

Human Rights Australia



TOOMELAH REPORT

**REPORT ON
THE PROBLEMS AND NEEDS OF
ABORIGINES LIVING ON THE
NSW – QUEENSLAND BORDER**

JUNE 1988

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2 June 1988

The Hon. Lionel Bowen MP
Deputy Prime Minister
& Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

We have pleasure in presenting the report of our Inquiry into the social and material needs of the residents of the New South Wales - Queensland Border Towns of Goondiwindi, Boggabilla and Toomelah, conducted pursuant to s.11(1) (f) and (k) of the Human Rights and Equal Opportunity Commission Act 1986 and s.20(1) (a) of the Racial Discrimination Act 1975.

We commend our findings and recommendations to you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Marcus Einfeld'. The signature is fluid and cursive, with a prominent loop at the end.

The Hon. Justice Marcus Einfeld

A handwritten signature in black ink, appearing to read 'D. J. Killen'. The signature is stylized and cursive, with a long horizontal stroke at the end.

The Hon. Sir James Killen

Kaye Mundine

ACKNOWLEDGEMENTS

The members of the Inquiry wish to acknowledge the contributions of many people to the success of the Inquiry and to the completion of this Report. Commission staff involved were:

| | |
|---|---|
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| Murray Chapman, Senior Conciliator and Aboriginal Policy Advisor: | Research, community liaison, assistance in preparation of the Report. |
| Kim Monnox, Research Officer: | Research, writing sections of the Report. |
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TABLE OF CONTENTS

| | |
|--|----|
| CHAPTER 1: INTRODUCTION | 1 |
| The Inquiry | 2 |
| History of Toomelah | 2 |
| Toomelah 1987 | 4 |
| Previous Inquiries | 4 |
| Notes | 6 |
| CHAPTER 2: INTER-GOVERNMENT CONFLICTS | 7 |
| Introduction | 7 |
| Historical Background | 7 |
| Policy Conflicts 1971-1987 | 7 |
| Current Federal Policy | 8 |
| Continuing Policy Conflicts | 9 |
| Funding Conflicts | 10 |
| Conclusion | 11 |
| Notes | 12 |
| CHAPTER 3: HOUSING | 13 |
| Background | 13 |
| The Situation at Toomelah | 13 |
| Commonwealth Housing Programs | 14 |
| Commonwealth Housing Policies | 14 |
| New South Wales Housing Programs | 16 |
| New South Wales Housing Policies | 16 |
| Conclusion | 17 |
| Notes | 18 |
| CHAPTER 4: WATER AND SEWERAGE | 19 |
| Introduction | 19 |
| Water – Present Status | 20 |
| Sewerage – Present Status | 20 |
| Source of Water Supply | 21 |
| Responsibility for Water and Sewerage Works | 21 |
| Conclusion | |
| Notes | 23 |
| CHAPTER 5: ROADS | 25 |
| Introduction | 25 |
| The Situation at Toomelah | 25 |
| Roadworks Construction and Funding Generally | 25 |
| Local Roads | 25 |
| Highways and Bridges | 26 |
| Toomelah — Internal Roads | 26 |
| Toomelah — Access Roads | 27 |
| Bruxner Highway | 27 |
| Access Road Between Old Highway and Toomelah | 28 |
| Notes | |

| | |
|---|----|
| CHAPTER 6: THE ROLE OF LOCAL GOVERNMENT | 31 |
| Introduction | 31 |
| Local Government: An Overview | 31 |
| Local Government Grants | 31 |
| General Purpose Grants | 31 |
| Specific Purpose Grants | 31 |
| Local Government Services to Aboriginal Communities | 33 |
| The Situation at Toomelah | 34 |
| Levying of Rates at Toomelah | 35 |
| Zoning | 36 |
| Toomelah's Location | 37 |
| Conclusions | 38 |
| Notes | 40 |
| CHAPTER 7: EDUCATION | 43 |
| Background | 43 |
| Pre-School Education | 43 |
| Primary Education | 44 |
| Secondary Education | 44 |
| Adult Education | 48 |
| Notes | 50 |
| CHAPTER 8: SOCIAL ENVIRONMENT | 53 |
| Introduction | 53 |
| Health | 53 |
| Racial Discrimination | 53 |
| Aboriginal Heritage | 55 |
| Land Rights and Self-Determination | 56 |
| Toomelah Social Plan | 58 |
| Notes | 59 |
| CHAPTER 9: FINDINGS AND RECOMMENDATIONS | |
| Findings | 61 |
| Recommendations | 64 |
| Housing | 64 |
| Water and Sewerage | 64 |
| Roads | 64 |
| Local Government | 64 |
| Education | 65 |
| Health | 65 |
| Employment | 66 |
| Aboriginal Heritage | 66 |
| Provision of Services | 66 |
| Self-Determination | 66 |
| APPENDICES | 67 |
| A: History of the Land at Toomelah | 69 |
| B: Liability of the Toomelah Residents to Pay Rates | 70 |
| C: Witnesses to the Inquiry | 72 |
| D: Exhibits | 75 |
| E: Written Submissions | 78 |

CHAPTER 1

INTRODUCTION

1.1 At the beginning of 1987, long-standing tensions between the communities of Goondiwindi, Boggabilla and Toomelah on the New South Wales-Queensland border achieved national prominence when they culminated in violence in Goondiwindi on the afternoon of 10 January. Nine people were injured and there was damage to hotels and shops. Charges were later laid against seventeen Aboriginal men from nearby Boggabilla and Toomelah, across the border in New South Wales. These charges are still to be heard.

1.2 Although Aboriginal and non-Aboriginal communities had lived alongside each other for almost fifty years without conflict of this intensity and type, this incident was blamed on racial discontent. The Human Rights and Equal Opportunity Commission, therefore, decided to investigate its underlying causes. The Commission is charged with the protection of the fundamental rights of all Australians, including freedom from racial discrimination in the provision of goods and services. It was and is no part of the Commission's mandate to concern itself with the criminal culpability of any person.

1.3 During January 1987, the Race Discrimination Commissioner Irene Moss visited the area and found wide disparities between the living standards and the socio-economic expectations of Aborigines and those of non-Aborigines. In particular, Commissioner Moss found that the living conditions at Toomelah, an Aboriginal community of almost five hundred people, were unacceptably poor and considerably worse than those in Goondiwindi and Boggabilla with mainly non-Aboriginal populations.

1.4 Goondiwindi, established in 1838, is a relatively prosperous regional centre on the banks of the Macintyre River in Queensland. It is the service centre for the surrounding cotton, sheep and cattle farms as well as for a number of townships and settlements, including those, like Boggabilla and Toomelah, on the New South Wales side of the river. Its four thousand residents are well supplied with services. Education, health, recreation and municipal services are all adequately catered for. Unemployment in the town is below the national average.

1.5 Boggabilla is both smaller and poorer than Goondiwindi. It is nine kilometres south-east of Goondiwindi on the New South Wales side of the Macintyre River which forms the State border at that point. It is one hundred and fifteen kilometres north-east of Moree. Only eight percent of its five hundred residents are Aborigines. The town has some sealed roads, street lighting, town water, a sewerage service and a stormwater drainage system. There is a primary school, and medical services, shopping and recreational facilities are available. Unemployment is slightly above the national average.

1.6 Toomelah, eighteen kilometres to the south-east of Boggabilla, also has about five hundred residents, all of whom are Aborigines. More than two-thirds of the Toomelah population is aged under twenty years. Although the community has a primary school and a health clinic, Commissioner Moss found the housing to be quite unsatisfactory both in quality and quantity. At the time of Commissioner Moss' visit, the water supply, entirely artesian, was rationed and dispensed twice a day for fifteen minutes at a time; the sewerage system was completely inadequate; the roads were unsealed dirt tracks. Access to and within the settlement was impossible after heavy rain. There was no drainage or street lighting, no regular garbage collection, and no store.

1.7 Commissioner Moss concluded that a degree of racial discrimination had resulted in the people of Toomelah being disadvantaged. They were not provided with the services available to similarly sized communities in the area and were not 'free and equal in dignity and rights'.¹ It was clear to Commissioner Moss that the poverty and neglect which made up the fabric of the lives of Aborigines at Toomelah, and to a lesser extent in Boggabilla, needed to be further investigated if equality of rights and dignity was to become a reality for everyone in the border region.

THE INQUIRY

1.8 As a result, under the powers vested in it by section 11(1)(f) and (k) of the *Human Rights and Equal Opportunity Commission Act 1986* and section 20(1)(a) of the *Racial Discrimination Act 1975*, the Human Rights and Equal Opportunity Commission determined to hold a public Inquiry into the Social and Material Needs of Residents of the New South Wales — Queensland Border Towns of Toomelah, Boggabilla and Goondiwindi. The Terms of Reference were as follows:

1. To inquire into and report on the social and material situation of persons in Goondiwindi, Boggabilla and Toomelah and identify the social and material needs of these and nearby communities.
2. In particular to inquire into and report upon the extent to which any problems or deficiencies identified have been caused by inadequate educational and/or employment opportunities and/or other facilities and the existence of the Queensland-New South Wales border between the town of Goondiwindi and the other two towns.
3. To investigate and report on the state of the community relations in Goondiwindi, Boggabilla and Toomelah and the way in which problems identified can be resolved among these and nearby communities.
4. To report on the impact of community relations on the social and material needs of these communities.
5. To recommend to all relevant persons and/or authorities, steps which might be taken to resolve the identified problems of these communities.

1.9 The Commission appointed three persons to the Inquiry in July 1987. The Inquiry was headed by the Hon. Justice Marcus Einfeld, a Judge of the Federal Court of Australia and the President of the Commission. The other members were the Hon. Sir James Killen, a former Federal Minister, and Ms Kaye Mundine, a senior Commonwealth public servant active in Aboriginal organisations.

1.10 The Inquiry was widely advertised. Submissions were invited from, and supplied by, the Commonwealth, New South Wales and Queensland Governments, the Moree Plains Shire Council, the Goondiwindi Town Council, the New South Wales Aboriginal Land Council, the New South Wales Aboriginal Legal Service Ltd. leaders, citizens and organisations in the area, as well as members of the public. Public hearings were held from 27 to 30 July 1987 at Boobera Lagoon, Boggabilla, Toomelah and Goondiwindi and on 7 December 1987 in Sydney. In all, oral evidence was taken from seventy-four persons and one hundred and nineteen written submissions and exhibits were received: see Appendices C, D and E.

1.11 The Inquiry's purpose was to ascertain facts, to identify problems and to look for solutions. It did not undertake a search for culprits or seek to attribute blame to individuals. This Report, therefore, is not about fault or culpability. No doubt many must share responsibility for the injustices which are documented in these pages. Some will be dead, others have retired or moved on to other pursuits. Some may have been Aborigines, but the overwhelming majority will undoubtedly have been non-Aborigines. From the outset, the Inquiry took the view that nothing would be served, and money would be wasted, by trying to identify all these people. Our aim has been to report on the present and look to the future. It is for historians to investigate and document the past.

HISTORY OF TOOMELAH

1.12 Toomelah's five hundred residents live on what was originally part of the traditional land of the Gamiliraay people. Present knowledge suggests a connection of Aboriginal people with land in this area stretching back fifty thousand years. Toomelah has been an Aboriginal reserve since 1937. Gamiliraay, Wirerai and Bigamul peoples were first placed on a single reserve at Euraba in 1912 by the Aborigines Protection Board (which had been established in 1883). They were moved to Old Toomelah in 1927 but, within a decade, disease and the inadequacy of the water supply forced another move, this time to the current site on the banks of the Macintyre River.

1.13 In 1975 the land ceased to be a reserve and the freehold title was transferred to the New South Wales Aboriginal Lands Trust pursuant to the Aborigines Act 1969 (as amended in 1973). Under the Trust, the land was largely managed by the Toomelah Aboriginal Co-operative Ltd (the Co-operative) which was established by the residents and was eligible for and received funding support from the Federal Department of Aboriginal Affairs and the Federal Aboriginal Development Commission.

1.14 In 1984 the freehold (184.9 hectares on which stood forty houses, health clinic, primary school and sheds) was transferred to the Boggabilla-Toomelah Local Aboriginal Land Council (the Toomelah Land Council or the Land Council) established under the Aboriginal Land Rights Act 1983. Generally speaking, all Aboriginal residents of Boggabilla and Toomelah are eligible for membership of the Local Aboriginal Land Council. Members elect their own officer-bearers. Funding support for the Land Council comes from an annual allocation from the New South Wales Government under the Aboriginal Land Rights Act.² The Co-operative continues to operate and to receive Federal funding. It holds a ninety-nine year lease over the entire original area (excluding 1.28 hectares leased to the Education Department for the primary school). The Land Council has submitted several land claims in its area and, to date, has acquired an additional ten hectares near Toomelah including two building blocks at Boggabilla.

1.15 Aboriginal, or self, management is a new concept for the people of Toomelah, as for most Aboriginal and Torres Strait Islander communities in New South Wales. During the long period when Toomelah was a reserve administered by the New South Wales Government, the community was directly run by a succession of white managers. At the public hearing at Toomelah, witnesses told the Inquiry of the oppressive life under the managers and of the difficulties in the transition to self-management due in the main to their lack of training.

1.16 The managers controlled almost every aspect of life for reserve residents. 'The edges of the mission were the edges of the world', Mrs Madeline McGrady told the Inquiry. During those years, she said, the people of Toomelah felt as though they were 'owned by the government', so complete was the control over their lives. Written permission was needed to leave the reserve, even to go shopping or to the hospital.³

1.17 The manager decided when and where a resident was to work. Mrs Madeline McGrady and Mrs Eileen McIntosh both told the Inquiry of being sent away to work as domestics when they were fifteen or sixteen years old. Mrs McGrady was sent to work on a station about fifty miles from Toomelah. For twelve months she worked from dawn to dusk every day except Saturday afternoons and Sundays. On her days off she was not permitted to leave the property and her family was not permitted to visit her. If she wanted even to write to her family, she had to give her employer two weeks' notice.⁴ Mrs McIntosh told the Inquiry:

They would take us off the mission and take us out of school and make us work and work very hard for 33 bob and when we would get sick of it we would pester them, could we go home, and they would only send us home for a week and then the managers would find another job to send us to.⁵

1.18 The residents were also subject to considerable police surveillance, even in their 'own' homes. Several witnesses testified that police had barged into houses, arresting people and harassing occupants. Mrs McGrady remembers waking at night 'with torchlight on our faces. It would be the police in our bedroom. They would walk right in, shine the torch around and leave'. She continued:

We were terrified, but we knew it was no use to complain. The only person we could complain to was the manager and he usually was the one who had called the police out in the first place!

1.19 Surveillance by 'the welfare' was also a fact of life for reserve communities. Mr Douglas McGrady recalled losing young friends when they were 'taken away by the welfare'. Even coming to school with dirty hair put a child at risk. Such a child could 'be put on a mission truck and sent away to a home somewhere. That was the last we ever saw of him. Sometimes this happened to whole families'.⁷

1.20 The reserve era for Toomelah ended only in 1977 when the last manager left. In the decade since, the community has had to come to terms with a vast array of new rights and responsibilities. They have had to learn to deal with numerous government departments and other bodies with respect to the

provision of a wide range of services and goods, including housing, enterprise funding and other matters. This period has been attended by many difficulties forged by the reserve experience. These difficulties have not been alleviated by understanding, sensitive support or appropriate training. As Mrs Madeline McGrady told the Inquiry, 'No training was given to help people make the transition'.⁸ Mr Michael Duncan, Chairperson of the Land Council, stated:

We were told to run things but not given the Power or resources to do so. We are held responsible for results but usually have had no say in government decision-making about what will happen at Toomelah. I think it must be explained that many people at Toomelah still feel the influence of having lived for so many years under white management. They are used to 'someone else' doing things on their behalf — this attitude is gradually changing but changes take time ... Toomelah people are very shy about voicing their opinions. This is the result of years of not being listened to at all.⁹

TOOMELAH 1987

1.21 Before the Inquiry commenced, its members spent some time touring the area, meeting people and inspecting services and facilities available in Toomelah and Boggabilla. The material and social needs at Toomelah were abundantly clear. The water supply was totally inadequate for household purposes and the sewerage system failed to operate on normal demand. The houses were in a poor state of maintenance and desperately overcrowded, with the average occupancy of the forty dwellings being twelve persons and some dwellings being occupied by more than twenty persons. One three-bedroom dwelling housed thirty persons. Both the access route and internal 'roads' were unsealed and impassable after heavy rain. Secondary and further education facilities were inadequate and there were few training or employment opportunities. The health clinic was in a very run-down condition, staffed only by a community health worker and without the services of either a nurse or a doctor. These conditions, and the impediments to their improvement, will be detailed in the following chapters.

1.22 The Inquiry was struck by the fact that even after numerous State and Federal government inquiries into Aboriginal and Torres Strait Islander needs, the awarding of joint responsibility for Aboriginal affairs to the Commonwealth Government by a constitutional amendment in 1967, the conclusion of a Commonwealth-State Arrangement with respect to funding for Aboriginal affairs in 1976, and the passage of the Aboriginal Land Rights Act by the New South Wales Parliament in 1983, the people of Toomelah still suffered living standards far below those experienced by the vast majority of non-Aboriginal residents of New South Wales and, for that matter, by the vast majority of Australians. Words, intention and goodwill are simply not sufficient.

PREVIOUS INQUIRIES

1.23 Aboriginal and Islander social and material needs have been the subject of a number of inquiries including those by the New South Wales Joint Select Committee upon Aborigines Welfare in 1967,¹⁰ the Australian Government's 1974-75 Commission of Inquiry into Poverty¹¹ (the Poverty Inquiry), the tripartisan Senate Select Committee on Aborigines and Torres Strait Islanders in 1976,¹² the tripartisan New South Wales Select Committee of the Legislative Assembly upon Aborigines from 1978 to 1981¹³ (the New South Wales Select Committee) and the World Council of Churches Inquiry in 1981.¹⁴

1.24 A survey of the findings of these inquiries reveals that Aboriginal and Islander communities too often live in conditions which are rarely, if ever, endured by entire non-Aboriginal communities. Studies conducted by the Poverty Inquiry documented the high incidence of poverty amongst urban Aborigines and that Inquiry expressed the view that rural Aborigines were likely to receive even lower levels of income.¹⁵ The reasons identified by the Poverty Inquiry included:

- many Aborigines failed to receive the income maintenance payments to which they were entitled; and
- Aborigines typically had poorly paid jobs and many were unemployed.¹⁶

1.25 Poverty and discrimination led to many Aboriginal families living in substandard and overcrowded accommodation.¹⁷ This, in turn, according to the New South Wales Select Committee, had a detrimental effect on both educational achievement and on health.¹⁸ The Committee stated that:

The level of Aboriginal childhood mortality is of the same order as countries in a 'transitional' stage of development (i.e. between developing and developed countries) but the level of Aboriginal adult mortality is much worse and is of the order of most 'underprivileged' countries.⁹

1.26 A survey of these reports also reveals a common understanding that poverty and racism are basic causes of the grossly substandard living conditions endured by Aborigines. Poverty is recognised as arising out of the organisation of society and largely beyond individual influence or control.²⁰

III- conceived government policies, such as assimilation, must also take their share of the blame.²¹ Not many official inquiries, however, have yet agreed with the firmly-held and strongly-voiced opinion of the New South Wales Select Committee that a more fundamental cause, the 'root cause', was the violent dispossession of Aborigines of their lands.²² The Committee identified four causes of socio-economic deprivations and disadvantages for Aborigines in all areas, the first of which was:

The expropriation of Aboriginal land with the consequent destruction of both their economic base and their cultural heritage.²³

The other causes identified by the Committee were:

- the policy of assimilating Aborigines into white society;
- racism against Aborigines by non-Aborigines; and
- a complete failure to consult Aborigines.²⁴

1.27 The suggested solutions of these inquiries were, in major part:

- the return of land;
- the abandonment of assimilationist aims;
- a reduction in racism; and
- the implementation of a policy of self-determination.

These subjects are taken up in Chapter 8 concerned with the Social Environment at Toomelah.

1.28 In October 1970 then Professor, later Mr Justice, J.H. Wootten visited Toomelah. His findings were reported in *The Australian*. He said:

[The] community of 250 people, including many young children, had been left for two weeks without a water supply and the situation is continuing. The houses, which the Aborigines rent from the NSW Government, are seriously overcrowded. They average 10 people to each two-roomed house and there are no rainwater tanks. The houses don't even have guttering or downpipes. Their only water is pumped from the Macintyre River and reticulated from an overhead tank. The supply is controlled by the landlord — the NSW Government. For two weeks the pump has been out of action and the houses have no water supply at all. The black residents carry bottles to fill at rain-water tanks behind a wired-up gate at the welfare office, climbing through a wire fence and uncertain of their reception ... What is appalling is the failure to purchase readily available good quality bore water to maintain the supply.²⁵

This Report documents how, eighteen years later, little substantive progress has been made.

NOTES

1. *Human Rights and Equal Opportunity Commission Act 1986* (Cwth) s.12.
2. *Aboriginal Land Rights Act 1983* (NSW) s.28.
3. *Transcript*, p.186.
4. *Transcript*, pp.186,193-4.
5. *Transcript*, p.85.
6. *Transcript*, p.187.
7. Exhibit 21, at pl.
8. *Transcript*, pp.I 90-191.
9. Exhibit 1, at p.4.
10. *Report from the Joint Select Committee of the Legislative Council and Legislative Assembly upon Aborigines Welfare*.re. I. (a) *Rural Poverty in Northern New South Wales (1974)* at pp.109-148;
(b) *Law and Poverty in Australia (1975)* at pp.262-289;
(c) *Poverty in Australia Vol.1 (1975)* at pp.258-268.
12. *The Environmental Conditions of Aborigines and Torres Strait Islanders and the Preservation of their Sacred Sites*.
13. (a) *Land Rights and Sacred and Significant Sites (1980)*;
(b) *Second Report (1981)*.
14. *Justice for Aboriginal Australians*.
15. *Poverty in Australia Vol.1 (1975)* at pp.260-261.
16. *Id*, at p.261.
17. *Poverty in Australia Vol.1 (1975)* at pp.263-264.
18. *Second Report (1981)* paras 2.34, 23.142.
19. *Id*, para 16.5.
20. Commission of Inquiry into Poverty, *Poverty in Australia Vol.1 (1975)* at p.1; adopted by the New South Wales Select Committee of the Legislative Assembly upon Aborigines, *Second Report (1981)* para 2.32.
21. NSW Select Committee of the Legislative Assembly upon Aborigines, *Second Report (1981)* at p.xii.
22. *Aboriginal Land Rights and Sacred and Significant Sites (1980)* para 3.12.
23. *Second Report (1981)* at p.xii. See also para 15.1.
24. *Ibid*.
25. R.Drewe, 'Aborigines in "appalling conditions" *The Australian* 8 October 1970.

CHAPTER 2

INTER-GOVERNMENT CONFLICTS

INTRODUCTION

2.1 Conflict over appropriate policy and responsibility for funding has plagued Commonwealth-State relations concerning Aboriginal affairs. Other inquiries have also recognised the disadvantages which have flowed to Aboriginal communities as a result. The current situation at Toomelah is, in our view, directly attributable to this conflict; the people of Toomelah are its victims. In this respect, Toomelah may be little different from the numerous other Aboriginal and Torres Strait Islander communities in New South Wales, particularly those still resident on the former Aboriginal reserves. Before a long-term resolution of their situation can be achieved, this conflict must be resolved.

HISTORICAL BACKGROUND

2.2 Until 1967 Aboriginal and Islander welfare was exclusively the responsibility of individual State governments and the Commonwealth was excluded from legislating for Aborigines except in the Territories. In 1967 a constitutional amendment empowered the Commonwealth Parliament to make laws for the benefit of Aborigines and Islanders, yet did not remove all responsibility from the States.

2.3 In New South Wales during the 1950s and 1960s, following a long protectionist era of 'soothing the dying pillow' (when it was expected that Aborigines would soon become extinct), an assimilationist policy was adopted for Aborigines. This policy sought:

that all persons of Aboriginal descent will choose to attain a similar manner and standard of living to that of other Australians and live as members of a single Australian community, enjoying the same rights and privileges, accepting the same responsibilities and influenced by the same hopes and loyalties as other Australians)

This policy was affirmed by the New South Wales Joint Select Committee upon Aborigines Welfare in 1967 and implemented in the Aborigines Act 1969 which repealed the Aborigines Protection Act 1909.

