Public History Review
Volume 3 1994
Professional Historians Association NSW Inc

Editorial Committee
Paul Ashton
Christina Ludlow
Kate Evans
Paula Hamilton
Christopher Keating

Correspondence
Queensland – Bran Columbus
South Australia – Bernard O’Neil
Victoria – Chris Healy
Tasmania – Richard Flanagan
Northern NSW – Bob James

Public History Review is published annually by the
Professional Historians Association NSW Inc
© this volume: Professional Historians Association NSW Inc 1995
© individual articles: the respective authors 1995

Subscription rates
$18 for one year
$32 for two years
$48 for three years

Cheques should be made payable to the
Professional Historians Association NSW Inc
Discounts are available to Association members

The editors welcome submissions of articles and book, film, exhibition,
multi-media or heritage reviews. Notices of conferences, workshops and other
events are also welcome. A copy of the journal style guide is available on request.

All correspondence, including subscriptions,
should be addressed to
Public History Review
C/- PHA NSW Inc
PO Box 219
Leichhardt NSW 2040
Tel (02) 603 3080
Fax (02) 461 6350

Special thanks to the Centre for Community History, the University
of NSW, and its Project Officer Lesa McCarthy.
Special thanks to the following people who contributed their time
and expertise in proofreading and other production areas: Linda
Carmichael, Jane Conroy, Jeannine Douglas, Stephen Grepp and
Veronica Glasson.

Design: Diane Quick PTI, Paddington NSW
Print Cover: I. Williams, B. Handrock and C. Bapley dressed in
Canadian building costumes and ensnared in seaweed at Collaroy
beach c1900-09 (Cadiz Collection)
Back Cover: Clarence the Clocker and Pam Burling

ISSN 1037 - 9851

CONTENTS

Contributors vi

ARTICLES

History and interactive multimedia: Hi-tech gimmick or a new form for community history? Heather Goodall and Karen Flick 1

Working for the Royal Commission: The History Project of the Royal Commission into Aboriginal Deaths in Custody Ann McGrath 18

Breaking into the quietude: Re-reading the personal life of Ferdinand von Mueller Andrew Brown-May and Sara Maroje 36

This thing of darkness: Public representations of Dr H. V. Evatt Bridget Griffen-Foley 64

Beyond the bounds of propriety: A photographic representation of Edwardian women Beth Gilligan 79

Flogging a dead tipster: A short biography of Clarence the Clocker Eddie Butler-Bowden 97

Realer than reel Mary Hoban 107

David Thelen, Center on History-Making in America interviewed by Jane Holley Connors 125

Royal birthdays: Glorious, inglorious and vainglorious Joy Hughes 137
WORKING FOR THE ROYAL COMMISSION: THE HISTORY PROJECT OF THE ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

Ann McGrath

To my knowledge, the History Project of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) in 1990 was the first time an Australian Royal Commission had a significant historical component and the first time a full-time historian was employed by such a Commission. A Royal Commission is Australia’s highest-level public enquiry and has the widest investigative powers. The Commissioners receive Letters Patent from the state Governors and/or the Governor-General who act on behalf of the current British (and therefore also Australian) monarch. I believe that the History Project and all the historians involved deserve substantial credit for raising the profile of the historical profession, not only in this crucial public enquiry but more widely in demonstrating what Australian historians can offer to other enquiries impacting upon policy-making for the future. To date this role has been far more important in North America than in Australia. Our experience may also provide opportunities for readers to be warned by some of our troubles and mistakes.

