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ADMINISTRATION OF CRIMINAL JUSTICE IN THE A.C.T.

Professor Richard W. Harding

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Australian Institute of Criminology
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C O N T E N T S

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ADMINISTRATION OF CRIMINAL JUSTICE IN THE A.C.T.

at the

AUSTRALIAN INSTITUTE OF CRIMINOLOGY

10-18 Colbee Court, Phillip

24 May 1984

9.30	Tea or Coffee	
10.00-10.15	Welcome and Introduction	
	Professor Richard Harding Director Australian Institute of Criminology	
	Opening	
	The Honourable Sir Richard Blackburn Chief Justice A.C.T. Supreme Court	
10.15-11.30	Policing in the A.C.T.	Chair: Prof. R. Harding
SESSION 1	The Case for a Separate A.C.T. Police	
	Mr P.R. Kobold, M.H.A. Chairman Police Liaison Advisory Committee (A.C.T.)	
	Dr Grant Wardlaw Australian Institute of Criminology	
	Questions and Discussion	
11.30-12.45	The Courts	Chair: Mr C.R. Bevan
SESSION 2	11.30-12.00 Mr. H. Woltring Justice Division Attorney-General's Department	
	12.00-12.30 Mr W.K. Nicholl S.M.	
	12.30-12.45 Mr B.R. Maguire Q.C. Bar Association	
12.45- 1.30	A light lunch will be provided at the Institute.	

1.30-2.00	Questions and Discussion on Sessions 1 and 2.	
2.00-3.30	The Treatment of Offenders Chair: The Hon. Sir Richard Blackburn	
SESSION 3	2.00-2.30	Mr P.H. Bailey Deputy Chairman Human Rights Commission
	2.30-3.00	Ms H Bayes Welfare Branch Department of Territories and Local Government
	3.00-3.30	Questions and Discussion
3.30-3.45	Afternoon Tea	
3.45-5.00	Self Government for the A.C.T. and its Impact Chair: Mr D. Biles	
SESSION 4	3.45-4.15	Mr Gordon Craig Chairman Task Force on Self Government for the A.C.T.
	4.15-4.30	Senator Margaret Reid
	4.30-5.00	Questions and Discussion and Summary

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AUSTRALIAN INSTITUTE OF CRIMINOLOGY

ADMINISTRATION OF CRIMINAL JUSTICE IN THE A.C.T.

MAY 24TH, 1984

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Mr John Walker	Criminologist Australian Institute of Criminology A.C.T.
Ms Robyn Walmsley	House of Assembly A.C.T.
Mr Grant Wardlaw	Senior Criminologist Australian Institute of Criminology A.C.T.

Mr Alex Watt	Principal Programmes Officer Australian Institute of Criminology A.C.T.
Mr Herman Woltring	Senior Advisor Attorney-General's Department A.C.T.
Mr Richard Young	Acting Superintendent Belconnen Remand Centre A.C.T.

ADMINISTRATION OF CRIMINAL JUSTICE

IN THE A.C.T.

REPORT OF PROCEEDINGS

BY

PROFESSOR RICHARD W. HARDING

SESSION 1 - POLICING IN THE A.C.T.

The Director of the Institute, Professor Richard Harding, before inviting the Chief Justice of the A.C.T. Supreme Court, Sir Richard Blackburn, to open the seminar, drew attention to some of the principal issues. He said that, as a newcomer to Canberra, he had been surprised progressively to discover there were many problems and issues relating to the administration of criminal justice in the A.C.T.

The first matter of which he had become aware related to the imprisonment of persons convicted and sentenced to imprisonment by A.C.T. courts. Such people were sent off to New South Wales prisons. The more one thought about this the more startling the implications became. Next he discovered that a comparable arrangement existed for juveniles who were to be institutionalised. This struck him as even more shocking than did the imprisonment arrangements relating to adults.

At the same time, he was being made aware of the continuing debate about appropriate policing structures for the A.C.T. and the relationship which these should bear to the operations of the Australian Federal Police. This issue had been debated between 1975 and 1979, and as an outsider he had thought that the 1979 legislation had satisfactorily solved the situation. Yet, quite evidently, this was not so. He suspected that the new dynamic factor which had entered into the matter since 1975 was the issue of self government for the A.C.T. Indeed, self government or the prospect of self government, must inevitably put all problems of the administration of criminal justice into a somewhat different perspective than before. This was no less true with regard to general provisions of the criminal law.

His Honour the Chief Justice had drawn the Director's attention to the many problems which existed in this regard. In many respects these arose out of the peculiar relationship which A.C.T. criminal law bore to New South Wales criminal law of 1911. The Criminal Law Consultative Committee of the A.C.T. had recently said that 'The Territory has been left as a small stagnating billabong cut off from the main river of law reform' since 1911.

The Director referred to the fact that, two days previously, Mr Uren, the Minister for Territories and Local Government, had confirmed that the Vinson enquiry into social welfare in the A.C.T. would soon begin. One of its terms of reference specifically took in the whole question of corrective services for adults and juveniles. He referred also to the fact that, the previous day, the Federal Attorney-General had announced moves to clarify in all contexts, not just that of criminal law, the relationship of A.C.T. law to New South Wales law. He welcomed this.

Finally, the Director referred to the fact that this was, somewhat depressingly, a debate which had been held previously. For example, in 1978 a seminar at the Institute on 'The Future of Corrections in the A.C.T.' reached a variety of conclusions about options for sentencing, whether the Territory should have a prison, and whether 'transportation' to New South Wales should cease. These conclusions had a very modern ring about them. He hoped that on this occasion it might be more than a debate, that action might follow at a political level. The Director then invited Sir Richard Blackburn to open the proceedings.

Sir Richard Blackburn thanked the Director and said how glad he was that such a seminar was being held at the Institute. He stressed that all aspects of criminal justice interact and have to be studied together. Judges and magistrates were in a special position which enabled them to see into all corners of the total system: police, legal profession, courts, corrective system and parole board. However, with regard to the corrective system, the judicial view was obscured; after sentence people disappear behind a curtain through which it is very difficult to see. His Honour then declared the seminar open.

Professor Harding resumed the chair and asked Mr Peter Kobold to deliver his paper.

Mr Kobold's paper is attached at p.39. In speaking to it, he highlighted in particular the following points:

1. That the Australian Federal Police Liaison Advisory Committee for the A.C.T. is unanimous that the present arrangements disadvantage the A.C.T. Examples of this related to conflicting priorities (so that when a demonstration occurred at Pine Gap, the A.C.T. was stripped of experienced and senior police officers) and the fact that 80 per cent of the police in the A.C.T. have less than 2 years experience, more senior officers having been pulled out of the A.C.T. to deal with tasks elsewhere.

2. There was great public concern about the present arrangements. It was no response to this concern for the Australian Federal Police to survey the rank and file to canvass their opinions; rather the community should be canvassed in this regard.

3. With self government certain to occur sooner or later it was crucial that a local legislature should be able to control its own law enforcement organisation. If the policing of the A.C.T. were done by a police body which was answerable to a broad Commonwealth line of political responsibility, conflicts of responsibility could well arise in the future.

4. The A.C.T. House of Assembly had asked the Police Liaison Committee to conduct an enquiry into the most appropriate form of policing for the A.C.T. upon the advent of self government. However, the committee was being frustrated at present by its

inability to secure assistance from the Australian Federal Police. Moreover, no response had been received from the Special Minister for State or the Department of Territories and Local Government to the requests for funds to enable this enquiry to be properly conducted.

Mr Kobold stated that he was clearly of the opinion that the A.C.T. police force should be re-established as a totally separate entity. He rejected the retention of the status quo. There were two other possibilities: to retain the Australian Federal Police structure itself and provide for policing of the A.C.T. either on a contractual basis along Canadian lines or by dint of the use of an A.C.T. division of the Australian Federal Police. Either of these alternatives were far less satisfactory than the re-establishment of a separate A.C.T. police force.

The Chairman then asked Dr Grant Wardlaw to deliver his paper. The text of this paper is contained at pages 43 to 52.

Dr Wardlaw began by stressing that the Mark Report had started from a false premise, namely that the level of crime in the A.C.T. was so insignificant that no separate force could be justified. Dr Wardlaw stressed that crime rates for most major crimes in the A.C.T. are comparable with those found in other Australian jurisdictions. Moreover, clearance rates appeared to have declined since the 1979 arrangements whereby the A.C.T. Police were amalgamated with the Australian Federal Police. It appeared to many A.C.T. residents that the imperatives of national policing priorities had diverted attention and expertise away from local concerns. Moreover much bitterness had accompanied the formation of the Australian Federal Police and the subsequent debate seemed to have been affected by this. Dr Wardlaw urged that the time was not appropriate to conduct a reliable public opinion pole in order to assess just what level of satisfaction existed in the community with regard to the system of policing the A.C.T. He suggested that the Police Liaison Committee, as part of its foreshadowed enquiry, should conduct such a survey.

Dr Wardlaw did not necessarily agree with Mr Kobold that a government which had local law making powers was no government at all if it did not have a police force answerable to it to enforce those laws. He considered that real accountability to the community could, in principle, be secured even though the policing unit was nationally structured. However, there were real difficulties to achieving this; foremost amongst them was the fact that local staffing stability did not seem able to be maintained in a context where the policing unit was a large national organisation. On balance, Dr Wardlaw considered that the original decision to abolish the A.C.T. police was misconceived. In urging the discontinuance of the present arrangements, he wished to stress that he implied no criticism of the way the Australian Federal Police had thus far carried out its duties.

Given that some change was necessary and desirable, Dr Wardlaw preferred the alternative of a separate A.C.T. police force. Past experience had shown that a force of 500 to 600 police was quite viable.

He did not favour the Canadian style contract policing arrangements; there were significant differences between the Royal Canadian Mounted Police and the Australian Federal Police situation, most notably that for the Royal Canadian Mounted Police the contract policing role was its dominant role. In other words, general policing was the task which the Royal Canadian Mounted Police was best equipped to handle; this was not so with the Australian Federal Police. Moreover, the system of contract policing was by no means generally accepted by the Canadian communities affected by it. He also saw problems with such an arrangement in terms of accountability.

Finally Dr Wardlaw regretted the terms in which much of the debate had so far been conducted. He asked that in future it be conducted on rational grounds concentrating on clearly articulated philosophies of policing and backed up by facts. It was not good enough for the Australian Federal Police to make defensive closed responses to criticism. The merits and drawbacks of all the viable alternatives must be laid out for informed public debate.

The Chairman thanked Dr Wardlaw, and commented that so far the papers seemed to be heading in one direction only. He informed the meeting that the Australian Federal Police had been invited to contribute to the seminar. However, the Commissioner had declined to allow an Australian Federal Police officer to speak at the seminar on the basis that, as the whole issue was one of government policy which was under active consideration, it was not appropriate for the Australian Federal Police to appear to be expressing a view upon the matter. The Chairman had no criticism whatsoever of this attitude, but suggested that in an effort to redress the balance the first speaker from the floor should be someone who was prepared to put a contrary point of view to that already expressed by the principal speakers. Mr Hugh Selby, from the Complaints Investigation Branch of the Ombudsman's office, indicated that he wished to do this.

Mr Selby was disturbed by the assumption of the first two speakers that the problems involved in policing the A.C.T. were principally structural ones. From his direct knowledge of the Australian Federal Police situation he was convinced that the problem was predominantly a resources problem; structural changes such as the proposed splitting off of A.C.T. policing would not help that at all. All the debate would come to nought unless total resources for national and A.C.T. policing were adequate.

He had spoken to many senior officers in the Australian Federal Police. They fell into two groups; those in whose view integration had been desirable and was now working well and those who, though against it originally, were of the view that we should now live with it and make it work as best we could. Mr Selby commented that it was quite apparent, however, that the old divisions of bitterness between the Commonwealth Police and the A.C.T. Police continued to exist; similarly disputes between the Australian Federal Police personnel and customs personnel were bedevilling the operations of the Australian Federal Police. For all that, he believed that splitting off the A.C.T. policing function would make all these personnel problems even worse.

With regard to the comment that police in the A.C.T. were so young, he regarded this as being a function of a total lack of resources and a confused career structure rather than attributable simply to the fact that the police force was unified. Finally, Mr Selby commented on the fact that academic police analysts and Council for Civil Liberties bodies and so on were always well represented at seminars such as this but there seemed to be nobody to put the police point of view publicly and cogently. He was glad to hear the Australian Federal Police had been formally given the opportunity to participate in this seminar.