POLICY CONFLICTS 1971-1987

24 The Commonwealth exercised its newly attained constitutional power to act with respect to Aborigines and Islanders by, among other things, establishing a Department of Aboriginal Affairs in 1971. The relationship of this federal department to the relevant State administrations was not clearly defined and varied from State to State. From 1972 to 1975 the federal policy of Aboriginal self-determination clashed — painfully for those Aboriginal and Islander communities under dual administration — with State policies of assimilation.

2.5 The policy of self-determination, as it was conceived during 1972-75, has been defined as being:

... the scope for an Aboriginal group or community to make its own decisions about the directions in which it is to develop or can and does implement those decisions, not necessarily implement them only with its own hands but employ the means necessary to implement the decisions which it comes to itself.=

2.6 This policy was endorsed by the Poverty Inquiry in 1975³ and by the New South Wales Select Committee in 1980-81.⁴ It was adopted by the New South Wales Government's Ministry of Aboriginal Affairs at its inception in 1981 and implemented in part by the Aboriginal Land Rights Act 1983.

2.7 By this time, however, there had been a significant retreat from the policy of self-determination at the federal level. The Australian Government of 1975-83 pursued instead a policy of self-management:

The Government's policy of self-management has as its objective that Aborigines should be in the same position as any other Australians to take decisions about their future and accept responsibility for those decisions ...

Funding should not be approved unless there is a reasonable prospect of successful management ...
Financial allocations should aim to maximise the Aboriginal community's potential to be self-sufficient ...

Aboriginals should be encouraged to contribute, financially or otherwise, towards the implementation of projects which they undertake with Government financial assistance ...⁵

2.8 In practice, self-management was much more distinctly different from self-determination than the two definitions quoted suggest. The emphasis under self-management was on Aboriginal responsibility rather than power or control. Effective control remained with the bureaucracy while Aboriginal and Islander communities and organisations were responsible for the proper use of, and accounting for, funds allocated for projects largely determined upon by others. The Department of Aboriginal Affairs, and later the Aboriginal Development Commission, maintained that the funds remained public funds which it was bound to account for to the public. Aboriginal programs, therefore, would not be supported unless approved by the Department and were liable to have funding withdrawn if accounting methods were not considered satisfactory or if any one of a range of other Departmental directives, such as about staffing,⁶ was not complied with.

2.9 The New South Wales Select Committee recognised the reality of this policy of self-management:

It would appear that the aim of this policy is management by Aborigines, but in accordance with guidelines imposed by non-Aborigines.⁷

The results of the policy of self-management for the Toomelah community will be assessed more fully in later chapters.

CURRENT FEDERAL POLICY

2.10 The new Australian Government in 1983 re-affirmed the policy of self-determination but, confusingly, continued to link it with self-management. This new policy of self-determination recognised that:

... programs of assistance to Aboriginals in the past have failed because they were not based on an understanding of Aboriginal culture and society and because Aboriginals were not involved in their formulation and did not want them.⁸

It aimed for the creation of a situation where:

... Aboriginals have sufficient economic independence to enjoy the civil and political rights provided in our system; and where they can control basic services such as health, education, housing, so that they come in a form and of a standard that meet Aboriginal needs as defined by the Aboriginal people themselves.⁹

2.11 In late 1987 the Federal Minister for Aboriginal Affairs, the Hon. Gerry Hand M.P., released a major policy document, *Foundations for the Future*, which stated in part:

It is the right of Aboriginal and Islander people as citizens of this country to be involved in [the decision-making process of government], as ultimately these decisions will affect their daily lives.

We must ensure that Aboriginal and Islander people are properly involved at all levels of the decision-making process in order that the right decisions are taken about their lives. Aboriginal people need to decide for themselves what should be done — not just take whatever governments think or say is best for them.¹⁰

Thus the present Federal and former New South Wales Governments seemed to agree on Aboriginal affairs policy, at least in name. To date the new State Government has not disagreed. Yet there remain significant hurdles to the achievement of accord.

CONTINUING POLICY CONFLICTS

2.12 First, it is apparent that local governments in New South Wales tend to cling to assimilationist ideas and this is certainly true of the Moree Plains Shire Council within whose area Toomelah and Boggabilla are situated. The Shire President, Mr Lyle Houlahan, suggested to the Inquiry:

I think the residents of Toomelah certainly should be allowed to enjoy the rest of their life there, but I think they should be encouraged to shift into Boggabilla where there are these services ...

To me it smacks of apartheid or separate development to have another settlement that is purely Aboriginal, out, away. Surely that is not the long-term thinking for Australia!

It is possible that some State Government departments have a similar attitude. In the Inquiry's view, it is wrong. Self-determination has absolutely no similarity to apartheid as will become clear from our later discussion.

2.13 Second, to the extent that the residents of Toomelah continue to rely on services provided by the Queensland Government as defined and practised by that State's former Government, they will again face a conflict of policies or at least a different approach to service provision within Queensland's borders. In its submission to this Inquiry the Queensland Government stated:

The Queensland Government had been conscious of some basic ideological differences between its own and the Commonwealth Government's vision as to the future position of Aboriginal people in Australian society ...

Concisely, it was felt that the Commonwealth approach tended to separate Aboriginal people from society's mainstream. With substantial financial assistance through the Commonwealth Department of Aboriginal Affairs, Aboriginal communities were expected to develop programmes reflecting an internal perspective of Aboriginal needs related to a pace and lifestyle determined by the Aboriginal communities themselves.¹²

Queensland criticised the Federal approach as follows:

The problem with this approach was the absence of encouragement to recognise the standards of living and conduct applicable to the surrounding region and which were generally expected by the Australian community as basic and essential. In other words, two separate strands and standards of social development in Australian society began to appear without any apparent attempt to interrelate and find a balance between the aspirations and needs of Aboriginal people, as not only members of the Aboriginal race, but also as Australians.³

Therefore, Queensland has adopted a different approach, one which is basically assimilationist:

Aboriginal people are viewed as part of a single homogeneous society, without loss of cultural identity or abandoning their cultural practices.¹⁴

This statement admirably acknowledges the right of Aboriginal people to retain their culture. Queensland policy in practice, however, has failed to recognise that such retention is not possible for a minority, particularly a dispossessed indigenous minority, forced in most aspects of their lives to adapt and assimilate to the majority. Assimilation cannot easily co-exist with multiculturalism.

2.14 Third, the history of discriminatory government policies and of policy conflicts will continue to influence the ongoing relationships of the Toomelah people to both State and Commonwealth Government departments. There is a considerable legacy of distrust to be overcome. Moreover, that history will also continue to influence inter-governmental relations at Federal, State and local levels.

2.15 Fourth, there is still considerable dispute about where the State Government's responsibility for an Aboriginal community ends and that of the Commonwealth Government begins and vice versa. The representative from the Department of Aboriginal Affairs told the Inquiry:

... the matter of essential services, the provision of them, is the State and local government responsibility. The Commonwealth's role is to try and augment where they can with the funds they have available.¹⁵

2.16 The role of local government is even more unclear. Moree Plains Shire Council was in no doubt where each tier of government stood, with itself as the ultimate standardbearer of the people's interests:

The water and sewerage and the general co-ordination of services have been the responsibility and funding of the DAA [Department of Aboriginal Affairs', with financial assistance in some cases from the New South Wales Ministry of Aboriginal Affairs.

In relation to housing and internal access roads, drainage etcetera, that would appear to be and has been the responsibility of the Aboriginal Development Commission. Additional housing has been the responsibility in the last year or so of the [NSW.' Department of Housing. The Moree Plains Shire Council, on the other hand, would appear to be the agent for the people. We provide the general services outside of the private holding ...
16

The Commonwealth's own Aboriginal Development Commission supported the Shire Council's approach:

... it is an understanding in Aboriginal Affairs and the ADC that ... [the involvement of local government' is limited or non-existent ...

The Commonwealth has accepted responsibility through numbers of programmes ... 17

As we shall show, it is clear that funding considerations are largely the cause of these disputes.

2.17 We regret that the former New South Wales Ministry of Aboriginal Affairs did not accept our invitation to appear before the Inquiry. It appears from the Ministry's latest annual report that at least the role of co-ordinating provision of services by State government departments has been undertaken, or at least accepted, by the Ministry. The Toomelah community proposed that the Ministry should undertake this role; but the Ministry's involvement was not apparent when the Inquiry visited Toomelah. Now that the Ministry has been downgraded to an Office in the Premier's Department, following the change of State Government in March 1988, we are even more doubtful of the State's capacity to co-ordinate service provision. In late 1987, after the Inquiry's hearings had exposed considerable community indifference, the Moree Plains Shire Council began to take the initiative in this respect, in which it was belatedly joined by the responsible Federal agencies.

FUNDING CONFLICTS

2.18 The interaction between the New South Wales and Commonwealth Governments concerning Aboriginal affairs is conditioned in part by the Commonwealth-State Arrangement on Aboriginal Affairs concluded in 1976. The preamble states, somewhat unhelpfully:

... certain functions ... will by arrangement between the two Governments be assumed by the Australian Government but not so as to derogate from the authority of the New South Wales Government to administer matters provided for by any law of the State relating to Aborigines or to Aboriginal affairs.

2.19 One provision seems clearly to commit the Commonwealth to primary responsibility for Aborigines:

... the Australian Government shall assume responsibility for, and for the administration of the planning, co-ordination and financing of, such activities as are designed to promote the economic, social and cultural advancement of the Aboriginal people in the State.

The Department of Aboriginal Affairs insists, however, that this does not mean that the State can neglect its Aboriginal citizens or that Aborigines should not be serviced, like all other citizens, by the State Departments of Health, Education, Family and Community Services, and others:

It is the Commonwealth's view that the Arrangement does not detract from the principle that the State has responsibility for providing for the maintenance of general services to Aboriginals at the same level as to other citizens, including particular measures in respect of disadvantaged groups. The Commonwealth (mainly through the Department of Aboriginal Affairs) provides selective supplementary grants to the States for special services to meet Aboriginal needs, within the constraints of available finance.¹⁵

2.20 Another provision of the 1976 Arrangement empowers the two Governments to conclude separate agreements whereby the Commonwealth undertakes to fund 'special services' for Aborigines

established within individual State Government departments. Most Commonwealth-State conflicts on policy have focussed on the meaning of 'special services' and on how long special services should be supported by the Commonwealth before being incorporated into the State department's regular budget. The Commonwealth typically has initiated 'special services' by funding a program for one or two years and then withdrawing funding, claiming the program is no longer 'special' 20

2.21 The New South Wales Anti-Discrimination Board investigated the effectiveness of the Commonwealth-State Arrangement for the purposes of its 1978 report *Discrimination in Government Policies and Practices*. The Board identified numerous problems with the existing arrangements, including fragmentation of service delivery to Aborigines, fluctuations in funding and the State's withdrawal from responsibility. The 'blurred demarcation of responsibility between Commonwealth and State governments, and attempts to shift responsibility between those governments' result in a 'political impasse [which] works to consolidate the extreme disadvantage suffered by the Aboriginal people of New South Wales'.²¹

CONCLUSION

2.22 The Inquiry finds that one result of the existing policy conflicts is that the residents of Toomelah, and no doubt of other similar communities, are denied many of the benefits and services provided as a matter of right to all non-Aboriginal citizens of the State. They are denied them because they are Aborigines living in Aboriginal communities. Services, if they are provided at all, are more likely to be provided from specialist, usually Federal, Aboriginal Affairs budgets. These budgets are then drained for these purposes so that insufficient funds remain for the support of programs which would boost the living standards of Aborigines to par with community norms, ensure their 'equal enjoyment or exercise of human rights and fundamental freedoms'²² and enable them to realise their right, 'in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, [and] to use their own language' .²³ On the other hand, we have seen nothing to demonstrate a willingness or a capacity within the Department of Aboriginal Affairs adequately to design and deliver programs to achieve these ends. Support for these doubts is detailed in following chapters.

NOTES

1. Quoted in NSW Select Committee of the Legislative Assembly upon Aborigines, *Second Report (1981)* para 1.16.
2. B.Dexter, Secretary, Department of Aboriginal Affairs, to Commission of Inquiry into Poverty, quoted in *Poverty in Australia Vol.1 (1975)* at p.258.
3. *Poverty in Australia Vol.1 (1975)* at pp.259,268.
4. *Second Report (1981)* at p.xii .
5. Department of Aboriginal Affairs, *Annual Report 1978-79*, at pp.75-78.
6. *Id*, at p.80.
7. *Second Report (1981)* para 10.3.
8. House of Representatives Select Committee on Aboriginal Education, *Aboriginal Education (1985)* at p.68.
9. *Labor's Programme for Self-Determination*, Aboriginal Affairs Policy 1983, at p.2.
10. At p.1 .
11. *Transcript*, pp.708-709.
12. Submission, at p.1.
13. *Ibid*.
14. *Id*, at p.2.
15. D.O'Rourke, First Assistant Secretary Programs Policy, Department of Aboriginal Affairs, *Transcript*, p.668.
16. L.Houlahan, Shire President, Moree Plains Shire Council, *Transcript*,. p.695.
17. M.O'Brien, General Manager, Aboriginal Development Commission, *Transcript*, p.693.
18. Toomelah Local Aboriginal Land Council, Submission, at p.1.
19. Minister for Aboriginal Affairs (Federal), Submission to NSW Select Committee of the Legislative Assembly upon Aborigines, quoted in *Second Report (1981)* para 39.44.
20. NSW Select Committee of the Legislative Assembly upon Aborigines, *Second Report (1981)* paras 39.15-48.
21. Submission to NSW Select Committee of the Legislative Assembly upon Aborigines, quoted *id*, paras 39.40-41.
22. International Convention on the Elimination of All Forms of Racial Discrimination, Art.1.4.
23. International Covenant on Civil and Political Rights, Art.27.

CHAPTER 3

HOUSING

BACKGROUND

3.1 Many Aborigines in New South Wales live in grossly substandard dwellings. The situation on the former reserves is particularly appalling. A New South Wales Public Service Board survey of reserve housing in 1938 found that many dwellings were in need of urgent repair or replacement, were unlined, without windows, not properly lit or ventilated, and constructed of such unsuitable materials that they were invariably unreasonably hot in summer and cold in winter.¹ In 1962-63 a New South Wales Aborigines Welfare Board survey of the 739 dwellings on Aboriginal reserves revealed that 16.5% were mere shacks; of those which could be described as cottages, over half were in poor or bad condition; average occupation per dwelling was eight persons; 83.6% of dwellings were not connected to electricity; over half had no bathing facilities; fewer than 5% had septic sewerage systems, the remainder relying on pit or pan systems; and 28% of residents had to cart water to their dwellings.²

3.2 In 1965 Professor C.D. Rowley of the Australian National University found that more than one Aboriginal home in three was a shack compared to one in every hundred for the State as a whole.³ In 1978 a Department of Aboriginal Affairs survey identified 1,399 dwellings occupied by Aborigines in New South Wales as substandard.⁴ The New South Wales Select Committee classed many Aboriginal dwellings in 1980 as unfit for human habitation: they not only did not protect occupants from the elements but actually contributed to disease and illness.⁵

3.3 There have been a number of surveys over recent years to gauge the housing need or backlog in New South Wales. In March 1976 the New South Wales Health Commission found that:

... more than 2000 families ... live in housing conditions that are detrimental to physical and social health and would be unacceptable by standards normally applied to the white population.⁶

A 1979 survey by the Department of Aboriginal Affairs estimated the need for housing in New South Wales to be 1,911 units, one-quarter of the houses needed being in the Northern Area of the State which included Toomelah. More than one half of the residents of this area were in need of new houses.⁷ By this deficiency was found by the Department of Aboriginal Affairs to have grown massively to 3,991 units in New South Wales.⁸ More than one-fifth of these dwellings are needed in the Department's area which includes Toomelah.

THE SITUATION AT TOOMELAH

3.4 There are forty dwellings at Toomelah accommodating on average more than twelve people each. This level of occupancy is four times the State average of three persons per household. Twenty-two people or more live in several dwellings and there is one three-bedroom household of thirty persons. Mr Alex Hippi, Administrator of the Co-operative, told the Inquiry:

We need at least seven new houses a year to keep pace with the overcrowding we already face. Overcrowding causes tension and aggression within families. Also we have had a baby boom in recent years.⁹

3.5 The problems caused by overcrowding are exacerbated by the very poor standard of most of the houses at Toomelah. The dwellings built by the Aborigines Welfare Board before 1969 are substandard.¹⁰ 'Even with some of the more recent accommodation there are major structural problems:¹¹ The Aboriginal Development Commission assessed the condition of thirty-nine Toomelah houses in 1987 as follows: fourteen (just over one-third) were in good condition; two were in fair condition; and twenty-three (just under two-thirds) were in poor condition. In the Inquiry's view, this is a conservative assessment of the decrepitude of these dwellings. Many have no windows, no guttering and are not rain-proof. The bathing facilities are hopelessly inadequate. There is inadequate flooring and roofing, and virtually no privacy. No Australian citizen should be living in such conditions in 1988. especially when the conditions are determined and provided by organs of government.

3.6 A further problem is that the design of the houses has neglected the needs of the Aboriginal families who inhabit them. Large extended families are forced to make do with cottages designed for quite small families. Mr Hippi told the Inquiry:

One of the most frustrating things about the housing programme is the fact that the community had no say as to what was built, when or how.

The Inquiry finds that Aborigines have not chosen this depressed lifestyle. It has been imposed upon them. They are expected to accept it without demur. The Inquiry does not accept it at all. Some of the houses should never have been constructed in that manner in the first place. Even now, many of the repairs and renovations needed to put the housing in a much better state would be quite inexpensive.

3.7 The community environment has also been entirely neglected, exacerbating the housing situation of the residents. Despite efforts by many Toomelah residents to beautify their own dwellings with paint, flower and tree planting, and, other initiatives, the common areas are barren and stark. An attempt to create a small park and children's play area foundered because the Co-operative's tractor broke down, there was no money for its repair, and no-one at Toomelah had the skills to undertake the repairs needed. This was not neglect by the people of Toomelah, but the uncaring inflexibility of the system under which they are required to live.

COMMONWEALTH HOUSING PROGRAMS

3.8 The Federal Department of Aboriginal Affairs first began funding programs at Toomelah in

1975-76, the year in which the reserve was revoked and the land granted to the New South Wales Aboriginal Lands Trust. The relevant local government authority at that time was paid \$160,000 to add bathrooms and verandahs to the dwellings at Toomelah which were then without these facilities. This authority was funded further in 1977-78 and 1978-79 to provide house maintenance and to instal solar hot water systems.

3.9 The Co-operative was first funded in 1977-78 when the establishment costs for a housing project were paid and \$79,597 provided to renovate twenty-eight existing dwellings. Over the next three financial years, \$1,195,774 was provided to the Co-operative for the construction of houses.¹³

3.10 In 1981-82 the Aboriginal Development Commission (the ADC) assumed responsibility for the Federal Housing Grants program. From that date to the end of 1986-87 the ADC has provided \$1,486,222 in capital funds to Toomelah which has allowed the construction of twelve houses to bring the total to the current forty. In the same period \$102,698 has been provided in recurrent funds to meet the shortfall between rental income and essential costs (rates, insurance, repairs and maintenance, etc). The ADC projected further building at Toomelah as follows: 1987-88, two houses; 1988-89, one house; 1989-90, two houses. Over the same period four houses would be constructed at Boggabilla for families wishing to move from Toomelah. However, since the Inquiry concluded its hearings, the ADC has withdrawn the two Toomelah houses planned for construction during 1987-88 and plans to build four in Boggabilla instead. It is not known at this stage whether the Federal Government will fund further building at Toomelah.

COMMONWEALTH HOUSING POLICIES

3.11 The ADC's current policy on housing design was somewhat unsatisfactorily described to the Inquiry as follows:

The Commission's policy is simply to provide housing of a type and style that would suit the particular family in question ... as far as possible, within reasonable economic restraints ... to provide adequate housing to suit the numbers of people in that particular family ...

The Commission has adopted a policy of one toilet and one bathroom for each six Occupants of a dwelling ...¹⁴

3.12 The provision of housing at Toomelah by the ADC does not appear to the Inquiry to be in accordance with the Commonwealth's policy of self-determination. While it is intended that the actual houses should more or less accord with individual and community needs, both the rate at which houses are built and the policy for funding the Co-operative are undermining community decisions on housing needs. It is Federal policy (termed neither self-management nor self-determination but 'self-help' by the Department of Aboriginal Affairs area officer)¹⁵ that 'communities are expected to contribute towards the cost of providing whatever services exist in the communities'.¹⁶ This excellent and understandable principle is, however, dependent on the availability of funds to the individuals who make up the communities. The ADC proffers no explanation as to how this is to be achieved by people who are unable to obtain employment.

3.13 Individual and community need is not the sole, or even the primary, factor which determines whether the ADC will fund the construction of houses. A large part of that determination is based on the demonstrated ability of a community to comply with grant conditions, to meet financial management standards and to maintain payment for services. This is judged primarily through the Co-operative's collection of rent. As Mr Alex Hippi told the Inquiry, 'our rent collection figure is an indication of how much "development" we can be allowed'¹⁷ Although the Co-operative 'owns' the houses, according to the ADC, and is responsible for damage and maintenance, the Co-operative is not permitted to determine the rent levels or its own collection policy. The Inquiry noted the ADC's declaration of willingness to be flexible by continuing to fund the Co-operative to build houses despite what the ADC asserts is its poor management record. Humane administration alone demands this flexibility in the case of Toomelah. The ADC's concession, therefore, does not necessarily signal a greater commitment to Aboriginal self-determination. We note also that the ADC provides no management training to the housing companies and co-operatives it funds.

3.14 As a general policy within New South Wales, the ADC expects tenants to pay a minimum rent of \$40 per week for houses in fair to good condition, while rental paid for housing in poor condition is expected to be much less, possibly only \$20 per week.¹⁸ At Toomelah rent is levied at the rate of \$20 per week for a brick house with amenities, \$10 per week for a shack with water and electricity, and \$5 per week for a shack without water and electricity. For a time the Co-operative did not collect rent because, as Mr Hippi told the Inquiry:

... the houses were in such a shocking state of repair that we felt it was wrong to take money from the people.¹⁹

It should be remembered that the condition and supply of water and sewerage to all Toomelah dwellings are well below acceptable standards.

3.15 Rent collection is also taken into account by the ADC when considering a community's application for recurrent funding, i.e. for essential operational costs needed to maintain the housing. An assessment is made of the rental income which *should* be collected. The ADC will fund the shortfall between potential rental income and recurrent costs but not any extra shortfall between potential rental income and actual rental income. In the circumstances existing at Toomelah, this policy utterly frustrates any determination by the Co-operative to maintain and repair houses from rental income and to gain the consent of their constituents to a sensible and rational policy on rental levels. In the Inquiry's view, the condition of the houses at Toomelah does not justify any rent at all. Under the ADC's current policy, that effectively means that no repairs will be made. The consequences for the health and well-being of the community are obvious.

3.16 The Inquiry accepts the common sense of seeking to free as much funding as possible for the building of new houses with as long a life as possible. However, the current policy makes a mockery of the concept of self-determination. In some respects the policy acts punitively by falling most heavily upon those communities already most severely disadvantaged. The ADC's statement of policy *Housing Grants Program and Project Funding* frankly declares that one aim is that Aboriginal housing associations will, sooner rather than later, become self-sufficient in economic terms so that Federal funding can ultimately be withdrawn altogether. The Inquiry regards this policy as discreditable because it is setting_ the goal

without adequately addressing the means to achieve it. There is nothing wrong with a policy of self-sufficiency per se, but the consensual element needed in a democratic country for successful social policies cannot be attained by heaping one injustice after another on the people concerned and then expecting their co-operation.

3.17 The Inquiry is deeply concerned that some Aboriginal people are being forced or required to pay for the privilege of living in substandard housing without adequate facilities. **We recommend that the ADC bring all houses up to a reasonable standard before requiring that rent be charged on them.** The provision of quality housing should not be dependent in any degree on the record of rent collection on substandard housing. Aboriginal families are being asked to pay in advance for anticipated improvements in their own conditions. Yet these conditions are the direct result not of any fault of their own but of two centuries of direct official discrimination and neglect. The record of government attention to the legitimate expectations of Aborigines provides no basis for confidence in a return on the investment in the foreseeable future. The Inquiry believes that this time it is government which should deliver first.

