	Statement of Stephen Wayne McNamee dated 1 October 1983
1825	Statement of Stephen Wayne McNamee dated 3 October 1983
1826	Statement of Stephen Wayne McNamee dated 24 September 1990
1827	Memo to Dennis James McCormick dated 4 October 1983 re: Stephen Wayne McNamee
1828	Statement of Stephen Wayne McNamee undated (from brief)
1829	Summons – Evelyn Dawn Johnson
1830	Transcript of interview between Criminal Justice Commission officer and Evelyn Dawn Johnson
1831	Summons – Justice of the Peace
1832	Statement of Justice of the Peace dated 27 November 1983
1839	Newspaper reports, *Courier Mail*, 16 April 1992 – Dr Eades and Dr McKeith
1840	Statement of Brian Charles Hoath dated 12 April 1992
1847	Summons – police officer
1848	Statement of police officer dated 1 October 1983
1849	Summons – Noreen Rose Jumbo

Exhibit No.	Description
1850	Noreen Rose Jumbo's written identification of two police officers
1851	Statement of Noreen Rose Jumbo dated 1 October 1983
1852	Statement of Noreen Rose Jumbo dated 3 October 1983 (memo to Dennis James McCormick)
1853	Statement of Noreen Rose Jumbo dated 18 January 1991
1854	Summons - police officer
1855	Statement of police officer dated 10 August 1984
1856	Summons - Darryl William Cherry
1857	Record of Interview dated 5 February 1987 between Darryl William Cherry and police officer, and attached trial transcript
1858	Statement of Darryl William Cherry dated 10 October 1983
1859	Statement of Darryl William Cherry dated 6 August 1984
1860	Summons - Dennis James McCormick
1861	Kelvin Ronald Condren's statement dated November 1983 and attached letter
1862	Two transcripts of interviews dated 8 April 1992 and 9 April 1992 between Dennis James McCormick and Criminal Justice Commission officers
1872	Statement of Kelvin Ronald Condren dated 15 January 1985
1873	Newspaper reports, *Courier Mail*, 23 April 1992, and *North West Star*, 21 April 1992
1874	Summons - Mr Robert Walkley

Exhibit No.	Description
1875	Report by Mr Robert Walkley dated 26 July 1984
1876	Summons – police officer
1877	Statement of police officer dated 25 November 1983
1878	Statement of police officer dated 6 August 1984
1879	Photograph of murder weapon (steel pipe)
1880	Photograph of murder weapon and scene of crime
1881	Statutory Declaration of Mr Leo Freney re: blood analysis
1882	Statement of Olive Loogatha dated 10 October 1983
1890	Entries from police officer's notebook dated 1 October 1983
1891	Statement of Susan Gilbert dated 1 October 1983
1892	Queensland Police General Instructions s. 4.54A(c) (1983 and present)
1893	Summons – police officer
1894	Statement of police officer dated 25 November 1983
1895	*Courier Mail* report dated 1 May 1992
1896	Statement of Dr Monika Henderson
1897	*R v Anunga & Others* [1976] 11 ALR 412
1898	*North West Star* report dated 21 April 1992
1899	*North West Star* report dated 27 April 1992
1900	Statement of police officer
1901	Summons – police officer

Exhibit No.	Description
1902	Statement of police officer dated 1 October 1983
1903	Summons – police officer
1904	Statement of police officer dated 10 August 1984
1905	Report of police officer dated 23 August 1984
1906	Statement of Susan Gilbert dated 10 October 1983
1907	Transcipt of conversation between Colin Forrest and Justice of the Peace
1908	*R v Williams* – letter dated 8 November 1985, from Marshall P Irwin, Northern Crown Prosecutor, to Chief Crown Prosecutor, and guidelines
1921	Report of Dr Joan Margaret Lawrence dated 14 May 1992
1922	Transcript of Interview with solicitor Paul Richards dated 13 May 1992
1923	Certificate dated 3 July 1990 re: time of sunset on 30 September 1983
1924	Newspaper report from the *North West Star* and covering letter
1925	Criminal history of Kelvin Ronald Condren
1926	Statement of police officer dated 6 August 1984
1927	*R v Condren* [1991] 1 Qd R 574

APPENDIX D

CRIME 4.54A(c)

(c) Questioning of Aborigines and Torres Strait Islanders – Whilst many Aborigines and Torres Strait Islanders would fall into the category of persons under disability, pigmentation of the skin or genealogical background should not be used as a basis for this assessment. Whilst all of the factors outlined above should be considered, particular attention should be given to the suspect person's educational standards, knowledge of the English language, or any gross cultural differences.

Aborigines and Torres Strait Islanders who come within the category of persons under disability will be questioned in the presence of an independent adult person concerned with the welfare of those races, in whom the person being questioned has confidence and by whom he feels supported, and who can act as an interpreter during the period of interrogation, if necessary. The Aborigine or Torres Strait Islander should not be overborne or oppressed in any way by the person present.