A lot has happened in Aboriginal affairs since 1990. The Australian public at that time had grown up with an education system which ignored Aboriginal history and many non-Aboriginal people were baffled as to why Aborigines, who since the 1960s had gained citizenship, still suffered social, economic and many other problems. This led them to take offence when Aborigines demanded special rights or treatment and to blame Aborigines themselves for their difficulties. But various events have challenged such opinions. The Mabo decision of 1992 was profoundly important because the High Court of Australia overturned the legal precept of...
representation of Aborigines in deaths in custody (over twenty times) reflected their over-representation in the criminal justice system as a whole. Of the deaths, thirty were found to be the result of hanging (suicide), twelve were from head injuries, seven from other external traumas, nine from substance abuse and thirty-seven from natural causes. Of these, sixty-three (including David Gundy) had been in police custody and thirty-three in prison custody. Three of the latter were in juvenile detention.

After Justice Muirhead's retirement, Elliott Johnston (QC) took over in April 1989 as National Commissioner as well as regional Commissioner for the Northern Territory and South Australia. Hal Wooten QC was Commissioner for New South Wales, Victoria and Tasmania, L. Wyvill for Queensland and Dan O'Dea for Western Australia. The final appointment was the first Aboriginal Commissioner, Pat Dodson, who was responsible for exploring the underlying issues in Western Australia. These five Commissioners were all male and all accomplished elders of the legal profession with the exception of Dodson, who had previously been Director of the Central Land Council. This latter body was concerned with administering legislation but also with wider social, economic and political issues.

The terms of the enquiry were broadened to look at the 'underlying issues' which could explain the disproportionate detention rates of Aboriginal people:

underlying issues that help to explain why so many Aboriginal people find themselves in conflict with the law, and why they are so heavily over-represented in police, prison and juvenile institution custody.

The core issues were variously defined as all those factors which have contributed to the situation of Aborigines today and their over-representation in custody. And in the Letters Patent the Commissioner were authorised to 'take account of social, cultural and legal factors which, in your judgement, appear to have a bearing on those deaths [my italics].’ Note that the word 'historical' was not specifically included.

In 1989 a paper was thus circulated to various people, including academics from a diverse range of fields, the heads of history departments and individual historians for responses on 'underlying issues'. This paper elicited numerous responses including some thoughtful and lengthy submissions from leading experts in the history of Aboriginal-white relations. For some time I had been considering the relevance of history to the Commission and when I saw the press coverage of Pat Dodson's eloquent statements regarding history's tragic legacy I was motivated to submit a letter to the Commissioners on the potential contribution of historians. With the strong support of Geoff Eames, Counsel Advising the Commissioners, a meeting of Aboriginal representatives and academic historians was called in late 1989 to discuss the possibility of a professional history or histories being written for the Commission's purposes. It was decided that a History Co-ordinator be appointed to suggest the names of consultants to write regional history reports and to supervise them. Above all the Co-ordinator was to be responsible for compiling a general history for the national report and generally advising the Commissioners upon relevant historical matters.

I was pleased to be offered the position and fortunately, in this age of 'community accountability', a secondment was unhesitatingly supported by my employer, the University of New South Wales. The brief was wide: it requested a national overview of black-white relations and the supervision of consultants to write regional history chapters with further lines of investigation to be determined in meetings with individual Commissioners. The Commissioners had also appointed Underlying Issues Units (UIUs) in each regional office. These UIUs were mounting huge fact-finding missions and employing consultants from numerous disciplines to write research reports on a wide range of topics. There were also the Aboriginal Issues Units in each regional office which represented Aboriginal community perspectives and which were often engaged in wide-ranging consultations in an exhausting range of locations.

Given the subject of the enquiry, however, it seemed incongruous that the Commission's structure appeared to marginalise the Aboriginal units while the UIUs, based in the same office and whose research was often city-based, had closer liaison with the Commissioner. The heads of the UIUs were often (though not always) legally trained; sometimes they were senior professionals, but in other cases they were fresh-faced and just out of law school. Often without research experience, their main task was to administer complex academic projects. Their shared law-school training and fraternal culture led to a similar outlook and sense of ease with each other. But unfortunately in some regional offices this also resulted in the marginalisation of Aboriginal Issues Units. This is not to suggest that the Commissioners themselves had little to do with members of the Aboriginal communities; the hearings into individual cases of deaths in custody involved sensitive relations and often required attempts to overcome the understandably hostile attitudes of bereaved families. The Commissioners were also often on the road with other Aboriginal officers of the Commission. Perhaps relationships there were more interdependent or interactive. So my comments are confined to the mood I sensed from urban-based office politics and the sense of frustration expressed by members of the AIUs.