3.18 The housing co-operatives are non-profit organisations. They are staffed by poorly-paid or volunteer workers who are largely untrained and certainly unsupported, and whose position often leads them into confrontation with family and neighbours. These workers, moreover, are performing a role elsewhere performed by private enterprise or public agencies. It should also be remembered that until relatively recently Aborigines were forced to reside on reserves in dwellings of the kind described at the beginning of this chapter. The Inquiry heard evidence that they were often led to believe that these homes were their own. This language is still being used but the residents are being required to pay rent and to submit to the will of others in the management of 'their' dwellings. To provide Aborigines with the same rights as non-Aborigines in Australia in this regard, **we recommend that Federal policy with respect to the provision of housing on Aboriginal Land Council land should be changed to accord with that of the New South Wales Department of Housing's Homes on Aboriginal Land Program** as detailed below.

NEW SOUTH WALES HOUSING PROGRAMS

3.19 Since 1985 the New South Wales Department of Housing has operated a Housing for Aborigines program on departmental land. As a special contribution to the International Year of Shelter for the Homeless (1987), the Department initiated a Homes on Aboriginal Land Program, a program of building houses (with Federal funding under the 1978 Commonwealth-State Housing Agreement) on Aboriginal-owned land in the State. Two hundred houses on Aboriginal land were programmed for 1987-88,²⁰ eight of which were planned for Toomelah. The Department was also to build or purchase eight houses in Boggabilla. These figures were revised (from ten at Toomelah and six at Boggabilla) after the Toomelah community determined the needs. All eight dwellings to be built at Toomelah were to replace old houses which were to be demolished. With the change of State Government in March 1988, the Homes on Aboriginal Land Program was suspended. Aboriginal Land Council tenants must again rely on the ADC for their housing needs. However, as we have already mentioned, the ADC may also be unwilling to build on Aboriginal land in future. Thus from two separate authorities intending to build new houses at Toomelah, there are now none.

NEW SOUTH WALES HOUSING POLICIES

3.20 Before the suspension of the Program, the New South Wales Housing Department had also become sensitive to the needs of individual Aboriginal families and was designing the new homes in consultation with them. The Department's policy on Homes on Aboriginal Land states:

In recognition of the wide range of circumstances and aspirations of Aborigines across the State, it is intended that the design of their housing should reflect this diversity. Thus, in response to the priorities of the local Land Council, the housing provided may range from simple shelters with lockable storage, to very large houses appropriately fitted out to accommodate an extended family.²¹

For one very large family at Toomelah, a novel but obvious solution has been reached.

We are building in total three houses to accommodate the ... family together, almost like an extended dwelling, so the response is to build much larger houses and ... all the other facilities like sleep-outs, and in one case a loft bedroom, but also to split the ablutions so that houses will have many more ablutions than they had before and they will also be isolated, so one bathroom, for example, does not have a bath, a toilet and a shower but there will be a separate bath, a separate toilet, separate shower.²²

In this way, it is expected that some of the overcrowding will be relieved.

3.21 In contrast to the ADC's housing policy, the New South Wales Homes on Aboriginal Land policy focusses on the need for housing and on providing appropriate housing in an appropriate way. The involvement of the Aboriginal community in both the planning and construction stages was a key factor. With respect to management of completed housing, the policy provides:

In relation to the housing built for a [Local Aboriginal Land Council] on its own land, by the Department of Housing: the Wand Council] is responsible for its allocation, management and maintenance. It determines how much rent will be paid, and collects that rent. While there is no overall Land Council policy on these matters, it can be safely assumed that each [Land Council] desires to minimize its maintenance costs, and running costs for its members.²³

The Inquiry was informed that the Department of Housing has engaged a consultant to develop an appropriate management policy under this Program. Fundamental to that policy will be the principle of self-determination in that the policy will be in the form of a recommendation to Land Councils only and a training package will be offered for those wishing to adopt 4.²⁴

CONCLUSION

3.22 The suspension of the Homes on Aboriginal Land Program is a severe blow to the people at Toomelah. On the ADC's own assessment, the eight houses expected to be built there this financial year would still leave at least fifteen houses at Toomelah in a poor condition. In our view, this is again a conservative assessment. It is doubtful that the ADC will be able to fill the gap left by the withdrawal of the State Department of Housing. Certainly the ADC will not be in a position to replace the Toomelah dwellings as quickly. Moreover, the ADC's management policies, as outlined above, make it unlikely that the real needs of the people of Toomelah will be addressed if the ADC is left to deal with the matter.

3.23 **The Inquiry recommends that the New South Wales Government restore the Homes on Aboriginal Land Program as a matter of urgency.** Delay in doing so will understandably reinforce the bitterness and frustrations of the Toomelah community as the existing housing further deteriorates. It will also greatly delay the solution of one of the critical problems we observed.

NOTES

1. Quoted by the NSW Select Committee of the Legislative Assembly upon Aborigines, *Second Report (1981)* para 4.9.
2. Quoted *id.*, para 4.14.
3. Duke of Edinburgh's *Third Commonwealth Study Conference* (Sun Books, 1965) quoted *id.*, para 3.4.
4. Quoted by the NSW Select Committee of the Legislative Assembly upon Aborigines, *Second Report (1981)* para 3.7.
5. *Id.*, para 3.8.
6. M.Dowling and J.Ward. *Housing of Aborigines in New South Wales in 1976 and its Relation to their Health*.
7. Quoted by the NSW Select Committee of the Legislative Assembly upon Aborigines, *Second Report (1981)* paras 11.2, 11.3.
8. Dubbo Area: 585; Lismore Area: 495; Tamworth Area: 877; Wagga Wagga Area: 278; Sydney Area: 1756; Total: 3991.
9. Exhibit 2, at p.4.
10. C.James, Consultant, NSW Department of Housing, *Transcript*, p.656.
11. K.Stnith, Divisional Manager Housing Programmes Administration, NSW Department of Housing, *Transcript*, p.655.
12. Exhibit 2, at p.5.
13. Department of Aboriginal Affairs, Submission.
14. M.O'Brien, NSW General Manager, Aboriginal Development Commission, *Transcript*, p.685.
15. P.Gilligan, *Transcript*, p.360.
16. *Ibid.*
17. Exhibit 2, at p.3.
18. Aboriginal Development Commission, Submission, para 19.
19. Exhibit 2, at p.4.
20. NSW Department of Housing, *Aboriginal Housing Programmes: Briefing Notes* (September 1987) at p.2.
21. NSW Department of Housing, *Homes on Aboriginal Land: Briefing Notes* (September 1987) at p.21.
22. C.James, Consultant, NSW Department of Housing, *Transcript*, p.656.
23. NSW Department of Housing, *Homes on Aboriginal Land: Briefing Notes* (September 1987) at p.23.
24. NSW Government. Submission, at p.16.

CHAPTER 4

WATER AND SEWERAGE

INTRODUCTION

41 When the Inquiry visited Toomelah in July 1987, water was being rationed. It was available twice a day for fifteen minutes at a time, as it had been for years. This daily rationing, forcing people to collect water in bottles and buckets, made life intolerable. Bathing of children and washing of clothes were particular difficulties.

42 We have earlier pointed out that lack of water prompted the move from Old Toomelah to the current site in the 1930s. Fifty years later, despite the fact that 'new' Toomelah sits on the banks of the Macintyre River, an adequate, certain and safe water supply has still not been attained. By the late 1960s the relevant local government authority had established that the Toomelah water supply was contaminated. On many occasions since, the Moree Plains Shire Council, the New South Wales Health Department and the Commonwealth Department of Aboriginal Affairs have been notified of chronic water shortages. In the early 1970s water was in such short supply that it was trucked at cost into Toome Iah.

4.3 Shortage of water is not just an inconvenience. It is a major crisis which Mrs Pamela Duncan, the community health worker, sees as a basic cause of many of the health problems at Toomelah. Every day between thirty and forty people visit the health clinic which is run from an old demountable schoolroom. The clinic often must function without water and there is no hot water. The Inquiry was told that the community residents most frequently complain of ailments related directly to the lack of water and poor sewage disposal: infected sores, gastroenteritis, growth failure, respiratory, ear and skin infections, and stress.' Moreover:

(The people] get really depressed because there is no water, and they cannot do their washing, they cannot do their cleaning up, they cannot make their gardens because there is no water, and that is frustrating and a lot of them turn to the drink, alcohol and drugs, and you have got it all over and over again.=

4.4 The Toomelah Primary School has air-conditioning and wet rooms for artwork, but the lack of water means they cannot be used. The shortage of water has also hindered the development of urgently needed facilities such as sewerage and roads. The ADC advised the Inquiry that, in its view, the water and sewerage improvements must be in place before roadworks can begin.³

4.5 Lack of water at one time also forced the abandonment of plans for a new pre-school. After the Toomelah community successfully lobbied the New South Wales State Government for money to establish a pre-school, the Moree Plains Shire Council put the application at the top of its priority list. However, the Council then refused to approve the development plans because of the lack of water and sewerage. The Council would not supply them itself.⁴ As a result the funds could not be used. The pre-school now operates from a machinery shed. Council has since approved the building of a pre-school despite the continuing relative uncertainty of the water supply.

4.6 The community currently relies on a septic system for sewage disposal. There is insufficient water to flush the sewage efficiently. The Inquiry observed raw sewage from the system's overflow covering a large area of land within one hundred metres of Toomelah. We saw other raw sewage on top of the ground outside some houses where children play and observed a septic system totally blocked up and without a sealed lid or top adjacent to a children's play area. This was said to be unrepaired because the only local plumber would not do any work until an unpaid account had been attended to by the appropriate government department. This was done during the Inquiry's hearings. The possibility of diseases being caused by exposure of children to raw sewage, especially in summer, was dismissed by one witness because:

[The community is just about immune to it, you know; it has been there for years and they have built up a resistance to it.⁵

Information from health workers as to the health status of the community, however, belies this impression, as discussed elsewhere.

WATER - PRESENT STATUS

4.7 In the period 1981 to 1987, the Department of Aboriginal Affairs provided approximately \$500,000⁶ in an attempt to secure an adequate water supply for Toomelah.⁷ In 1983 the Department initiated its first major program to increase the water supply by sinking bores. Within twelve months the community was experiencing shortages. Within two and a half years, two of the three bores had dried up.⁸ The second program commenced in 1986. The Inquiry was told that a bore sunk late in 1987 has now been capped, and pumping stations and storage tanks have been installed.

4.8 While the water is now available in sufficient quantities, there is an urgent need to repair or replace the internal reticulation system. A further \$453,565 has been allocated by the Department of Aboriginal Affairs for the 1987-88 financial year for this purpose. The New South Wales Department of Public Works will supervise, and the Moree Plains Shire Council will undertake, this work. The Inquiry was told that the repair work on this was to commence in February 1988 and should be completed by July,⁴ although it was agreed that if the matter was treated as urgent this four to five month period could be reduced to 'a matter of days'¹⁰ Since our hearings concluded, the Department of Aboriginal Affairs has advised us of a further delay. The funds granted do not cover the connections required inside the houses. Before further funds can be released for these, certain departmental procedures must be followed, thus further delay can be expected. Future maintenance of the reticulation system should be the responsibility of Moree Plains Shire Council, the cost being met from a source other than the Toomelah community.

SEWERAGE - PRESENT STATUS

4.9 The New South Wales Public Works Department has designed a sewerage system of modern standards of treatment and reticulation for Toomelah. However, the system has been designed to cater only for the present population of Toomelah, five hundred, although the Inquiry was told that the proposed oxidation pond treatment system has considerable loading flexibility so that some population increase can be handled. It is estimated that the system will be operational in July 1988. When asked if there was any way that operation could be expedited, the representative of the Department of Public Works replied that:

We would be very keen to accelerate it if it is physically possible to do so. We appreciate the urgency of it, but it is tied to the water supply ...

It requires water for flushing purposes ...

I imagine it is shortage of quantity to be able to cater for the additional burden that the sewerage would impose on it. What we have been keen to do, with the Department of Aboriginal Affairs, is to integrate the two projects, the water and the sewerage, with a view to having them both completed as quickly as possible [with] certainly the sewerage following right on the heels of the water.¹²

The sewerage works are funded jointly by the Department of Aboriginal Affairs and the New South Wales Ministry of Aboriginal Affairs. Moree Plains Shire Council is constructing the system. Again, some items have not been contracted for and the departmental procedures prior to release of further funds are likely to cause delays.

4.10 Maintenance of the sewerage system seems likely to cause problems for the community in the future although it is designed to be of low cost maintenance. The representative of the Department of Public Works told the Inquiry that it was the responsibility of some local authority' to maintain the system, probably He who pays the bills', namely the Department of Aboriginal Affairs.¹³ However, that Department has determined to provide only part of the necessary funds, on the basis that the Toomelah community will take an increasing responsibility. After three years the community would be fully responsible. The Inquiry considers that, if current high unemployment continues, this will be a cost which the people of Toomelah will be unable to afford. There are four agencies involved in this matter. **The Inquiry recommends that the Moree Plains Shire Council be responsible for the future maintenance of the sewerage system. Plans should be made to cover the cost of maintenance from sources other than the Toomelah community.**

SOURCE OF WATER SUPPLY

4.11 While Toomelah now relies on bores, the towns of Goondiwindi and Boggabilla obtain their town water supply from the Macintyre River. The New South Wales Water Resources Commission controls the water supply to these towns and to riverside properties which are licensed to receive it for domestic and irrigation purposes. By prior arrangement, the Commission releases water to licensees from one or more dams situated on the Border Rivers system into the Macintyre River. Mr Andrew Pike, Acting Senior Licensing Officer for the Water Resources Commission, informed the Inquiry that, if the Toomelah community obtained a pump and a water licence (costing \$100 for a ten-year licence), the required supply of water from the Macintyre River would be made available on demand.¹⁴ Such water would probably not be suitable for drinking without treatment, but it certainly would be suitable for sewerage and other domestic purposes.

4.12 The people of Toomelah were left ignorant of the reason for the sudden drying up, some years ago, of the Macintyre River in their area. Until that time, it had been flowing freely and supplying water to Toomelah for decades. The reason, of course, was the damming of the river and the controlled release of only sufficient water for the towns and properties licensed to make use of it. None of the relevant authorities, neither those responsible for servicing Toomelah nor those responsible for regulating water supply, had ever informed the Toomelah community either of the reason for the decision to rely in future on bores or of their right to apply to have water released to them by the Water Resources Commission.

4.13 In reply to a query whether there was any reason why the Department of Aboriginal Affairs could not fund the community for the purchase of the necessary pump or pumps and \$100 for the licence, Mr Don O'Rourke, a First Assistant Secretary of the Department, agreed it was 'a very sensible proposal'.¹⁵ The Department of Aboriginal Affairs was, however, concerned at the cost of establishing the alternative source. Nevertheless, it seems to the Inquiry that, given the limited life of bores in the past, use of river water would be more cost-effective in the long term and prolong the life of bores by allowing the use of unfiltered river water for sewerage, gardening and other purposes not requiring potable water. The Department, moreover, seems not to have planned for the long term with the likely result that, if river water is not used, water will again be rationed or unavailable at Toomelah at some future time.

RESPONSIBILITY FOR WATER AND SEWERAGE WORKS

4.14 The evidence to the Inquiry indicates that, everywhere else in New South Wales, local government authorities have the responsibility of, and receive funding for, providing water and sewerage facilities in towns within their boundaries. Subsidies for these works are available from the New South Wales Department of Public Works,¹⁶ but the Toomelah works are, for some reason, being entirely funded from Aboriginal affairs budgets. In fact both the Moree Plains Shire Council and the Department of Public Works have to date refused to undertake any water or sewerage works within Toomelah on their own responsibility and with their own funds. The Council describes Toomelah as 'a private settlement' and, therefore, says it has neither responsibility nor authority to provide water, sewerage or other essential services.¹⁷ The Council is nevertheless willing to accept money from other authorities to carry out the work.

4.15 There is considerable disagreement as to whether local government authorities have responsibility for the provision of such services to Aboriginal communities. The Department of Aboriginal Affairs insists that water and sewerage provision is the responsibility of the local government authority¹⁸ and the Department of Local Government agrees.¹⁹ However, the Local Government and Shires Associations' representative told the Inquiry:

I find it extremely unusual that there is even contention about this. It [Toomelah] is a private property as far as the Local Government Act is concerned and the council cannot expend funds, its own funds, in that area.²⁰

The responsibility of local government is dealt with in Chapter 6.

CONCLUSION

4.16 The provision of water and sewerage to Toomelah from 1937 to date has been mismanaged, unco-ordinated and inadequate. The lack of water has for many years been used as a reason for the denial of other necessary services and the residents of Toomelah have had to live in conditions which are totally unacceptable. Clearly an effective sewerage system depends upon an adequate and permanent supply of water. Yet until the beginning of 1988 there was no co-ordinated plan, devised in consultation with the residents of Toomelah, for the provision of water. There can be no justification for this failure to ensure that the residents of Toomelah have a secure, permanent water supply and a safe, operative and effective sewerage system. No non-Aboriginal community of this size and with so many young people and children would, or would be asked to, tolerate such a state of affairs.

4.17 We consider that it is primarily the responsibility of the Federal Department of Aboriginal Affairs to ensure that Aboriginal communities are adequately serviced. We do not necessarily expect the Department, alone and fully, to fund, design and construct all such services, having regard to the limited resources and expertise available to and within the Department. However, the Department does have a clear responsibility to monitor the provision of basic services to all Aboriginal communities, to access service providers on their behalf, and to perform a co-ordinating role to ensure services are provided efficiently and in accord with a policy of self-determination.

4.18 The failure or inability of the Department of Aboriginal Affairs to perform this task for the people of Toomelah thus far, especially in relation to these long-standing water and sewerage problems, suggests that another formula should be found to provide a co-ordinating and information source for service provision for Aboriginal communities. The Inquiry therefore considers it essential that one identifiable authority be responsible, in consultation with the Toomelah community, to exercise oversight of the supply and adequacy of services to Aborigines living in the New South Wales-Queensland border region. It is urgent that the Toomelah Social Plan discussed in Chapter 8 address this issue.

NOTES

1. P.Duncan, *Transcript*, pp.202-203.
2. *Id*, at p.203a.
3. C.Plowman, NSW Regional Director, Aboriginal Development Commission, *Transcript*, p.514.
4. L.Whitton, *Transcript*, p.267.
5. M.Duncan, Chairperson, Toomelah Local Aboriginal Land Council, *Transcript*, p.51.
6. \$476,500. In 1981-82 \$100,000 was supplied by DAA to provide a new water supply works and attaching sewage to old and new houses.
In 1982-83 DAA provided \$295,000 to instal water and sewage facilities.
In 1985-86 DAA spent \$81,500 upgrading the Toomelah water supply system: Department of Aboriginal Affairs, Submission, pp.18-19
7. D.O'Rourke, First Assistant Secretary Programs Policy, Department of Aboriginal Affairs, *Transcript*, p.667.
8. J.Worthington, Worthington Civil, Consulting Engineers, Submission, at p.9.
9. D.O'Rourke, First Assistant Secretary Programs Policy, Department of Aboriginal Affairs, *Transcript*, p.663,
10. J.Worthington, Worthington Civil, Consulting Engineers, *Transcript*, p.368.
11. R.Eagle, Assistant Director, Department of Public Works, *Transcript*, p.606.
12. *Id*, at p.607.
13. *Id*, at p.609.
14. The present cost of a 10-year licence is \$100. A temporary licence can be processed within two to three weeks and a long-term authorisation can be processed in two months. The issue of a licence is in no way dependent upon Toomelah being declared a town under the Local Government Act 1919 (NSW): A.Pike, Senior Licensing Officer, Water Resources Commission, *Transcript*, pp.628-631.
15. *Transcript*, p.665.
16. D.McSullea, Deputy Secretary, Local Government and Shires Association, *Transcript*, pp.721 -722.
17. L.Houlahan, Shire President, Moree Plains Shire Council, *Transcript*, p.696.
18. D.O'Rourke, First Assistant Secretary, Programs Policy, Department of Aboriginal Affairs, *Transcript*, p.668.
19. D.Kelly, Assistant Secretary, Department of Local Government, *Transcript*, p.639.
20. D.McSullea, Deputy Secretary, Local Government and Shires Associations, *Transcript*, p.716.

CHAPTER 5

ROADS

INTRODUCTION

5.1 One-third of the Aboriginal population of Australia lives in and around small non-Aboriginal towns.' It is rare for an Aboriginal settlement to support a school, medical or hospital facilities and long-term employment opportunities. There are usually no shops, and food storage facilities are often inadequate.² Therefore, frequent trips to the nearest town are necessary, and roads and road transport provide an essential link between the Aboriginal communities and these facilities and services. However, this link is often impeded by unsealed roads, which may be subject to flooding, and a lack of public transport. Further, 'few people have motor vehicles because of their low incomes'.³ For the same reason, most of the vehicles owned are old and dilapidated, requiring continuous maintenance to keep them running. Few can maintain the vehicles they do have. The transport difficulties of some communities have been eased only by the purchase of a community bus or the establishment of a taxi service with loans from the Aboriginal Development Commission.⁴

THE SITUATION AT TOOMELAH

52 The residents of Toomelah are seriously disadvantaged in obtaining access to the nearby towns of Boggabilla and Goondiwindi. To reach Boggabilla, they must travel along a half-kilometre dirt track to the old unsealed Bruxner Highway which they must then use for a further six and a half kilometres before reaching the new highway. There is no bridge or causeway at either of two creek crossings which must be traversed, with the result that both routes are subject to flooding, leaving Toomelah cut off during and after heavy rains. Roads within Toomelah are pot-holed, black soil tracks. There is no paving, kerbing, guttering, drainage or street lighting, and no provision for pedestrian safety. When the Inquiry visited in July 1987, it appeared that no roadworks (other than a little grading) had been undertaken at Toomelah. The Department of Main Roads' representative admitted that he was unaware of any other community of five hundred people within New South Wales where no roadworks had ever been undertaken.' In order to understand this situation fully, it is necessary to know something of the procedures for providing roads to the general Australian community.

ROADWORKS CONSTRUCTION AND FUNDING GENERALLY

Local Roads

5.3 The general rule is that a local government authority provides local roads within its area. Roadworks constitute the largest expenditure item in most local government budgets and additional funding is available to local governments for roadworks from both the State and Commonwealth Governments. Local government authorities have broad powers with respect to public roads generally. They include the power to dedicate public roads, to seal the surfaces, provide paving, kerbing, guttering, drainage and streetlighting, and to construct bridges and causeways.⁶ A local government authority has a discretion whether to perform roadworks and is not under a legislative duty to do so.⁷

54 For more than sixty years, Commonwealth Government funding for local government roads has been a major source of revenue for many local government bodies, particularly in rural areas. In 1986-87 the Commonwealth granted more than \$250 million to the New South Wales Department of Main Roads (the DMR) under the Australian Land Transport Program.⁸ Those funds are administered at the discretion of the DMR. Although the Program was not intended specifically for local government use,⁹ in practice the DMR disburses funds according to a list of priorities based on advice from local government authorities. Naturally the priorities are also affected by political considerations and the lobbying powers and skills of different individuals and groups.

5.5 However, local government authorities do not usually build or maintain roads within Aboriginal communities.' The DMR acknowledged that it would be 'very difficult' for an Aboriginal community to get a road constructed under the Australian Land Transport Program unless the relevant local government authority took responsibility for it.¹² In October 1987 the then Federal Minister for Land Transport, the Hon. Peter Duncan MP, issued an instruction to the then New South Wales Minister for Roads, the Hon. Laurie Brereton MP, to the effect that consideration in future should be given to the needs of Aboriginal communities in the administration of federal funds for road building.¹³ To date the DMR has not passed on responsibility for compliance to the local government authorities which advise it, and effectively has ignored the instruction, at least with respect to local roads. Nothing at all has been done at Toomelah.

Highways and Bridges

5.6 While local government authorities build and maintain local roads, the DMR is responsible for the construction of highways and major arterial roads. One factor influencing the assessment of priorities for the sealing of these roads is the ability of a community to lobby for roadworks. Groups such as Aborigines who have little political influence are, therefore, disadvantaged.¹⁴ The DMR's representative told the Inquiry that the above-mentioned instruction from the Federal Minister for Land Transport should ensure that highways and major arterial roads which primarily benefit Aboriginal communities are not relegated to a lower priority in future planning.¹⁵

5.7 The DMR can also provide temporary panel bridging (Bailey Bridges) for use in emergencies.¹⁶ In the past the Department has provided temporary bridging where a prior commitment has been made to provide a footbridge over a highway and when bridges have been damaged. Until raised by the Inquiry, the possibility of using a Bailey Bridge on Toomelah's access routes had apparently not been considered.