Amendment No. 486 (Cont'd)

*(c) Questioning of Aborigines and Torres Strait Islanders - Whilst many Aborigines and Torres Strait Islanders would fall into the category of persons under disability, pigmentation of the skin or genealogical background should not be used as a basis for this assessment. Whilst all of the factors outlined above should be considered, particular attention should be given to the suspect person's educational standards, knowledge of the English language, or any gross cultural differences.

Aborigines and Torres Strait Islanders who come within the category of persons under disability will be questioned in the presence of a solicitor or other legal adviser or a person concerned with the welfare of those races.

Where this is not practicable, any such person will be questioned in the presence of an independent adult person in whom the person being questioned has confidence and by whom he/she feels supported and who can act as an interpreter if necessary.

The questioning must be conducted under conditions whereby the person being questioned is not oppressed or overborne by condition, circumstance or person;

(e) Other obligations of law or practice not negated - The provisions of this General Instruction are in addition to any other requirements of duty, law or procedure;

*Amendment No. 837
G.I. 4.54A(c) revised on 18/2/91.
Includes part of Amendment No. 807.

Published Reports of the Criminal Justice Commission

Date of Issue	Title	Availability	Price
May 1990	Reforms in Laws Relating to Homosexuality – an Information Paper	In stock as at time of printing of this report	$ 7.80
May 1990	Report on Gaming Machine Concerns and Regulations	In stock as at time of printing of this report	$12.40
Sept 1990	Criminal Justice Commission Queensland Annual Report 1989–1990	Out of Print	–
Nov 1990	SP Bookmaking and Other Aspects of Criminal Activity in the Racing Industry – an Issues Paper	In stock as at time of printing this report	No charge
March 1991	Review of Prostitution – Related Laws in Queensland – an Information and Issues Paper	In stock as at time of printing this report	No charge
March 1991	The Jury System in Criminal Trials in Queensland – an Issues Paper	In stock as at time of printing this report	No charge
April 1991	Submission on Monitoring of the Functions of the Criminal Justice Commission	Out of print	–
May 1991	Report on the Investigation into the Complaints of James Gerrard Soorley against the Brisbane City Council	Out of print	–
July 1991	Report on a Public Inquiry into Certain Allegations against Employees of the Queensland Prison Service and its Successor, the Queensland Corrective Services Commission	In stock as at time of printing of this report	$12.00

Date of Issue	Title	Availability	Price
July 1991	Complaints against Local Government Authorities in Queensland – Six Case Studies	Out of Print	–
July 1991	Report on the Investigation into the Complaint of Mr T R Cooper, MLA, Leader of the Opposition against the Hon T M Mackenroth, MLA, Minister for Police and Emergency Services	In stock as at time of printing of this report	$12.00
August 1991	Crime and Justice in Queensland	In stock as at time of printing of this report	$15.00
Sept 1991	Regulating Morality? An inquiry into Prostitution in Queensland	In stock as at time of printing of this report	$20.00
Sept 1991	Police Powers – an Issues Paper	In stock as at time of printing of this report	No charge
Sept 1991	Criminal Justice Commission Annual Report 1990/91	In stock as at time of printing of this report	No charge
Nov 1991	Report on a Public Inquiry into Payments made by Land Developers to Aldermen and Candidates for Election to the Council of the City of Gold Coast	In stock as at time of printing of this report	$15.00
Nov 1991	Report on an Inquiry into Allegations of Police Misconduct at Inala in November 1990	In stock as at time of printing of this report	$12.00

Date of Issue	Title	Availability	Price
Dec 1991	Report on an Investigation into Possible Misuse of Parliamentary Travel Entitlements by Members of the 1986–1989 Queensland Legislative Assembly	Out of print	–
March 1992	Report on an Inquiry into Allegations made by Terrance Michael Mackenroth MLA the Former Minister for Police and Emergency Services; and Associated Matters	In stock as at time of printing of this report	$12.00
March 1992	Youth, Crime and Justice in Queensland – An Information and Issues Paper	In stock as at time of printing of this report	No charge
April 1992	Crime Victims Survey – Queensland 1991 *A joint Publication produced by Government Statistician's Office, Queensland and the Criminal Justice Commission*	In stock as at time of printing of this report	$15.00
June 1992	Forensic Science Services Register	In stock as at time of printing of this report	$10.00
Sept 1992	Criminal Justice Commission Annual Report 1991/1992	In stock as at time of printing of this report	No charge

Further copies of this report or previous reports are available at 557 Coronation Drive, Toowong or by sending payment C/O Criminal Justice Commission to PO Box 137, Brisbane Albert Street, 4002. Telephone enquiries should be directed to (07) 360 6060 or 008 773 342.

This list does not include confidential reports and advices to Government or similar.