The next speaker was Mr Richard Lucas, who also works in the Ombudsman's office. He stated that he had been a member of the police force in the A.C.T. between 1977 and 1983. Mr Lucas disputed Dr Wardlaw's view that the A.C.T. police force had been a viable one. He said that, just before the 1979 amalgamation, the size of the A.C.T. police force had indeed been between 500 and 600 men. Promotional possibilities were very limited; people spoke of promotion by stepping into 'dead men's shoes'; this was very bad for morale. Since 1979, a great number of positions have become available; promotional possibilities have freed up considerably. He believed that police forces, particularly one concerned with policing communities such as the A.C.T., should be enlightened and highly educated, and he believed that the freer structure associated with the Australian Federal Police might well do something to achieve this objective by way of attracting better personnel. A separate A.C.T. force would not open up this possibility in the same way. The Australian Federal Police should not be broken up; the very furthest this process should be taken should be to provide for policing of the A.C.T. on a contractual basis, in as much as this at least retains the benefits of the basic force being a larger one.

Mr Ian Cunliffe from the Australian Law Reform Commission spoke next. He commented that so far we had heard mostly about the A.C.T. perspective; a broader perspective was necessary. The whole point of the Mark Report and the 1979 amalgamation was to combine the A.C.T. Police and Compol so as to obtain an effective federal police force. This was a policy matter that has not altered; we still need an effective federal police force. If any question of segregation of A.C.T. policing were to arise, it would have to be done so as to leave the Australian Federal Police as an effective body in terms of its broader responsibility for federal policing.

Mr David Biles, Acting Deputy Director of the Institute, was invited by the Chairman to make a contribution. The Chairman pointed out that for the last 2 years Mr Biles has been a member of the Committee conducting a total review of the policing needs of the State of Victoria.

Mr Biles started by referring to Mr Kobold's comment with regard to a conflict of political accountability if the A.C.T. police were part of a broader national policing body and the directions from the two political sources were conflicting. Mr Kobold had asked; which master should they obey? Mr Biles said that they should obey neither;

no police force should be the lackey of the government which happens to be in power. Police, in their operations, are accountable to the courts and to the law not to a Minister. In this regard, it should be noted that the fundamental problem of the Australian Federal Police is that for it, in contrast to state police forces, there is a political line of command: the Australian Federal Police is categorically the law enforcement authority of the Federal Government. This was a fundamental structural flaw in his view.

Mr Biles also commented on the fact that Mr Selby had seemed to dismiss the arguments with regard to hiving off the A.C.T. Police on the basis that it was all a resources problem. An issue of principle should not and could not be sidestepped in this way. Every police force had a resources problem. The argument being addressed in this seminar must be confronted, not characterised as an irrelevancy on the basis of the resources problem.

With regard to Mr Cunliffe's point that federal policing was of great importance, Mr Biles differed. What was important was not federal policing but the federal law enforcement; the idea of federal policing is misconceived, for, with the separation of the federal guard force, there is no public order function to the non-A.C.T. part of Australian Federal Police functions. The non-A.C.T. part should be called a federal investigation service. If this were done, one of the great benefits would be that the tensions which existed between the Australian Federal Police and the seven State police forces would thereby be circumvented.

The Chairman thanked the contributors and speakers from the floor and declared this session to be closed.

SESSION 2 - THE COURTS

Mr C.R. Bevan, Assistant Director (Training), took the chair for this session. He invited Mr Herman Woltring to deliver his paper. The full text is attached at pages 53 to 61.

Mr Woltring began by referring to the confused state of the criminal law in the A.C.T. He quoted Sir Richard Blackburn's remarks in The Queen v. Sykes (1983), where His Honour had said

> 'The criminal law of this Territory is, to a degree which is scandalous, in need of review, and all the judges of this court have been saying so for 12 years to my knowledge.'

Mr Woltring referred to the response of the Attorney-General, Senator Gareth Evans, to this need in that he had created a position of senior advisor in his department to advise on this very thing. Mr Woltring himself occupied that position; his assistant, Mrs Sigrid Martin, was also present at the seminar.

Mr Woltring then referred to the first part of the reform program for A.C.T. criminal law. This involved a general tidying up which included the removal of archaic or non-operative provisions as well as the adoption of some reforms made interstate. This first part was encompassed in three Miscellaneous Crimes (Amendment) Ordinances passed during 1983. He set out the detail of these matters. The year 1983 ended on a high note in that in December a consolidated reprint of the Crimes Act 1900 (N.S.W.) in its application to the A.C.T. became available. This was the first such reprint available in the last 20 years. It incorporated the various 1983 reforms. It in itself was the launching pad for stage two of the reform package, namely the substantive reform of laws relating to the whole criminal law.

Mr Woltring now set out in detail some of the matters which would appear in stage two of the reform program. In particular he referred to a Crimes (Amendment) Ordinance which would add community service orders to the range of sentencing options available to courts in the territory; this ordinance was at present with the House of Assembly. He referred also to the fact that two draft ordinances reforming the law relating to sexual offences were at present with the Attorney-General for reference, in turn, to the House of Assembly. Property offences were also under consideration, and indeed had now been sent on to the Criminal Law Consultative Committee for consideration. Another draft ordinance currently under preparation is designed to enlarge the jursidiction of the Court of Petty Sessions in relation to criminal law matters.

Mr Woltring referred to a marked change of philosophy in relation to A.C.T. criminal law. He pointed out that until 1983 the conscious policy was to keep the criminal laws of the A.C.T. and New South Wales uniform or as near uniform as was feasible on the basis that the A.C.T. was an island within New South Wales. This policy had changed. The present Attorney-General accepts that the A.C.T. might become a flag-ship of criminal law reform, for example, with regard to mental retardation and the criminal law.

Mr Woltring concluded by thanking various bodies which have contributed to the process of criminal law reform in the A.C.T., including the Australian Law Reform Commission, the Criminal Law Consultative Committee of the A.C.T. and the Australian Federal Police.

The Chairman then asked Mr Warren Nicholl S.M. to deliver his paper. The full text is attached at pages 63 to 66.

Mr Nicholl began by referring to a general observation once made by Chief Justice Warren Berger of the United States Supreme Court, that one cannot look at what courts do in isolation. One must be aware of the state of the community, its conduct and values, outcomes and modes of disposition after conviction, etc. The success of courts is related to all this; that is also true with regard to the debate upon the administration of criminal justice in the A.C.T. In this regard, Mr Nicholl supported Sir Richard Blackburn's introductory remarks. What was apparent in the A.C.T. was that it seemed to take years to achieve any desirable reform, even one which had no substantial opposition from any quarter. For example, the infringement notice system with regard to traffic offences was first raised in 1972, and it only became law in 1983. Yet it was non-controversial and straight-forward as a policy. In this regard, he welcomed the appointment of Mr Woltring and Mrs Martin to positions within the Attorney-General's Department. There was enormous value in institutionalising commitment to the idea of reform.

Mr Nicholl said that he had been impressed by the talk of resources, and value for money, and efficiency in the earlier session. These concepts were equally applicable to the organisation of court work in the A.C.T. In his view there was a need for the review of jurisdiction of courts of petty sessions in regard to criminal law matters, and quite clearly that jurisdiction should be extended. Since the Court of Petty Sessions of the A.C.T. was first set up in 1930, its standards and practices have changed greatly so as to justify an extension of its jurisdiction. For example, in the beginning it was contemplated that there would be no legally qualified magistrate, that police prosecutors would do all the prosecuting, that there would be no accurate transcript kept, and that there would be limited powers to deal with indictable offences. Much of this has changed. From 1963, for example, S.M.s have been appointed to the exclusion of non-legally qualified people; from 1964 tape recordings of proceedings have been made and thus there has been an accurate record; from 1974 it has been recognised that if an indictable matter prima facie falls within jurisdiction then it should be dealt with by the Court of Petty Sessions. This whole process should be

continued by removing remaining restrictions implicit in the legislation with regard to the jurisdiction of Courts of Petty Sessions over all indictable matters except very serious ones. The Courts of Petty Sessions were quick and efficient; they would if their jurisdiction were extended be able to take some of the pressure off the Supreme Court.

The Chairman then called upon Mr B. Maguire Q.C., President of the A.C.T. Bar Association, to speak.

Mr Maguire began by commenting on the question of an A.C.T. police force. He believed that the key aspect of accountability and responsiveness was the size of a community; thus the police in Newcastle or Wollongong were more responsive to their communities than the police in Sydney, even though all three were part of the New South Wales police force. He did not believe that it was necessary to have a separate A.C.T. police force to achieve community responsiveness and accountability. Moreover the bitterness which would be caused by the amalgamation would be enormous. As regards Mr Biles' comment about the resentment which state police forces have for the Australian Federal Police, he believed that this was because the states perceived the Australian Federal Police to be efficient and clean.

With regard to the status and structure of the A.C.T. courts, he was concerned about some possible implications of self government. The situation in the Northern Territory was a cautionary tale. The point arose as follows.

Although the A.C.T. Supreme Court is not, of course, strictly a Federal court, it does perform in large measure a federal role. For example, it is not infrequently a forum of choice by plaintiffs in defamation actions; similarly in commercial matters large organisations are registered in the A.C.T. so that the A.C.T. Supreme Court, in administering company law, plays a national role that cannot be evaded. The A.C.T. Supreme Court is there to serve the nation, whether we like it or not. In this context it is crucial that the status of the A.C.T. Supreme Court not be reduced in any way.

When the Federal Court was created, it was slotted in an intermediate court of appeal for both the Northern Territory Supreme Court and the A.C.T. Supreme Court en route to the High Court. All judges of the Northern Territory and A.C.T. Supreme Courts were also invested as Federal Court judges; thus each of them gained appellate experience in a role akin to that of the Full Court in State jurisdictions. However, now that the Northern Territory had attained self government, new appointees to the Northern Territory Supreme Court were not also given federal commissions as Federal Court judges. Thus, in time the Northern Territory Supreme Court would be populated by judges of lower status than Federal Court judges, and in addition Northern Territory Supreme Court judges would not gain appellate experience as members of the Federal Court in its appellate role. Rightly or wrongly the Northern Territory Supreme Court would be perceived as an inferior court to the Supreme Court of the States and to the Federal Court. In this context, what is the prospect for the A.C.T. Supreme Court?

Mr Maguire called upon the people involved in the self government for the A.C.T. debate to answer this question quite specifically. It would be a backward step to contemplate a diminution of the status of the A.C.T. Supreme Court upon the attainment of self government.

Mr Maguire next commented on the whole question of the administration of criminal law in the A.C.T. He pointed out - conceding that his own evidence was anecdotal - that Supreme Court trials take longer in Canberra than anywhere else in Australia. This was a very important factor in as much as it explained the continual move to erode the jurisdiction of the Supreme Court. The length of trials was directly associated with the cost; this in turn obviously lent support to the push to extend the jurisdiction of the lower courts. Mr Maguire sought to identify some of the factors explaining the trend for trials to take longer in the A.C.T.

Foremost amongst these factors was the fact that counsel were very junior and inexperienced. On the prosecution side, this was because the Crown Solicitor's office regarded prosecution as a passing phase in the career of a government lawyer. As soon as a young lawyer was showing ability in this regard, he was likely to be passed on to some other phase of his general government career. Mr Maguire was most hopeful that the establishment of the Director of Public Prosecution's office would lead to a situation where prosecution was regarded as a career and senior people would start to be involved again. On the defence side of criminal cases, there was an Australia-wide trend for young and inexperienced lawyers to be involved. Mr Maguire wished to stress he was not jumping on the bandwagon of those who assert that legal aid prolongs criminal cases unnecessarily; but junior lawyers do prolong such cases, and of course they also tend to be prominent in legal aid schemes. A more mature profession reduced this sort of problem.

With regard to the debate about the enlargement of jurisdiction of courts of petty sessions, Mr Maguire stressed that the concomitant move to abolish appeals by way of rehearing to the supreme court was misguided. It was absolutely vital to maintain the present right of appeal which acted as a sanction on both Courts of Petty Sessions and police forces. What more important role can there be for a Supreme Court than to supervise matters relating to liberty of the subject?

Questions and discussion now followed.

Mr Nicholl was asked to develop his views about discovery in criminal trials to which he had referred briefly at the end of his speech. The panel generally was asked its views on discretion not to proceed with prosecutions. Mr Maguire was asked to explain again his concern about the way in which the status of the A.C.T. Supreme Court may de facto become reduced upon self government.

Mr Stretton, of the A.C.T. Law Society, asked Mr Kobold whether or not his point about the youth and lack of experience of A.C.T. police officers was not somewhat misleading in that the necessity of a whole new intake in 1979 made this inevitable. In other words, would this

phenomenon not be self correcting? Mr Kobold replied that this sounded very rational but that as senior police officers left (for example by being recruited to government departments) and as senior officers were taken out of the A.C.T. to fill holes in other parts of the Australian Federal Police, the A.C.T. would always get the young ones. In other words, the A.C.T. would be a sort of kindergarten for the Australian Federal Police.

Mr Peter Bailey of the Human Rights Commission asked whether or not the idea of an A.C.T. division of the Australian Federal Police had been rejected too readily. Mr Kobold replied that he believed that Commissioner Grey of the Australian Federal Police was keen on this idea. The Police Liaison Committee would certainly enquire into it; he would, therefore, prefer not to state his own views too categorically until he had more information. Dr Wardlaw stated that a major difficulty with this concept was accountability, and if this were strong enough to meet his own objections to the present situation it would de facto mean that the A.C.T. division was separate anyhow from the Australian Federal Police.