TOOMELAH - INTERNAL ROADS

5.8 As with everything else within Toomelah, Moree Plains Shire Council denies any responsibility with respect to the roads within Toomelah. The Council stated that the roads are not dedicated roads and that it is prohibited from using local government funds on 'private property'.¹⁷ The Council acknowledged that it has the power to dedicate roads. However, it stated that the Toomelah people have not approached the Council to request dedication of the roads within Toomelah. Of course no-one from the Council had ever conveyed this to the Toomelah residents or told them what to expect as a result. The Council then stated that, if such a request were made, Council would probably require the roads to be improved to a satisfactory standard first.¹⁸ The Council stated that, in these circumstances, the Aboriginal Development Commission is responsible for the funding of roadworks within Toomelah.

5.9 The dispute as to the responsibility for the provision of roadworks reveals a very disturbing lack of understanding of the legal positions of both the Shire Council and Toomelah itself. The Aboriginal Development Commission stated:

... there is no formal responsibility on the part of the local council itself ... to provide services to Toomelah.⁹

5.10 In contrast, the Department of Aboriginal Affairs, in its written submission, stated:

Responsibility within the Aboriginal Affairs Portfolio for funding internal roadworks at Aboriginal communities now rests with the ADC.²⁰

However, in oral evidence the Department's representative stated that roads are 'clearly a State responsibility'.²¹

5.11 The DMR denied having a direct interest in Toomelah's roads, although representations had been received from the community. Its representative stated:

They came to our Minister and fortuitously it was at about the same time as this instruction that I referred to earlier had been received from the federal Minister ... the action that was taken then was to refer that advice to the Moree Plains Shire Council with the advice that, when they are next preparing their proposals for inclusion in the local roads construction programme, the internal roads within the settlement should also be taken into consideration.²²

The DMR seems to have ignored the Council's position that it is not authorised to undertake roadworks within Toomelah.

5.12 Prior to 1985-86, the Federal Department of Aboriginal Affairs accepted responsibility for the provision and maintenance of roadworks within Aboriginal communities. In that year, this responsibility was transferred to the Aboriginal Development Commission.²³ Roads do not appear to have been given a high priority by the ADC. In 1985-86 the ADC apportioned only 5% (\$2.1 million) of its grant funds throughout Australia to 'Housing Support', the funding category which includes roads.²⁴

5.13 There have been some federal attempts to improve Toomelah's internal roads. In 1983-84 the Department of Aboriginal Affairs offered \$187,000 to the Toomelah Co-operative to seal the roads. A further \$100,000 was allocated to complete the works in 1984-85. In that year the Department provided a grant of \$25,000 to the Co-operative to have the roads designed by the Commonwealth Department of Housing and Construction.²⁵ Five years later the roads remain at the design stage.

5.14 The Department of Aboriginal Affairs stated that 'the Co-operative questioned the need for the roadworks as a priority against the construction of a bridge'²⁶ which would facilitate access in wet weather between Toomelah and the nearby towns and services. Nothing better illustrates the dilemma into which the community has been involuntarily drawn. No-one was available to help them fix the priorities or produce a program of activity which would result in the provision of both bridges and roads in a timely fashion. The matter was not resolved and the funds were redirected. within the Aboriginal Affairs portfolio. Mr Alex Hippi, Administrator of the Co-operative, told the Inquiry:

About two years ago the previous Co-op administration was advised that they had obtained a \$120,000 ADC grant to seal the roads around Toomelah. I believe the money was actually returned to consolidated revenue. I have no idea why the roads are still in such a shocking condition.²⁷

No department or authority, Commonwealth, State or local, undertook to the Inquiry to ensure the improvement of Toomelah's internal roads. However, since the Inquiry concluded its hearings, the Moree Plains Shire Council has been the successful tenderer for a contract let by the ADC to seal these roads. The rate of progress on the internal roadworks will be dependent on completion of sewerage and water reticulation works. As previously noted, there are many problems and delays to be overcome before these works are completed. Thereafter, continuing maintenance of the roads will present problems as Moree Plains Shire Council has not accepted responsibility for ongoing maintenance.

5.15 There is ample gravel on the Toomelah site suitable for road-making. The cost of converting the internal tracks of Toomelah into gravel-based roads would be small. **In the event that the sealing of the internal tracks is likely to be delayed beyond the end of 1988, the Inquiry recommends that a gravel base of sufficient depth be laid as a matter of urgency, especially on the ascending section of the existing track, to permit trafficable use during and after rain.**

TOOMELAH ACCESS ROADS

Bruxner Highway

5.16 Prior to 1982 the Bruxner Highway between Boggabilla and Warialda passed within half a kilometre of Toomelah. In that year the Highway was redirected south at the 'North Star Turnoff', six and a half kilometres to the west of Toomelah. The portion of road from the North Star Turnoff to Toomelah is unsealed and includes a creek crossing which becomes impassable in heavy rains. This was one reason for its abandonment. In 1981 the Toomelah community lodged a complaint of racial discrimination with the New South Wales Anti-Discrimination Board against the DMR alleging:

We believe that were we a white community, the 7kms. of the Bruxner Highway from Toomelah to the North Star turnoff, on which we are dependent for access to many services, would long ago have been sealed.²⁸

In settlement of this complaint the DMR agreed to provide \$800,000, in four annual \$200,000 instalments, to Moree Plains Shire Council to seal the full length of the old portion of the Highway from the Turnoff to within half a kilometre of Toomelah.

5.17 At the time of the July 1987 hearings of the Inquiry, five years after the settlement, three kilometres, or less than half, of the Old Highway had been sealed. The remaining unsealed portion included the creek crossing. It is particularly this portion which impedes, and at times prevents, the community's access to essential services in Boggabilla and Goondiwindi.²⁹ In October 1987 the DMR forwarded \$400,000 to the Shire Council to seal the remaining portion of the Old Highway between the North Star Turnoff and Toomelah. During this Inquiry, the Shire Council stated that the roadworks would be included in the Council's 1988 works program.³⁰ If they are completed then, implementation of the promise given at the settlement of the racial discrimination complaint will have been two years overdue. No explanation has been offered for this neglect.

Access Road Between Old Highway and Toomelah

5.18 By the end of 1988, it is anticipated that only one impediment to road access to Boggabilla will remain: the creek crossing on the unsealed half kilometre length of track between the Old Highway and Toomelah. The DMR has stated that a temporary bridge could be made available 'with the appropriate arrangements ... subject to there being sufficient balance remaining'.³¹ The 'appropriate arrangements' transpired to be rental of \$500 per month for each bridge. The DMR has several available bridges which are not in use. **The Inquiry recommends that the DMR undertake the urgent installation of a temporary (Bailey) bridge at the current creek crossing without charge.**

5.19 During the Inquiry's December 1987 hearing, the New South Wales Department of Housing advised that the community had proposed an alteration to the location of the planned access road to Toonielah.³² The alteration would reduce the length of road to be constructed and would avoid the current creek crossings on both the Old Highway and the present access road, but would still involve one creek crossing. The Shire Council stated that it would discuss with the DMR whether the funds allocated for the Old Highway (which included one creek crossing) could be redirected to the proposed new access route.³³ However, we have since been advised that Moree Plains Shire Council considers the existing route the most cost-effective. We understand that Council may be under pressure from other users in the area to seal the entire unsealed portion of the Old Highway. The relevant funds were provided for the benefit of the Toomelah Aboriginal community and it is their interests which must primarily be served. **We therefore recommend that the proposed alternative route be immediately considered in the context of the Toomelah Social Plan. A report should be prepared within two months as to which of the two routes should be adopted. Immediately after the route is chosen it should be constructed and sealed.**

NOTES

1. *Report of the Committee of Review of Aboriginal Employment and Training Programs (1985)* at p.367.
2. House of Representatives Standing Committee on Aboriginal Affairs, *Strategies to Help Overcome the Problems of Aboriginal Town Camps (1982)* at p.28.
3. *Ibid.*
4. Aboriginal Development Commission, *Annual Report 1985-86*, at p.72.
5. D.Black, Manager Engineering Services, NSW Department of Main Roads, *Transcript*, p.618.
6. J.Stilington, *Local Government Functions: An Investigation of Changes in Patterns of Expenditure in Local Government from 1971-81 (1985)* Table A1.
7. Local Government Act 1919 (NSW) s.235.
8. NSW Commissioner for Main Roads, *Annual Report 1986-87*, at p.28. An additional \$130 million was granted by the Commonwealth to the Department under the Australian Bicentennial Road Development Program.
9. National Inquiry into Local Government Finance. *Report (1985)* at p.38.
10. D.Black, Manager Engineering Services, NSW Department of Main Roads, *Transcript*, p.613.
11. National Inquiry into Local Government Finance, *Report (1985)* at p.334.
12. D. Black, Manager Engineering Services, NSW Department of Main Roads, *Transcript*, p.617.
13. *Id*, at p.615.
14. *Ibid.*
15. *I b i d .*
16. *Id*, at p.621.
17. L.Houlahan, Shire President, Moree Plains Shire Council, *Transcript*, pp.710-711.
18. M.O'Reilly, Shire Clerk, Moree Plains Shire Council, *Transcript*, p.711.
19. M.O'Brien, NSW General Manager, Aboriginal Development Commission. *Transcript*, p.691.
20. Department of Aboriginal Affairs, Submission, at p.7.
21. D.O'Rourke, First Assistant Secretary Programs Policy, Department of Aboriginal Affairs, *Transcript*, p.677.
22. D.Black, Manager Engineering Services, NSW Department of Main Roads, *Transcript*, pp.616-617.
23. Department of Aboriginal Affairs, Submission, at p.7.
24. Aboriginal Development Commission, *Annual Report 1985-86*, at pp.42,88.
25. Department of Aboriginal Affairs, Submission, at p.7.
26. *Ibid.*
27. Exhibit 2, at p.6.
28. Exhibit 5.
29. *Ibid.*
30. L.Houlahan, Shire President, Moree Plains Shire Council, *Transcript*, p.699.
31. D.Black, Manager Engineering Services, NSW Department of Main Roads, *Transcript*, pp.620-621.
32. Ciames, Consultant, NSW Department of Housing, *Transcript*, p.658.
33. L.Houlahan, Shire President, Moree Plains Shire Council, *Transcript*, p.699.

CHAPTER 6

THE ROLE OF LOCAL GOVERNMENT

INTRODUCTION

6.1 The Inquiry was appalled to find that the Toomelah community of almost five hundred Aboriginal people is denied the very services which most of us, and especially those non-Aboriginal people living in communities of similar size, take very much for granted. For the majority of Australians, most of the material services of relevance here are provided through local government authorities. In this chapter we detail the relationship between the relevant local government authority (the Moree Plains Shire Council) and Toomelah. In order to explain this relationship clearly, we first examine the more typical role of local government.

LOCAL GOVERNMENT: AN OVERVIEW

6.2 Local government provides a decentralised system of municipal authorities created by State Parliaments.' Each authority functions both as an independent tier of government and as an integral component of Commonwealth and State government administration.² As an independent arm of Australia's federal system of government,³ each local government authority discharges its functions under the direction of representatives elected by adults on the electoral roll resident or owning property within the boundaries of its area.⁴ Although local government is a creature of State governments, the Inquiry was told that the New South Wales Government has undertaken little regulation of local government authorities:

... traditionally the Department of Local Government has been a policy department. Councils under the Local Government Act are mainly autonomous, so the Department's role traditionally over the years has been restricted to monitoring the administration of the Act and monitoring finances.⁵

6.3 The effective delivery of many government services depends in part upon the nationwide network of local government authorities. Historically, local government's functions have concentrated on the provision of 'property' services including roads, water, sewerage, land use regulation, building supervision and regulation, and similar functions. Since World War II, local government authorities have increasingly placed an emphasis as well on 'human' services (welfare, health, recreation including the provision of parks and sporting facilities, libraries and other public amenities).⁶ Legislation predominantly confers mere powers upon local government authorities rather than affirmative duties, so that an authority has a discretion as to which services it will provide to the residents of its area and no duty to provide any in particular.² In general, and subject to what follows, local government is master of its own priorities fettered only by its total budgetary resources.

6.4 The major source of revenue raised by local governments in New South Wales is taxation in the form of rates.⁸ Rates are levied in three categories: water rates, sewerage rates and general rates. The basis of all rates is an assessment by the Valuer-General of the value of individual parcels of land. The owner of land is usually responsible for the payment of rates (see Appendix B). A local government authority is responsible for providing services to all residents in its area, whether they are ratepayers or not. For example, church and government land is not usually rateable but nonetheless is generally serviced.⁹ Tenants pay no rates directly but are entitled to and use services. Rate revenues are usually supplemented to a significant degree by grants from Federal and State Governments.

LOCAL GOVERNMENT GRANTS

General Purpose Grants

6.5 Grants to local government are of two kinds: general purpose and specific purpose. General purpose grants are made by the Commonwealth Government. They are appropriated in a lump sum to the State Government for distribution among the local government authorities in the State. In New South

Wales this distribution is undertaken by the Local Government Grants Commission. This Commission now applies a 'full horizontal equalisation principle to its distribution process. This means that each authority's grant is first calculated on a strict *per capita* basis. This 'share' might then be increased by reference to one or more of a number of factors peculiar to the individual shire or municipality, notably greater needs, higher cost of providing services, reduced revenue-raising capacity. Thus there is an attempt to equalise the relative spending power of the differently situated local government authorities and to assist those authorities which are disadvantaged.¹⁰

6.6 The full horizontal equalisation principle is intended to enable each local government authority to provide a standard range of services to all residents irrespective of the amount of its rate revenues.ⁱⁱ As the Local Government and Shires Associations of New South Wales told the Inquiry:

... the Grants Commission [is] saying between councils, 'We recognise different capacities to raise revenue and different expenditure needs. What we will do is give you a grant to equalise your capacity to provide a standard range of services'.¹²

In recognition of the generally poor services available in Aboriginal communities which were formerly reserves, a problem only recently inherited by mainstream government authorities, the Grants Commission is considering further steps to assist shires incorporating such communities. It seems that a 'disability factor' will be introduced which will take into account 'the disabilities that might arise from a substantial number of Aboriginal people in a council area'.¹³

6.7 However, general purpose grants are 'untied'; that is to say, there is no obligation on the funded authority to expend the funds in a particular way. A local government authority receiving an increased grant because of the needs of a section of the community is under no obligation to relieve those needs with a portion of the grant.

Essentially the [general purpose] grants rest on the assumption that local government is a separate sphere of government responsible to its own electors.¹⁴

Specific Purpose Grants

6.8 When local government authorities function as agents of the State and Commonwealth to perform the local delivery of designated services,¹⁵ funding is provided by specific purpose grants. Each program is funded in accordance with the priorities of the Commonwealth or State department responsible for its administration.

6.9 The specific purpose appropriations by the Commonwealth to local government in 1985 represented about half the total Commonwealth appropriations for local government.¹⁶ Some of these Commonwealth funds are available directly from the Commonwealth itself, while others are administered by State government departments. The largest specific purpose grants are generally for roads which, in 1984-85, totalled more than \$211 million.¹⁷ Only the local government authority can advise the Department of Main Roads as to roads eligible for this funding and, on approval, it is the local government authority which receives the grant. The remainder of Commonwealth specific purpose grants are for the provision of welfare services. These grants are not usually limited to local government authorities, but may be provided to private or semi-public organisations of many different kinds.

6.10 State governments also make specific purpose grants to local government authorities. In 1982-83 the States provided \$907 million to local government.¹⁸ One grants program in New South Wales is the Country Towns Water Supply and Sewerage Subsidy Scheme which provides a 50% subsidy to a local authority undertaking water supply and sewerage capital works.¹⁹ Only local government authorities are entitled to receive this funding.

LOCAL GOVERNMENT SERVICES TO ABORIGINAL COMMUNITIES

6.11 Although local government usually provides many of the essential services throughout Australia, the Inquiry was told that local government provides few, if any, services to Aboriginal communities. The Federal Minister for Aboriginal Affairs stated in a Discussion Paper on *Aboriginal Participation and Equity in Local Government* submitted to the Inquiry:

Most of Australia is covered by established systems of local government, where Aboriginals are in a minority within existing local government areas. This minority situation, together with entrenched discriminatory or apathetic attitudes within local government councils, and the historical 'separateness' of Aboriginal missions or reserves, has by and large resulted in discrete Aboriginal communities receiving no services or services at a far lower level than that provided to non-Aboriginal settlements by local government.²⁰

6.12 Ineffective representation of Aborigines has been one historical cause.

In all areas of predominantly non-Aboriginal population throughout Australia there is a remarkable lack of Aboriginal representation within local government.²¹

The Federal Department of Aboriginal Affairs has recommended one way of overcoming this problem:

State/NT governments should be encouraged to facilitate the establishment of Aboriginal electoral wards within predominantly non-Aboriginal local government areas, where requested by an Aboriginal community, when necessary to ensure Aboriginal representation at a level at least equal to the Aboriginal proportion of the population.²²

In the meantime, we believe that consideration should be given to amending legislation to permit the option to relevant local government authorities of an Aboriginal or Islander nominee of the local indigenous population.

6.13 As discussed in previous chapters, there is considerable dispute and confusion as to the responsibility and, indeed, the power of local government authorities to expend funds on most Aboriginal land in New South Wales. ('Aboriginal land' is land owned in freehold title by Local Aboriginal Land Councils constituted and incorporated under the Aboriginal Land Rights Act 1983.) The Local Government and Shires Associations of New South Wales and the Department of Aboriginal Affairs (in its written submission) asserted that such land is private land and that, therefore, the Local Government Act prohibits a local government authority expending funds within its boundaries.²³ Neither was able to explain how the Shire Council was able to rate Toomelah per house while treating the entire community as a private settlement. The ADC seemed to take the view that local government authorities could not be expected to service Aboriginal communities which did not pay rates and, indeed, that they were prevented from servicing them unless rates were paid.²⁴ This view does not seem to take into account the facts that the people of Toomelah are unable to obtain regular employment, reasonable services and facilities from any other authority than local government, or any reliable assurance that proper services would promptly follow the payment of rates.

6.14 In contrast, the New South Wales Department of Local Government, which is responsible for the administration of the Local Government Act, stated that a local government authority is responsible for the provision of services throughout its area, including all Aboriginal communities. Mr Dan Kelly, Assistant Secretary of the Department, told the Inquiry that he could think of no legal basis under the Local Government Act upon which a local government authority could avoid responsibility for including an Aboriginal community within its framework of services.²⁵ The Inquiry agrees and is of the opinion that the contrary is unarguable. In particular, we cannot understand the attitude of the Federal Aboriginal affairs agencies. Although established for the sole purpose of servicing the needs of Aborigines, these agencies took a view of this situation which defeated the most basic interests of the people at Toomelah.

6.15 It is at best ironic that local government bodies in New South Wales refuse to service Aboriginal land while receiving general purpose grant funds which, although not specifically allotted for that purpose, are assessed in part on the existence and needs of an Aboriginal community. The 1985 Report of the National Inquiry into Local Government Finance states:

... local councils throughout Australia do not generally cater adequately for Aboriginals although their general purpose grants are in part calculated on the basis of Aboriginal populations residing within their boundaries.²⁶

6.16 As noted earlier, the involvement of a local government authority as agent for the Commonwealth or State is at present essential to secure certain specific purpose grants, including Commonwealth grants for roads and State grants for water supply and sewerage works. A local government authority which refuses to provide services to an Aboriginal community which it provides to non-Aboriginal communities within its boundaries effectively prevents funds which may be available under these programs from being expended in that Aboriginal community.

THE SITUATION AT TOOMELAH

6.17 Not only does the Moree Plains Shire Council refuse to supply any services to Toomelah and argue that it is prohibited from expending its funds within the community; it has even failed to supply water and sewerage services to the community's boundary. The Shire President, Mr Lyle Houlahan, told the Inquiry:

Council sees Toomelah as a private settlement which, therefore, differs in comparison to Boggabilla and other shire villages, where Council has a responsibility to provide and maintain various services ... Council is not responsible for the provision of services at Toomelah.²⁷

Not content to rely on its interpretation of the Local Government Act as prohibiting servicing of private land and its labelling of Toomelah as a 'private settlement', the Shire Council further told the Inquiry:

We have no financial capability of providing these services [to Toomelah].²⁸

The term 'private settlement' was, as the Shire Council readily conceded, invented by the Council itself. It has no legal meaning under the Local Government Act, or for that matter under any other legislation. The Council has thus described no other place within its area and does not know of any other such creature in Australia. We consider that the Council has so described Toomelah in order to avoid its obligation to service the residents in the same way as all other residents of the Shire are serviced. If necessary, the New South Wales Government must act to ensure that this avoidance does not continue and to remove any provisions which, however spurious, enable local governments to avoid their responsibilities to Aboriginal communities.

618 Mr Michael Duncan, Chairperson of the Toomelah Land Council, stated:

They [Moree Plains Shire Council] claim they do not have any of the responsibility of Toomelah at all, as far as I know, their responsibility stops at the ramp [the entrance to Toomelah].²⁹

Yet, to date, the Shire Council has failed to bring the services even up to the entrance.

619 With five hundred people, Toomelah could qualify for declaration as a 'town', which requires two hundred and fifty people within a clearly defined settlement. In addition, any community of twenty-five people within a clearly defined settlement can be declared a 'village'.³⁰ Yet Toomelah has not been declared a town or village. Village or town status is declared by the Governor or the Minister for Lands on the application of the shire or municipal council. Mr Dan Kelly, Assistant Secretary of the Department of Local Government, told the Inquiry he believed that Moree Plains Shire Council has not nominated Toomelah for town or village status because:

... it was clear to me that they [Moree Plains Shire Council] felt that giving Toomelah the status of a village would carry various connotations in things like what you would normally expect to see in a village. Would you expect to see a school there? Would you expect to see various other provisions of services which you might not expect to see in an isolated settlement? That seemed to be the attitude they were taking.³¹

This view of the Shire Council's motivations in the matter appear to us to be correct. As such they are quite discreditable.

6.20 A local government authority's responsibility to its residents is not dependent, however, on the village or town status of their community. Moreover, it seems that the declaration of Toomelah as a 'town' or 'village' would bring no automatic benefits to its people because the Shire Council might still refuse to provide services to the community. It could also impose further obligations on them, notably with respect to building regulations. On past experience, the Toomelah community may not regard the change of description to be worth the additional subjection to Council's oversight, without some guarantee of corresponding gains. In other words, the community must weigh up the disadvantages of changing its present status.

6.21 Argument about Toomelah's status does not justify the Shire Council's refusal to service the community. When Council sees a potential benefit the Toomelah people are not so roughly ignored. We have already drawn attention to the fact that, like other municipal and shire councils in New South Wales, Moree Plains Shire Council receives an annual general purpose appropriation from the New South Wales Local Government Grants Commission. The Council's representatives told the Inquiry that this appropriation is based on the total population of the Shire, including the population of Toomelah.³² The Council is entitled to petition for a larger appropriation on the basis that there is currently a lack of standard services at Toomelah. Although the Council did petition the New South Wales Local Government Grants Commission on the basis of its substantial Aboriginal population (14% of Shire residents), the Council did not know whether its appropriation was increased by virtue of its Aboriginal population.³³

6.22 The Shire Council's attitude also deprives the Toomelah people of benefits provided to other sections of the community by the Commonwealth and State Governments through special projects funded by specific purpose grants. Funds will not be made available for projects under the Australian Land Management Program and the New South Wales Country Towns Water Supply and Sewerage Subsidy Scheme to be undertaken at Toomelah unless Moree Plains Shire Council applies for these funds. It is unacceptable that this has not been done.