As Co-ordinator of the National History Project, as it came to be called, I had to ensure that the consultant historians met the requirements of the regional UIUs and AIUs as well as those of the relevant regional
Commissioner. Once the historians were appointed they were to liaise as closely as possible with all of these people and respond to their feedback and criticisms.

Fortunately, the calibre of those who agreed to participate in the project was outstanding. One regret was that I had hoped to engage more Aboriginal historians in the Project. Leading Aboriginal historians Jackie Huggins and Noel Pearson were approached to write state reports but they declined due to prior commitments or due to more community-specific interests which were outside the Project brief. Marcia Langton was busy heading the AIU for the Northern Territory. The non-Aboriginal historians were selected for proven expertise in an area and for their political sensitivity to issues of Aboriginal history and ability to work with Aboriginal communities. Peter Read was to write on the Northern Territory, Heather Goodall on New South Wales, Peggy Brock on South Australia, Dawn May and Henry Reynolds on Queensland, Richard Broome on Victoria and the Pailawah historian, Errol West, on Tasmania. Although I had approached a historian to write the Western Australian chapter, that state’s UIU wanted to do its own research and to integrate history throughout its Underlying Issues report and therefore refused to join the National History Project. Righly or wrongly, it also appeared that the History Project was suspiciously perceived by some Western Australians as a national take-over threat: we were reminded that such seccession was part of a much longer history.

To characterize my own position as National Co-ordinator of the History Project, there was a lot of flying around the country, quite a few meetings, a lot of directions being given, endless phone calls, letters, faxes, much playing with modems and E-mailing documents. The only really ‘lucks’ I remember were a late night shoe-buying expedition with Marcia Langton and Cathy Whimp and being picked up at airports by Commonwealth cars. This could be exciting, not only because no meter was ticking but because the drivers sometimes told you indiscreet details about politicians, including techniques by which the women parliamentarians managed to do everything in the light of their family commitments. But in retrospect, maybe they didn’t.

The historical consultants, too, were asked to do quite a lot. Comprehensiveness was required, but in 5000 words! And of course they were given hardly any time in which to complete their reports. Responding to my pleas for urgency, most of the historians obediently commenced their research and writing only to find that their appointments — and their money — had not yet been officially approved. It was often much easier to get the historians moving than the wheels of a bureaucracy stretching from Broome and Perth to Adelaide, Townsville and Melbourne. The National Commissioner moved around Australia and the state Commissioners were often somewhere mysteriously distant and telecommunication-free, beyond the black stump. Yet only the Commissioners could sign authorizations; only they could approve anything, including each historian’s appointment and employment contract. Furthermore the Commissioners were usually extremely preoccupied with hearing and writing up cases of the individual deaths. Many of the hearings were stretching out beyond expectations, so needless to say the rather unwieldy and less pressing ‘social science projects’ such as our own were the least urgent of their worries. But the historians still had to be paid.

One could not, however, lean on the Commissioners. Nearly all the judges, each was individually ‘he who must be heard’ (no apologies for subverting Rumpole). I was amazed by the culture of deference amongst the legal fraternity, by the temperamental nature of some (certainly not all) of the senior staff. And I was equally shocked by the treatment tolerated by some junior legal staff. I found, to my detriment, that any breaches of this protocol were not tolerated. In contrast, many of the general secretarial staff did what they liked, and nice as they were, it was impossible to get much assistance from them. But I won’t complain about having virtually the only office without a glorious view. I was both a latecomer and the only employee of the National Commissioner based in the Sydney office and at least I had an office!