Ms Betty Hocking of the A.C.T. House of Assembly expressed concern about the erosion of the presumption of innocence in A.C.T. laws and other criminal laws. She wondered whether the reverse onus rule was a way of saving money in that convictions were easier to get and one therefore did not need to appoint a fourth Supreme Court judge to the A.C.T. She suggested that drug trafficking cases might be an example of this. Mr Woltring stated that the Attorney-General's Department was alive to the problems; there was a firm policy against extending the reverse onus unnecessarily.

SESSION 3 - THE TREATMENT OF OFFENDERS

Sir Richard Blackburn took the chair and called upon Mr Peter Bailey, Deputy Chairman of the Human Rights Commission, to address the seminar.

Mr Bailey began by explaining that the interest of the Human Rights Commission in this matter arose out of complaints from A.C.T. residents about there being no prison within the A.C.T. He stated that in his view the question was not whether we have a prison but where - in the A.C.T. or New South Wales? After raising the matter in February in a speech to the Civic View Club, he had written to various notable politicians to elicit their attitude to the matter. He recognised that there were cogent arguments against having a prison anywhere in the A.C.T. In this regard he was aware of the comments of Mr Bill Clifford, a former Director of the Australian Institute of Criminology, made in the Canberra Times on the 26 April. Mr Clifford had seemed to dismiss the argument for a prison in the A.C.T. on the basis that it was a manifestation of a kind of illegitimate societal machismo. In Mr Bailey's view, however, it was simply an aspect of self government, part and parcel of autonomy. In this regard it was exactly akin to the point made by Mr Woltring on page 60 of his paper with regard to the disposition of the mentally disordered offender.

Mr Bailey referred to the International Covenant on Civil and Political Rights, particularly articles 10, 7 and 23, which confer particular jurisdiction upon the Human Rights Commission in regard to this on-going debate. He expressed the hope that the Vinson enquiry would in its report include a statement of rights for prisoners. The United Nations Standard Minimum Rules should be refined and improved and applied so as to be a model for the whole of Australia.

The Chairman then asked Ms Helen Bayes, Director of Corrective Services in the A.C.T., to present her paper.

Ms Bayes said that she would deal with four matters:

1. She would describe current facilities in the A.C.T.,
2. She would describe the procedures by which New South Wales institutions were utilised,
3. She would refer to the pattern of offences and offenders in the A.C.T., and
4. She would make some reference to the available future options.

1. Current Facilities

These consisted of the following:

The Belconnen Remand Centre,
The Quamby Children's Centre, and
The Probation and Parole Service.

These were the only facilities directly available within the A.C.T.

With regard to the Belconnen Remand Centre, this was set up in 1976 under the Remand Centre Ordinance. Its regime was based directly on the United Nations Standard Minimum Rules for the Treatment of Prisoners. Its philosophy is that detainees are innovent until proven guilty. This philosophy affects every aspect of administration. Thus detainees have their own key to their cells, retain their own property, have more or less unlimited visits, their mail is uncensored, they have ready access to telephones, there are barbeque facilities for family visits, they wear their own clothing, and full medical facilities are available to them. There is a grievance mechanism contained in the Remand Centre Ordinance in that a stipendiary magistrate should visit weekly and speak to each detainee. In Mc Bayes's view magistrates were not entirely happy about this role in that it seemed possibly to involve a conflict of interest. She added that each detainee upon admission is handed a detailed written statement of the applicable rules and his or her rights so that the grievance mechanism can in fact operate effectively.

Belconnen is a mixed facility, and the staff is also mixed. There are 18 units; it is often full to over-flowing, and accordingly it is necessary from time to time to gazette police cells in Belconnen Police Station as a remand centre. The architectural design of the Centre contemplated short stays; thus there is not a great deal of space for exercise and there are not enough recreational facilities for persons staying for a long time. Unfortunately, the way things have developed quite a few people do in fact stay for a prolonged period.

As for the Quamby Children's Shelter, this was set up pursuant to the Child Welfare Ordinance in 1962. It is both criminal and protective (that is, for those in need of care) in its scope; a child for the purposes of the ordinance is someone up to the age of 18 years. As with Belconnen, it is designed on the assumption that the period of detention will be short; and also as with Belconnen it has not worked out this way. One of the reasons for this is that there are more appeals than were expected. Another is that there are not more serious cases which have to go to the Supreme Court with the consequent delays which accompany those proceedings. In addition, some magistrates tend to remand repeatedly rather than dispose of the case. There

are 10 units with an overspill upstairs for between four and six people. As with Belconnen, it is mixed both as to residents and staff.

The Probation and Parole Service is a conventional one operating in relation to persons resident in the A.C.T. It suffers from fairly severe resource limitations and clients can only be seen once a month during office hours.

Ms Bayes was of the view that the currently available A.C.T. facilities reflect a decision that the present emphasis must be on short stay/less intensive situations. Her own position as Director of Corrective Services is a new and recently created one. In this regard it is akin to the position of Mr Woltring in Attorney-General's and perhaps indicates the institutionalisation of commitment to progress.

2. Use of New South Wales Prisons and Juvenile Institutions

Upon conviction in the A.C.T., a male who has been sentenced to more than 12 months imprisonment is sent to Long Bay Gaol in New South Wales for classification. He is then sent on to whatever prison the New South Wales authorities decide is appropriate. For males sentenced to less than 12 months imprisonment, a comparable procedure is followed at Goulburn Gaol. Females sentenced to imprisonment for any term are sent to Silverwater for classification and further disposition. The Corrective Services Department of the A.C.T. has no influence whatsoever on where an A.C.T. offender is placed. They have no resources to visit such offenders whilst they are in New South Wales, nor indeed in a technical sense do they have any right or responsibility to do so. The cost of housing these prisoners is met by the Commonwealth Attorney-General's Department, which reimburses New South Wales for the cost. When prisoners are about to be released from the New South Wales system, there is no obligation for them to return to the A.C.T. If they do so, then the A.C.T. Probation and Parole Service will deal with their cases; if they remain in New South Wales they go into the NSW South Wales Probation and Parole system.

With children the system is very similar. They are sent to New South Wales, and although the magistrate can recommend the place, the length of time for which they should be institutionalised and so on, New South Wales in fact retains complete control over this matter. As with adults, New South Wales is reimbursed by the Attorney-General's Department for the costs of institutionalisation.

3. Pattern of Offences

The manner in which statistics are kept and become available makes it extremely difficult to keep trace of A.C.T. persons sent to New South Wales. That is not to say that particular

individuals cannot be traced at any given moment, but the overall trends are not able to be followed. There is a chronic lack of basic information about the working of the system.

However, Ms Bayes's general impressions were as follows. First it did appear that the A.C.T. had the lowest rate of imprisonment and probation and parole in Australia. (This was later able to be confirmed by Mr David Biles who referred to the current Australian imprisonment rates, a copy of which for April 1984 is attached at page 67. With regard to juveniles, the committal rate seemed to have peaked in 1982 and had been dropping slightly since then. The daily average of incarcerated juveniles in 1983/84 is about 12. These were in one of three institutions: Daruk, Mount Penang or Reiby. Of course, the number of commitments per annum exceeded that daily average; in 1979/80 (the last year for which comprehensive information was available to her department) 28 children were institutionalised by the Children's Court. In 1982/83, some 283 juveniles were placed on probation by the Children's Court.

Ms Bayes estimated that at any given time there were some 551 clients of her department made up as follows:

50	adult prisoners
15	adult remandees
150	adult probationers
40	adult parolees
23	pre-sentence reports
13	juveniles who have been committed
10	juvenile remandees
250	juvenile probationers
551	

4. Options for the Future

Ms Bayes stated that in terms of policy development there was something to be said for the Corrective Services Division being responsible both for adults and juveniles. The options which should be considered or which were currently being considered were as follows:

(a) Community Service Orders for Adults

As Mr Woltring had indicated the Ordinance was ready and would soon go to the House of Assembly. Budgetary considerations seem to be important; four staff would be needed at a cost of $180,000 per annum. There would be some offsets by reduced use of New South Wales gaols; however, it was also likely that some of the Community Service Order clients would be people who otherwise would have been placed on probation.

(b) Attendance Centre

There was an urgent need for an attendance centre for children. The new Children's Ordinance would require such a centre to be set up. Attendance would mainly be in the evenings and at weekends; it was hoped that it might reduce the incidence of institutionalisation, though it was also recognised that it would draw clients from the group which otherwise would have been placed upon probation.

(c) Adult Attendance Centre

A centre of this kind was also needed and would possibly link in with the operation of community service orders.

(d) A Low Security Adult Prison or Juvenile Residential Facility

The aim of both of these institutions would be to enable the attendance at school or work to continue whilst the person was institutionalised. This would be particularly useful for young adult offenders who constitute the bulk of A.C.T. offenders. It would also be useful for working off fines.

(e) Pre-release Programs for Adult Offenders

It would be extremely useful to establish such a facility here for those A.C.T. offenders who have been sent away to New South Wales. In that way they could perhaps for the last three months of their sentence be received back into the A.C.T. community.

(f) Probation and Parole

There is a need to improve these services by allocation of greater resources.

(g) Bail Hostel

This should be considered as a possibility. Also other options such as a directed location should be considered.

Options (a) to (g) form part of a continuum of low security or community-based treatment possibilities for the A.C.T. The final option is:

(h) A Medium to High Security Institution

It is very difficult to estimate the need for such an institution. In Ms Bayes's view we must first establish

and complete the low security or community-based treatment continuum so that we can ascertain how many clients these facilities will soak up. Obviously, a medium to high security institution would involve a high capital cost and also high running costs. There would be no economy of scale. Yet if the A.C.T. is to continue to meet the United Nations and Human Rights Commission Standards, we would necessarily have to increase the costs of running the institution. In essence she believes this was the argument being made by Mr Clifford: that the advantage of a larger New South Wales system is that it has the numbers to justify the range of services which are required in maximum or medium security institutions. It should be added that institutions that have low numbers of inmates all often have staffing morale problems.

Ms Bayes, however, noted that there is a move towards smaller gaols in other states; for example, see the recommendations of the Neilson Report in Victoria which suggested a maximum of 250 prisoners per institution. But the A.C.T. could not even supply that figure. Nor could we meet the specialised needs, so that we would in all probability still be sending people out of the A.C.T. Bearing in mind that imprisonment should be the last resort, we should concentrate on minimum security/ community based facilities. It is essential that the A.C.T. maintain its position as the place with the lowest rate of imprisonment in Australia.

Ms Bayes concluded by stressing that the foregoing represents her personal views. However, it was obvious that this range of possibilities must be considered by the government, and in relation to this it should be noted that the Vinson enquiry's terms of reference specifically take in this full range of options.

The Chairman thanked Ms Bayes and opened the matter for general discussion. In particular he invited Mr Zavier Connor, Chairman of the A.C.T. Probation and Parole Board, to make a statement if he so wished.

Mr Connor said that it was his strong belief that every community ought to do its own dirty work. That being so, the A.C.T. should have its own full range of facilities for dealing with persons coming within the criminal justice system. At federation, both Tasmania and Western Australia would only have had a population of a quarter of a million or so, equivalent to the A.C.T.'s present population. The argument as to size of population should not be regarded as a crucial one in itself. He wished to stress, however, that the issue of the treatment of A.C.T. offenders was absolutely distinct from the self government issue. It must be faced regardless of whether the self government move is successful or not.

In Mr Connor's view the situation whereby prisoners were beyond our control at the moment must be reversed urgently. The Parole Board was plagued by the problem; it must depend on reports from another service which in turn caused delay and in any case led to the presentation of reports which were made according to different criteria for different purposes. In the A.C.T., an unsuccessful applicant for parole had a right to appear before the Board; thus he had to be brought to Canberra from New South Wales, kept in a lock-up here and then present his case here. This could be ridiculous and unjust. He had never heard of any other place in the world where this kind of system occurred. He disagreed profoundly with Mr Bill Clifford's view that the A.C.T. should not in fact take on the full range of responsibilities in this regard. He noted that one of Mr Clifford's objections to an A.C.T. prison was that the judiciary would fill it up. Objectively that was an insulting suggestion in as much as the past form of the judiciary and the magistracy in the Territory was one of great sensitivity with regard to the damage potentially done by imprisonment and therefore to the need to use imprisonment as a matter of last resort.

Although his own view was strong that ultimately the A.C.T. should face up to its own responsibilities in this regard, and although this was a view he held regardless of the outcome of self government negotiations, he nevertheless accepted that an order priority in working towards the attainment of this goal was broadly that set by Ms Bayes.

The Chairman, Sir Richard Blackburn, stated that he agreed very strongly with Mr Connor, and that the other A.C.T. Supreme Court judges likewise agreed. The present situation was frustrating and absurd and its only virtue was that it did not cost as much as a proper system. The A.C.T. needed a full range of alternatives; this should include a much wider discretion for the Supreme Court to impose fines. This would be a great step forward.

