had considerable support, it was also strongly opposed by some members of the Committee. The Committee therefore agreed to recommend the enactment of an unenforceable Declaration of Rights and Freedoms which would guide Parliament in considering legislation and have a moral and educative effect in the community. The Committee felt that this proposal would be likely to gain the widest possible support. The Committee also envisaged a body which would scrutinise governmental action for compliance with the Declaration and report to Parliament.

The Report therefore proposes the conferral upon the Legal and Constitutional Committee of the functions of

- automatically scrutinising Bills and newly-made subordinate legislation for compliance with the Declaration and
- undertaking specific references to consider compliance with the Declaration of existing Acts of Parliament, subordinate legislation, the common law and areas of executive action.

The Committee was keenly aware of the controversy aroused by federal proposals for a Bill of Rights which would have been enforceable by judicial and executive review (see [1986] *Reform* 10; [1986] *Reform* 84; [1987] *Reform* 37). A major concern with the most recent federal proposals was the prospect of the invalidation of Acts of Parliament by non-elected judges. The Report emphasises several times that the recommended Declaration of Rights and Freedoms would not be enforceable through the courts.

minority report. One member of the Committee, Mr AT Evans, issued a minority report recommending against the need for any action in relation to human rights to be taken by the Victorian Parliament. He said that the overwhelming majority of witnesses who appeared before the Committee were satisfied that the present safeguards of human rights in Victoria were adequately protected by Parliament, the Judiciary and the common law.

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aboriginal deaths in custody

The price of justice is eternal publicity.

Arnold Bennett

the number of deaths. Since December 1986, 16 Aborigines have died while in custody. According to the *Sydney Morning Herald* of 23 July 1987 the list of deaths is as follows:

- December 4, 1986: Perry Noble, 21, Yarrabah near Cairns, Qld
- December 18, 1986: Charles Hyde, 42, Yarrabah, Qld
- March 4, 1987: Mitchell Agie, 29, Perth
- March 14, 1987: David Koowartha, Cairns
- March 14, 1987: Alistair Riversleigh, 34, Doomadgee, Qld
- March 29, 1987: Willy Wallace, 23, Wujal Wujal, Qld
- April 2, 1987: Name not released, Darwin
- April 11, 1987: Reginald Pootchemunka, 18, Aurukun, Qld
- May 21, 1987: Stephen Michaels, 29, Perth
- June 11, 1987: Daniel Lionel Lacey, 43, Brisbane

- June 11, 1987: Arthur Moggat, 51, Warragul, Vic
- June 24, 1987: Mark Anthony Quayle, 23, Wilcannia, NSW
- June 26, 1987: Stanley Brown, 41, Broome, WA
- July 9, 1987: Edward West, 18, Cherbourg, Qld
- July 9, 1987: Kingsley Dixon, 19, Adelaide, SA.

Since this list was published another Aborigine has died in custody.

- August 6, 1987: Lloyd James Boney, 28, Brewarrina, NSW

Such a large number of deaths in such a short period of time is very disturbing. As *The Weekend Australian* noted in its editorial of 8–9 August 1987 p 20:

> The death of 16 Aborigines in police custody during the past eight months is a matter of the gravest concern about which every decent Australian must feel profound disquiet.

It is not clear whether this is a recent phenomenon or whether it continues a long term trend. A recent national study by Hatty and Walker entitled *Death in Australian Prisons* (Australian Institute of Criminology, 1986) which studied the rate of deaths in prisons (which excludes police lock-ups) for the period 1980–85 concluded that:

> Aboriginals appear to be at no greater risk of suicide than non-Aboriginals but have a death rate by all causes around fifty per cent higher.