But back to the problem of the historical consultants’ contracts and waiting for the Commissioner’s approval. The Commissioners had secret phone numbers: you got to their minds; their minds had minds; you got sick of dialling and hearing ‘couldn’t anyone else help you?’; you got warnings about their more important pressures, about how finished the History Project might be if they became irritated and strategies of how ‘litte ole you’ might be heard without getting under anyone’s feet. To make matters worse, as the History Project was a national concern, approval sometimes relied on obtaining their unanimous consent. When all five Commissioners managed to meet amidst their hectic schedules all over Australia, they had innumerable more crucial issues to discuss.

Amidst this unfamiliar hierarchy, I discovered — often too late — the importance of careful wording. I had to remember that I could not ‘recommend’ someone for a task. Humility was crucial. A game of power rather different from those in the academic world was being played out. Ten different bodies within the Commission may have already been consulted but this counted for nought. Although my brief was to be responsible for managing a large project, I had to remember the limited nature of my authority: I could not ‘request’ that someone be appointed or paid.
Rather it had to be forwarded for someone’s consideration. I found that I could only suggest that someone (or something) be considered. These issues may seem trivial but they could be subjects of great seriousness and obvious consequences. It was far from clear who was responsible for what or how things should be done. I only found out the unwritten rules when I broke them. Some of the minds were very powerful and it was hard to know who or what you were taking on.

Those administering the finances were based in the Canberra office and were wily foxes indeed. Incrutable senior bureaucrats, they were masters of the long telephone pause and the cutting comment. It was as though they saw me as easy sport. I found that assuming that I was morally correct or that something had been previously agreed to didn’t work. No, because the rules had changed and they didn’t make them. I had to get angry, I had to downplay what I knew to be the historians’ real commitment and dedication and threaten that they would desert ship. There were pyrrhic victories; eventually people got paid — or I hope they did — but overall, other than the adrenaline hit of another battle of wits, let me say that I didn’t enjoy this part of it so much. When I actually saw one or two of these bureaucrats in the flesh on a Canberra visit, I was totally shocked to find they had a human form, let alone a friendly side and even weekend hobbies such as visiting antiquarian bookshops.

Eventually the historians were all paid a fixed fee for their chapters, except for Errol West, who refused to accept payment. Instead of writing a report, Errol held a briefing with the Commissioner on relevant Tasmanian history issues.

The other Project historians were all asked to follow a rough outline of topics which included frontier dispossession, police-Aboriginal relations, the history of detention rates and Aboriginal employment. Each tackled their brief rather differently. In response to feedback from on high or elsewhere in the Commission there were some heated debates about the content or missing content of some papers. But eventually most parties were reasonably satisfied with the results. Some historians (including myself) became somewhat disgruntled when some members of the Commission staff harshly critised their approach or interpretations. Generally, however, they defended their work when necessary and were open to advice. Questions of language, style and perspective were very important. Fortunately the quality of these papers, which were widely circulated throughout the Commission, was excellent. It was a difficult task for everyone, much time was taken up with briefings, consultations and revisions. The historians had to try to fill my requests and those of the various Commissioners while being obliged to respond to the demands and required revisions of the AIUs and the UJUs. The Aboriginal Issues

Units were often naturally suspicious of non-Aboriginal historians. In other cases, inter-disciplinary rivalry sometimes surfaced.

As well as administering the History Project, my brief as National Coordinator involved writing any background papers I considered relevant to the RCIAADC’s enquiries. These included a survey of the history of Aborigines and alcohol, a paper on labour and gender, one on colonialism and a study of changing patterns of detention rates. My biggest task, however, was to draw up the regional papers and develop other crucial themes into a national history. Further primary and secondary research ended in an 18,000 word paper entitled The Legacy of History.