Mr Nicholl S.M. also stated that he agreed with Mr Connor. There was a need for Belconnen Remand Centre to be extended for it is now at bursting point.

Mr John Vagg of the Belconnen Remand Centre stated that one of the effects of sending an A.C.T. offender after conviction to New South Wales is that he could become a victim of the vicious behaviour within the New South Wales system itself.

Mr Brian Kennedy of Belconnen Remand Centre asked whether one of the reasons for the overcrowding of Belconnen might be that the magistrates, rather than sending a person on to New South Wales, might use Belconnen as a way of giving a person a taste of imprisonment. Mr Nicholl S.M. said that this was not the case.

Mr Lucas asked Ms Bayes whether she had considered the idea that the joint New South Wales/A.C.T. prison might be established at Queanbeyan. Ms Bayes said that she had not considered this but prima facie the problems for the A.C.T. system would be identical. Mr Biles pointed out that there were at present almost 300 federal prisoners in Australia of whom 150 were in New South Wales prisons. If the question of a

joint facility were being considered perhaps there was something to be said for a joind federal/A.C.T. facility.

The Chairman then brought Session 3 to a close.

SESSION 4 - SELF GOVERNMENT FOR THE A.C.T.

Mr Biles took the chair and asked Mr Gordon Craig, Chairman of the Task Force on Self Government in the A.C.T., to address the seminar.

Mr Craig began by tabling for all participants copies of the Task Force on Implementation of A.C.T. Self Government Report - Advice to the Minister for Territories and Local Government (May 1984). He spoke about the general philosophy of the Report, stressing that citizens of Canberra are citizens of Australia and that in the move towards self government they should have an opportunity structure parallel to that for all other citizens of Australia. This was the underlying philosophy of the whole document.

With regard to the particular subject matter of the seminar, Mr Craig referred in particular to page 145 of the Report which would require the Establishment Act to refer to the rightsof A.C.T. citizens. He then referred to page 63 which made it clear that the functions recommended for transfer to the A.C.T. government at the first stage included the power to make laws relating to offences against the laws of the A.C.T. and the prosecution of offences against such laws. In addition, he referred to other legislation with special significance for self government coming at present within the Federal Attorney-General's portfolio; see page 76 of the Report. Appendix A on page 100-101 also referred to matters of basic law enforcement importance which should be transferred at stage one. Finally, he referred to page 165 in which it is made clear that the A.C.T. Supreme Court must have a parallel status to supreme courts of the states. Obviously, this tied in with the point being previously made by Mr Maguire Q.C.

The Chairman thanked Mr Craig and asked Senator Margaret Reid to speak. Senator Reid began by saying that she was not personally convinced that self government was in the best interests of the A.C.T. Her impression also was that most people were not convinced it was in our best interest. However, the appropriate way to resolve this would be by a referendum.

She recognised that this was not the central part of todays agenda, however.The issues on the program were of great importance, whether or not self government comes to the A.C.T. As to the reform of the criminal law, it was clear from the papers presented today that this was a matter of great concern. With regard to the matter of policing, it was evident that the issue needed to be examined. No recommendation was made by the task force; Senator Reid believed that the clock could not be turned back to the situation as it was before 1979. That would get us nowhere at all for times had changed with the growth in the A.C.T. She believed that some of the problems that had been referred to in relation to the policing of the A.C.T. by the Australian Federal Police would have existed in any event under the pre-1979 arrangements had they

still existed. She believed, moreover, that the resources point made originally by Mr Selby was extremely important; the resource issue was crucial to every aspect of the A.C.T. debate.

With regard to the court structure, she agreed with the point raised by Mr Maguire as to the possible erosion of the status of the A.C.T. Supreme Court unless the matter were very carefully structured. She would add that it was particularly important that judges sitting on such a small court such as the A.C.T. Supreme Court should also have the opportunity to sit on another superior court such as the federal courts; this raised interest, opportunities and morale.

With regard to prisons, she agreed with the principle that we needed to control our own destiny one way or another, but accepted that a gradualist approach to taking over control of our own destiny was appropriate. She suggested that the Honeysuckle Creek Tracking Station should be considered as a facility for conversion into a minimum security institution.

Senator Reid concluded by raising some further problems about issues which the Task Force appeared not to have faced adequately. She stressed again that the issues being considered by the seminar were issues that would have to be faced whether or not self government came to pass.

The Chairman asked Mr Craig whether he would like to add any comments. He simply stressed that his concern, as Chairman of the Task Force, was that the level and degree of public discussion upon the matter be raised and maintained. He was glad to have had an opportunity of addressing such an audience on the general issues of self government, particularly as they related to the items of the seminar agenda. The Chairman thanked Mr Craig and closed Session 4.

The Director of the Institute, Professor Richard Harding, then resumed the chair. He wished to thank all chairmen, particularly Sir Richard Blackburn, all speakers and participants from the floor, all those who had attended the seminar and, finally, the Institute staff from the Training Division who had made this seminar possible. He undertook to try to have the proceedings produced within three weeks or so and distributed to all participants and other interested parties.

The seminar closed at 4.45 pm.

RAPPORTEUR'S INTERPRETATIVE NOTE

Professor Richard Harding
Director
Australian Institute of Criminology

What follows is a personal interpretation of the issues that seem to have been raised and the likely solutions to the problems that were identified in the course of the seminar. In no sense does this Note represent Institute policy; it is simply a personal response to the discussions which may or may not be of some utility to readers.

A point which was strongly stressed is that all the issues considered by the seminar were important issues in their own right, regardless of whether or not self government was achieved in the A.C.T. and regardless of when this process occurred. Quite clearly this point is a valid one; if the Federal Government were to announce as a matter of policy that there would not be self government for the A.C.T., then the citizens of the A.C.T. should nevertheless be concerning themselves with these issues. But in my view it is disingenuous to approach the matter as if the self government debate has not added a new dimension and an immediacy to the issues. With self government now a live issue, it is simply not possible to subsume such matters as how the A.C.T. should be policed, what kind of correctional facilities it should have and how its criminal law and courts system should operate within broader and more general Commonwealth law and administration issues. The self government issue has sharpened all of these debates.

It must also be said that the pace of change has picked up in the last year or so. I regard it as a matter of considerable practical and symbolic importance that a new position of special adviser to the Attorney-General with regard to A.C.T. criminal law matters has been created (that is Mr Woltring and his assistant Mrs Martin) and also that a new position of Director of Corrective Services has been created. The establishment of the Vinson enquiry is also a move of very considerable importance. In principle, of course, the work of all these officers could be done in a context where there was to be no self government. Nevertheless, it seems likely that the possible imminence of self government has led to the institutionalisation of the commitment to solving problems of this sort.

In the course of the seminar, the widest range of agreement appeared to be reached in relation to prisons for adults, institutions for juveniles and associated corrective facilities. Not a single voice was raised to defend the present system whereby the A.C.T. loses control of its own citizens because of the need to send them to New South Wales for institutionalisation. Mr Xavier Connor said that he believed that every society should do its own dirty work. Even if one

concedes that there is a point up to which it is simply not viable for societies to accept this responsibility, it seemed to be unanimously accepted that the A.C.T. has for these purposes reached the point of viability. This principle, then, seemed to be widely accepted, and seems to me to be quite clearly a proper one. The only question, therefore, became that of how to implement the principle in question. In this regard the gradualist approach set out in Ms Helen Bayes paper was widely seen as being the appropriate one. It is an approach which takes account of the resources line of argument which underlay much of the discussion during the day. It seems to me to be a correct one. The only reservation I would make arises out of a comment by Senator Margaret Reid. In other places within Australia it is not uncommon for old buildings - for example, hospitals or sanatoriums - to be recycled and used as minimum security institutions. Senator Reid made reference to the possibility of doing this in relation to the Honeysuckle Creek Tracking Station. I have not seen this building so cannot make any comment upon the appropriateness of that very facility for recycling. However, I beleive that the government and the Vinson enquiry should closely examine what facilities might be available for recycling for use as a minimum or possibly medium security institution. With regard to adult offenders, it would be a very considerable achievement to move at once to a situation where only the dangerous offenders for whom maximum security is necessary are sent to New South Wales.

The present situation is fraught with anomalies. The remission rights of A.C.T. prisoners are governed by New South Wales law; parole privileges are governed by the 1983 Probation and Parole Act of the Commonwealth; but rights - such as early release - which are neither remissions in the strict sense nor parole apparently fall into a legal hiatus. If A.C.T. prisoners are to be treated in a way comparable to the New South Wales prisoners with whom they are housed, it can only be done (and is being done) administratively. The A.C.T. has in a sense not yet properly confronted this situation as a matter of law. Moreover, it seems to have taken a rather passive line on the question of where prisoners are sent, leaving these decisions exclusively to the New South Wales authorities. Surely, this aspect of the problem could be re-negotiated; it is not good enough simply to throw up one's hands and say that once sent to New South Wales such persons pass from our control. A fortiori this is true with regard to juvenile offenders and persons needing to be institutionalised. The present system is a disgrace and should be ended forthwith. The daily average of such persons in New Wouth Wales during 1983 was 13; this is a number in relation to which emergency provision can and should be made by way of provision of A.C.T. facilities.

I next come to the issue of criminal law reform and the courts. As mentioned previously, it is apparent that the course of criminal law reform is under way. This is very much to be welcomed. It is quite evident that the A.C.T. must have available to it no less comprehensive a range of sentencing options than every other court system in Australia. The Chief Justice's particular suggestion for the extension of the power to impose fines seems an important and appropriate one, though it should only be implemented after proper consideration has been given to the mode of both assessing fines and collecting them.

With regard to the question of the extension of the jurisdiction of courts of petty sessions, this seems to me to be inevitable in a context where there is no superior court of intermediate jurisdiction, that is a district or county court. Obviously, the size of the A.C.T. does not merit such an intermediate court. Accordingly, the real question seems to be the manner in which the jurisdiction of the lower courts in criminal matters is extended and the impact which this will have upon Supreme Court jurisdiction and status. Mr Maguire's strongly argued point that the Supreme Court must retain jurisdiction to deal with appeals from courts of petty sessions by way of rehearing seems absolutely correct, even more so if the jurisdiction of the lower courts is to be extended. Beyond that, it is quite clear that the criticisms that apparently are made about length of proceedings in the Supreme Court must be met in some way. However, even if this problem is tackled forcibly, it seems relatively clear that there is an urgent need for the appointment of a fourth Supreme Court judge.

Mr Maguire's other main point about the possible erosion of the status of the Supreme Court if its members no longer, as with Northern Territory Supreme Court judges, become commissioned to serve also in the Federal Court is a strong one. However, it does not seem possible or appropriate to legislate for this in any way; if the appointment of A.C.T. Supreme Court judges in the future should rest with A.C.T., rather than federal, authorities then it seems entirely appropriate that the federal authorities (that is the Attorney-General) should retain the right to exercise their own judgement as to whether the particular person is one they would wish to have serving as a Federal Court judge. The proper status, therefore, of Mr Maguire's warning is an educative one, not one which in my view can appropriately be institutionalised in any way.

I come now to the question of policing the A.C.T. This was the most contentious issue in the seminar.

The first point which seems quite clear is that, in the absence of self government either as a reality or a likelihood, no convincing case has been made for putting the clock back to the pre-1979 position. Whilst it was able to be clearly demonstrated that there have been teething problems in the new arrangements and whilst it is regrettable that there does not appear to have been a sufficient degree of interaction with the A.C.T. community which is being policed by the Australian Federal Police, all such matters seem relatively minor ones which should be able to be resolved. If the present governmental situation were to continue, therefore, the question would not be whether to make fundamental changes in structure but rather how to insure that the present structure works effectively. The frustration expressed by Mr Kobold as to the status which seems to be accorded to the Police Liaison Advisory Committee seems to be an important facet of this; quite clearly there is a need for the deliberations of that body to be taken more seriously. Consideration might be given to writing this into the appropriate statute.

However, it seems equally clear that the present arrangement cannot survive the granting of self government, except perhaps as an interim or transitional arrangement whilst more appropriate arrangements are made. In this respect policing is no different from corrective services; a society must do its own 'dirty work'. Mr Craig's general principle that the A.C.T. upon the granting of self government should be put in a parallel position in resources and responsibilities terms to that of other self governing entities in Australia obviously pushes one to this conclusion. Moreover, if one considers the case of the Northern Territory, whilst in 1975 when the Australia Police proposal was being discussed it was assumed that Northern Territory policing would be subsumed by the overall Federal Australian Police, in 1979 in a new context where the Northern Territory had become self governing this sort of arrangement was clearly seen to be inappropriate. This would likewise be the case if A.C.T. self government were to be granted. Accordingly, it is my own view that an enquiry should be initiated at an early stage to determine what transitional arrangements would be appropriate for policing the A.C.T. if it is to be granted self government. A corollary of that enquiry would be how to restructure the Australian Federal Police so as to retain its professionalism and numerical viability in a context where A.C.T. functions are no longer carried out by it.