LEVYING OF RATES AT TOOMELAH

6.23 Another example of Council's inconsistency of approach to Toomelah is its levying of rates. When Toomelah was owned by the New South Wales Aboriginal Lands Trust (1975-84), the Local Government Act provided that it, like all other Lands Trust land, was exempt from all local government rates.³⁴ As a result, local government authorities were not inclined to provide municipal services. However, the attitude of authorities has not changed since the passage of the New South Wales Aboriginal Land Rights Act which does not continue the blanket exemption of Aboriginal land from the payment of rates. Although it refuses to provide services to the dwellings at Toomelah, the Moree Plains Shire Council does levy a general rate. It justifies doing so because the Toomelah residents have access to the general services provided by the Council in the Shire: the municipal library and swimming pool at Moree some one hundred and fifteen kilometres away, playing fields at Moree and Boggabilla, and Sc) on. Because the Council does not supply water or sewerage services to Toomelah,³⁵ water and sewerage rates cannot, by operation of law, be levied.³⁶

6.24 The Inquiry was told that there is no uniformity in the application of the Valuation of Land Act to Aboriginal land throughout New South Wales. Moree Plains Shire Council said that some Aboriginal communities are assessed on a community-basis while others are assessed on a dwelling-basis.³⁷ In 1985-86 the valuation of Toomelah was changed, without any consultation with the community, from a community-basis to a dwelling-basis. The change increased the general rate levied upon Toomelah more than twenty times.³⁸ The dwellings are now separately valued and the rate applied is the minimum amount of \$130 for each of the forty houses.³⁹ The rate is levied against the legal owner of the land, the Toomelah Land Council, although the Shire Council has no means of recovering unpaid rates on this land directly as they are by law only recoverable from the New South Wales Aboriginal Land Council.

6.25 The Inquiry is concerned that the Valuer-General has not consistently addressed the subject of valuation with respect to Aboriginal land or dwellings. Moreover, the Inquiry believes that the Valuation

of Land Act cannot cope adequately with the very recent phenomenon of inalienable communal land. A valuation of land is based on the value of the fee simple in the land, normally ascertained by reference to a hypothetical sale of that land. A valuation of a dwelling is similarly achieved. This system does not appear to contemplate land title conferred pursuant to the Aboriginal Land Rights Act which cannot be sold. There could be no semblance of a market for the sale and purchase of houses at Toomelah. Yet a rate is levied on the fiction of a capital value which cannot be accurately assessed. In our view the Valuation of Land Act does not give sufficient guidance and is not presently appropriate to the assessment of Aboriginal land. **We recommend that the Act be amended to exclude from its provisions the rating of Aboriginal Land Council land at least until the standard of dwellings and services reach levels comparable to those in the respective local government areas.**

6.26 In 1980 the New South Wales Select Committee, in its report on land rights, recommended that Aboriginal-owned land should be rateable but that the rates should not have to be paid by the owners because that would create considerable hardship.⁴⁰ The Federal Department of Aboriginal Affairs admitted to the Inquiry that rates at Toomelah would fall into that category and suggested that the responsibility for the payment of rates assessed could fall on that Department 'for a period of time'.⁴¹ However, this approach does not address, much less solve, the real problem. It would merely relieve the Shire Council and the New South Wales Government from responsibility for fairly resolving the situation, while depriving the Department of funds which could be put to better use elsewhere.

6.27 There is provision in the New South Wales Aboriginal Land Rights Act for a Local Aboriginal Land Council to apply to the Minister administering the Act for a declaration of exemption from local government rates. The Minister may grant the exemption if he 'is of the opinion that special circumstances exist which warrant his so doing'.⁴² The Toomelah Land Council has not been so exempted although it seems that an application was made some time ago.⁴³ In the view of the Inquiry, Toomelah's desolate circumstances and situation of isolation from the general services which are provided in the shire, and for which it is charged, would amount to a 'special circumstance' in terms of the Aboriginal Land Rights Act. **We recommend that the Minister speedily grant Toomelah an exemption from payment of local government rates.**

6.28 There is also provision in the Aboriginal Land Rights Act which allows a local government authority to recover the unpaid rates of a Local Aboriginal Land Council from the New South Wales Aboriginal Land Council.⁴⁴ The Moree Plains Shire Council informed the Inquiry that it intends to claim Toomelah's unpaid rates from the New South Wales Land Council for the past three years.⁴⁵ In light of the current condition of Toomelah and the Council's continuing refusal to supply services and facilities, we regard this plan as unacceptable. **We recommend that the exemption of Toomelah from payment - of rates be backdated so as effectively to rebate all outstanding rates.** The future of local government rates and service provision at Toomelah will be dealt with in connection with the proposed Toomelah Social Plan described in Chapter 8. The involvement of the Moree Plains Shire Council on the Steering Committee for that Plan encourages us to believe that the Council will be more reasonable in the future than we consider it to have been hitherto.

ZONING

6.29 Toomelah is currently zoned Rural 1(a) upon the petition of Moree Plains Shire Council without consultation with the residents.⁴⁶ This zoning category inhibits further residential and commercial development of the site by restricting residential development to existing use rights and prohibits any new (commercial) uses.⁴⁷ Existing dwellings can be replaced, if necessary; by slightly larger houses.⁴⁸ Most commercial development other than agriculture is entirely prohibited.⁴⁹ Self-help entrepreneurial or manufacturing enterprises are forbidden. Having in mind Toomelah's large unoccupied area and isolation, the Inquiry can find no rational basis for this zoning. Again there was no consultation with the Toomelah community.

6.30 As a consequence of its current zoning, Toomelah is not subject or entitled to the building controls imposed elsewhere by the Shire Council. It is likely that very few other communities of five

hundred people are similarly excluded. A 'building control area' consists of all towns and villages and any other area proclaimed to fall within Part XI of the Local Government Act. There has been no proclamation to bring Toomelah within this Part. Therefore, the only building regulation to which Toomelah is subject is the requirement that development applications be submitted for approval by the Shire Council. This gives the Shire Council the right to veto a proposed development while imposing on it no obligation whatsoever to protect the community from unsafe or unsound building practices. This power was exercised by the Shire Council to prevent the building of the pre-school at Toomelah as mentioned above. Building supervision is undertaken instead by the Federal Department of Housing and Construction for the Federal funding body, the Aboriginal Development Commission. Many of the buildings at Toomelah would never have been permitted by local government inspectors if they had not been planned for and constructed upon Aboriginal reserves or Aboriginal property. On the other hand, housing for Aboriginal communities must be designed with their social and cultural needs in mind.

631 The adoption of a zoning category which would allow Aboriginal communities to develop in a socially and culturally appropriate way without hindrance from unsympathetic local government authorities was recommended by the New South Wales Select Committee:

Your Committee considers that land owned by Aboriginal communities should be governed by special planning provisions of the [then] Planning and Environment Commission which would permit Aboriginal communities to develop projects that may otherwise be contrary to local planning ordinances ...⁵⁰

This recommendation was largely implemented and in late 1987 the Toomelah Land Council applied to the Shire Council to have Toomelah rezoned 'Special Uses — Aboriginal' to allow the building of the types of community facilities desired by the people living there.⁵¹ This zoning would enable the establishment of shops and light industry at Toomelah while still leaving Toomelah outside the building control area of the Shire Council. Following rezoning, a development application would still be required for building at Toomelah, but there would still be no local government regulation of construction standards. The Inquiry was informed in February 1988 that the Shire Council had referred the proposal to the Department of Environment and Planning. We will monitor the progress of the rezoning proposal.

TOOMELAH'S LOCATION

632 When the Inquiry visited Toomelah in July 1987, part of the area was in Moree Plains Shire and part in Yallaro Shire. Apparently unknown to either shire council, and certainly unknown to the residents, the border between the two actually bisected one of the Toomelah houses. The Aboriginal community seems to have been ignored altogether in the creation of the shire boundaries, almost as if no-one in the responsible department knew they were there. Since our July 1987 hearings, the boundary has been moved so that Toomelah is now entirely within the Moree Plains Shire area. At our December 1987 hearing the Shire President, Mr Lyle Houlahan, expressed some disquiet about this development:

What I was suggesting to you in the hearing, and to the powers that be, was that before that was undertaken, let us clean up the whole mess that is the Toomelah out there at the present time; that Moree Plains, before it accepted unreservedly that Toomelah would be in Moree Plains shire — we wanted the water systems, the sewerage systems, all upgraded, and the general living conditions of the people much better than they were.⁵²

In light of the fact that Moree Plains Shire Council not only has not exercised its discretion to expend its own funds in its part of Toomelah but in fact claims that it is prohibited by law from doing so, we can only speculate as to why the Council was concerned to have the conditions there upgraded before the remainder of the area came within its jurisdiction.

CONCLUSIONS

6.33 The Inquiry is deeply concerned at the refusal of Moree Plains Shire Council to service the Toomelah community, and of local government in general to service Aboriginal settlements. As a result of this refusal, Aboriginal communities are forced to rely on the Department of Aboriginal Affairs and the Aboriginal Development Commission which, if we can generalise from the Toomelah experience, have come to the problem of municipal services very recently and face overwhelming demands on limited budgets with little or no knowledge of how to access available State and Federal funds and expertise. Indeed, our impression is that officers of both the Department of Aboriginal Affairs and the Aboriginal Development Commission are almost as isolated and as uninformed about gaining access to sources of assistance as the Aboriginal communities themselves.

6.34 In the vacuum left by the failure of local government to provide municipal services, it does not appear to the Inquiry that, as has occurred elsewhere, constituting individual New South Wales Aboriginal communities, even those as large and isolated as Toomelah, as separate local government authorities with power to accept State and Federal funds and to provide such services themselves, is a realistic solution. Apart from the difficulties of revenue-raising, efficiency and cost-effectiveness seem to dictate the linking of Aboriginal communities into service networks within existing local government areas.

6.35 For much the same reasons, the Inquiry does not agree with a recent Department of Aboriginal Affairs proposal for the establishment of Urban Area Committees.⁵³ These are provided for under the New South Wales Local Government Act, which empowers the Governor, on the application of the relevant local government authority, to create an Urban Area within a portion of the local government area to enable even more localised decision making under the governance of a three-person Urban Area Committee. The Committee would undertake all those responsibilities of the local government authority which would be of special benefit to that Urban Area. Unlike a shire or municipal council, a Committee may be funded only by local rates raised within the Urban Area. A Committee would not be eligible for general or specific purpose grants from the Commonwealth or State, although the parent Council would have a discretion to allocate some of its own funds to a Committee. The general purpose grant would be allocated to the Council and need not be spent within the Urban Area, in this case an Aboriginal community. Under an Urban Area mechanism, the community of the Area would be expected to fund the provision of municipal services from an internal local rate and any other rate levied upon Area residents by the Council, including general, water and sewerage rates.⁵⁴

6.36 The Inquiry is concerned that this mechanism would not meet the needs of the Toomelah community and other Aboriginal communities similarly situated. It would not ensure a more equitable distribution of funds between communities within a local government area. Urban Area Committees would be responsible for providing local government services but would almost certainly have insufficient funds to perform these functions, especially in Aboriginal communities. They could also do nothing about zoning. The Urban Area mechanism seems to be designed to provide services additional to those needed in the remainder of the local government area, whereas the need of most Aboriginal communities is to be brought up to an equal standard of servicing.

6.37 Concern about local government refusal to service Aboriginal communities is now prompting the New South Wales Department of Local Government to become more involved, on a policy level, in local government activities. Representatives of the Department told the Inquiry:

Our increasing involvement in the matter of Aboriginal services came first of all because we launched a programme of equal opportunity [of employment] in councils ... As a result of moving into that area we became increasingly conscious of the problems of Aboriginal employment in councils because particularly in country areas it is possibly the only really large major employer that offers opportunities for Aboriginal people ...

... what has also become increasingly clear is the way in which it is very difficult to separate the employment prospects from the general question of the provision of services ... it is becoming obvious to us that we are going to get increasingly involved in the policy implications and the guidance implications ...⁵⁵

While this evidence indicates that little thought has yet gone into what constructive role the Department of Local Government might play — and what role it is entitled to play under existing legislation — in ensuring adequate servicing and equality of treatment of Aboriginal communities in future, the Inquiry is encouraged that steps are being considered. This is one of the important issues which will be covered by our continuing review of progress at Toomelah.

638 The Commonwealth Office of Local Government is also concerned about the failure of local governments which, although receiving Federal funds assessed partly on the basis that residents include Aborigines, nevertheless refuse to service Aboriginal communities. A Task Force has been established within the Office to consider ways in which the Commonwealth might act to ensure servicing in future. We await the Report of this Task Force with interest and urge its early completion.

639 The Inquiry is dismayed, as the Australian Government and people must be, by the state of affairs revealed by this review of the evidence which it has uncovered. We address further recommendations for resolution in Chapter 9.

NOTES

1. National Inquiry into Local Government Finance, *Research and Consultancy Report No.2: Local Government and Specific Purpose Grants* (1985) at p.8.
2. *Ibid.*
3. National Inquiry into Local Government Finance, *Report (1985)* at p.3.
4. The representation varies if the local government area comprises wards and ridings. In these local government areas, adults on the electoral roll vote for representatives of their respective ward or riding.
5. D.Kelly, Assistant Secretary, Department of Local Government, *Transcript*, p.635.
6. National Inquiry into Local Government Finance, *Research and Consultancy Report No.2: Local Government and Specific Purpose Grants* (1985) at p.9.
7. National Inquiry into Local Government Finance, *Research and Consultancy Report No.1: Local Government Functions* (1985) at pp.74-79.
8. Rates accounted for 72% of local government revenue in NSW in 1982-83: National Inquiry into Local Government Finance, *Report (1985)* at p.30.
9. D. Kelly, Assistant Secretary, Department of Local Government, *Transcript*, p.639.
10. National Inquiry into Local Government Finance, *Report (1985)* at pp.320-322.
11. D.Effraemson, Manager Policy Research and Advice, NSW Local Government and Shires Associations, *Transcript*, p.722.
12. *Id*, at p.723.
13. *Ibid.*
14. National Inquiry into Local Government Finance, *Report (1985)* at p.346.
15. National Inquiry into Local Government Finance, *Research and Consultancy Report No.2: Local Government and Specific Purpose Grants* (1985) at p.8.
16. National Inquiry into Local Government Finance, *Report (1985)* at p.346.
17. *Id*, at p.68.
18. *Id*, at p.8.
19. R.Eagle, Assistant Director, Public Works Department, *Transcript*, p.602.
20. Exhibit 57, at p.12.
21. *Ibid.*
22. *Id*, at p.13.
23. D.McSullea, Deputy Secretary, Local Government and Shires Associations, *Transcript*, p.716; Department of Aboriginal Affairs, Submission, at p.12.
24. M.O'Brien, General Manager, Aboriginal Development Commission, *Transcript*, pp.692-693.
25. *Transcript*, pp.640-641.
26. National Inquiry into Local Government Finance, *Report (1985)* at p.334.
27. Exhibit 28, at p.4.
28. L.Houlahan, Shire President, Moree Plains Shire Council, *Transcript*, p.323.
29. *Transcript*, p.48.
30. Correspondence from M.O'Reilly, Shire Clerk, Moree Plains Shire Council to the Human Rights and Equal Opportunity Commission, dated 28 September 1987. Mr O'Reilly stated that he had obtained the information from the Moree Lands Office.
31. *Transcript*, p.646.
32. M.O'Reilly, Shire Clerk, Moree Plains Shire Council, *Transcript*, p.712.
33. The Council had been informed by an officer of the NSW Local Government Grants Commission that any additional allocation on that basis would be very small: M.O'Reilly, Shire Clerk, Moree Plains Shire Council, *Transcript*, p.713.
34. Local Government Act 1919 (NSW) ss.132(1)(m), 379(4)(c).
35. Water is supplied to land by providing a council water-pipe within 225 metres of that land: Local Government Act 1919 (NSW) s.379(1). Sewers are supplied by providing a council sewer within 75 metres of the land: Local Government Act 1919 (NSW) s.379(2).
36. L.Houlahan, Shire President, Moree Plains Shire Council, *Transcript*, p.696; Local Government Act 1919 (NSW) s.379(1),(2).
37. M.O'Reilly, Shire Clerk, Moree Plains Shire Council, *Transcript*, p.349. 38. Moree Plains Shire Council, Exhibit 27, at pp.13-14.

39. M.O'Reilly, Shire Clerk, Moree Plains Shire Council, *Transcript*, p.702.
40. *Land Rights and Sacred and Significant Sites (1980)* para 9.9.
41. D.O'Rourke, First Assistant Secretary Programs Policy, Department of Aboriginal Affairs, *Transcript*, p.681.
42. S.43. See also, Local Government Act 1919 (NSW) ss.118, 120; Metropolitan Water, Sewerage, and Drainage Act 1924 (NSW) s.87; Broken Hill Water and Sewerage Act 1938 (NSW) s.75; Hunter District Water, Sewerage and Drainage Act 1938 (NSW) s.90.
43. NSW Aboriginal Land Council. *Annual Report 1986-87*, at p.53.
44. Aboriginal Land Rights Act 1983 (NSW) s.44A.
45. Exhibit 28, at p.5.
46. *NSW Government Gazette* No.73, 29 April 1985, at p.1821.
47. *Moree Plains Local Environment Plan 1985*, s.13(2)(a), allows the construction of one additional house on every 100 hectares. Toomelah's area is 184.9 hectares.
48. *Moree Plains Local Environment Plan 1985*, s.13(3).
49. *Moree Plains Local Environmental Plan 1985* prohibits advertising structures; boarding-houses; commercial premises (other than timber yards); gas holders (other than those used in conjunction with agriculture); generating works (other than those used in conjunction with agriculture); hotels; industries (other than extractive industries, offensive or hazardous industries, home industries or rural industries); motels; motor showrooms; refreshment rooms; residential flat buildings; service stations; shops (other than general stores); warehouses.
50. *Land Rights and Sacred and Significant Sites (1980)* para 21.16.
51. L.Houlahan, Shire President, Moree Plains Shire Council, *Transcript*, p.706.
52. *Transcript*, p.707.
53. Exhibit 57, at p.13.
54. Local Government Act 1919 (NSW) Part XXVII.
55. D.Kelly, Assistant Secretary, NSW Department of Local Government, *Transcript*. p.636.

CHAPTER 7

EDUCATION

BACKGROUND

7.1 Adequate secondary education free from discrimination has never been available to the Aboriginal communities at Toomelah and Boggabilla. Witnesses told the Inquiry that they felt this was a fundamental right which had been denied them and was still denied their children. Very few of the adults had been educated beyond sixth grade and some witnesses recalled repeating sixth grade over and over again merely to enable them to reach the legal school leaving age. Until 1967 Aborigines at Toomelah received their secondary 'education' at Toomelah Primary School with extremely limited facilities for this purpose.'

7.2 In 1938 the responsibility for the education of Aboriginal children was transferred from the then New South Wales Aborigines Protection Board to the State Education Department. The policy was to implement assimilation in and through the school system. However, integration of Aboriginal children into the schools was resisted by white parents and teachers.² Until 1967 the then Aborigines Welfare Board still had power to remove Aboriginal children from their families living on reserves and either place them with employers or transfer them to the Board's training homes: Cootamundra for girls and Kinchela for boys. The girls were trained for domestic service and the boys for labouring jobs.

7.3 Even for those children who were allowed to remain with their families on reserves, their transfer to the State school system was not undertaken with vigour until the 1950s and early 1960s, as the Education Department gradually closed some of the special Aboriginal schools and enrolled the pupils in nearby public schools.³ The possibility of exclusion on racial grounds still existed until 1972, when the regulation permitting principals to defer or refuse enrolment of Aboriginal children on the grounds of 'home conditions' or 'substantial opposition' (i.e. from the non-Aboriginal community) was finally removed from the *Teachers' Handbook*.⁴

PRE-SCHOOL EDUCATION

7.4 The Toomelah community operates a pre-school with funding from the Department of Youth and Community Services. A full-time Director, a full-time assistant and a part-time helper are employed, all of whom are Toomelah residents. There are approximately sixty pre-school children. There is, however, no pre-school building and the pre-school operates in a disused machine shed which is dangerous because of the unguarded machines and power points present. A development application for a pre-school building was rejected by Moree Plains Shire Council because a water supply could not be secured. Following the hearings of the Inquiry, that rejection was rescinded and the community is hopeful that building will commence in the near future.⁵ This building will also be used for daycare and after-school and vacation care.

7.5 A building to be used for such purposes was erected in 1984 following a grant of \$60,000 from the Federal Government to the New South Wales Department of Industrial Relations under the Commonwealth Employment Program. The building was erected in a part of Toomelah which is inaccessible during and after rain, which is the very time the children would be most in need of the facility. The building was not completed and has no doors, windows, floors or lighting. It is a corrugated iron construction to which the Inquiry obtained access only by clambering through a section of the wall held back. There is no point in completing this building because of its unsuitability for a pre-school and its location. The Inquiry recommends its demolition unless it is convertible for some other as yet unidentified use. Pending the construction of the promised new facility, the New South Wales Education Department, in co-operation with Federal agencies, should provide a demountable building suitable for pre-school education and child day care.

PRIMARY EDUCATION

7.6 There are public (i.e. primary) schools both at Boggabilla and at Toomelah. Two-thirds of the children at the Boggabilla school are Aborigines (forty-five children), while all one hundred and five children at the very impressive Toomelah school are Aborigines.⁶ The Education Department reported that during 1987 the children at both schools suffered emotional stress caused by the racial unrest at Goondiwindi.⁷ Both schools have a school-based Aboriginal Education Policy and parent involvement is encouraged. There is a full-time Aboriginal Education Assistant at each school. Both benefit from the Disadvantaged Schools Program with funding for Boggabilla in 1987 totalling \$7,426, and for Toomelah, \$13,368. The Education Department reported that all curricula at Toomelah have nutrition as an overall theme.⁸

7.7 The Education Department reported to the Inquiry that:

The building of a new school at Toomelah in 1986 has been of considerable significance, especially for parents, students and staff of Toomelah, but also as a public demonstration that Aboriginal Education is given high priority. No vandalism has occurred at the School since the new facilities were provided.

Parents and the extensive community identify closely with the school and participate widely in school activities ...⁹

The primary school situation at Toomelah is extremely encouraging. Mrs Robyn Fairbairn, who has taught at both Boggabilla and Toomelah primary schools, told the Inquiry that they were two of the happiest schools she had taught in and that the children at Toomelah were 'the most responsive children I have ever taught.'¹⁰ The Inquiry found the Toomelah Primary School to be a credit to the headmaster, teachers and Department, as well as to the children and their parents.

SECONDARY EDUCATION

7.8 While the primary schooling situation at Toomelah is good, secondary education has presented significant problems. Until 1988 secondary students have had to travel across the border to Goondiwindi in Queensland to attend school. This has had seriously detrimental effects on the education of most of the Aboriginal children, either because it has taken them away from their communities or because of difficulties with the Queensland system, or for a combination of both reasons. During the past seven years, only twenty Aboriginal students from Boggabilla, Toomelah and the surrounding region have progressed to Year 11 and only two have progressed to Year 12. Of the twelve Aboriginal students who entered Year 7 in 1983, only one reached Year 10 in 1986.¹¹

7.9 Because of differences between the New South Wales and Queensland education systems, the students coming across the border have had to complete a one year bridging course, paid for by the Queensland Government, at Goondiwindi State High School. This system has operated since 1982 and is designed to bring New South Wales children to the same level as Queensland students, who begin their secondary education in Year 8 rather than Year 7 as in New South Wales. This is a difficult transition for many children but is particularly so for the Aboriginal students. This is because:

... they also have to deal with the transition across a state border, in a racist town and in a school where they are basically the only Aboriginal children.¹²

Another factor is that they are moving from a community primary school in a protected and familiar environment to a large academic high school in a very different and unfriendly town.¹³

7.10 Some parents feel that their children lose interest in school during the transitional year and there is certainly considerable attrition during this period.¹⁴ Mrs Fairbairn told the Inquiry:

The sad thing happens when the children ... both the Aboriginal children and the white children, when they go to high school.

The enthusiasm that they have seems to disappear very quickly and ... some of the very bright children at Toomelah seem to find it hard to maintain the momentum they have had at primary school — maybe they seem to lack the encouragement.¹⁵

This opinion was supported by a review of the arrangements for all New South Wales students at the Goondiwindi State High School undertaken in mid-1986 by two School Inspectors from the New South Wales Department of Education. They advised that 'the secondary-age Toomelah children are not experiencing success under the present system'.¹⁶ The Toomelah children are further disadvantaged by the living conditions at home: the lack of water for personal hygiene and for cleaning clothes (with resultant criticism from both staff and fellow students); overcrowding resulting in ill-health, lack of privacy and interference with study; and occasional isolation due to flooded roads. On average, each Aboriginal student misses about twenty days of school each term.