Sometimes the Commissioners’ views of history seemed at odds with the historians. When initial resistance to one employment contract surfaced I argued at our meeting that history should be recognised as a fundamental issue. If not the fundamental underlying issue. The Commissioner promptly responded by asking me that if this was the case, should everyone else now pack their bags and go home, including himself? I usually ran into trouble when requesting assistance to go to the the 1990 AHA Conference which happened to be offering several very pertinent papers. My first two requests refused, I was getting desperate and went to the ‘top’. Unfortunately I did not get my ultimate written request vetted by a lawyer. My argument was that the Conference would enable me to become familiar with the most important debates relating to Aborigines and justice. In a thoughtfully worded reply I was told that ‘debates’ or ‘controversies’ would not be of any interest to the Commission; they were only concerned with ‘controvertible facts’, nothing in dispute. Two of the consultant historians had also received the difficult advice to include only ‘the facts’. Either the message that our profession, like that of lawyers, also interprets the facts has not got across to the public or the interpreting process was not considered desirable. Indeed, while I must say that two or three of the Commissioners were very sensitive to the importance and relevance of historical processes, and could even be described as excellent historians themselves, such differences still emerged. I guess the Commissioners’ task was to come up with an opinion as close as possible to the ‘truth’. We had to believe in such a ‘truth’ or the foundations of our task and the credibility of its product could be challenged. Henry Reynolds and Heath Goodall have since offered powerful reflections on such interactions of law and history.

**HISTORY IN THE FINAL REPORTS**

It was not certain throughout the project whether the histories would be published or whether they would be merely taken on as information...
papers. It was therefore good to see that some of the regional histories were published in modified form as part of the text or as appendices to the regional reports. In the Queensland report these took up almost as much space as the report itself: In the NSW report, a substantial history is included on that state, while condensed versions of the Victorian and Tasmanian histories appear (probably in keeping with the small numbers of deaths in those states). In the Western Australian report, the anthropologist Sandy Toussaint contributed much historical context and discussion. I would assume that the reasons why the histories were reproduced generally to the exclusion of the many other commissioned research papers is not only because history was recognised as relevant, but because the writing style of the historical profession is more educational and publicly accessible than some other forms of research, where findings are often discussed in highly technical language. This is perhaps something to think about when we consider how post-modernist we want to become.

While all volumes of the National Report appear under the name of the National Commissioner, Elliott Johnston, and the regional reports under the relevant Commissioner, all Commissioners clearly acknowledged the historian's contribution in their preambles. (For example, National Report, volume 2, p3; see also H. Wotton, Report NSW) A substantial paper which I was later asked to prepare on government policies relating to Aboriginal affairs to 1967 also informed various historical background sections, especially Chapter 20.3, 'Government and the Concept of Self-Determination' (pp510-520).

The national report was a five volume publication. In the overview, historical sensitivity is evident in the opening paragraphs:

It is a revealing commentary on the life experience of Aboriginal people in 1987 and of their history that it would have been assumed by so many Aboriginal people that many, if not most, of the deaths would have been murder committed if not on behalf of the state at least by officers of the State. This is indeed a refreshing recognition of an Aboriginal historical consciousness based on accurate perceptions of the past. The Commissioner is keen to emphasize the importance of history yet this is done self-consciously as though an invisible public would object. Past government reports generally included history only as a short ‘background’, an appendix or a time-line comprising a few names and dates and usually emphasizing legislation. I suppose that it was thought that readers would consider history somewhat irrelevant and wonder when they would get onto the real stuff.

In the Overview, volume 1 of the National Report, the primacy of the theme ‘the importance of history’ is evident. It is the fourth topic addressed and is followed by a further section entitled ‘Some conse-quences of history’. This follows key sections which include a brief description of the Commission itself, comments on the individual deaths and the disproportionate number of Aboriginal people in custody. The unusual prominence given to history, however, is revealed by the Commissioner’s somewhat defensive tone:

I include in this report a chapter on that history [of two centuries of European domination of Aboriginal people]. I make no apology for doing so. I do so not because the chapter adds to what is known but because what is known is known to historians and Aboriginal people; it is little known to non-Aboriginal people and it is a principal thesis of this report that it must become more known. [My emphasis]

Next follows a summary of the impact of dispossession, the bloodshed, disease and economic disenfranchisement, then the impact of reserves policy, racist child removal policies, disempowerment and the effects of history on non-Aboriginal people who still see Aboriginal people as inferior and believe in assimilationist ideals — that ingrained sense of superiority among some non-Aboriginal people that they know what is best for Aboriginal people. A number of problems associated with the deaths are also explained by historical factors: for example, low self-esteem, disrupted communities, disadvantage, inequality and drinking. Another, telling, section discusses the consequences of history.