However the general impression is that there has been a dramatic increase in Aboriginal deaths in custody in the last year. While full details of all the deaths are not publicly available a number of observations may be made:

- most of the deaths are reported to be suicides;
- the most common cause of death appears to be hanging;
- many of the persons who died were affected (usually very badly) by alcohol — a number were in protective custody for this reason;
- most of the deaths occurred in unattended police cells;
- all 16 persons who died were male and 7 were aged 23 years or less;
- six of the 16 deaths occurred on Aboriginal communities in Queensland.

the committee to defend black rights. This Committee has over the last 12 months conducted a concerted campaign to draw attention to the number of Aboriginal deaths in custody. Since the middle of last year it has conducted a speaking tour, held public meetings and has invited organisations and individuals to join in the establishment of an Aboriginal Deaths in Custody Watchdog Committee. The Committee to Defend Black Rights has made repeated calls for a Royal Commission to investigate:

- the unresolved questions surrounding the circumstances of the deaths of particular Aboriginal persons;
- the incidence of deaths in custody and the causes of those deaths;
- the demonstrated lack of adequate medical attention given to persons in distress;
- the practice of unrestricted use of force in the arrest of individuals and in subduing of persons in custody;
- the establishment of coronial inquests independent of police control of investigations involving police and warders.

It was given funding (to date $13 000) by the Minister for Aboriginal Affairs in November 1986 to obtain legal assistance to produce a submission which might establish the need for a Royal Commission.

It was reported in *The Australian* (21 July 1987, p 5) that the Committee had briefed six barristers who will prepare arguments to justify a Royal Commission into Aboriginal deaths. The Committee has decided to focus on six Aboriginal deaths which all include, what it considers to be, suspicious circumstances.

official action. On 13 April 1987 the then Federal Minister for Aboriginal Affairs, Mr Clyde Holding, referred the issue of Aboriginal Deaths in Police Custody to the House of Representatives Standing Committee on Aboriginal Affairs. In doing so the Minister made it clear that the decision to proceed with the Parliamentary enquiry did not foreclose on the possibility of a Royal Commission into Aboriginal deaths in custody if the evidence presented by the Committee to Defend Black Rights justified such actions. The Parliamentary Committee's terms of reference went much wider than the issue of Aboriginal deaths and involved a wide ranging enquiry into all aspects of Aborigines and the criminal justice system. The work of the Parliamentary Committee had proceeded no further than the preliminary stage of calling for submissions when Parliament was dissolved for the federal elections. However when this occurred the Minister for Aboriginal Affairs announced that an enquiry would be conducted into Aboriginal deaths by the Human Rights and Equal Opportunity Commission (HREOC). On 22 July 1987 HREOC announced the establishment of its inquiry which will be headed by 3 former judges. However at the time of writing no details of the terms of reference were available.

Meanwhile the Queensland Government has conducted its own inquiry into the deaths in custody in Queensland. The Queensland Community Services Minister, Mr Bob Katter, appointed Mr Eric Law, an Aboriginal school teacher, and Mr Pearce Powder, an official of the Aboriginal Coordinating Council, to conduct an inquiry. The report of this inquiry was publicly released on 3 August 1987.

interim measures. Apart from establishing inquiries it appears that little other official action has been taken in relation to Aboriginal deaths in custody. The first report to become available is the Queensland Report by Law and Powder. According to the *Times on Sunday* (19 July 1987) the Law-Powder Report to the Queensland Cabinet recommends:

- the establishment of drug and alcohol centres at all Aboriginal communities;
- more co-operation between community police forces and existing hospitals;
- employment of full-time watch-house keepers to provide constant surveillance of cells when prisoners are present;
- re-location of some isolated watch-houses closer to police stations;
- up-grading of those watch-houses which 'quite frankly should have been knocked down years ago'.

The HREOC inquiry is likely to take some time but will be more extensive as it will focus on the situation Australia-wide. Other inquiries which have contained recommendations relevant to the issues raised by the large number of

Aboriginal deaths in custody in recent years include the ALRC's report on the Recognition of Aboriginal Customary Laws (ALRC 31) and the Harkins Enquiry into Aboriginal Legal Aid. Both of these reports have been tabled in the Federal Parliament but no official response has been made in relation to either.

