

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

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

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

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

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

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

* * *

land rights for torres strait islanders

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

Chinese proverb

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

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

1985 (Qld) was enacted. It deemed any rights which might otherwise have survived annexation to have been extinguished. The Queensland Government argued in the High Court that the 1985 Act was a bar to the Murray Islander's claim and was thus a defence to their action because it 'retrospectively abolished any surviving traditional communal or personal proprietary rights or interests of the Islanders to land on the Murray Islands' (Justice Deane). The Murray Islanders demurred to this aspect of the defence.

The High Court, in considering the demurrer, focused on two principal questions:

- the effect of the 1985 Act and
- any material inconsistency between it and sections 9 and 10 of the Racial Discrimination Act 1975 (Cth).

All members of the Court agreed that the 1985 Act on its true construction extinguished the traditional legal rights on which the Murray Islanders relied in their Statement of Claim. However, a majority of the court (Brennan, Toohey, Gaudron, Deane, JJ; Mason CJ, Wilson and Dawson JJ dissenting) held that the 1985 Act was inconsistent with section 10 of the Racial Discrimination Act 1975 (Cth) and was therefore ineffective by reason of section 109 of the Constitution. Sub-section 10(1) of the Racial Discrimination Act states

If, by reason of, or of a provision of, a law of Australia or of a State or Territory, persons of a particular race, colour or national or ethnic origin do not enjoy a right that is enjoyed by persons of another race, colour or national or ethnic origin, or enjoy a right to a more limited extent than persons of another race, colour, or national or ethnic origin, then, notwithstanding anything in that law, persons of the first mentioned race, colour or national or ethnic origin shall, by force of this section, enjoy that right to the same extent as persons of that other race, colour or national or ethnic origin.

The majority of the High Court found that the 1985 Queensland Act destroyed the traditional legal rights in and over the Murray Islands possessed by the plaintiffs and that such an arbitrary deprivation of their property limited their enjoyment of the human right to own and inherit it. Accordingly the Court found that the Murray Islander plaintiffs enjoyed their human right of the ownership and inheritance of property to a more limited extent than others who enjoy the same human right.

the next stage. While this victory for the Murray Islanders is significant, the substantive action has still to be resolved on its merits. It is still an open question whether the title to land claimed by the Murray Islanders continued after annexation and further, what effect subsequent alienation by the Crown of rights in and over the land has had. The Mabo Case is the most significant in terms of determining native title in Australia since the Gove Land Rights Case of 1971.

* * *

multiculturalism

If God lived on earth people would break his windows.

Yiddish proverb

the curse of otherness. The Commonwealth Secretary General, Shridath S Ramphal said recently that the demise of slavery 'did not usher in an age of enlightenment; the law continued to allow racial prejudice and discrimination wide reign — both in Britain and the colonies' (Kapila lecture, London 15 December 1988).

He said racism was not merely a matter of colour but resulted from the curse of 'otherness'.

But 'otherness' rears its ugliness in many a Commonwealth country — including my own. Each society has to struggle to suppress unworthy impulses; each community of people — especially a majority commu-