Mr Biles's suggestion that the Australian Federal Police without A.C.T. functions be renamed a Federal Investigation Service - presumably having in mind the model of the Federal Bureau of Investigation - possibly goes a little too far, in that the Australian Federal Police would continue to have many traditional policing functions such as powers of arrest, investigation, gathering evidence from the point of view of a prosecution and so on. In my view it would remain appropriate therefore to continue to call it a police force. However, the obverse of Mr Biles' point is of immense importance, in that the Australian Federal Police could - once shed of the burdens of traditional policing - become a model of excellence of investigative policing in Australia. The loss of A.C.T. functions could strengthen it rather than weaken it.

The Craig Report apparently ducked the issue of policing; this was unfortunate if understandable. There is a need for urgent action to consider the matter yet again in a context where, unambiguously, the Australian Federal Police would continue to police the A.C.T. up to the time of self government and in all probability for a transitional period afterwards. In other words, the basic existing structure must be understood by all parties to be one which is likely to have at least a ten year life span and which therefore must be made to work effectively. But better and more appropriate possibilities must be worked towards.

As to the self government debate itself, obviously it was not the duty of the seminar or of the rapporteur to try to reach a concluded view upon this matter. All I would say is that I believe the Task Force Report is of a high standard and sets the parameters for the debate. I would also indicate my agreement with Senator Margaret Reid that at some stage it will be necessary to hold a referendum, though I believe

it would be inappropriate to do so at this stage in as much as the public debate has not developed to a point which would make that referendum a truly informed one.

ADMINISTRATION OF CRIMINAL JUSTICE IN THE A.C.T.

Opening Remarks by the

Director of the Australian Institute of Criminology

Professor Richard W. Harding

Your Honour, Distinguished Participants, Ladies and Gentlemen:

Before I came to Canberra in February to take up my position as Director of the Institute, I must confess that, if I ever thought about our capital city and its surrounding territory at all, it was with the robust resentment so characteristic of citizens of the far-flung States. The perception there is of a spoilt and cosseted population, featherbedded from the economic and social realities which beset the rest of us - a place seemingly without problems.

I am exaggerating, of course - making myself sound worse than I really was. However, I do believe it is important for an audience such as is here today to understand that this sort of perception of Canberra is widespread; it is not perceived as having problems comparable to the rest of Australia, so that the identification of any such problems and the initiation of attempted solutions is more a self-contained local matter than in most areas of criminal justice. That, as I say, is the perception. Whereas marijuana growing in Griffith would not merely be perceived as a Griffith problem, or a New South Wales problem, but a national problem, Canberra matters seem peculiar and self-contained. So there is a responsibility upon Canberra citizens, their various representatives and the great pool of experts resident here to turn their attention to Canberra problems; they will not normally be solved as a by-product of other solutions to other problems.

I have now reached the point of talking about approaches and solutions to problems - for, of course, problems there are. The outsider's facile prejudices could not survive more than a few weeks' residence in the city.

Indeed, the first week I became aware that A.C.T. convicted prisoners were sent off to New South Wales which accepted them for a fee. This was something, I must confess, to which I had never previously given any serious thought - but the more one thought about it the more startling the implications became. Thus, one came to the debate about the need for a prison for the A.C.T. Into the balance, my learned predecessor, Mr Bill Clifford, threw some no less cogent factors by way of an article in the Canberra Times on 26 April. The issues are not simple. Perhaps today we may be able to find a modus vivendi between the two main positions.

In my second week of residence, I became aware that juveniles who are to be institutionalised are likewise sent off to New South Wales. Somehow, this shocked me even more than did the imprisonment situation with regard to adults. Obviously, one of the most negative features of sending inmates away to New South Wales is the logistical strain which is imposed upon an already strained family relationship; for juveniles this factor seemed even more disturbing.

My voyage of discovery into the problematical side of A.C.T. arrangements continued as I became aware of the A.F.P./A.C.T Police Force debate. Looking from the West, this seemed to have been an

old debate, long since settled. I myself had been very much involved in it in 1975 when Mr Whitlam, Mr Enderby and Mr Carmody most notably had been trying to set up an Australia Police Force. Even in the somewhat-altered format adopted by the Fraser Government in 1979, the issue seemed to have been satisfactorily resolved. Yet quite evidently, reading the newspapers, this was not so. The resources of the A.F.P. were insufficient; yet additional functions were to be added - for example, Coastal Protection. Morale was not high, said a Report to the Special Minister of State, yet it was being suggested that the most traditional policing function - big city policing - which presumably is positive in its morale effects should be taken away. As a newcomer I found the issues difficult to reconcile.

However, I was soon able to see why an issue I had thought dead and buried was in fact alive and kicking. The new, highly dynamic factor which had arisen since I myself had been involved was the self-government for the A.C.T. question. All the issues I have so far mentioned are potentially affected by this. Changes in constitutional status - whether from colony to independent nation, or from legally subservient Territory to self-governing quasi-State - must inevitably be accompanied by some structural changes in the area of law enforcement. The real questions relate to how much change and in what direction.

In the particular case of appropriate policing structures, the principal forum for debate seems to have been the Police Liaison

Advisory Committee of the A.C.T. House of Assembly. We are fortunate that Mr Peter Kobold, Chairman of that Committee, is to speak to us today. Dr Grant Wardlaw, of the Institute, will also contribute his perspective.

As to the provision of adult and juvenile correctional facilities, only two days ago Mr Uren, Minister for Terrtories and Local Government, confirmed that the Vinson Inquiry will now begin. Previously, Professor Vinson had hoped to have been able to attend today, but not surprisingly he is too busy. He has sent a research assistant, Ms Barbara Esteel, to listen to our deliberations. Participants in this Seminar, therefore, have a unique early opportunity to make their voices heard. Leading the debate will be Mr Peter Bailey, Deputy President of the Human Rights Commission, whose views on the issue of a prison for the A.C.T. have already been vigorously put, and Ms. H. Bayes, whose work brings her into association with the Belconnen Remand Centre.

As to the dynamic and perhaps dominant issue of self-government, we are fortunate indeed to have with us Mr Gordon Criag, whose name has become almost synonymous with the issue. The Report of his Task Force, became public two weeks ago. I understand from the press that the Government has already decided to shelve the matter for the time being. If that is correct, I am sure that our other distinguished contributor in this area, Senator Margaret Reid, will have something

to say about the matter. Her concern for and knowledge of A.C.T. issues has always been vocal and clear, and we welcome her here today.

I have left to last the whole question of reform of A.C.T. criminal law. The importance of this matter was first brought to my attention by the Honourable Sir Richard Blackburn, Chief Justice of the A.C.T. Supreme Court, whom I shall very soon ask to open this conference. The A.C.T.'s criminal law is, it seems, in a state of some disarray; this is for a mixture of historical and technical reasons. Let me quote the 1983 Annual Report of the Criminal Law Consultative Committee of the A.C.T. :

> 'In January 1911, the Australian Capital Territory inherited New South Wales' law then in force. In the area of criminal law the main source of law was the New South Wales' Crimes Act of 1900. That Act is still the main source of criminal law in the A.C.T In New South Wales, the Crimes Act of 1900 has been extensively amended since 1911 to bring it into line with changing community attitudes and with the needs of a modern age of computers and white collar crime. Those reforms did not apply automatically to the A.C.T. After January 1911, with only the occasional refreshing infusion of criminal law reform, the Territory has been left as a small stagnating billabong cut off from the main river of law reform from that time. That it was allowed to remain so for so long is probably a reflection of the Territory's relatively small size [and] its lack of self government .....
>
> The criminal laws governing the ACT are in a neglected state - the product of long neglect. Such amendments and additions as there have been to the law inherited from New South Wales in 1911 is itself a hotchpotch - largely inaccessible, neglected, a source of uncertainty and confusion to police, citizens and the judiciary .....'

Though some slight improvements have evidently been made since this was written, nevertheless it hardly represents a situation from which a polity of any size should be contemplating self-government. Mr Herman Woltring, who is a member of the Consultative Committee, Mr Nicholl S.M., who performs daily the unenviable task of trying to make this ancient and patched legal machinery work, and Mr Maguire, Q.C. on behalf of the A.C.T. Bar Association will lead us in consideration of this matter.

What is somewhat worrying is that we have been through some of this before, to no avail. In December 1978 the Institute held a two-day seminar on 'The Future of Corrections in the A.C.T.' I cannot resist referring you to some of the conclusions which were reached.

> '151 : Options for sentencing. Perhaps one of the greatest benefits to the system would be to create a broad range of options for utilisation by the courts and the corrections system. Indeed, it was pointed out that the clear message from the seminar was that 'there is a need for a far greater range of options for sentencing' within the Australian Capital Territory:
>
> > "That is a message coming indirectly from members of the Supreme Court; it is a message that has come from members of the magistracy who have been here; it is a message coming from members of the welfare agencies, the community and others affected by the sentencing procress."
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> 155 : A prison for the Territory? One conclusion was that 'no clear message came through as to whether an institution should be set up in the Australian Capital Territory or whether it should not.' Many problems were to be faced in determining whether a prison should indeed be created within the Territory.
>
> 157 : Away with transportation? Finally, the major finding of the seminar was that no one appears to have supported 'the status quo' :

> 'No one is happy with the situation of sending individuals by way of modern transportation into the New South Wales system: yet what is to be done to replace that transportation system is a difficult issue .....'
>
> No longer can it be claimed that responsibility ends with the payment of monies to another system, that of New South Wales, to deal with persons passing through Territory courts. Ultimately the Territory and the Commonwealth must address their responsibilities.

On that note - that it is not or should not be a parochial A.C.T. issue but rather one which concerns all Australians, inasmuch as criminal justice is simply one aspect of the relationship between the A.C.T. and the rest of Australia which will change with self-government - I would like to ask Sir Richard Blackburn to open the Seminar. As I said, it is he who opened my own eyes to the issues. Also, he is a man with roots in many aspects of Australian legal life - South Australia as a student and teacher, the whole Federation as a Federal Court Judge and, most importantly, the A.C.T. as the Chief Justice of the Supreme Court. His qualifications epitomise the sorts of perspective which should be brought to this debate. It is with grea pleasure, therefore, that I ask you, Sir Richard, to open the seminar.

Australian Federal Police
Liaison Advisory Committee
for the A.C.T.

THE CASE FOR A SEPARATE A.C.T. POLICE FORCE.

(Address to Seminar:

Administration of Criminal Justice in the A.C.T.)

INSTITUTE OF CRIMINOLOGY.

Thursday 24 May, 1984.
By P.R. KOBOLD. M.H.A. (Lib)

The operation of the A.F.P. is good for the A.F.P. and for Australia, but is it good for the A.C.T. Community?

I firmly believe that the most effective police force to meet the needs of the A.C.T. community is an autonomous force.

I, and the Police Liaison Committee, which is composed of representatives of all parties of the House of Assembly, are of the view that the status quo cannot remain. The committee is unanimous that the A.C.T. has been disadvantaged by the present arrangements.

This is a question not only related to Territorial Government it is a ques tion of what is good for the community. The principle for the establishment of an automonous police force for the A.C.T. is inarguable. The mechanism of how this will be achieved is secondary. There are several options being canvassed.

OPTION 1) RE-ESTABLISH AN A.C.T. POLICE FORCE, as a totally separate entity, responsible and responsive to the A.C.T. Community.

OPTION 2) RETAIN THE A.F.P. STRUCTURE: with several different arrangements available.
A contractual system possibly along the Canadian lines
or
Re-establishment of the A.C.T.Division with agreed manpower and operational guide-line clearly spelt out, both of these, sufficiently automonous to be answerable to the Territorial Government.

OPTION 3) Would be to RETAIN the STATUS QUO which I reject out of hand. It is clear that not only the Assembly and the Police Liaison Committee are dis satisfied with the present situation and are looking toward change.

Deputy Commissioner Val McConaghy is to go to Canada in June to investigate the Contractual System further.

The A.F.P. Staff magazine of April 1984 announced a Survey amongst the rank and file to canvass opinions about the future of policing in the A.C.T. under Territorial Government.

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There is apparent disquiet in the community. This is obvious by the numerous letters and articles in the Canberra Times, and submissions to the preliminary investigations of the Police Liaison Committee from community groups such as the Road Safety Council of the A.C.T. expressed dissatisfaction about the current quality of policing in the A.C.T.

The re-creation of the guard division suggest to me that there was a problem in the initial amalgamation. One could conclude that the ease with which the decision was made to extricate the guard section from A.F.P. could also apply to the re-establishment of A.C.T. Police.

The Minister, at least in Press releases, has indicated that he has an open mind to the establishment of a separate A.C.T. Police Force, and it is imperative that the Community convince him of this need.

What would Sir Robert Marks say about the current situation? The Federal Government saw a problem that needed solving, and commissioned Sir Robert with Federal issues as the main focus of his enquiry. His report at that time showed very little appreciation of the needs of the Canberra Community. However, should he have been commissioned now, with Territorial Government imminent and a population of ¼ million people, I am certain that his recommendations would not be for amalgamation.