Finally, Aboriginal people remember this history and it is burned into their consciousness. Secondly, Aboriginal people have had very different experience arising out of the taking over of their country, and the states are compared. Thirdly, the different perceptions of people coming from different areas due to local social organisation are discussed.

History is the first of the underlying issues to be discussed. Volume 2 of the Report is devoted to these issues and the chapter entitled the ‘Legacy of History’ appears as Chapter 10 of the overall report. It therefore becomes the introduction to the underlying issues volume which is part C of the Report. Once again, strong statements are made about the relevance of history:

I start with the legacy of history because so much of the Aboriginal peoples current circumstances, and the patterns of interactions between Aboriginal and non-Aboriginal society are a direct consequence of their experience of colonialism and, indeed, of the recent past. It is important that we understand the legacy of Australia’s history, as it helps to explain the deep sense of justice felt by Aboriginal people, their disadvantaged status today and their current attitudes towards non-Aboriginal people and society. In this way, it is one of the important underlying issues that assists us to understand the disproportionate detention rates of Aboriginal people. [My emphasis]

This substantial chapter ‘The Legacy of History’ extends from page three to page forty-seven. Some of the issues canvassed include:
Why is history relevant?
Aboriginal society prior to British arrival
The Dispossession of Aboriginal people
Frontier period: disease and violence
Police and native police
Aboriginal people and the law
Detention patterns
Labour, land and law
Social Control, protection, custody
Resistance to colonialism

It was gratifying to see that most of our research and writing was taken on board though I noted that the theoretical discussion and insights provided by Michel Foucault's studies of culture and incarceration had been chucked out lock, stock and barrel!

Again and again, the Report stressed the importance of history:

as with so many, if not all, of the underlying issues addressed in this report, the historical experience shapes, and to a significant extent determines, the parameters of every issue.11

In the police section, the importance of the historical legacy is also emphasized. Chapter twenty also provides a long summary of government policy, especially regarding assimilation and self-determination.11 The history of child removal is also dealt with in some detail in various sections of the report.

The recommendations of the report are probably the most important section. Recommendations 290, 291 and 295 discuss the importance of educating for the future. Despite the low profile that such enumeration might imply, the Commissioner emphasized public education in his media release as did the Minister, Robert Tickner, both in his responses and when he kindly congratulated me later on my work with the History Project.

The Report itself and specifically the history section has been used in numerous tertiary-level courses, including ones for journalism and communications, law and Aboriginal studies. It has received some critical analysis by at least one 'post-Aboriginalist',12 and has been used by those preparing the Commonwealth defence of the applicability of the Western Australian challenge to the Native Title Act. The Report has also been used on the international scene by groups such as Amnesty International and human rights committees of the United Nations. The state histories, too, were used in some of the reports of individual deaths in custody and may be useful sources for many other proceedings.

The History Project's investigation exposed many important issues some of which will have important research spin-offs. Some of these I explained in a paper given at a Conference on Indigenous Rights in London and these issues were explored in an article in Australian Cultural History.14 Themes included the need for historians to investigate Aboriginal experiences of prisons, to analyse the strange parallels between our foundations as a convict nation and the fact that our indigenous people are now stereotyped as prisoners.