7.11 There are also continuing reports of discrimination at Goondiwindi State High School. Mrs Fairbairn told the Inquiry, 'There is an undercurrent of racism at the high school'.¹⁷ Another former teacher reported 'openly hostile' attitudes among some teachers towards Aboriginal children.¹⁵ In addition, Mrs Dawn Dennison stated:

... we have had reports come out of that high school that is not funny. They had a blackboard for the whites and a blackboard for the black kids. Our kids are always humiliated in front of the class, stood out in front of the class and humiliated, and that is from people that have been there and saw it all happen. Even their uniforms, they were always picked on, made stand in front of the class because of their uniform, and the white kids wore what they wanted to wear. They were always humiliated ...¹⁹

Former teachers at Goondiwindi State High School confirmed this report,²⁰ but the current headmaster of the school assured the Inquiry that at least separate blackboards are not now in use.²¹ The use of these blackboards was probably due more to perceptions of differences in the learning standards and speeds of students than to overt racism. The resultant division of the class on black—white lines, however, was insensitive and impermissible. We recommend that the Queensland education authorities ensure that there is no re-emergence of this practice at Goondiwindi and that, if it exists elsewhere in the State, it is discontinued.

7.12 We also received evidence of racism practised against Aborigines by their fellow students. Ms Shelley Coneybeer, a former teacher at the school and director of a Commonwealth-funded homework centre at Toomelah, said that this discrimination often took the form:

... not of outright abuse, but people ignoring them, people walking past them, not being nominated in sports teams, not being asked, not being involved. They put up a hand to answer a question and they are not asked, often because the teacher does not even know their name.²²

On the other hand, some discrimination has been very blatant:

... one of the young girls ... was picked to represent the Goondiwindi High School this year ... the only Aboriginal one — and she was better than the whites, and the white kids said to her, 'If you put your foot on that bus we will throw you off'²³

We heard other evidence of Aboriginal children with superior sporting skills or race speeds being passed over or omitted from sports teams in favour of less skilled or less speedy non-Aboriginal children. This is frank racism and probably amounts to an offence under Australia's Racial Discrimination Act.

7.13 Evidence was given of high school students saying, 'It would have been better if they had done the job properly and killed the lot'²⁴ and admitting that their parents had brought them up not to have anything to do with Aborigines.²⁵ It is little wonder that the Aboriginal students are reluctant to attend the Goondiwindi State High School, that it is a 'battle' for them when they must cope with such attitudes and when 'they are called racist names like "coons", "niggers", "boongs"'.²⁶ We urge the Queensland Government to initiate an immediate public education campaign to foster a greater understanding of Aborigines and their culture and cross-cultural awareness in general. Officers of the Human Rights and Equal Opportunity Commission are available and willing to assist in this task.

7.14 After the riot in Goondiwindi in January 1987, a number of Aboriginal families decided to boycott the Goondiwindi State High School. Mr Richard Mackie kept his three teenagers out of school because of rough treatment and harassment.²⁷ Mrs Eileen McIntosh sent her fourteen-year-old son to live with his older sister and to go to school in Warwick because he was afraid to attend the Goondiwindi school.²⁸

7.15 The Inquiry recognises that children's ignorance and cruelty are especially difficult to deal with and that Aborigines are not the only victims. Yet it is in their formative years that people learn about attitudes towards themselves and develop their attitudes towards others and that their self-esteem is built or destroyed. Teachers and parents, therefore, have a special responsibility to build a sense of responsibility and self-respect for children in their charge. Evidence from the headmaster of Goondiwindi State High School leads us to believe that little is done to cater for the Aboriginal students or to educate the non-Aboriginal students. He said, among other things:

... every staff member was asked to identify the strengths of the school, to identify the concerns of the school ... but there is not one statement there coming through which says that Aboriginal education, or the treatment of Aboriginal students in the school is of major concern to the teachers ...

... there has not been an acceptance that we go in there and we identify Aboriginal students, and we develop separatist-type programmes for them, but rather, they are Australian kids, we will meet the challenge as best we can.²⁹

The result of this refusal to recognise the special needs of the Aboriginal students is a failure to give them an equal opportunity in education.

7.16 The New South Wales Education Department also attributes some of the blame for the lack of success among Aboriginal students to the inadequacy of educational support services at the Goondiwindi State High School. There is no school counsellor, careers teacher, Aboriginal Education Aide or permanent Home-School Liaison Officer. The Department asserts that these would be provided in a comparable New South Wales school. Moreover:

... no recognition is given in the Queensland education system to Aboriginality and there is no Aboriginal Education Policy. There are no Aboriginal perspectives across the curriculum and Aboriginal Studies are not available. Aboriginal parents, as a consequence, feel that the curriculum at Goondiwindi State High School has very little relevance for their children ...³⁰

7.17 Many students from New South Wales, and particularly Aboriginal students, have thus been alienated from the Goondiwindi school. As a further result:

... increasing numbers of Aboriginal and some non-Aboriginal students from Boggabilla and Toomelah will not receive 'adequate secondary education. This will continue to result in low retention, poor attendance, low academic or even work related outcomes. Racial and political tensions will be on-going

31

The Queensland Government failed to recognise this situation in its submission to the Inquiry. For example, it was asserted that:

The school believes it offers an environment of support which enables success for all students who enrol.³²

7.18 The Inquiry finds that there was overt and covert racism and discrimination at Goondiwindi State High School and that this operated to the detriment of both Aboriginal and non-Aboriginal students. We draw attention, in particular, to the evidence to the Inquiry of Mrs Dawn Dennison as comprehensively illustrating a number of these problems. It bears careful reading to illustrate the insidious impact of racism on innocent children. Racism and discrimination, whether from teachers, parents or peers, should not be tolerated in schools. It is essential that educational systems provide appropriate programs for Aboriginal students, programs about Aboriginal culture for other students, teacher training on racism and on Aboriginal culture and history, appropriate support within schools for Aboriginal children and education generally on human rights.

7.19 On the other hand, there has been progress on the Queensland side of the border since the Inquiry commenced. The New South Wales Regional Director of Education for the north-west region has met with the Queensland Regional Director, and staff at Boggabilla and Goondiwindi have also met to discuss and try to improve the situation. An Aboriginal liaison officer, appointed by New South Wales to work at the Toomelah public school, was also working with the Goondiwindi High School during 1987.³³ There is also a move towards staff development activities to involve staff from Goondiwindi, Boggabilla

and Toomelah.³⁴ The Inquiry welcomes these initiatives informally agreed between the education authorities of the two States. They should be expanded and staff and parents should be encouraged to participate. The Human Rights and Equal Opportunity Commission is available to lend assistance.

7.20 Although a general assessment of Queensland's performance in delivering education to Aborigines and Torres Strait Islanders was beyond the scope of this Inquiry, the Queensland Government's submission did detail the principles and structures established for so doing. These seem to us to be forward-thinking and to have considerable potential. For example, the importance of Aboriginal and Islander involvement at all levels, including planning and delivery, has been recognised. The Queensland Education Department is currently developing a formal policy on Aboriginal and Islander education. Evidence received about the Goondiwindi State High School, however, strongly indicates that the principles of the Department have not filtered through to that school to date. **The Inquiry recommends that the Queensland Government further develop an appropriate Aboriginal Education Policy, teacher training and school curricula on Aboriginal issues.** Again the Human Rights and Equal Opportunity Commission is available to assist in this.

7.21 Aborigines at Toomelah and Boggabilla told the Inquiry that they had argued for ten years that the number of secondary school age children justified a secondary school in the area. On the other hand, the New South Wales Education Department explained its prior long refusal to establish a secondary school at Boggabilla by pointing to the express preference of the community of the area as a whole, at least before January 1987, to continue sending the children to Goondiwindi State High School.³⁵ This is an obvious conflict of recollection.

7.22 In late 1987, after the Inquiry's hearings at Goondiwindi, the New South Wales Government announced that a new central school (taking students to Year 10 — the School Certificate; and then on to Year 12 — the Higher School Certificate — with some correspondence work) would open at Boggabilla by February 1988. Many non-Aboriginal parents campaigned and testified to the Inquiry against this, fearing that their children would be forced to attend. They feared that the new school would be a second-class school both because it would not offer as wide a range of courses as that in Goondiwindi and because most of the students would be Aborigines.³⁶ The Education Department justified its decision in part on the basis that the occurrence of the riot rendered the Goondiwindi school no longer suitable for the Aboriginal students on the New South Wales side of the border.³⁷ From the evidence before us, it seems that the Goondiwindi school was unsuitable long before this occurrence.

7.23 Ultimately a permanent Community Education Centre, incorporating the central school and a facility of the New South Wales Department of Technical and Further Education (TAFE) will be built at Boggabilla. In addition to ordinary classrooms, the central school will have a woodwork area, a science laboratory, art facilities, home science facilities, a computer room, an audio-visual room, a gymnasium, a library, agriculture sheds, an outside project area and a canteen. It will also allow other community access to some of these facilities.³⁸

7.24 In the meantime, a school in a demountable facility accepted its first intake of secondary students at the commencement of the 1988 school year. Any parent wishing to continue or commence sending children to high school in Goondiwindi may still do so.³⁹ The Boggabilla Central School is a well-resourced and fully-equipped secondary school. In its first year there are three classrooms, a science laboratory, a home science teaching space, a woodwork workshop, an administration block, a staffroom and toilets.⁴⁰ The New South Wales Education Department assured the Inquiry that consultations with the communities at Boggabilla and Toomelah will influence the curriculum range as will, of course, the availability of staff.⁴¹ The Department is concerned to ensure that 'what the school is offering is in line with community expectation and desire', as well as the basic or core subjects, and that flexibility is maintained over time.⁴² The Department told us that it is also aware of the desirability of offering courses in relevant skills training and enhancement. In particular, and in addition to continuing consultation, the Department says that it intends to acquire additional land near the school site 'with a view to having room for agricultural science projects [and] some local community space'.⁴³

7.25 The New South Wales Education Department implements both its Aboriginal and multi-cultural education policies at the new school. The Aboriginal Education Policy, published in 1982, has the dual aim of enhancing the self-esteem and cultural identity of Aboriginal children and of educating all children in aspects of contemporary and traditional Aboriginal society. One specific strategy is to involve the local Aboriginal community, through consultation and participation, to ensure that the curriculum is relevant to the needs of their children. The policy reveals an awareness that the school system needs to respect Aboriginal culture and values, as well as Aboriginal English where applicable, if an Aboriginal child is to benefit from the education offered.⁴⁴

7.26 The New South Wales Aboriginal Education Policy incorporates many of the concepts recommended in the 1985 report on *Aboriginal Education* by the House of Representatives Select Committee on Aboriginal Education. This Committee strongly supported the policy of self-determination in Aboriginal affairs and noted that that policy, in the field of education, would involve the significant 'Aboriginalisation' of education.⁴⁵ However, 'the extent of Aboriginal participation has not gone far enough and ... much remains to be achieved if the policy of self-determination is to be effectively realised'.⁴⁶ The Committee stated that:

The process of Aboriginal self-determination in education can be greatly improved by the greater involvement of local Aboriginal communities.⁴²

The Committee recommended the establishment of Aboriginal School Advisory Committees in schools with a significant minority Aboriginal population. These Committees should be given significant powers in relation to the specifically Aboriginal components of the school program as well as providing general advice to the schools about Aboriginal educational needs." **We recommend that the New South Wales and Queensland Governments implement this recommendation and establish such committees without delay.** The Committee's report is now three years old. The Inquiry is of the opinion that this is sufficient for its consideration and it is now time for its implementation.

ADULT EDUCATION

7.27 Post-secondary qualifications are held by a substantially smaller proportion of the populations of Boggabilla and Toomelah than the New South Wales average. At the 1981 Census it was estimated that 28.9% of the population of New South Wales aged fifteen years and over possessed such qualifications. The comparative proportions were 16.3% in Boggabilla and 3.1% in Toomelah.⁴⁹ The proposed TAFE facility in the new Community Education Centre will be an annex of the Moree TAFE College.⁵⁰

7.28 This will not be TAFE's first venture into the area. Courses such as Reading and Writing for Adults, Aboriginal Culture, Living Skills and a Maths Workshop were provided in the Toomelah Primary School building during 1987.⁵¹ TAFE's representative told the Inquiry:

... our principal at Moree College has been very concerned with the need in the Boggabilla-Toomelah area. He has held a number of meetings in the area and has formed a steering committee to oversight future TAFE development.⁵²

That steering committee has some Aboriginal representation and there is a recognition by TAFE that 'there needs to be a high degree of ... work, effort, put into education programmes that aim for employment within the local community — community-based work programmes, community development programmes and so on'.⁵³ Again, this Department expressed its concern to develop facilities which will be sufficiently flexible to adapt to changing community needs.⁵⁴

7.29 The TAFE facilities proposed for Boggabilla are said to provide five basic instructional areas:

- a multi-purpose workshop designed to cater for a range of courses related to the local rural environment such as a Stockman and Station Hands Course and a Cotton Industry Course;
- a multi-purpose work area designed to cater for fashion and textile courses and flexible enough to cater for other courses that are later required;
- general-purpose theory and typing areas for Secretarial, Business and Administrative, and General Studies courses;

- a computer room, designed also to allow general theory classes to be held when the computers are not in use: and
- a resource area for learning resources including books and other materials.⁵⁵

7.30 Adult education may also be made available at Toomelah and Boggabilla, as elsewhere, outside the TAFE framework. The New South Wales Adult Education Board, in consultation with the Aboriginal Training and Cultural Institute, is in the process of developing more informal programs to meet the needs of those communities. Ms Natascha McNamara, co-director of the Institute, made some suggestions to the Inquiry about the direction such supplementary courses might take:

I suspect that what really needs to happen is that some of the governing skills and the community skills in understanding the way conflict is resolved and understanding the way issues are resolved, and the understanding of ways in which communities outside work are the sort of skills which could, in addition to what has been said ... be engendered.

The other thing which needs to be addressed is, how do we build skills so that Aboriginal people know how to work in environments where there are a lot of non-Aboriginal people around? ... it is those community skills. I think, which we would be at this moment thinking of providing — hopefully working with the people and starting to provide them some sort of development focus and attitude ...

NOTES

- I NSW Department of Education, Submission, at p.15.
2. NSW Select Committee of the Legislative Assembly upon Aborigines, *Second Report (1981)* paras 21.33-21.34.
3. *Id*, para 21.45.
4. *Id*, para 21.46.
5. M.Duncan, Chairperson, Toomelah Local Aboriginal Land Council, Exhibit 1, at p.5.
6. Some of the non-Aboriginal primary school pupils of Boggabilla attend the convent school in Goondiwindi.
7. Submission, at pp.7,11.
8. *Id*, at p.13.
9. NSW Department of Education, Submission, at p.11.
10. *Transcript*, p.226.
- II. NSW Department of Technical and Further Education, *Moree College of TAFE: Boggabilla Campus: Educationai Brief (July 1987)* at p.4.
12. NSW Teachers' Federation, Submission.
13. I.Isaacs, *Transcript*, p.53 I a.
14. In 1985 more than 80% of Aboriginal students (6 of the 7 enrolled) left the bridging course by the beginning of Term 3.
15. R.Fairbairn, *Transcript*, p.227.
- I 6. NSW Department of Education, Submission, at p.16.
17. *Transcript*, p.227.
18. Witness X, *Transcript*, p.307.
19. *Transcript*, p.238.
20. Witness X, *Transcript*, p.309.
21. I.Isaacs, *Transcript*, p.525.
22. *Transcript*, p.466.
23. J.Whitton, Secretary, Toomelah Local Aboriginal Land Council, *Transcript*, p.93.
24. R.Buchhom, *Transcript*, pp.I14-115.
25. D.Dennison, *Transcript*, p.235. On the other hand, the Inquiry heard some evidence of other attitudes. A.Doyle told the Inquiry, `Martin Luther King once had a dream ... that both black and white children would one day walk together hand in hand ... A white boy aged thirteen, working in a mixed race small group unit at Goondiwindi High School responded when hearing of this speech "isn't it good that his dream has come true": Exhibit 52, at p.3.
26. M.McGrady, *Transcript*, pp.I90-191.
27. *Transcript*, p.68.
28. *Transcript*, p.86.
29. I.Isaacs, *Transcript*, p.517.
30. NSW Department of Education, Submission, at p.20.
31. *Id*, at p.19.
32. Submission, at p.17.
33. P.Whelan, Staff Inspector, Policy Unit, NSW Education Department, *Transcript*, p.598.
34. *Ibid*.
35. NSW Department of Education, Submission, at pl.
36. R.Fairbairn, *Transcript*, pp.232-233.
37. NSW Department of Education. Submission, at p.2.
38. NSW Department of Technical and Further Education, *TAFE Provision at Boggabilla: Boggabilla Community Education Centre (1987)* at pp.8-9.
39. P.Whelan, Staff Inspector, Policy Unit, New South Wales Education Department, *Transcript*. p.584.
40. *Id*, p.581.
41. *Id*, p.582.
42. */d*, p.583.

43. *Id.*, p.585.
44. NSW Department of Education, Directorate of Special Programs, *Aboriginal Education Policy (1982)*.
45. At paras 4.1-4.2.
46. At para 4.4.
47. At para 4.25.
48. At para 4.52.
49. New South Wales Department of Technical and Further Education, *Moree College of TAFE: Boggabilla Campus: Educational Brief (July 1987)* at p.6.
50. L.Fitzallen, Senior Education Officer, Planning Division, NSW Department of Technical and Further Education, *Transcript*, p.590.
51. Department of Technical and Further Education, *TAFE Provision at Boggabilla: Boggabilla Community Education Centre (1987)* at p.l.
52. L.Fitzallen, Senior Education Officer, Planning Division, NSW Department of Technical and Further Education, *Transcript*, p.592.
53. *Id.*, p.593.
54. *Id.*, p.594.
55. NSW Department of Technical and Further Education, *Moree College of TAFE: Boggabilla Campus: Educational Brief (July 1987)* at pp.10,12-13.
56. *Transcript*, p.597.

CHAPTER 8

SOCIAL ENVIRONMENT

INTRODUCTION

8.1 In addition to the material living conditions of the Toomelah community, it was clear to the Inquiry that the social environment and needs were also of great significance to the Aboriginal people of the area. Four broad issues in particular were addressed:

- health
- racial discrimination
- Aboriginal culture and dignity
- land rights and self-determination

HEALTH

8.2 As mentioned above, the Inquiry received evidence of ill-health among members of the Toomelah community which was related to overcrowding, lack of water and poor sewage disposal. In 1986 a Health Department survey of children under six years found over 20% suffering from recurrent chest infections and almost 50% had chronic ear disease) Baby health is a particular concern.² Lack of water has also played a part in causing a high incidence of skin infections, head lice, trachoma and conjunctivitis among adults and children alike.³ Other health problems identified include diabetes, alcoholism and sexually transmitted diseases, all of which require programs of treatment by trained professionals.

8.3 Although a community of five hundred people, Toomelah residents have inadequate access to medical services. The community health worker, Mrs Pamela Duncan, has a diploma in Aboriginal Health and services the entire community on her own most of the time. At times over the past few years a registered nurse has worked full-time at Toomelah. However, there has been no nursing service there since shortly before this Inquiry commenced. A Health Department doctor visits about ten times each year but only to immunise the children. Because the health worker may not prescribe drugs, the people must travel to Goondiwindi for most medical treatment — a trip often rendered impossible by lack of transport or the closure of the access roads during rains. For dental treatment they must often travel to Moree because, as New South Wales citizens, they are not entitled to the free dental care provided by Queensland to its own citizens. For specialist medical care a trip must also be made to Moree. Hospital services are only available at Goondiwindi where, even for confinements associated with childbirth, Aboriginal women report discrimination and indignities. Ambulance services also emanate from Goondiwindi but are impeded by the bad roads and what is said to be an uncaring attitude to Aborigines.

8.4 Apart from the lack of medical care at Toomelah, the clinic itself leaves much to be desired. The building is run-down and often without an adequate supply of water. There is no hot water. It is also very small. Despite an offer from the New South Wales Department of Housing to construct a new clinic, the Health Department has yet to decide whether to proceed. **We recommend that the Health Department, in consultation with the community, approve the construction of a new clinic and the appointment of a registered nurse to work full-time at Toomelah.** In addition, a doctor should visit much more regularly and Toomelah should be included in the regional schedules of visiting specialists, including a dentist, at the Department's expense. Although we understand that the Toomelah Social Plan discussed below is expected to make detailed proposals for the alleviation of the health problems at Toomelah, these recommendations should be implemented immediately.

RACIAL DISCRIMINATION

8.5 A general history of separate, different and inferior treatment of Aboriginal communities in New South Wales has resulted in a lack of adequate housing, municipal services and health care at Toomelah. Moreover, as we have shown, their different treatment in law at the present time (i.e. under the New

South Wales Aboriginal Land Rights Act 1983) is still cited by some authorities as the reason for the failure to provide them with the same services through the same channels and of the same quality as are available to other Australians. These matters have been dealt with in previous chapters.

86 Aboriginal witnesses told the Inquiry that they also suffer racial slurs and discrimination as individuals. Apart from the discrimination practised at Goondiwindi State High School which has already been dealt with in Chapter 7, there was also evidence of other incidents of racial discrimination. One witness told of his experiences during the Welfare Board period as a valued footballer for the Goondiwindi club:

... after the match all the black players would be bundled into a truck and driven back to Toomelah. The whites would go back to the pub⁴

87 Other witnesses spoke of similar attitudes existing at the present time:

Over the years we have had boys play with Goondiwindi in the grand finals for them. As soon as that football season is finished, they were not accepted in the town. Every Sunday morning they came and picked the boys up to go to football, or ... training, and they never picked them up and took them in there for a party of any sorts. The grand final, they celebrated, and after that they were finished — they were thrown out until the next football season came up.⁵

8.8 A local school teacher told the Inquiry about the occasional joint activities of the primary schools at Boggabilla, Toomelah, Yetman and other towns in the area, one of which is an annual cultural day for which the children prepare musical performances and dancing. At the last such event 'the people from some of the other schools would not hold hands with the Aboriginal children in the combined dancing'.⁶

89 A teacher who used to work at Goondiwindi State High School stated:

I have seen the way Aboriginal people are often treated by some people in this town, and I would say that that riot to me is a retaliation to anger. to abuse, to embarrassment, and young Aboriginal women were not safe in the streets of Goondiwindi. There is a certain number of the local hoons who like to abuse them, and I think people can only take so much.⁷

An Aboriginal resident of Boggabilla complained of significant harassment and even threats of violence which he believed to have been racially based.⁸

810 Many non-Aboriginal witnesses recognised that the root causes of racial discrimination are ignorance and fear, but that:

... there are not enough chances for Aboriginal people to educate the public about Aboriginal heritage, and communities need support to do this.⁹

We strongly agree with the urgent need for extensive exchanges to be developed. One woman gave evidence that she had often stood in supermarket queues with Aboriginal women but had never thought of speaking to them. Still less did the many other Goondiwindi women realise that Aboriginal women share many of the same gender deprivations and discrimination, and many of the same aspirations for their children and themselves. We believe that, if Goondiwindi people and their businesses are happy to accept Aboriginal money with the consequent benefit to the town's prosperity, they should be ready to offer something in return. To offer tolerance, understanding and opportunities for exchange would not exact too great a toll on the residents of Goondiwindi.

811 Aborigines will continue to feel alienated and unwelcome until active measures are taken by the non-Aboriginal community of Goondiwindi to condemn and remove racism and discrimination and to build bridges towards the Aboriginal community. The Inquiry heard evidence from members of the Goondiwindi Town Council, representatives of several churches,¹⁰ and a number of Goondiwindi residents' I as to their desire to join in building such bridges. There was a general recognition among these non-Aboriginal witnesses that closer contact through shared activities, especially when children were involved, would go far towards increasing inter-community respect and breaking down the barriers built by ignorance and fear. Reverend Graham Fairbairn of the Anglican Church at Boggabilla stated:

It seems to me that one of the important things about improving relations between the various communities here is contact on that informal level, where people can learn to accept one another and see one another for what they are ...¹²

The Mayor of Goondiwindi told of 'an attempt made by the [Goondiwindi Town Council] to have a liaison group with representatives of the town council and representatives of the Aboriginal community of Boggabilla and Toomelah'.¹³ The Inquiry urges that this initiative be pursued with urgent vigour. Another important initiative flowing from the Inquiry has been the establishment, in November 1987, of the Border River Community Consultative Committee which encourages all persons interested to attend meetings providing an opportunity to discuss matters of concern to them and to try to develop solutions. We congratulate those involved in this initiative and urge the people on both sides of the border to participate in its work.

