

reasons beyond the person's control, to obtain evidence, the Court may make such order as the interests of justice require including, where appropriate, a stay of proceedings.

- A new section has been inserted to allow a defendant to have proceedings removed to another State or internal Territory.
- A new section makes provision for the granting of legal aid to persons who have been, or are about to be, charged with an offence under the Act.
- The Attorney-General will be required to submit to Parliament a yearly report on the operation of the Act.
- Persons accused of war crimes are not to be extradited unless the court is satisfied that there has been established a *prima facie* case that the person committed the offence under the Act.

special investigations unit. Apart from the controversy which the actual legislation has aroused in the community, many have expressed alarm at the Special Investigations Unit (SIU), set up by the Government in anticipation of the passing of the legislation, to investigate individual allegations against persons now living in Australia who are believed to have been involved in committing war crimes during World War II. It has been reported that over 500 individual allegations have been investigated. However, according to SIU Chief Mr Robert Greenwood QC, only about 12 of those cases are regarded as top priority (*AFR*, 17 November 1988). The SIU has cost an estimated \$1m last financial year and its budget for the next financial year is estimated at more than \$3m – mostly to be spent on work overseas, finding and questioning potential witnesses.

high court challenge. It has been widely predicted that, upon the first charges being brought under the legislation, the constitutionality of the legislation will be challenged in the High Court (*SMH*, 13 December 1988). Although the Government believes the legislation will be valid under the Common-

wealth's external affairs power, a High Court challenge is sure to delay the proceedings substantially.

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aboriginal deaths in custody

Australia must know the truth.

Commissioner James Muirhead, QC

interim report. The Royal Commission into Aboriginal Deaths in Custody released an Interim Report in December 1988. The Interim Report had been requested by the Government in September 1988 because of the increasing number of Aboriginal deaths in custody which have been occurring during the course of the Royal Commission's inquiry.

background. The Royal Commission was established towards the end of 1987 under Commissioner James Muirhead QC. There had been strong agitation by Aboriginal groups, in particular the Committee to Defend Black Rights, over the preceding two years for a judicial inquiry into the number of deaths of Aboriginal people while in police custody or in prison. There were indications that the number of Aboriginal people dying in custody was increasing. In 1987 22 Aborigines died while in custody, a figure well above the average of the preceding six years. (For further background see [1987] *Reform* 139.)

The Royal Commission was initially asked to investigate 44 Aboriginal deaths which had occurred since 1980. However, by the time the Commission formally opened, it was realised that the number of deaths it would be required to investigate would be significantly higher. There had been more Aboriginal deaths than was first thought. As well, the Commission had to consider any deaths which occurred during the course of its inquiry. At an early stage the Commission recognised that the period of 12 months set aside for the inquiry would be clearly insufficient. Hence, during 1988 the time for com-

pletion of the inquiry was extended to mid 1990 and four additional Commissioners were appointed: three Commissioners, Hal Wooten QC, Elliott Johnston QC and Lew Wyvill QC, were appointed in May 1988 and Daniell O'Dea was appointed in October 1988. The number of deaths that the Commission was investigating at the time of publication of its Interim Report was 103.

the purpose of the interim report. The Interim Report is a report by Commissioner Muirhead QC. The purpose of the report as expressed in its introduction is two-fold:

Firstly, to inform governments of the Commission's activities to date, to update information concerning custodial deaths of Aboriginal persons and to outline briefly the work ahead. Secondly ... to express recommendations and suggestions which if implemented may serve to improve practices and procedures and limit future custodial deaths, objectives which must be recognised as the primary justification for the Commission's work.

The report does not deal specifically with any of the 103 deaths but makes recommendations covering such matters as sentencing practices, how to deal with intoxicated persons, conditions and procedures at police lock-ups, recruitment, training and placement of police and prison officers, medical issues relevant to Aboriginal prisoners; and post-death investigations.

recommendations. The major recommendations in the report include:

- There should be legislation to enforce the principle that imprisonment should be utilised only as a sanction of last resort. Furthermore, sentences of imprisonment should not automatically be imposed for default of payment of fines.
- The offence of public drunkenness should be abolished. This should be accompanied by adequately funded programs to establish and maintain facilities for the care and treatment of intoxicated persons.