It is puzzling that historians, who have been so fascinated by convict history, have been so reluctant to look at the more recent historical experience of imprisonment. This requires oral histories of inmates' lives and experiences and investigations into the past use of different forms of punishments for Aborigines. For example, physical punishment such as whippings were administered when they were out of favour and indeed considered barbarous for other people. The same was the case regarding the use of neck and leg chains on Aboriginal offenders. Different types of detention/custody were applied to Aboriginal people due to government policies of containment and we observed how this changed during the assimilation era. Other issues included changes in Aboriginal detention rates over time, the impact of drinking, the impact of the vote, citizenship rights and home and job integration. Aboriginal people also see imprisonment or 'in custody' as a metaphor for colonialism. Unfortunately we did not have time to conduct significant research which might have made a case for the relevance of gender issues to the Commission's analysis. That theme is indeed missing from most of the RCIAIC's reports. I still believe that consideration of the gender differentials might have been productive but it was difficult to fit within the existing frames of reference and nor was the research time or funding available.

Many further issues emerged about contemporary Australian society and attitudes towards Aborigines, some of which will be taken up in proposed research projects by other historians. The historical role of policing is one example. Whereas stereotypes depict Aborigines as drunks or criminals, few consider the complex role of the police in relation to Aboriginal subjugation and mendicancy as they administered frontier justice, in their power to dole out blankets, rations and rights. Similar topics demand more investigation by cultural historians. Why was ordinary Aboriginal behaviour defined as criminal? Why have their movements and actions been so over-regulated? An analysis also needs to be made of racist jokes. One circulating in 1991 actually won a joke of the week competition on 2BL, an Sydney ABC radio station. While the joke remained distinctly racial in tone, it had its regional variations. In Brisbane it was an Aboriginal man, while slightly more subtle in Sydney, leaving out race but adding an identifiable suburb where Aborigines reside. The joke went as follows:
A garbage man calls out to a Redfern resident 'Where's ya bin?' The man replies 'Bin up in Queensland. Where's ya wheely bin?' 'O bin in jail, just say Queensland cos it sounds better.'

This is not the place to consider the difficult question of whether the Royal Commission as a whole was effective, but various follow-up reports and studies are being published including the responses of the states. As far as the History Project was concerned, it is a story with a relatively happy ending and some important implications for the potential input of historians into public enquiries. Although I know that historians have played an increasingly important role in heritage related issues, prior to 1992 they had not frequently been called upon to give evidence in public enquiries, even those relating to Aboriginal matters. Unlike the Canadian or North American situation, where historians have long played roles in interpreting treaties and in land rights and related legislation, in Australia quite the opposite has been the case.

In this country, anthropologists were entrenched as the experts on all things relating to Aborigines. In part this was the legacy of the dominant Australian school of applied anthropology and the close relationships that men like A. P. Elkin negotiated with governments. But it is also due to the historians' 'conspiracy of silence,' their sluggishness in getting onto the topic of the history of Aboriginal/white relations. Historians had willingly agreed to leave the topic of Aborigines to the anthropologists while they got on with the task of writing nationalistic history which glorified white achievement. This changed during the 1970s and Henry Reynolds has led the way in demonstrating the relevance of historical interpretation in the land rights debate, as in his book *The Law of the Land.* Peter Read's long involvement in *Linkup* which enables family reunification of Aboriginal people has also been very important. Since the late 1970s others have contributed submissions for land councils. Indeed, as discussed in detail elsewhere, historians of 'Aboriginal history' have been at the forefront of 'applied history' and are highly sensitised to the political implications of their findings. I am not sure who advised Justice Blackburn regarding *Miliyam v. Nabarre* though he used numerous historical documents in his 1971 judgement which confirmed the validity of *terra nullius.* The Woodward Commission into land rights did not consult historians at all to my knowledge. Woodward's recommendations meant that the Northern Territory *Land Rights Act* (1976) required only anthropological advice on cultural knowledge and land associations as evidence of traditional ownership. A rather static definition of Aboriginality was potentially reinforced by this legislation, delegating historical change to the margins. Were it not for the flexible and well-informed Land Commissioners, this would have weakened the claims of all Aboriginal people forcibly dispossessed.