ABORIGINAL HERITAGE

8.12 Aborigines are entitled, like all other Australian citizens, to the protection of their culture through the preservation of sites of significance and of access to such sites. Access is often difficult, as the Inquiry found. We visited a sacred site: a small cemetery containing several headstones to the memory of deceased members of the Old Toomelah community. The land on which this cemetery is situated was granted to the Toomelah people some years ago. It is adjacent to the now almost deserted site of Old Toomelah. The cemetery is several hundred metres from a road on an undeveloped and uncleared part of a private property whose owner gave us access. When the land was granted, no access path was included in the grant. As a result, few of the Aboriginal owners had visited it. Many current Toornelah and Boggabilla residents were born at Old Toomelah but had never seen it as adults. Due to the attitude of the owner to visits by Aborigines, any equitable rights of access would have to be established in court before they could be enforced. At present, the Aboriginal owners cannot obtain access to this site. This is entirely unsatisfactory.

8.14 Land and sacred sites are important signposts of dignity and pride to persons of all races and creeds. They have a special significance to Aborigines which other Australians must make an effort to understand. **The Inquiry recommends that all Australian governments and authorities considering land and sacred site claims ensure that all grants include rights of access. In particular we recommend that the New South Wales Government provide the Aboriginal owners of the Old Toomelah cemetery an access route to that land, the nearby village and any other land which has been granted to them.**

8.15 Also of significance to the Aborigines living in the border region is the Aboriginal Community Hall in Boggabilla. This old church building was purchased by the Boggabilla Aboriginal community, moved to its present site at their expense and repairs and renovations commenced. The hall is used for children's playreading, drama groups and rollerskating, representing a significant community resource. However, it lacks toilet accommodation and disabled access. We understand that the Department of Aboriginal Affairs promised to provide the funds required to complete the building but never delivered them. **The Inquiry recommends that the funds be provided immediately.**

8.16 The Inquiry heard considerable evidence, both from the members of the Aboriginal community and from a National Parks and Wildlife Service anthropologist, about the continuing importance of another sacred site in the Boggabilla-Toomelah region, Boobera Lagoon. This Lagoon is about six kilometres in length and averages one hundred metres in width. Ten kilometres of its twelve kilometre shoreline (83%) is privately-owned and the remaining two kilometres were gazetted as a Travelling Stock and Camping Reserve in 1899. Four public uses compete on the publicly-owned area: stock watering, water-skiing and general motor-boating, general recreation and visits by Aboriginal people in connection with their beliefs. Private uses are stock grazing, crop growing and irrigation.¹⁴

8.17 Boobera Lagoon is considered to be the most important Aboriginal site in the area. The site was officially catalogued by the National Parks and Wildlife Service in 1977 but its significance to Aborigines has been acknowledged by non-Aborigines at least since 1899 when it was recorded by a government

surveyor.¹⁵ The site is significant chiefly because of the belief that the local Rainbow Serpent lives in the Lagoon. The area of significance is the entire lagoon and the land bordering it.

8.18 Many Aboriginal witnesses told the Inquiry about the importance to them of Boobera Lagoon. They do not swim in the water out of respect for the Rainbow Serpent¹⁶ and they visit not only the Lagoon but also a shell midden on the shore, an area where stone tool remnants can be seen and were shown to us,¹⁷ scarred trees from which bark has been removed for utensils and ancient traditional camping grounds.¹⁸ Aborigines continue to collect food from within and around the Lagoon.¹⁹

8.19 In 1984 the publicly-owned area around Boobera Lagoon and the entire body of water was declared an Aboriginal Place.²⁰ While it is an offence to damage, deface or destroy an Aboriginal Place, its declaration as such does not alter the ownership or use of the land. The Toomelah community has now submitted a land claim with respect to the travelling stock route under the Aboriginal Land Rights Act 1983. Such a claim is subject to the approval of the Pastures Protection Board and to a lease-back arrangement whereby the freehold title vests in the claimant Aboriginal Land Council but the land is leased in perpetuity to the Crown. A plan of management must be negotiated which, among other things, will detail the rights and obligations of the Aboriginal Land Council.

8.20 The claim, supported by the National Parks and Wildlife Service, is being favourably considered and a plan of management is currently being negotiated for Boobera Lagoon. The Inquiry was told that there is an intention to establish a management committee with representatives from the Toomelah community, Moree Plains Shire Council, the Goondiwindi and District Aquatic Club and others.

8.21 Among other things, the management plan must confront the man-made damage to the environment which has already occurred. The evidence before us, and our own observations of the site, showed that irrigation use has caused the water level to drop, resulting in destruction of vegetation and the silting up of the Lagoon. Run-off from cotton fields into the Lagoon has introduced polluted water. Motor boats have caused a wave wash which has eroded the shore as well as adding fuel and oil pollution. Vehicle and pedestrian traffic as well as stock watering on the shore has destroyed vegetation and contributed to erosion. Fish have died and wild plant foods and wildlife habitats are threatened.²¹

8.22 If the recreational uses of the Lagoon are indeed damaging it, as appears most likely, it would seem there has been a breach of the law covering declared Aboriginal Places. The National Parks and Wildlife Service has a statutory responsibility for the protection of Boobera Lagoon, at least until the Aboriginal land claim is finalised. The Service either has not exercised this responsibility adequately or its efforts to do so have been ignored. **We strongly recommend that, pending finalisation of the land claim, the Service increase its supervision of this area with a view to ensuring that the legislation is complied with. We recommend that offenders be prosecuted, both as punishment for their breaches and as a deterrent to others.** Laws governing and protecting Aboriginal sites warrant enforcement as much as laws protecting the property of others. This has not happened at Boobera Lagoon. The sacred sites of all peoples in Australia are equally entitled to protection. We will review progress towards finalisation of the plan of management and the transfer of title to Boobera Lagoon to the Toomelah Local Aboriginal Land Council.

LAND RIGHTS AND SELF-DETERMINATION

8.23 Many Aboriginal witnesses argued strongly that their material conditions could not realistically be expected to improve without recognition of their legitimate land claims and of their right as a community to self-determination. Mrs Madeline McGrady told the Inquiry:

... land rights is the key to the future of the Aboriginal people, because we cannot divorce this inquiry or any other inquiry from land rights, because that is what land rights means to Aboriginal people in this country. It means better living conditions; it means better education; and the full recognition for Aboriginal people in this country has got to be land rights.²²

This was also the considered conclusion of the New South Wales Select Committee upon whose recommendations the Aboriginal Land Rights Act 1983 was based:

It is undeniable that problems of housing, health, education, employment, welfare and cultural issues are inextricably intertwined with the land rights issue.²³

Therefore, the Committee was:

... convinced that without substantial implementation of its recommendations on land rights, any actions taken in other areas can only be stop-gap measures, alleviating a little of the pain without treating the cause.²⁴

8.24 Of the numerous land claims submitted under the Aboriginal Land Rights Act, the Toomelah Land Council has successfully claimed about ten hectares to date. It also appears likely that the Boobera Lagoon claim will be successful in the near future. So far, however, the Toomelah community has nothing like enough land to establish economically viable enterprises. The New South Wales Aboriginal Land Rights Act does not enable Aboriginal Land Councils to expropriate land from existing non-Aboriginal owners. Only Crown, or public, land can be claimed. In addition, the Land Councils have only a small budget with which to make land purchases.

8.25 The Toomelah people were very cynical about the implementation in their community of the policy of self-determination by both the Federal and State Governments. Mrs Julie Whitton, Secretary of the Land Council, told the Inquiry:

I was involved in the Co-op in the early 70s. We never ever made written submissions ourselves. The DAA would insist on writing the submissions. They would tell us what should go in the submissions. I know we were always made to feel that we had to go along with whatever DAA suggested ...²⁵

Mr Roger Draper asserted that this attitude continues to the present day:

Aboriginal people are put down in a position where a government decision looks after them — they never let you make any decisions for yourself.²⁶

8.26 The Toomelah people called for true self-determination. Mr Michael Duncan, Chairperson of the Land Council, submitted:

I cannot say strongly enough that by 'consultation' we mean that we need to actually participate and allow the whole community of Toomelah to participate in decisions about what will happen. Telling us what will happen after the decision is/made is quite useless.²⁷

Mrs Whitton stated:

What should happen from here on? ... Toomelah must be running itself ... We get plenty of people who are capable of doing a lot for Toomelah, but always before we have not been allowed to do things, to do anything except by the white man's way — but that is not our way.²⁸

Mrs Madeline McGrady said:

Living at Toomelah, I know we have a long way to go, but I also know that anything else than a recognition of our right to be a fully self-determining people in our own right is just another attempt to manage us.²⁹

8.27 This call for self-determination was echoed by the National Parks and Wildlife Service's social anthropologist, Mr Howard Creamer:

There needs to be, I believe, a reversal of the direction in which policy is made. It tends to be made from the top down and it is brought to the people with a preconceived idea of how it is going to be implemented. The notion is we can adjust a few things here and there, but basically this is the policy, and we are going to stick to it. It should be an interactive approach, a two-way approach, even what is called in the literature as opposed to a top-down approach, a bottom-up approach, and that is people — the target group — influencing the providers of the policy and making a policy in that way.³⁰

8.28 Previous inquiries have been in unanimous agreement with the concept that significant improvements in Aboriginal socio-economic conditions depend on Aboriginal involvement. In 1975 the Poverty Inquiry recognised that:

The way in which decisions are made is of fundamental importance to the success of any measures to help people who belong to minority groups. More mechanisms should be developed to allow the needs and priorities of Aboriginal people to be expressed.³¹

That Inquiry stressed that:

The most important aspect of help for Aboriginal people is that they should decide what they want and become responsible for their own progress.¹²

8.29 The Senate Select Committee on Aborigines and Torres Strait Islanders drew together its many recommendations on environmental conditions stating:

Aborigines must be enabled and encouraged to see themselves as part of a program, and must have an effective role in determining from the outset what that program will be.³³

The New South Wales Select Committee also affirmed that:

Aboriginal 'self-determination' should be the essential basis of Aboriginal policy planning.³⁴

8.30 The precise application to indigenous peoples of Article 1.1 of the International Covenant on Civil and Political Rights, to which Australia is a party, is not clear. Article 1.1 provides:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

What is clear is that it does extend to all Aboriginal and Torres Strait Islander people as citizens of Australia. The recognition of their right to self-determination within the Australian nation will require a thorough re-examination of relationships between Aboriginal communities and the institutions of our society: governments at all levels, bureaucracies, courts and police, educational and other systems. The Human Rights and Equal Opportunity Commission in accordance with its charter should undertake further research on the implications for the Commonwealth of its obligations under this Article in respect of Aboriginal and Islander peoples.

TOOMELAH SOCIAL PLAN

8.31 Federal, State and local government authorities have recently supported the establishment of a committee to oversee the preparation of a 'strategy for [the] social and physical development' of Toomelah and Boggabilla.³⁵ This strategy is intended to assess the availability of services to both communities. The Moree Plains Shire Council, Department of Aboriginal Affairs, ADC, Department of Housing, DMR, Toomelah Land Council and Toomelah Co-operative are all represented on this committee. A consultant has been selected and commenced work at the beginning of May 1988.

8.32 We commend this initiative which is designed to be responsive to the needs and views of the communities involved and attempts the co-ordination of the three tiers of government. On the information we have received, however, we are concerned that the committee may not operate with sufficient authority to deal effectively with the root problems identified by the Inquiry: conflict about responsibility for the provision and financing of essential services and the failure of self-determination.

8.33 On the other hand, we are confident that the Social Plan will have an impact on one of the major participants, the Moree Plains Shire Council. It is clear that the Council has been avoiding its responsibilities to five hundred residents of the Shire. This situation cannot continue. It will be dealt with, effectively we hope, in the course of the development of the Toomelah Social Plan. We will monitor its progress in the coming months.

NOTES

- I. P.Wish, Exhibit 23.
2. P.Duncan, Exhibit 16, at p.2.
3. R.Wish, Exhibit 23.
4. D.McGrady, Exhibit 21, at p.2.
5. J.Whitton, Secretary, Toomelah Local Aboriginal Land Council. *Transcript*, p.93.
6. R.Fairbairn, *Transcript*, p.228.
7. S.Coneybeer. *Transcript*, p.468.
8. V. Den n i son . *Transcript*, p.172.
9. P.Thompson, *Transcript*, p.138.
10. G.Fairbairn, Anglican Church, Boggabilla, *Transcript*, pp.151-152; N.Kross, Seventh Day Adventist Church, Goondiwindi, *Transcript*, p.572.
11. M.Stigwood, Exhibit 39; A.Doyle, Exhibit 52, at p.2.
12. *Transcript*, pp.151-152.
13. W.Lees, *Transcript*, p.488.
14. H.Creamer, Anthropologist, NSW National Parks and Wildlife Service, Exhibit 33, at p.1.
15. *Id*, *Transcript*, pp.455-456.
16. J.Whitton, Secretary, Toomelah Local Aboriginal Land Council, *Transcript*, p.25.
17. *Id*, at pp.34-35.
18. H.Creamer, Anthropologist, NSW National Parks and Wildlife Service, Exhibit 33, at pp.6,11.
19. *Id*, at p.7.
20. *NSW Government Gazette*, 10 February 1984: Travelling Stock and Camping Route 29416, Public Recreation Reserve R91242 and part of Portion 4, Parish of Boobera, County of Stayplton, declared an Aboriginal Place under National Parks and Wildlife Act 1974 (NSW) s.84.
21. P.Thompson, *Transcript*, pp.128-129. Much of this evidence was challenged by the Goondiwindi and District Aquatic Club: R.Wilkins, Exhibit '49.
22. *Transcript*, pp.198-199.
23. *Second Report (1981)* para 1.9.
24. *Id*, para 1.10.
25. *Transcript*, p.168a.
26. *Transcript*, p.102.
27. Exhibit 1, at p.5.
28. *Transcript*. p.169.
29. *Transcript*, pp.190-191.
30. *Transcript*, pp.422-423.
31. *Poverty in Australia Vol.] (1975)* at p.259.
32. *Id*, at p.267.
33. *The Environmental Conditions of Aborigines and Torres Strait Islanders and the Preservation of their Sacred Sites (1976)* at p.17.
34. *Aboriginal Land Rights and Sacred and Significant Sites (1980)* at p.7.
35. NSW Department of Housing, *Aboriginal Housing Programmes Briefing Notes* (September 1987) para 2.3.
36. V.Dennison, *Transcript*, pp. I 60-163.

CHAPTER 9

FINDINGS AND RECOMMENDATIONS

FINDINGS

9.1 The Toomelah community of five hundred Aboriginal people endures appalling living conditions which amount to a denial to them of the most basic rights taken for granted by most other groups in society, and by other Australian communities of similar size. Their houses are substandard and overcrowded, actually contributing to a range of diseases. The community has for decades lived without an adequate and certain water supply, a properly functioning sewerage system and a safe means of sewage disposal. The lack of a sewerage system is partly due to the damming of the Macintyre River without offering and making available the dammed water to the Toomelah community as it is offered and made available to other nearby towns and private properties. The community is frequently completely isolated from all services and contact with the outside world due to closure of the inadequate access roads by rains.

9.2 Community members display higher than average rates of a range of debilitating diseases for which they cannot get adequate treatment. They suffer from a lack of adequate education and chronic unemployment. Their traditions have been largely destroyed and their self-esteem is low. Their treatment by government at all levels has been insensitive and uncaring. Their human rights have been ignored. This situation has persisted for decades despite the fact that authoritative attention has often been drawn to it.

9.3 The housing conditions at Toomelah (including the water and sewerage facilities provided) have been accepted by authorities at all levels of government although they lack physical safety and protection from weather and are dangerous to the health of the occupants. Unless the present suspension of the New South Wales Department of Housing's Homes on Aboriginal Land Program is soon lifted, the potential for bringing the dwellings at Toomelah rapidly to an acceptable standard is remote.

9.4 The health services provided at Toomelah by the New South Wales Department of Health are wholly inadequate. Many official visitors from a number of government bodies have acquiesced in the presence of raw sewage where children live and play as well as other defects in the health situation. No regular medical, hospital or ambulance services are available. The consequence has been high rates of preventable diseases, neglect of treatable conditions, and retardation of the development of children.

9.5 Although providing excellent primary school facilities at Toomelah, the New South Wales Education Department inexplicably tolerated unsatisfactory secondary schooling facilities for Aboriginal children for years. The result was severe discrimination against the Aboriginal students attending school in Queensland and a high drop-out rate.

9.6 Whilst generously offering a bridging course for Aboriginal students from New South Wales schools, the Queensland Education Department permitted Goondiwindi State High School to be overtly racist towards Aborigines contributing in major part to racial tensions, unhappiness and stress, and to the high drop-out rate.

9.7 The Moree Plains Shire Council, whilst levying rates on the residents as if supplying them with services supplied to other ratepayers, has denied to Toomelah residents the services supplied to other ratepayers and residents of the Shire. Moreover, the failure of the Shire Council to accept responsibility for Toomelah has resulted in Commonwealth and State funding for local government services being denied to the people of Toomelah, although received by the Shire Council for them and on the basis that they are residents of the Shire.

9.8 Generally speaking, the leaders and people of Goondiwindi have taken no interest in, and made no contribution to, the development of good race relations, despite the contribution of Aborigines to the town's prosperity. There are some signs of improvement since the Inquiry's hearings.

9.9 Inter-governmental conflicts as to policy and funding responsibilities have been a fundamental and direct cause of these conditions. Moreover, no government authority took responsibility for monitoring the conditions at Toomelah and helping the people to access the required services. The Federal Department of Aboriginal Affairs failed in its obligations in this regard. The Department's view was that services should be supplied by State and local government authorities. Yet the Department did little to bring Toomelah's need for services to the attention of those authorities and did nothing to encourage them to provide those services. When the Department belatedly provided the services itself, they were inadequate and inappropriate. As a consequence of this mismanagement, the Toomelah community has been severely and unjustly denied basic rights and an improvement in living conditions.

9.10 There was considerable dispute among government service providers as to whether the Toomelah community had certain entitlements at all, what procedures they should follow to acquire services and which bodies were responsible for providing them. The various levels of government made little attempt to clarify or define responsibility for the delivery of essential services to the Toomelah community.

9.11 No government authority — Commonwealth, State or local — provided adequate information, consulted the community effectively, or co-ordinated the three tiers of government in the provision of services. The former New South Wales Ministry of Aboriginal Affairs, the authority most able to influence State and local government authorities, abdicated its responsibilities to the Toomelah community. The Federal Department of Aboriginal Affairs, a specialist body established to operate on behalf of Aborigines, failed to ensure that the Toomelah residents obtained the information and assistance necessary to acquire the services they needed. The Aboriginal Development Commission, a body designed to provide for the basic needs of Aborigines, pursued policies which directly impeded and obstructed their interests.

9.12 Not surprisingly, then, the Toomelah Local Aboriginal Land Council, the Toomelah Aboriginal Co-operative Ltd and the people of Toomelah had no information about:

- their entitlement to many services available to all Australians;
- the procedures for acquiring these services; and
- the bodies responsible for providing them with information, funding and services.

The result has been that the Toomelah people have been unable to ensure adequate provision of services for themselves and therefore received none of the services they required.

9.13 Since the Inquiry commenced in July 1987, the following commitments have been made for the improvement or provision of services to Toomelah. The Inquiry will review progress towards the fulfilment of these commitments.

| AUTHORITY | COMMITMENT | ANTICIPATED COMPLETION DATE |
|-----------------------------------|-------------------------------------|--|
| NSW Education Department | Secondary school at Boggabilla | Opened Feb. 1988 in temporary premises; permanent premises to be constructed |
| NSW Department of TAFE | TAFE facility at Boggabilla | Opened Feb. 1988 in temporary premises; permanent premises to be constructed |
| Aboriginal Development Commission | Replacement dwellings at Toomelah | 1 house 1988-89 2 houses 1989-90 1987-88 |
| NSW Housing Department | 8 replacement dwellings at Toomelah | |

| AUTHORITY | COMMITMENT | ANTICIPATED COMPLETION DATE |
|----------------------------------|--|------------------------------------|
| Moree Plains Shire Council | Sealing of final 4km of Old Highway for access to Toomelah | end 1988 |
| Department of Aboriginal Affairs | New bore, pumping stations, storage tanks | Completed end 1987 |
| Department of Aboriginal Affairs | Repair of internal reticulation system | June 1988 |
| NSW Public Works Department | Sewerage system | July 1988 |
| Goondiwindi Town Council | Establish programs and initiatives to build good relations between Aborigines at Boggabilla and Toomelah and the citizens of Goondiwindi | Near future |

9.14 The Inquiry identified several other areas of need which, despite intensive questioning at the public hearing in Sydney on 7 December 1987, seem unlikely to be met in the near future. The Inquiry will review the situation with respect to these needs when it reviews progress on the fulfilment of commitments made to it.

Sufficient housing to meet present needs

House maintenance

Health clinic and staff

Adequate pre-school building

Internal roads — sealing, kerbing, guttering, drainage

Road maintenance

NEEDS

POSSIBLE AUTHORITIES

NSW Housing Department;
Aboriginal Development Commission

Aboriginal Development Commission;
Department of Aboriginal Affairs

NSW Health Department;
Aboriginal Development Commission

Department of Aboriginal Affairs;

NSW Department of Family and Community Services;
Moree Plains Shire Council

Aboriginal Development Commission;
Moree Plains Shire Council

Aboriginal Development Commission;
Moree Plains Shire Council

Access road — Old Highway to Toomelah Moree Plains Shire Council

Sewerage and reticulation maintenance Department of Aboriginal Affairs;
Moree Plains Shire Council

Payment of rates Moree Plains Shire Council to provide usual service or waive rates; NSW Minister for Lands to exempt Toomelah;
Department of Aboriginal Affairs to pay rates

RECOMMENDATIONS

Housing

9.15 The Aboriginal Development Commission should bring all the houses at Toomelah up to a reasonable standard before requiring that rent be charged on them.

9.16 Federal policy with respect to the provision of housing on Aboriginal Land Council land should be changed to accord with that of the New South Wales Department of Housing's Homes on Aboriginal Land Program.

9.17 The New South Wales Government should restore the Homes on Aboriginal Land Program as a matter of urgency.

Water and Sewerage

9.18 The Department of Aboriginal Affairs should, as an urgent priority, take responsibility for co-ordinating current projects designed to supply water and sewerage services to Toomelah.

9.19 Moree Plains Shire Council should urgently clean the existing sewage pond at Toomelah and remove the raw sewage.

9.20 The Moree Plains Shire Council should be responsible for the future maintenance of the sewerage system and the water supply system at Toomelah. The cost of maintenance should be met from sources other than the Toomelah community.

9.21 Immediate action should be taken to resume the provision of river water to Toomelah to supplement the bore water as needed.

Roads

9.22 The internal tracks of Toomelah should be promptly sealed. If this must await the completion of other projects, a temporary gravel base should be laid of sufficient depth to permit trafficable use during and after rain.

9.23 The New South Wales Department of Main Roads should undertake without charge the urgent installation of a temporary bridge at the existing creek crossings on the access routes to Toomelah.

9.24 The proposed alternative access route should be immediately considered in the context of the Toomelah Social Plan. A report should be prepared within two months as to which of the two routes should be adopted. Immediately after the route is chosen it should be constructed and sealed.

Local Government

9.25 The Valuation of Land Act 1916 (NSW) should be amended to exclude from its provisions the rating of Aboriginal Land Council land at least until the standard of dwellings and services reach levels comparable to those in the respective local government areas.

9.26 The Minister administering the Aboriginal Land Rights Act 1983 (NSW) should speedily grant Toomelah an exemption from payment of all local government rates, including all accrued rates.

9.27 The Moree Plains Shire Council should immediately commence the supply of the same services to Toomelah as are provided for the rest of the Shire. Included in these services should be the provision of kerbing, guttering, street lighting, tree and flower planting in common areas, and a park and playground facility.

9.28 The Moree Plains Shire Council should promptly employ an Aboriginal community worker. That worker's tasks should be to act as an effective liaison between the Council and Aborigines living in the Shire and to institute and promote cross-cultural programs and exchanges throughout the Shire involving people of all ages and interests.