Opponents of the establishment of a separate police force say it is too difficult; I believe NOW is the time, as the Territory is about to go through wholesale change. It is most appropriate to make that decision NOW, as any delays may make it impossible. Let us ask NOW what is best for the A.C.T. Community, and act upon that.

I favour the first option of Separating the administration functions of the A.C.T. Police, that is, re-establishing an A.C.T. Police Force..

Primarily for the following reasons;

1) FIRST. A LOCAL LEGISLATURE NEEDS TO CONTROL ITS LAW ENFORCEMENT ORGANISATION.

A government which can make laws but has no institution to enforce them cannot be regarded as credible by the community that elects it and for whom it legislates.

Imagine the situation where an A.C.T. Government passes a particular piece of legislation which may be repugnant to the Federal Government of that time. With the A.F.P. RESPONSIBLE TO THE Special Minister of State, whose instructions would they follow? (e.g. Public Assemblies Ordinance -- Anzac Day.)

2) SECONDLY. CONFLICTING PRIORITIES ARE ALREADY A PROBLEM. Any adminstration with responsibilities for national and international issues will invariably suffer conflict when asked to place an individual community interest over their wider area of responsibility. I believe that it is an important principle to insist that the local community have CONTROL over PRIORITIES and operation of its police force.

Staff allocation is a clear example of how this conflict is disadvantaging the community here. (e.g. Pine Gap).

Since amalgamation, the more experienced police are no longer available to the Canberra Community, with current indications that some 80% of officers serving in Canberra have less than 2 years experience.

IS THIS TO THE BENEFIT OF THE A.C.T. COMMUNITY?

3)This raises another issue, the question of EFFICIENCY AND EFFECTIVENESS, an argument used strongly by Sir Robert Marks in advocating the creation of A.F.P. Sir Robert felt that a larger, central organisation could bring great benefits and efficiency by harnessing technological aids, sharing facilities, more efficiently utilising specialiced skills, offering benefits for training and promotional opportunities.
THESE ARE BENEFITS BUT FOR WHOM. FOR THE A.C.T. COMMUNITY?

The A.F.P. centralised training facilities and access to technological aids and expertise ought to be available to the A.C.T. Police in order to facilitate the movement of staff between services. However, I cannot agree that an A.C.T. force, being part of a highly centralised organisation is in itself efficient or of advantage to the A.C.T. Community.

A larger central organisation is likely to lose the links that keep a police force responsive to local needs. Internal morale and a feel for local problems and issues can only be maintained if the police see themselves as part of the same community as they serve.

4)PROMOTION OPPORTUNITIES AND PORTABILITY OF EMPLOYMENT BENEFITS are also used as a strong argument for the retention of the A.F.P. System. Many rank and file officers would claim they had been disadvantaged by loss of geographical stability.

The Minister, Mr.Young in a recent Statement said, he,
"Saw advantages in the present structure of the A.F.P. being kept as it is particularly in terms of careers,joint training and resource management with a great mobility in the structure."

I have already addressed the question of joint training and resource management. However, the promotional opportunities and portability of employment benefits are part of the wider problem to be faced by all departments upon the introduction of territorial government.

The Task Force needs to formulate a solution to this problem at a very early stage to still the apprehension and disquiet amongst all public servants involved in administration of the A.C.T. including A.F.P. Officers.

There are lots of ripples on the policing pond at present-There is much useful discussion and several groups are actively engaged in working on solutions to these complicated problems.

The House of Assembly has asked the Police Liaison Committee to conduct an enquiry into the most appropriate form of policing for the A.C.T. in the advent of Territorial Government. However, the committee is being frustrated at present by its inability to secure assistance from A.F.P. and no response to requests for funds has been received from Special Minister of State or the Department of Territories and Local Government.

The A.F.P. are conducting a Survey amongst rank and file to determine which options members of the force would prefer. How appropriate is it to ask officers which master they should serve? How appropriate is it to ask the police about policing when community representatives are unable to adequately pursue that question?

A.F.P. are sending an officer to investigate the Canadian contract System. How appropriate is this, if the community is unable to consult with the Canadian Community as to the effectiveness or otherwise of this system?

Clearly, I am firmly in favour of separating the A.C.T. Police functions from the A.F.P. who have responsibility for the national and international interest of our country.

Of course there will be some overlaps. Of course there are advantages in sharing facilities but ultimately I believe the A.C.T. Police Force should be responsible and responsive to its own community.

POLICING IN THE A.C.T.: ISSUES FOR PUBLIC DEBATE

Dr Grant Wardlaw
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Remarks prepared for a seminar on Administration of Criminal Justice in the A.C.T., Australian Institute of Criminology, 24 May 1984.

POLICING IN THE A.C.T. : ISSUES FOR PUBLIC DEBATE

Grant Wardlaw
Australian Institute of Criminology

The A.C.T. is the only jurisdiction in Australia which does not have its own police force. As you are all aware, the Territory was served by the A.C.T. Police until 1979 when it was merged with the former Commonwealth Police to form the Australian Federal Police. The A.C.T. Police had an excellent reputation as an efficient force, had some of the highest standards of any police force in Australia, and was very highly regarded by the community it served. The principal reason given by Sir Robert Mark in his report which recommended the abolition of the A.C.T. Police as a separate body was that crime in the A.C.T. was so insignificant that no separate force could be justified. In my view, Sir Robert was clearly in error in making this assertion (which he stated without argument or statistical evidence) and did the local community a great disservice. In fact, per head of population, the crime rates for most major crimes in the A.C.T. are comparable with those found in other Australian jurisdictions. Of the seven major, or index, crimes on which comparable statistics are kept, the A.C.T. has the lowest rate per head of population for only two categories, namely, homicide and break and enter. It has the third highest rates for serious assault and fraud and forgery. Tasmania, Western Australia, and Queensland have lower rates for rape; Queensland and Tasmania have lower rates for motor vehicle theft; and Western Australia and Tasmania have lower rates for robbery. While the numbers of offences are obviously smaller in the A.C.T. their impact on the local community is comparable with the impact of similar crimes elsewhere. Canberra is not a crime-free city and its residents need and deserve a police force committed to dealing primarily with traditional forms of crime that impact directly on the community.

It appears to many residents that the assertion that the A.C.T. is relatively crime free and the imperatives of national policing priorities have diverted attention and expertise away from local concerns. In recent years a number of community leaders have expressed disquiet about the effects on local police coverage and service delivery of the often competing demands of a national agency. At times, the number of police on duty in the A.C.T. seems to have fallen significantly below strength because of deployment out of the Territory of officers on special duties, for example, for large-scale investigations or task forces interstate, to assist various Royal Commissions, to provide security at places such as Pine Gap, etc. It is alleged that too many experienced officers from the A.C.T. have been transferred interstate in order to undertake the complex tasks being assigned to the AFP and that, consequently, we are left here with an inexperienced force. It is acknowledged that 80% of the police on patrol in the A.C.T. have less than 2 years experience. Others claim that with more emphasis being placed on training for national functions, AFP trainees are getting insufficient instruction on the laws specifically applicable to the A.C.T. A comparison of crime clear-up rates for the last year of the A.C.T. Police (1978-79) and the latest available AFP figures (1982-83) appears to show that the AFP have not been as successful in solving crime in the A.C.T. (although an accurate comparison is made difficult by the fact that different crime categories are given in the respective annual reports).

These claims and the debate they have engendered need to be squarely and honestly addressed by the community, its elected representatives and the AFP themselves. Unfortunately, much of the debate has been marred by the bitterness which accompanied the formation of the AFP. There is little solid information available upon which to come to an informed opinion on

the issues surrounding the appropriate form of policing for the A.C.T. As a consequence, all most people hear are rumours and insinuations about the level of competence of police in the A.C.T. and emotion-charged attacks on or defences of the AFP. It is said that the community is dissatisfied with the level of police service, but the assertion is based on impressionistic data. I would suggest that now would be an appropriate time to conduct a reliable public opinion poll in order to assess just what level of satisfaction does exist in the community. We need from the AFP detailed information on staffing levels, amount of experience and so forth before we can assess accurately what level of service the Territory is receiving. In considering such information, participants in the debate should be less inclined to draw negative conclusions without considering the possible justifications for certain figures or actions. Let me give a few examples. A review of reporting in the Canberra Times indicates that dissatisfaction has been expressed over the past few months with such things as proposed numbers of police on duty at the Canberra Show, the provision of only one officer in patrol cars during daylight hours, and the proportion of patrol officers with relatively little police experience. It is easy to jump to negative conclusions about these issues. But equally it could be argued that the Canberra Show did not need a large police presence, there is no necessity for two-officer car crews on day shift, and it is not unusual for a high proportion of patrol officers to be relatively inexperienced. Although there is room for debate or disagreement on all these issues, the alternative views or possible justifications for the decisions of AFP management do not seem to have been seriously considered by those who criticize the AFP in the Territory and use this as a basis for their claims for an autonomous force. Conceivably, a well-managed A.C.T. Police Force would have arrived at the same decisions.

Nor do I find it a terribly compelling argument (in the context of self-government for the A.C.T.) that a government which has local law-making powers is no government at all if it has no institution to enforce them. It must be conceded that the A.C.T. is a special case by virtue of its status as the national capital and that the Federal Government also has a legitimate interest in certain policing arrangements in the Territory. That being so, I see nothing inherently wrong in terms of governmental structures with a federal force policing the A.C.T.

There are, however, serious objections to the current system insofar as a philosophy of policing is concerned. Policing in our tradition is said to be a system of policing by consent. A central element in policing by consent must be some form of real accountability to the community it serves. It is this element which is obviously absent under the present arrangements and, in fact, has never prevailed in the A.C.T. Whether we have a separate A.C.T. Police or a form of contract policing with the A.F.P., the major issue to be decided is to whom the force will be accountable and what form this accountability should take. I would hope that this question is given some priority in the inquiry about to be conducted by the Police Liaison Advisory Committee.

It should also be noted that current police thinking is to place increasing emphasis on community crime prevention programmes which attempt to improve relations between the police and the public and to involve the community much more in the processes of crime prevention and crime reporting. As part of this emphasis we see, in such concepts as neighbourhood policing and community policing, major effects being made to establish more and better links with the community, to ensure that police are seen in the community and respond to its needs, and for individual

police to acquire a detailed knowledge of particular geographic areas and the people who inhabit them. A number of elements facilitate these developments. One is for the police force to be an entity clearly identified with the local community. It seems certain that this was part of the reason for the high community acceptance of the A.C.T. Police; and it is equally certain that such a local identification is much more difficult to achieve if the local police are clearly identified as belonging to an impersonal, large national organization. Another prerequisite for the development of effective community policing is a stable patrol force. Obviously, it takes time to develop contacts, become known to the local community and obtain an intimate knowledge of the patrol territory. These things will not happen if there is a lack of stability in the staffing of community policing. In a large, national organization this stability is much more difficult to achieve than in a local force.

On the basis of the matters I have raised, I believe there is an unassailable case for some form of local policing for the A.C.T. A number of alternative structures have been suggested. For the reasons I have outlined, I would reject the option of continuing with the present arrangements. I should like to stress that this implies no criticism of the way the A.F.P. has carried out its duties. Rather, I think the original decision to abolish the A.C.T. Police was misconceived. Many of the problems and alleged problems of policing in the A.C.T. since 1979 are merely the result of adjustments inevitable in the forging of a new organization out of already existing constituent parts. Even if the problems of staffing and experience could be solved, as they almost certainly will be in time, my fundamental objection to the lack of local accountability will not be addressed if the A.F.P., as presently constituted, continues to police the Territory.

The leading contenders for an alternative structure appear to be the re-establishment of the A.C.T. Police as a totally separate force accountable to the House of Assembly or some form of contract arrangement in which the AFP would contract with the ACT Government to provide specified police services in the A.C.T. The arguments for an A.C.T. Police Force are fairly straightforward. Past experience has shown that a force of 500-600 police is a viable organization and is capable of providing an adequate range and quality of policing for the A.C.T. It can be made clearly accountable to the A.C.T. Government. The arguments against the proposal are almost exclusively tied up with presumed difficulties in disentangling the A.C.T. police functions from the total structure of the A.F.P. It is argued that this is relatively simple in terms of so-called street policing functions, but complicated in many of the support areas such as training, specialized equipment, and computer facilities. Further, there are seen to be advantages for staff in being able to be trained and have experience in a wider range of police or investigational areas and in the opportunity to transfer around Australia and, in a small number of cases, overseas. I must say that I find none of these arguments particularly compelling. There are certainly problems in separating off A.C.T. functions and support services, but surely imaginative administrative arrangements can be made to overcome them. There are a number of options other than those which would produce expensive duplication, especially in the services area, including joint facilities and various contract arrangements. It is certainly true that being a part of a national organization has attractions for some personnel and that more attractive career paths have been created for many individuals. Against this, however, must be weighed the opinions of those who found the A.C.T. Police so attractive, compared with State forces, precisely because it did not require shifting place of residence and who found the attractions of a

community policing role very real.