the need for an enquiry. Many Aboriginal organisations have called for a Royal Commission or some other form of judicial inquiry into Aboriginal deaths in custody. Dissatisfaction has been expressed with each of the inquiries that has been established to date, principally because they have lacked the status of a judicial inquiry to gather evidence including statements from local police officers. HREOC has a judicial Chairman, Justice Einfeld, but as the Committee to Defend Black Rights has pointed out, the Act under which HREOC was established provides only limited powers to call witnesses to attend and give evidence. However, one advantage of HREOC conducting such an inquiry is that it can focus on all States and Territories. It is clear that any initiatives in this area should be adopted on an Australia-wide basis and not left to individual States or Territories. While there has been a concentration of deaths in Queensland there have also been deaths in most other Australian jurisdictions. Only an inquiry that examines all deaths which have occurred throughout Australia will be able to reach conclusions for long-term solutions rather than proposing piece-meal approaches in individual jurisdictions. It is not sufficient to say that local factors only are involved and that local coronial inquiries can resolve the problem. As the editorial in the *Weekend Australian* of 8–9 August 1987 noted in proposing the need for a royal commission:

> Such a royal commission would probably require the co-operation and participation of the States to be completely effective, but this is a matter in which all Australians of goodwill can surely join in demanding a speedy and comprehensive explanation of why so many Aborigines are dying.

One difficulty confronting any inquiry will be the appropriate methodology to adopt in investigating such a complex problem.

There are strong arguments for some form of inquiry into Aboriginal deaths in custody. When such a widespread pattern of Aboriginal deaths in custody appears to include such a high proportion of suicides, a real problem within Aboriginal communities appears to be evident. The Queensland Minister for Community Services, Mr Bob Katter is reported (*SMH* 16 July 1987 p 8) to have said that the Queensland State Government's 'policy of giving Aboriginal and Islander communities control of their own affairs would gradually overcome the social conditions leading to gaol suicides'. The fact that communities were being given land tenure and control of their own affairs through community councils under State government land rights policies should reduce the feelings of hopelessness, despair and desolation which, according to the Minister, have produced the recent spate of Aboriginal suicides. However, while this presents a possible long-term solution to some of the problems other measures would appear to be required immediately. A comprehensive strategy of long-term, medium-term and short-term policies is required.

editor's note. The Prime Minister, Mr Hawke, announced on Tuesday 11 August that a federal-State Royal Commission would be established to examine the circumstances of the deaths of 44 Aborigines since 1 January 1980.

* * *

transcover

> Get out with your wife and 2 point 4 children
> Before it's too late.
> It's not home mate
> It's a coffin of chrome
> That'll crush your chest on its steering wheel
> Your life ebbing out
> On the twenty dollars optional carpet –
>
> Barry Oakley,
> *Let's Hear it for Prendergast*

background. Mr Ken Booth, the New South Wales Treasurer, introduced the Traffic Accidents Compensation Act 1987 (NSW) at its second reading as 'the single most important reform to motor accident compensation in the history of this State'. The Act introduces TransCover which is based on the New South Wales Law Reform Commission's Traffic Accident Scheme contained in its 1984 Report, the New South Wales Government's Green Paper of 1986 together with submissions from the New South Wales Government Insurance Office (GIO) and the community.

what is transcover? Transcover is a new transport accident compensation scheme which replaces the third party common law action for people involved in accidents on or after 1 July 1987. It does not apply retrospectively.

The three principles of the scheme are

- equity: to provide fair and appropriate compensation for the seriously injured,
- rehabilitation: to facilitate return of the injured to a full and meaningful life, and
- responsibility: to bring costs to the community under control.

why reform the third party common law system? Two major reasons are given by the Government for reforming the third party common law system which has existed since 1942. They are the costs of the system and the deficiencies in its approach.

costs of the third party system. Mr Booth states that the fund will be exhausted in a few years under the common law. In May 1987 there were 90 000 current claims with the GIO. Over the past five years claims costs have increased by an average of 28% per annum and this is projected to continue at 25% even with the 1984 reforms, aided by 'super inflation' factors of fraud and court precedents. Without reform, premiums will be increased by over 23% per annum. The NSW government argues that its scheme will prevent the exhaustion of the fund, will be 15% cheaper overall and will only result in a 12% increase in premiums over the next five years. The NSWLRC, through its then Chairman, Professor Ronald Sackville, in 1984 raised the question whether premiums should be tied to the Fund as a matter of policy.

deficiences in the common law approach. There have been many criticisms of the common law approach to accident compensation, notably the basic lack of equity and the lengthy delays in obtaining compensation. It is