- Arrests for minor offences should be avoided when alternative steps are available.
- Aboriginal legal services should be notified in all instances of the detention of any Aboriginal person in custody.
- In no case should a person who is either unconscious or not easily roused be transported by police to a lock-up or watch-house. Such persons should be taken to a hospital or medical practitioner. Furthermore, a person found unconscious whilst in a watch-house or cell should be immediately conveyed to a hospital, medical practitioner or nurse.
- Police officers whose duties may require them to perform watch-house duties should undergo basic training in the recognition of symptoms of head injuries, major illnesses and in first-aid and resuscitation techniques.
- Aboriginal detainees should not be confined alone in a cell unless the well-being of the detainee or other persons could be prejudiced.
- All cells should be equipped with alarm and intercom systems.
- In consultation with Aboriginal communities and their organisations, cell visitor schemes should be introduced to service police lock-ups and watch-houses wherever practicable.
- There should be positive encouragement given to the recruitment of Aborigines by police and prison departments.
- Police and prison departments should screen potential officers who hold racist views.
- All personnel of police, prison, social welfare or other departments who work or come into contact with Aboriginal people should receive appropriate training or re-training to ensure that they have an understanding or appreciation of Aboriginal history, culture and

social behaviour and the ability to effectively communicate and work with Aboriginal people.

- The Aboriginal component of training courses should be prepared in consultation with representatives from the Aboriginal community.
- Aboriginal police aide schemes should be re-examined to ensure their role is not merely to assist the police in everyday duties but rather to advise the police and to operate as a true link between the police and the Aboriginal population. Furthermore, Aboriginal police aides should have a true career structure and receive proper training and support.
- The functions and status of the office of Coroner requires examination and re-assessment with full recognition of the public value of the role.
- All custodial deaths should, by legislation, be the subject of coronial enquiries.

future direction. The Muirhead Royal Commission has not been free from controversy. The Western Australian Police Union and Prison Officers Union have challenged the legal validity of the inquiry. This matter has been set down for hearing in the Federal Court on 9 February, 1989. Aboriginal organisations have also at times been critical of the Commission and the time the Commission is likely to take to complete its report. Commissioner Muirhead has announced his resignation from the Commission effective April 1989 when he will take up the position of Administrator of the Northern Territory. For these reasons the future direction of the Royal Commission is not clear. However, taking note of all the criticisms and comments concerning the work of the Commission, Commissioner Muirhead commented in the concluding chapter of his Interim Report:

It will be unfortunate if the work of this Commission is impeded by narrow, selfish or political considerations. Our performance is being assessed, not only in this

country but in overseas forums and I fear that our country's reputation will suffer if expediency rather than honesty prevails.

At the conclusion of this, our bicentennial year, calls are made by some to abandon the Commission or restrict the thoroughness of inquiries. Australia must know the truth behind the deaths or else we must forever live with the knowledge that our fear of the truth or our misguided sense of priorities caused us to abandon an essential and momentous decision to examine a little of our national character and the behaviour of people in authority.

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land rights for torres strait islanders

To forget one's ancestors is to be a brook without a source, a tree without a root.

Chinese proverb

the mabo case. In December 1988 the High Court handed down its decision in the Mabo Case. The decision does not bring this long running case to a conclusion but it does resolve a number of key issues. The Mabo case commenced with the filing of a Statement of Claim in 1982 by a group of Murray Islanders (the Murray Islands are part of the Torres Strait Islands group) against the State of Queensland and the Commonwealth. The Murray Islanders are seeking to establish their traditional rights to their lands which, they argue, have been handed down to them by their ancestors. They argue that those rights are recognised as part of the common law which Australia inherited from England.

The Murray Islands and the other Torres Strait Islands had been annexed by Queensland by virtue of the Queensland Coast Islands Act of 1879 (Qld). The Murray Islanders argue that this annexation did not extinguish their prior rights to the land. In 1985 the Queensland Government sought to put the matter beyond argument and the Queensland Coast Islands Declaratory Act