The other major solution proposed is to allow the AFP to police the ACT under contract along the lines of the Canadian model. In Canada, the Royal Canadian Mounted Police provides, under contract to the appropriate government, general policing to all of the provinces except Quebec and Ontario and to a large number of municipalities and other local authorities. In addition to the RCMP, Canada also has two provincial police forces and 424 regional and municipal police forces. The importance to the RCMP of the contract policing role is very great, with the largest single category of RCMP officers being made up of those who are performing contract services. The contracts specify the policing services to be provided and the terms under which they will be conducted, and guarantee staffing levels, training standards and a number of other matters.

In many respects such an arrangement seems an ideal solution to the problems confronting the A.C.T. It is certainly a system which should be studied so that its advantages and disadvantages can be accurately weighed against those inherent in a separate and autonomous force. But a number of issues should be borne in mind. First, the scale of general policing is quite different in the RCMP. General policing under contract is the major function of the force and so support services, administrative sections and training are dominated by this area. In the AFP, general policing applies only to the A.C.T. and is not the dominant function. Of necessity, back-up for functions other than general policing must often take precedence and will certainly claim the bulk of resources. Second, by no means is the system of contract policing universally accepted in Canada. Those jurisdictions which currently are served by thier own police resist attempts to bring them within the RCMP system and there are frequent public

debates about the desirability of continuing with the RCMP in those jurisdictions which have contract policing. Finally, although the contract provides that RCMP personnel providing contract police services (as opposed to federal policing) come under the constitutional jurisdiction of the local Attorney-General (or other relevant authority), they are still de facto and de jure under the operational control of the RCMP Commissioner in Ottawa (who is, in turn, answerable to the Solicitor-General of Canada). Thus, in a country which constitutionally provided for the policing function to be within the provincial sphere of control, the situation exists where the federal government could exercise very considerable influence over provincial policing policy. Similarly, if the AFP contracted to provide policing for the ACT, a situation could arise where the priorities or policies of the federal government differed from those of the Territory government. Obviously, these problems will have to be seriously considered before a decision is made about the merits of a contract system.

It follows from what I have said that I am inclined to opt for a return to an autonomous A.C.T. Police Force. The community was sold short when Sir Robert Mark decided that no significant general policing needs exist here and used this as the principal justification for the abolition of the force. The Federal Government has already agreed that another element of the AFP, namely the guarding function, should be separated out into a new organization and that this will not damage the functional integrity of the AFP. There is no reason why such a decision could not also be made in relation to general policing in the A.C.T. In my view this would leave the AFP free to concentrate on its important national responsibilities. The important principle that I want to leave you with, however, is that the debate about policing in the A.C.T. be conducted on

rational grounds concentrating on clearly articulated philosophies of policing and backed up by facts. Let us get away from the vitriolic attacks on the AFP and the defensive, closed responses to them. Let us ensure that the merits and drawbacks of all the viable alternatives are laid out for informed public debate. Whether we end up with an A.C.T. Police or AFP contract policing we can work together to construct an imaginative, accountable community police presence. All that is needed is a sense of perspective, some goodwill and imagination. These will be the test of the maturity of the Canberra community.

THE COURTS

Mr H. Woltring,
Justice Division,
Attorney-General's Department.

Whilst the topic for this particular session is "the Courts", the subject I propose to deal with is the criminal law of the A.C.T., which, of course, is of significance for the Courts. The genesis of the statutory criminal law of the A.C.T. is section 6 of the Seat of Government (Acceptance) Act 1909 which provides that the laws which applied in N.S.W. on 1 January 1911 were to continue to apply in the A.C.T. One result was that the Crimes Act 1900 of New South Wales as it stood on 1 January 1911 became the law of the Territory, and, accordingly, at that time there was a uniformity of law. Between 1911 and Septmeber 1983, unlike in N.S.W., only minor changes were made to the A.C.T. version of the Crimes Act and the result of this inaction was probably best enunciated by His Honour the Chief Justice of the A.C.T. on 6 July 1983 in the case of the Queen v Sykes. His Honour said, inter alia, the following:

> "I do not stay to comment on this incredible juggling of obsolete concepts such as penal servitude which has for decades ceased to have any practical meaning, and the distinction between felonies and misdemeanours. The criminal law of this Territory is, to a degree which is scandalous, in need of review and all the judges of this court have been saying so for 12 years to my knowledge".

The Attorney-General, Senator Gareth Evans, acknowledged the validity of this criticism and instituted what has been referred to as a "Blitz on A.C.T. law reform". He publicly enunciated this commitment in September 1983 when the first of four reform Ordinances made that year became law by stating:

> "The needs of the Territory have been neglected and duckshoved for too long. A lot of good work in drafting reform proposals has been done over the years, but the rate of implimentation has been appallingly slow. We want to change all that".

This commitment has been adhered to and in the recent restructuring of the Attorney-General's Department a position of Senior Advisor was created. I am currently occupying that position and have been given primary responsibility for the Department's contribution to ongoing criminal law reform in the Territory. The reform program has been undertaken in two parts.

The first part, substantially completed by the four amending Ordinances made in 1983, involved a general tidying up which included the removal of archaic or non operative provisions as well as the adoption of some reforms made interstate. The second part involves substantive reforms to the laws relating to whole subject matters. This latter task has commenced and is advancing.

Briefly the reforms which have already been implemented, and which formed part of the first stage, were contained in three Miscellaneous Crimes (Amendment) Ordinances made during 1983 as well as an Ordinance which repealed the bulk of the Police Offences Ordinance. The third of these

crimes amendment Ordinances recreated in modern terms in the Crimes Act a few of the offences removed from the Police Offences Ordinance, and I emphasize the "few". The tidying up aspects of this first stage included the abolition of the distinctions between felony and misdemeanour, the repeal of provisions which were inconsistent with, or covered by paramount Commonwealth legislation, as well as the deletion of terms which do not have, and frequently never had, any significance in the Australian Capital Territory. By way of example, references to "two justices" were amended to "magistrate" as justices do not exercise judicial functions in the Territory, and references to the District Court and the Supreme Court of New South Wales for the district of Port Phillip were deleted. Notwithstanding the Death Penalty Abolition Act 1973, several sections spelt out the mode, and accompanying formalities, of carrying out the death penalty. These were also removed. The criminal law of the A.C.T. also lost some delightful vestiges of Victoriana. For example, since 18 November 1983 no person can be convicted of being a "rogue and a vagabond", an "idle or disorderly person" or an "incorrigible rogue". Similarly the offence of vagrancy ceased to exist. Other offences abolished included the selling of gun powder, squibs, rockets or other combustible matter by gas, candle or other artificial light and the placing of any line or pole across any street or passage or the hanging or placing of clothes thereon.

The substantive reforms made during 1983 included:

- courts taking into account, with the defendant's consent, outstanding charges when passing sentence;
- courts given power to backdate sentences or to order that sentences are to take effect from a subsequent date;
- the Court of Petty Sessions dealing summarily with common law offences with the consent of the accused and prosecution;
- the decriminalisation of simple drunkenness coupled with the conferring of power on police officers to apprehend a drunkard where this is considered necessary either for his own protection or for the protection of other persons or property;
- a number of provisions making it a circumstances of aggravation carrying a higher penalty where certain pre-existing offences are committed whilst armed;
- creating the offence of defacing either public or private premises together with an adequate provision enabling the court to order reparation; and
- the insertion of an objectionable noise provision. The making of objectionable noise does not constitute an ofence but a failure to obey a noise abatement direction does.

Finally certain New South Wales provisions relating to the passing of valueless cheques, the obtaining of money or property by deception, false or misleading statements and obtaining credit by fraud, were inserted. These latter provisions are now in turn being reviewed as part of the proposed reforms relating to theft!

1983 ended on a high note in that in December a consolidated reprint of the Crimes Act 1900 in its application to the A.C.T., the first in 20 years, became available. This reprint incorporated the various reforms enacted in 1983. Whilst this document was of assistance to the Courts, the legal profession and law enforcement agencies, its real importance is that it facilitates a comparative study of the criminal laws of the A.C.T. and those of the States and Territories and, indeed, overseas countries. It is the launching pad for stage 2.

Work on stage 2, namely the substantive reform of laws relating to entire subject matters is advancing. Only one Ordinance in relation to stage 1 has not as yet been enacted and it is currently under consideration by the House of Assembly. This proposed Ordinance, the last of the miscellaneous amendment Ordinances, deals, inter alia, with the malicious or fraudulent abstraction of electricity, goods stolen in transit but in possession within the A.C.T., hoax communications, the powers of arrest without warrant of police in respect of interstate offenders found within the A.C.T, the power of judge to record a verdict of acquittal in cases where presently he is required to direct a jury to return such a verdict and finally the giving of an alibi notice after commital and before trial on indictement.

Stage 2 subject matters on which work is well advanced include inter-state exhibits and search warrants, sexual offences, and offences relating to property.

About to be made is a Crimes (Amendment) Ordinance which deals with the investigation of interstate offences and enables the obtaining of evidence located interstate of the commission of offences within other States or Territories. This proposed Ordinance forms part of a uniform legislative scheme agreed to by the Standing Committee of Attorney-General. Briefly the legislation permits the issuing and execution of search warrants in one jurisdiction in order to obtain evidence of the commission of offences in other jurisdictions, either for the purpose of further investigations or proceedings in respect of such offences. A number of safeguards against abuse are included in the draft Ordinance, namely:

- the warrant may only be issued by a Magistrate;
- the grounds seeking the issue must be set out in an affidavit and that affidavit must be filed by the issuing Magistrate in the Court of Petty Sessions;
- the legislation applies only to indictable offences against the law of the jurisdiction in which those offences are alleged to have been committed which also attract criminal liability in the jurisdiction where the warrant is to be issued and executed; and
- the return of property to the person from whom it was seized unless that property is otherwise disposed of by order or direction of a court.

Also with the House of Assembly is a Crimes (Amendment) Ordinance which is to add community services orders to the range of sentencing options

available to courts in the Territory. Community service orders are expected to be particularly useful as alternatives to the impositon of short terms of imprisonment and to the mandatory imprisonment flowing from default in the paying of fines. In essence the Ordinance will provide that an adult convicted of an offence punishable by imprisonment, or liable to imprisonment for non payment of a fine may, if he consents and if the court thinks fit, be sentenced to perform unpaid work of a community nature for not more than 208 hours and not less than 24 hours. Unless the period of the order is expanded, an offender will have 12 months in which to discharge the order.

Presently with the Attorney-General for reference, subject to his concurrence, to the House of Assembly are two draft Ordinances reforming the law relating to sexual offences. This area of the law has been the subject of amendment in both New South Wales and Victoria and earlier in South Australia. It has also been the subject of a report by the Tasmanian Law Reform Commission. The various laws and recommendations were considered in this review. Additionally an officer from the Office of Status of Women and I studied the operations of the New South Wales reforms. This study involved consultations with judicial officers, prosecutors, public defenders, police officers as well as persons connected with rape crisis centres. Whilst I am not in a position to anticipate the Attorney's reaction to specific proposals the main aims sought to be achieved by these reforms include:

- the balancing of the rights of the victim and of the accused enabling a fair trial of the latter whilst at the same time avoiding further degradation and humiliation of the former;
- the creation of a situation more conducive to the reporting of sexual offences (there is some evidence to suggest that in excess of 80% of alleged rapes are unreported whilst some people suggest that the figure is in excess of 90%);
- the restating of sexual offences in more contemporary and relevant manner emphasising the violent as opposed to "passionate" nature of the offences and including forms of penetration of the victim other than traditional intercourse; and
- the recognition of the equality of status of all persons.

Almost in final form is a draft Ordinance designed to replace Part IV of the Crimes Act, namely the part dealing with offences against property. It particularly revises the laws of larceny and criminal damage to property. The basic offence of larceny or stealing originated more than six centuries ago when notions of ownership and intangible rights, the foundation of the modern commercial community, were unknown. The common law has been added to by more than 150 sections in the Crimes Act in an attempt to make the old law applicable to modern conditions or to render larcenable things not capable of being stolen at common law. This has resulted in a patchwork of judicial decisions and statutory provisions. At the end of the line are the two mutually exclusive offences of larceny by a trick or obtaining by false pretences, the only distinction being whether the accused obtained mere possession or ownership. Preferment of the wrong charge is fatal to a

prosecution. Similarly the law relating to criminal damage has become unnecessarily cumbersome. Presently some 55 sections of the Crimes Act deal with this subject matter with distinctions being made as to, for example, the mode of destruction or the nature or location of the property involved. The law reforms in England and Victoria were closely studied for the purposes of this exercise. Whilst the proposals include what I would regard to be improvements, the Ordinance has been so drafted that the bulk of the English and Victorian case law will be available to the courts of this Territory in interpreting the new provisions. Departures from the Victorian and English models under consideration include:

- the merger of the offence of theft and obtaining property by deception giving statutory effect to the decision in Lawrence v The Commissioner of Police (1971) 1QB 373 adopted by Gobbo J. in Heddich v Dike 3A. Crim R. 139 leading to the conclusion that the two offences are co-extensive;
- land to be capable of being the subject of theft. In Victoria it cannot be the subject of theft but can be the subject of what has been held to be the co-extensive offence of obtaining by deception. There would not appear to be any valid policy reason for the distinction;
- abrogation of the rule that money must be returned in specie to avoid conviction for theft;
- a provision to deal with the dishonest use of a computer or other machine with an intent to obtain gain for oneself or to cause loss to another;
- the retention, in relation to criminal damage, of an aggravated offence akin to arson.