9.29 The New South Wales Government should investigate and report on the feasibility of co-opting an Aboriginal representative to local government authorities in areas with significant Aboriginal

populations, pending making provision for the establishment of Aboriginal wards and the election of Aboriginal members to councils.

Education

9.30 The Queensland Education Department should, at Goondiwindi State High School and all other schools in the State, abolish, and ensure that there is no re-emergence of, the classroom practice of using separate blackboards for Aboriginal and non-Aboriginal students. It should insist that no other racism, or acts or attitudes reasonably capable of being construed as racist, be pursued at Goondiwindi State High School or any other school in the State.

9.31 The Queensland Government should instruct its officers to ensure that:

- the students, teachers and parents at Goondiwindi State High School undertake cross-cultural exchanges and programs with their counterparts at Boggabilla Central School as part of the ordinary activities of the school;
- the curricula at Goondiwindi State High School make provision for the teaching (particularly by Aborigines themselves) of Aboriginal history, culture and aspirations, and for the frank revelation of the treatment of Aborigines since European settlement in Australia;
- inservice teacher training for trainee and qualified teachers in these subjects is introduced at Goondiwindi State High School; and
- an Aboriginal liaison and program officer is permanently appointed to and available at Goondiwindi State High School.

9.32 The Queensland Government should further develop an appropriate Aboriginal Education Policy, teacher training and school curricula on Aboriginal issues for all schools in the State.

9.33 The New South Wales and Queensland Governments should establish, without delay, Aboriginal School Advisory Committees as recommended by the 1985 House of Representatives Select Committee on Aboriginal Education.

9.34 The New South Wales Government should instruct its officers to ensure that:

- the courses at the new Boggabilla Central School and TAFE facility accord with the aspirations and needs of the local Aboriginal communities for a useful and thorough education, and resultant employment opportunities;
- the temporary facilities are replaced by permanent buildings properly equipped for full secondary education within three years; and
- the curricula at both institutions embrace the establishment of cross-cultural exchanges and programs, to include the students, teachers and parents of Goondiwindi State High School.

Health

9.35 The New South Wales Health Department, in consultation with the Toomelah community, should:

- immediately appoint a registered nurse to work full-time at Toomelah;
- construct a new and properly equipped health clinic at Toomelah, the plans for which should be submitted to the Toomelah community within two months; and
- make immediate arrangements, if necessary in co-operation with the Queensland and Commonwealth Governments, for the regular provision of a fully qualified medical practitioner and for the urgent provision as needed of ambulance and other emergency aids.

9.36 The Queensland Health Department should ensure that sensitive, non-discriminatory services are available for Aboriginal people attending Goondiwindi Hospital and that staff training at the hospital embraces the need for properly servicing Aborigines.

Employment

9.37 It is essential that the issues of vocational training and employment be urgently addressed. The Toomelah Social Plan, the proposed TAFE facility and other current initiatives are only first steps. The Commonwealth Government should, in co-operation with the New South Wales and Queensland Governments, examine, as a matter of urgency, the ways in which these initiatives can be supplemented. Governments, businesses and farming enterprises should be encouraged to make positions available for the employment of Aborigines.

Aboriginal Heritage

9.38 All Australian governments and authorities considering Aboriginal claims for land and sacred sites should ensure that all grants include rights of access. As a matter of urgency, the New South Wales Government should provide the Aboriginal owners of the Old Toomelah cemetery an access route to that land, the nearby village, and any other land which has been granted to them.

9.39 Pending finalisation of the Toomelah Local Aboriginal Land Council's claim to Boobera Lagoon, the New South Wales National Parks and Wildlife Service should increase its supervision of the area and use its powers of prosecution to ensure compliance with legislation prohibiting damage to the area.

9.40 The Department of Aboriginal Affairs should immediately provide the funds required to complete the Aboriginal Community Hall at Boggabilla.

Provision of Services

9.41 The Offices of the Commonwealth, New South Wales and Queensland Ombudsmen should be expanded to enable them effectively to investigate the adequacy of the provision of services to Aboriginal communities.

9.42 Within three months of the date of this Report, the Department of Aboriginal Affairs should supply to the Toomelah community a clear statement of the services available to them, under the various headings identified in this Report, from whom such services may be obtained and the procedures for acquiring them. Similar statements should be supplied to Aboriginal and Torres Strait Islander communities in every State and Territory of the Commonwealth.

9.43 The Department of Aboriginal Affairs should establish a special section or branch with appropriately trained staff to exercise primary responsibility for monitoring the conditions in Aboriginal communities, for supplying information to those communities as to where services may be obtained, and for then ensuring that those communities efficiently receive adequate basic services in a way which protects their quality of life and promotes their right of self-determination. The Commonwealth Ombudsman should actively exercise oversight of these functions.

9.44 The Commonwealth and New South Wales Governments should urgently renegotiate the 1976 Commonwealth-State Arrangement on Aboriginal Affairs to provide that primary responsibility for providing services to Aborigines rest with a single authority with power to implement or require implementation of decisions and to which Aboriginal communities have direct and locally-based access.

9.45 The provision of general services by State and local government authorities should take into account the needs of Aboriginal communities and the inadequacy of existing services to them. Commonwealth financial grants for the provision of such services in future years should be conditional upon compliance with that requirement in previous years.

Self-Determination

9.46 The policy of Aboriginal self-determination should be effectively implemented, particularly in the provision of basic services and the establishment of a decent quality of life for all Aboriginal and Torres Strait Islander peoples.

APPENDICES

APPENDIX A

HISTORY OF THE LAND AT TOOMELAH

| Land | Date | Title |
|--|--------------|--|
| Part A camping reserve: | 1891 | CR 14698. |
| Part A leased to G.Evans: | ? to 1927 | |
| Part B Travelling stock and camping route, Pastures Protection Board: | ? to 1937 | TS&CR 33868 |
| Part C Water reserve: | ? to 1937 | |
| Whole reserved for the use of Aborigines: | 2 Sept 1937 | Reserve 66833 |
| Freehold to 184.9ha transferred to the NSW Aboriginal Lands Trust: | 24 May 1975 | Certificate of Title Vol. 12766 Folio 140 |
| Freehold transferred to Minister, Aboriginal Land Rights Act 1983: | 11 July 1983 | |
| Freehold transferred to Boggabilla- Toomila [sic] Local Aboriginal Land Council: | 7 Mar 1984 | GO 9 Mar 1984, fol.1456 |
| 1.28ha leased to Minister for Education, 99 years: | 2 Jan 1984 | Lease Number V11840, registered 23 Aug 1985 |
| 183.62ha leased to Toomelah Co-operative Limited, 99 years: | | It appears that this lease has not been registered. The lease therefore may not be in force. |

APPENDIX B

LIABILITY OF THE TOOMELAH RESIDENTS TO PAY RATES

The Minister administering the New South Wales Aboriginal Land Rights Act 1983 is empowered by section 43 to exempt an Aboriginal Land Council from liability for the payment of local government rates:

43 (1) Where the Minister is of the opinion that special circumstances exist which warrant his so doing, he may, by notification published in the Gazette, declare that any land vested in an Aboriginal Land Council and specified in the notification shall be exempt from payment of rates under —

(a) the Local Government Act, 1919; or shall be exempt from the payment of those rates as is specified in the notification.

(2) A declaration made under subsection (1) (a) shall operate for a limited period of time if such a period is specified in the declaration; and

(b) may, by notification published in the Gazette, be revoked by the Minister at any time.

Section 132 of the Local Government Act 1919 exempts land in respect of which such a declaration has been made from liability for rates:

132(1) All land in a municipality or shire (whether the property of the Crown or not) shall be ratable except —

(1) land vested in the New South Wales Aboriginal Land Council or a Local Aboriginal Land Council constituted under the Aboriginal Land Rights Act, 1983, being land which is declared under Division 5 of Part VI of that Act to be exempt from the payment of rates under this Part;

A person holding an estate or interest in land with respect to which a rate notice has been served may appeal against the levying of the rate on the ground that the land is not rateable: Local Government Act 1919, section 133. A challenge to the amount of the rates may be made under the Valuation of Land Act 1916.

No exemption has been granted to the Boggabilla-Toomila [sic] Local Aboriginal Land Council. Therefore, the Council is liable for rates.

It should be noted that land owned by an Aboriginal Land Council cannot be sold for overdue rates. The Aboriginal Land Rights Act 1983 provides:

44 Notwithstanding the provisions of —
(a) the Local Government Act, 1919;

or any other rule of law, land vested in an Aboriginal Land Council shall not be sold, whether by way of writ of execution or otherwise, for overdue rates payable under any of those Acts nor shall action be taken to wind up any such Council because of non-payment of any such rates.

Sections 145 and 151 of the Local Government Act deal with liability for rates of a lessee of land. Neither section would justify the levying of rates against the individual tenants of houses on Aboriginal Land Council land. Section 145(2) requires a lessee from the Crown to pay the rates to the local council. Section 151, which applies only to long-term leases entered into at the beginning of this century, obliges the lessee to pay the rates if there is an agreement in the lease itself to this effect.

Section 145(2) may have justified the collection of rates from the individual Toomelah tenants during the period from 10 June 1983 to 7 March 1984 when the land was owned by the Minister administering the Aboriginal Land Rights Act, a corporation sole representing the Crown.

In contrast, the Boggabilla-Toomila [sic] Local Aboriginal Land Council is not a statutory body representing the Crown: Aboriginal Land Rights Act, section 65.

INDIVIDUAL LIABILITY

Section 139(4) of the Local Government Act provides that the 'person ratable in respect of the land', upon whom the rate is to be levied, is the owner, except in the cases mentioned above (sections 145 and 151) where a lessee is liable. Where more than one person is the owner, the council is entitled to levy the rate upon one or more of such persons: section 139(5). Where the ratable person (i.e. the owner) is unknown to the council, the council is entitled to serve the rate notice upon the occupier and demand that rent due to the owner be paid instead to the council: section 150(1)(b).

It is clear that the Moree Plains Shire Council rates each dwelling at Toomelah separately. It is also clear, however, that the rates are levied against the Toomelah Local Aboriginal Land Council.

SEPARATE VALUATION

The Valuer-General is required to value separately several parcels of land owned by one person when each is separately let to a different person: Valuation of Land Act 1916, section 27(1). However, Toomelah is a single parcel of land, parts of which are leased to different persons. If the internal 'roads' of Toomelah can legally be described as such, the Valuer-General may be required to value separately the dwellings divided off by those roads. Section 27(2) of the Valuation of Land Act provides:

Lands which do not adjoin or which are separated by a road, or are separately owned, shall be separately valued ...

Moree Plains Shire Council is entitled to make separate assessments of portions of a single parcel of land when the Valuer-General has separately dealt with each portion: *Lane Cove Municipal Council v McDonald* (1934) 34 S.R. 201. Any parcel of land separately valued under the Valuation of Land Act is a separate parcel of land for the purposes of the Local Government Act: Local Government Act 1919, section 134(3).

The rate notice with respect to each separately valued parcel of land may be issued separately or combined: Local Government Act 1919, section 139(3). In either event, it is clear that the notice(s) should be served upon the Toomelah Local Aboriginal Land Council as the owner of the land.

APPENDIX C

WITNESSES TO THE INQUIRY

| DATE | LOCATION | WITNESS | ADDRESS |
|---------|--|----------------|--|
| 27.7.87 | Boobera Lagoon Boggabilla Aboriginal Community Hall | J.Whitton | Toomelah Local Aboriginal Land Council, Boggabilla |
| | | M.Duncan | Toomelah Local Aboriginal Land Council, Toomelah |
| | | A.Hippi | Toomelah Aboriginal Co-op, Toomelah |
| | | J.Whitton | Toomelah Local Aboriginal Land Council, Boggabilla |
| | | P.McIntosh | Boggabilla |
| | | R.Mackie | Toomelah Aboriginal Co-op, Toomelah |
| | | A.Jarrett | Toomelah |
| | | | Moree |
| | | R.Draper | Talwood |
| | | E.McIntosh | Moree |
| | | M.Charles | Sydney |
| | | M.McGrady | Sydney |
| | | K.Flick | Moree |
| | | | L.Munro Snr |
| 28.7.87 | Boggabilla Aboriginal Community Hall | R.Buchhorn | Wilcannia |
| | | P.Thompson | Boggabilla |
| | | G.Fairbairn | Boggabilla |
| | | V.Dennison | Boggabilla |
| | | L.Landsborough | Toomelah Local Aboriginal Land Council, Boggabilla |
| | | J.Whitton | Sydney |
| | | M.McGrady | NSW Department of Health, Boggabilla |
| | | P.Duncan | Boggabilla |
| | | V.Lazell | Boggabilla |
| | | | Boggabilla |
| | R.Fairbairn | | |
| | D.Dennison | | |

| | | |
|---------|--------------------------------------|--|
| | R.Hippi | Boggabilla |
| | D.McGrady | Moree |
| | P.Seagal | Aboriginal Legal Service, Moree |
| 29.7.87 | Toomelah Primary School | L.Whitton Toomelah |
| | F.McGrady | Toomelah |
| | P.Whish | NSW Department of Health, Inverell |
| | L.Penrose | Boggabilla |
| | Anon. | Brisbane |
| | L.Houlahan and M.O'Reilly | Moree Plains Shire Council |
| | P.Gilligan | Department of Aboriginal Affairs, Inverell |
| | J.Worthington | Worthington Civil Consulting Engineers, Narrabri |
| | P.Wilson and A.Amatto | NSW Teachers' Federation, Sydney, Armidale |
| | H.Creamer | NSW National Parks and Wildlife Service |
| 30.7.87 | Golden Age Centre, Goondiwindi | I.Cameron MP Fed. Member, Maranoa |
| | H.Creamer | NSW National Parks and Wildlife Service |
| | S.Coneybeer | Boggabilla |
| | V.Walker | Goondiwindi |
| | M.Stigwood | Goondiwindi |
| | W.Lees | Goondiwindi Town Council |
| | C.Plowman | Aboriginal Development Commission, Sydney |
| | R.Faulkner | Aboriginal Development Commission, Tamworth |
| | I.Isaacs | Goondiwindi High School |
| | R.Mann | Goondiwindi Town Council |
| | L.Heywood | Boggabilla |
| | C.Styles | Goondiwindi |

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|---------|--|---|
| | R.Wilkins and R.Daniels | Goondiwindi and District Aquatic Club |
| | R.Hall | Yetman |
| | N.Kross | Goondiwindi Goondiwindi |
| | A.Doyle | Goondiwindi NSW |
| | J.Pirrie | Department of Education |
| 7.12.87 | HREOC, Sydney P.Whelan | |
| | L.Fitzallen | NSW Department of TAFE |
| | J.Wellings | NSW Adult Education Board |
| | N.McNamara | Aboriginal Training and Cultural Institute, Sydney |
| | R.Eagle | NSW Public Works Department |
| | D.Black | NSW Department of Main Roads |
| | A.Pike | NSW Water Resources Commission |
| | D.Kelly, K.Cole, D.Calliope and J.Trigger | NSW Department of Local Government |
| | K.Smith and C.James | NSW Department of Housing |
| | D.O'Rourke, K.Duggan and R.Toohy | Department of Aboriginal Affairs, Canberra |
| | M.O'Brien, R.Faulkner and C.Ploman | Aboriginal Development Commission, Sydney and Tamworth |
| | L.Houlahan and M.O'Reilly | Moree Plains Shire Council |
| | D.McSullea and D.Effraemson | NSW Local Government and Shires Association |
| | F.Herscovitch | Sydney |

APPENDIX D

EXHIBITS

| No | TENDERED BY | DATE | NATURE OF EXHIBIT |
|-----|-------------|--------------|--|
| 1 | M.Duncan | 27 July 1987 | Written statement |
| | A.Hippi | 27 July 1987 | Written statement |
| 3 | R.Mackie | 27 July 1987 | Written statement |
| 4 | R.Buchhom | 28 July 1987 | Typed school notes |
| 5 | | | Letter to C.Nyland from B.Loder 9.3.82 |
| 6 | | | Newspaper article, <i>Inverell Times</i> 31.8.84, 'Aboriginal Land Claim' |
| 7 | | | Dumaresq Parish Map Newspaper article, <i>Goondiwindi Argus</i> 6.6.84 'Get Ready to Defend Your Land' |
| 9 | | | Newspaper article, <i>Narrabri Courier</i> 21.10.82, 'Criticism of Rights Demand' |
| 10 | | | Newspaper article, <i>Northern Magazine</i> 7.10.84, 'The Concept of Rural Land Rights is a Myth' |
| 11 | | | Newspaper article, <i>Northern Magazine</i> 21.10.84, 'In Reply to Wal Murray' Newspaper article, <i>Northern Daily Leader</i> undated, 'Aboriginal Land Grant Opens Pandora's Box' |
| 13 | | | Newspaper article. <i>National Times</i> 18-24.4.86, 'Why the Government Backed Off on Land Rights' |
| 13a | | | Written statements |
| 14 | J.Whitton | 28 July 1987 | Written statement |
| 15 | M.McGrady | 28 July 1987 | Written statement |
| 16 | P.Duncan | 28 July 1987 | Written statement |
| 17 | V.Lazell | 28 July 1987 | Information sheet on Goondiwindi Blue Nursing Service |
| 18 | | | Information sheet on Uniting Aboriginal and Island Christian Congress |
| 19 | | | Written statement |
| 20 | R.Hippi | 28 July 1987 | Written statement |
| 21 | D.McGrady | 28 July 1987 | Written statement |
| | L.Whitton | 28 July 1987 | Written statement |
| 23 | P.Whish | 29 July 1987 | Various documents re health conditions at Toomelah |
| 24 | L.Penrose | 29 July 1987 | Various documents re feed lot near Goondiwindi |

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|----|-------------|--------------|---|
| 25 | Anon. | 29 July 1987 | Written statement |
| 26 | | | Written statement by anon. |
| 27 | L.Houlahan | 29 July 1987 | Written statement by Moree Plains Shire Council |
| 28 | | | Written statement |
| 29 | P.Gilligan | 29 July 1987 | Written statement |
| 30 | | | 'DAA - Regional Office Visits to Toomelah/Boggabilla 1.1.86 to 29.7.87' |
| 31 | P.Wilson | 29 July 1987 | Written statement by NSW Teachers Federation |
| 32 | H.Creamer | 29 July 1987 | Aboriginality in NSW — Beyond the Image of Cultureless Outcasts |
| 33 | | | A Summary of the Aboriginal Significance of Boobera Lagoon in Northern New South Wales |
| 34 | | | Letter to J.King from National Parks and Wildlife Service 16.6.87 and letter to Crown Lands Office from H.Creamer 24.4.87 |
| 35 | | | Aboriginal Heritage Working Party |
| 36 | G.Simmonds | 30 July 1987 | Toomelah Public School |
| 37 | S.Coneybeer | 30 July 1987 | Written statement |
| 38 | V.Walker | 30 July 1987 | Written statement |
| 39 | M.Stigwood | 30 July 1987 | Written statement |
| 40 | W.Lees | 30 July 1987 | Written statement by Goondiwindi Town Council |
| 41 | | 30 July 1987 | Written statement |
| 42 | R.Mann | 30 July 1987 | Written statement |
| 43 | L.Heywood | 30 July 1987 | Written statement |
| 44 | R.Wilkins | 30 July 1987 | Written statement by Boobera Ski Club |
| 45 | | | Extract from NSW <i>Government Gazette</i> 10.4.87 |
| 46 | | | Written statement by Goondiwindi and District Aquatic Club |
| 47 | | | Written statement by Mr and Mrs R.Rowe |
| 48 | | | Photograph of Boobera Lagoon |
| 49 | R.Daniels | 30 July 1987 | Written statement |
| 50 | R.Hall | 30 July 1987 | Written statement by Concerned Parents — Border Education Committee |
| 51 | N.Kross | 30 July 1987 | Written statement |
| 52 | A.Doyle | 30 July 1987 | Written statement |
| 53 | J.Pirrie | 30 July 1987 | 4 newspaper articles |

| | | | |
|----|-------------|------------|--|
| 54 | L.Fitzallen | 7 Dec 1987 | TAFE Provision at Boggabilla; Moree College of TAFE Handbcok; NSW Department of TAFE <i>Annual Report 1986</i> ; TAFE Corporate Plan |
| 55 | R.Eagle | 7 Dec 1987 | Document re sewerage system at Toomelah |
| 56 | C.James | 7 Dec 1987 | Toomelah map |
| 57 | D.O'Rourke | 7 Dec 1987 | Aboriginal Participation and Equity in Local Govt |
| 58 | I.Myers | 8 Mar 1988 | Letter re water pumps at Toomelah |

APPENDIX E

WRITTEN SUBMISSIONS

| NO | DATE RECEIVED | NAME |
|----|------------------|---|
| 1 | 18 February 1987 | Confidential |
| 2 | 28 May 1987 | Richard Buchhorn |
| 3 | 11 June 1987 | Betty Ronnfeldt |
| 4 | 22 June 1987 | Cec Fisher |
| 5 | 30 June 1987 | Goondiwindi Town Council |
| 6 | 24 June 1987 | D.Huggonson |
| 7 | 27 July 1987 | John Horne |
| 8 | 27 July 1987 | David Williamson |
| 9 | 28 July 1987 | John Quelch |
| 10 | 29 July 1987 | Peter Gilligan and Paula Howard |
| 11 | 30 July 1987 | L.Dillon |
| 12 | 30 July 1987 | Bill Cook |
| 13 | 30 July 1987 | Malana Clark |
| 14 | 30 July 1987 | Norman Fox |
| 15 | 30 July 1987 | Moree Plains Shire Council |
| 16 | 30 July 1987 | Legal Aid Commission of NSW |
| 17 | 31 July 1987 | Queensland Association of Teachers in Independent Schools Union of Employees |
| 18 | 3 August 1987 | Richard Buchhom |
| 19 | 6 August 1987 | Barry Kindt |
| 20 | 7 August 1987 | Dr Watson |
| 21 | 7 August 1987 | Andrew Behr |
| 22 | 10 August 1987 | Mrs Vander Griend |
| 23 | 10 August 1987 | John Bolton |
| 24 | 10 August 1987 | Thompson Kanandah Pty Ltd |
| 25 | 11 August 1987 | Mr and Mrs North |
| 26 | 14 August 1987 | Shirley Ellis |
| 27 | 14 August 1987 | Jack MacDonald |
| 28 | 14 August 1987 | Glenda de Viclas |
| 29 | 14 August 1987 | J.Hammond |
| 30 | 14 August 1987 | Raelene Donpon |
| 31 | 17 August 1987 | Richard Copeland |

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| 32 | 17 August 1987 | Noel Smith |
| 33 | 17 August 1987 | Mr and Mrs Carrigan |
| 34 | 17 August 1987 | Robert Hall |
| 35 | 17 August 1987 | Mr and Mrs Kirkegaard |
| 36 | 17 August 1987 | Mr and Mrs Price |
| 37 | 17 August 1987 | G.Pfitzner |
| 38 | 17 August 1987 | Mrs Pfitzner |
| 39 | 17 August 1987 | Mrs Hannan |
| 40 | 18 August 1987 | Shelley Coneybeer |
| 41 | 19 August 1987 | Janine Newell |
| 42 | 19 August 1987 | Mr and Mrs Dillon |
| 43 | 19 August 1987 | Richard Buchhorn |
| 44 | 19 August 1987 | Dr Chenoweth |
| 45 | 20 August 1987 | The National Aboriginal and Islander Health Organisation |
| 46 | 21 August 1987 | P.Corish |
| 47 | 24 August 1987 | Department of Social Security |
| 48 | 24 August 1987 | New South Wales Government |
| 49 | 25 August 1987 | Institute of Sisters of Mercy of Australia |
| 50 | 26 August 1987 | Department of Aboriginal Affairs |
| 51 | 26 August 1987 | Aboriginal Development Commission |
| 52 | 26 August 1987 | Pat Cunningham |
| 53 | 28 August 1987 | Local Government and Shires Associations of NSW |
| 54 | 31 August 1987 | Worthington Civil, Consulting Engineers |
| 55 | 1 October 1987 | Queensland Teachers Union |
| 56 | 20 October 1987 | Department of Employment, Education and Training |
| 57 | 6 January 1988 | Toomelah Aboriginal Land Council |
| 57 | 28 January 1988 | NSW Department of Housing |
| 59 | 28 January 1988 | NSW Department of Education |
| 60 | 3 February 1988 | Local Government and Shires Associations of NSW |
| 61 | 4 March 1988 | Queensland Government |