Another draft Ordinance currently under preparation is designed to enlarge the jurisdiction of the Court of Petty Sessions in relation to criminal matters. Where such jurisdiction is determined by reference to the value of property involved in the charge, the potential jurisdiction is to be the same as the court has in respect of civil matter. Depending on the value of the property the court may exercise that discretion without the consent of the accused whilst in other cases the consent of the accused is a prerequisite.

A review has also been conducted of the summary offences contained in the Crimes Act. The results of that review and the consequent legislative proposals are also to be referred to the House of Assembly in the near future.

A.C.T. criminal law reform is a continuing full-time project and indeed some recently introduced reforms may themselves be reformed in the near future. The ultimate aim is to replace the Crimes Act 1900 of New South Wales in its application to the A.C.T. with our own modern Crimes Ordinance which,hopefully, will be capable of use by other jurisdictions as an example. In launching a book dealing with mentally retarded persons within the criminal justice system the Attorney-General recently

indicated that the problems discussed in that book would be addressed during the A.C.T. criminal law review and he expressed a desire that the Commonwealth could be a flagship in areas of law reform such as this. There are indications that some other jurisdictions are anxious to consider A.C.T.law reform initiatives in their own reform deliberations.

I would wish to make some observations dealing with the interrelationship of the criminal laws of the New South Wales and the Australian Capital Territory. Until last year the conscious policy was to keep the criminal laws of the two jurisdictions uniform on the basis that the A.C.T. was an island within New South Wales. This policy has somewhat changed. For example, the sexual offence reform proposals are markedly different and, unlike the 1981 New South Wales reforms, deal compre - hensively with the subject matter. Similarly radical departures may be made from New South Wales law in relation to theft and criminal damage. It would be fair to say that in areas where it is felt that New South Wales law would not adequately serve the interests of the A.C.T. community, departures will be made. Indeed, this is implicit in the Attorney-General's "flagship" concept. In other areas, continued uniformity is to be maintained.

The interrelationship, and, in some cases, the dependence of the A.C.T. on New South Wales, may, however, have some bearing on the fulfillment of reform objectives, particularly possible objectives relating to the treatment of persons dealt with by the criminal justice system in the A.C.T. The A.C.T. does not have its own prison nor the facilities to house persons who, by reason of insanity, are acquitted, found unfit to plead or stand trial. In England, pursuant to the Mental Health Act 1959, Courts are empowered, in certain circumstances, to make hospital orders in lieu of passing sentences of imprisonment. If consideration is to be given to similar provisions in A.C.T. law it would, under present circumstances, be necessary to reach agreement with New South Wales not only for such persons to be accommodated within the mental health system of that State but also ensuring that those state authorities would not release those persons without the prior consent of the Federal Attorney-General.

In closing I would like to pay tribute to the A.C.T. Criminal Law Consultative Committee and to the Australian Federal Police Force. The Consultative Committee is a part-time committee whose members are volunteers. Its chairman is the Honourable Mr. Justice M.D. Kirby C.M.G. who is also the Chairman of the Australian Law Reform Commission. Other members are Mr Justice Kelly of the A.C.T. Supreme Court, Messrs Nicholl and Cahill of the A.C.T. Magistracy as well as representatives from the Law School of the Australian National University, the Bar Association, the Law Society, the police and members of other departments with criminal law responsibilities. The committee has made an invaluable contribution to the Criminal Law Reform program. It has initiated a number of reforms and additionally has considered the various reforms initiated by Government Departments.

The Australian Federal Police Force has also made an invaluable contribution. Reform proposals have been prepared in full consultation

with that Force and whilst from time to time there have been agreements to differ, the degree of assistance and co-operation has been such as to give the lie to allegations that police are either one-eyed or reluctant to accept change. A number of far-sighted and enlightened reforms which have been made were either suggested, or agreed to, by officers of that force.

THE A.C.T. COURT OF PETTY SESSIONS (CRIMINAL JURISDICTION)

W.K. Nicholl S.M.

KEYWORDS: Resources. Value for Money. Efficiency.

Better use of existing resources and some changes to the law would give the community better value for its money and render the administration of criminal justice more efficient.

The present restrictions on finalising indictable matters in the Court of Petty Sessions are a legacy of the days when the Court of Petty Sessions did not have legally qualified professionally experienced magistrates, inadequate and inaccurate recording of evidence and police prosecutors and little or no legal aid for those who could not afford to pay for their lawyers.

In 1951 the Court of Petty Sessions was given some summary jurisdiction in respect of certain indictable matters "but the Court shall not have jurisdiction to hear and finally determine a charge if it appears to the Court that the offence, having regard to its seriousness or the intricacy of the facts or the difficulty of any questions of law likely to arise at the trial, or any other relevant circumstances ought to be tried by the Supreme Court".

In 1974 Sections 476 and 477 of the Crimes Act 1900 as amended by Ordinance were amended to confer in respect of some cases jurisdiction in indictable matters without the consent of the accused and in a wider range of cases with the consent of the accused. There were property limitations in both cases and the Court was required to be of opinion that the

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case may properly be disposed of summarily. There were as before restrictions on the powers of sentencing and an amendment to the Court of Petty Sessions Ordinance Section 92A authorising the Court of Petty Sessions upon the summary conviction of a person charged with an indictable offence to commit to the Supreme Court for sentence where it appears to the Court that by reason of the character and antecedents of that person it is desirable that sentence be passed upon him by the Supreme Court.

I do not know on what criteria the Court of Petty Sessions would determine that it was not proper to dispose of an indictable matter summarily pursuant to Sections 476 or 477.

In the Australian Capital Territory the magistrates are barristers and solicitors, and experienced members of the legal profession presiding over Courts where the evidence is tape recorded; the prosecutions are conducted on behalf of the Director of Public Prosecutions by members of the legal profession and legal aid is available in general to persons charged with indictable crimes.

In my opinion jurisdiction should be conferred on the Court of Petty Sessions to finally dispose of indictable matters pursuant to Section 477:

(1) in the case of pleas of guilty without the consent of the accused and without restriction as to the value of the property or money involved and without reducing the power of the Court in respect of the sentence for the offence;

(2) in the cases where the defendant wishes to have a summary trial without restriction as to the value of the property or the money involved and without reducing the power of the Court in respect of the sentence for the offence.

If this jurisdiction was given to the Court of Petty Sessions then it would mean that a person charged with an indictable crime referred to in Section 477 would have the matter disposed of summarily on a plea basis and be able to have it determined on a summarily contested trial basis. The defendant wishing to have trial by judge and jury would still be so entitled.

Greater use of an infringement notice system or a like procedure in respect of summary offences e.g. company prosecutions for failing to file an annual return would divert cases from the Court and reduce the cost to the community without removing the right of a citizen to have the matter dealt with by the Court.

Greater use of averments for proving matters which ought not to be in dispute e.g. the incorporation of a company or ownership of property would reduce the cost of prosecutions and help reduce the time taken in Court.

Pre trial discovery and inspection at the request of the defendant of documents and items intended to be exhibited would help reduce time of the hearing in Court. There should be jurisdiction conferred on the Court to make an order for discovery and/or inspection in criminal cases.

Jurisdiction should be conferred upon the Court to give directions in respect of criminal trials.

The prosecution should be permitted to give a Notice to admit facts.

In summary and indictable matters the prosecution should serve copies of the statements of a witness on the defendant at least where the

defendant requests copies of the statements. There should be right in the defendant to seek an order from the Court where the prosecution refuses to serve a copy of a witness' statement.

In committal proceedings the statement of a witness should be admissible where they have been served upon the defendant and the defendant has not requested the witness to be present for cross-examination.

Jurisdiction should be conferred upon the Court to accept photographs of property as evidence in lieu of the actual property which at present has to be tendered as an exhibit e.g. the property the subject of an alleged larceny provided the actual property is not required to permit proper identification or for some other reason.

Adoption of this procedure would reduce the property held by the police pending the finalisation of charges and enable property to be returned to the owner at a much earlier stage.

It has not been possible in the short time available to discuss in detail these suggestions or to set out the criteria upon which Court should act but it is submitted "that the proposed changes in proper form would reduce the cost of the administration of justice in general and in particular reduce the time required in Courts to finalise matters with obvious savings in cost for both the prosecution and the accused".

(W.K. NICHOLL)
Stipendiary Magistrate
24th May, 1984.

AUSTRALIAN INSTITUTE OF CRIMINOLOGY

Director: Professor Richard W. Harding

AUSTRALIAN PRISON TRENDS - NO. 95

The daily average numbers of persons (to the nearest whole number) held in custody during April 1984 with changes in the totals over the past month and over the past year are:

	April			Changes since	
	Males	Females	Total	Mar. 1984	Apr. 1983
N.S.W.	3156	146	3302	+ 160	- 226
VIC.	1913	70	1983	+ 21	+ 106
QLD	1772	42	1814	+ 34	+ 110
W.A.	1427	67	1494	+ 13	- 111
S.A.	596	12	608	- 51	- 193
TAS.	234	6	240	+ 7	+ 38
N.T.	262	14	276*	+ 2	+ 18
A.C.T.	54	2	56**	+ 3	+ 2
AUST.	9414	359	9773	+ 189	- 256

* 2 prisoners in this total were serving sentences in S.A. prisons.
** 41 prisoners (including 1 female) in this total were serving sentences in N.S.W. prisons.

The table below shows the number of sentenced prisoners received in each jurisdiction during April 1984 as well as the imprisonment rates (prisoners per 100,000 population) based on daily averages.

	Sentenced Prisoners Received	Daily Average Prisoners (as above)	General Population* (in thousands)	Imprisonment Rates
N.S.W.	776**	3302	5667	58.3
VIC.	326	1983	4007	49.5
QLD	285	1814	2494	72.7
W.A.	322	1494	1370	109.1
S.A.	274	608	1347	45.1
TAS.	58	240	434	55.3
N.T.	123	276	135	204.4
A.C.T.	-	56	237	23.6
AUST.	2164	9773	15691	62.3

* Projected Population end of April 1984 derived from Australian Demographic Statistics Quarterly (Catalogue No. 3101.0)

** Comprising 426 Fine Defaulters and 350 Sentenced Prisoners.

(cont'd over page)

Work Release, Periodic Detention and Attendance Centre Data

In many jurisdictions small numbers of prisoners on work release programs are included in the daily average number of prisoners. Some of these figures are: 99 in New South Wales, 23 in Queensland and 12 in Western Australia. Excluded from the prisoner statistics were 273 offenders in Victoria serving attendance centre orders, of whom 99 were pre-releasees from prison.

As at 1 April 1984 the actual (as opposed to daily average) numbers of prisoners in custody in each jurisdiction and the proportion of these who were on remand are shown in the table below. The number of Federal prisoners in custody in each jurisdiction at 1 April 1984 are also shown in this table.

	Total Prisoners	Federal Prisoners	Prisoners on Remand	Percentage of Remandees	Remandees per 100,000 of General Population
N.S.W.	3349	144	639	19.1	11.3
VIC.	2017	48	163	8.1	4.1
QLD	1815	28	131	7.2	5.3
W.A.	1500	28	161	10.7	11.8
S.A.	629	12*	141	22.4	10.5
TAS.	239	1	15	6.3	3.5
N.T.	275	13	42	15.3	31.3
A.C.T.	52	-	12	23.1	5.1
AUST.	9876	274	1304	13.2	8.3

* 4 of the Federal prisoners in South Australia were transferred from the Northern Territory.

COMMENTS

1. During the month of April 1984 there was a significant increase in the number of prisoners in Australia. This increase was almost totally the result of higher numbers in New South Wales. On the other hand the figures for South Australia have shown a marked decrease during this period. This change has brought the South Australian imprisonmment rate well below that of any other State, but not as low as that of the A.C.T.

2. Notwithstanding the overall increase in numbers during April the national figure is still lower than it was twelve months earlier. This is also the case in New South Wales, Western Australia and South Australia.

3. The data in the statistical table above include the numbers of Federal prisoners in each jurisdiction. From this table it can also be seen that on 1 April 1984 13.2 per cent of Australian prisoners were unconvicted remandees. This is a higher proportion than is usually found.

Compiled by David Biles
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25 May 1984