Historical advice has, however, been heavily in demand since the Mabo decision of 1992. Historical research has been essential for claims relating to native title, whether they be before the High Court or via the *Native Title Act* (1993). Historians such as Henry Reynolds, Bob Reece, Neville Greene, Tom Stannage and myself have been called upon to provide advice for land councils and for the Commonwealth and state governments. Hopefully historians other than those concerned with inter-ethnic relations also look at how their insights might contribute to other social enquiries. For example, the current Royal Commission into the NSW police calls out for historical analysis into the origins of the police force and the evolution of police culture and the long history which has shaped public perceptions.

**BATTLING THE CROWN: THE COPYRIGHT SAGA**

In the rush to obtain employment status for the consultant historians so their payments would be authorised, they agreed to sign the standard contracts which included a clause vesting copyright in the Crown. Before the Commission wound up, I realised this was an issue which I must do something about, especially if we were ever to publish anything further from this large research project. When I rang the Commission, I was told that they were in the last, crazed stage of finishing the writing of the final reports and that they could not consider the issue until they were finished. I empathised with the enormity of their task. But when I contacted them again I was informed there was no longer any Royal Commission. The Commissioners were no longer Commissioners. So who should I approach to arrange to have the Crown copyright waived?

By this time, I had a publisher interested in a proposed general history of Aboriginal–white relations that would draw upon the history chapters written for the Royal Commission. But I did not want to go ahead with signing their contract until I was given official approval. The sorry two-year copyright saga that resulted was a trying nightmare. I wrote to Elliott Johnston, who offered his support, but couldn't actually do much for us. An official request was sent to the Attorney General's Department. Spokespersons from that department tended to contradict themselves and proved terribly difficult to catch despite endless faxes and phone calls to Canberra. I tried to get officers of the Prime Minister's Department to intercede and pressed a senior officer for a response. Finally, excitement and relief when he telephoned and said he had heard that 'the Crown' via the Attorney General's Department would soon agree to waive copyright. This was in keeping with a new political agenda; it was believed that such
information should be in the public domain and part of a wider public education program.

Long alterations followed but no written answer was forthcoming. I had heard nothing from the Attorney General's Department. After further enquiries, I was eventually told that the relevant file and my letters were lost. So I started over again. After pressing the Attorney General's department for a response, and eventually getting to communicate with the powerful ones, I finally received the long-awaited phone call. The answer was no. We could not publish anything which emanated or originated from the Royal Commission even if it was substantially altered. I was shocked and explained how I had been told we would get the okay! Mentioning this created an infuriated though more engaged response, suggesting the excitement of inter-departmental feuding or perhaps only the whiff of an indiscreet transgression against bureaucratic protocol.

A further plea was made and a face to face meeting arranged with a senior government lawyer, via the support and assistance of Allen & Unwin's publisher Mark Tredinnick (another legally trained person). This was a great deal better than the previous communications. Nonetheless, I was told that a wide range of people had been consulted. This included, I was told, all the ex-Commissioners and also an individual Aboriginal public servant who to my knowledge had no previous experience with the History Project of the Royal Commission. The negative decision was due to their expressed concerns about issues of confidentiality. Yet, as I explained, we historians had rarely even had access to such materials and they were not used at all in our reports. Of course I felt that I had held the moral high ground but I was put in my place over the relevance of such thinking. I waved around letters from the participating historians offering their endorsement of the proposed book and explaining its importance. The tide seemed to change slightly during this meeting, most noticeably after I answered a question in the affirmative as to whether one of the historians was married to a Canberra senator.

After having defended the various grounds for refusal I was later told that I had been given a negative response because they always initially say 'no' to such requests. Right, so 'no' does not necessarily mean 'no'. Finally, after further discussion, I received another response. I was told that we had been negotiating with the wrong department. We should instead be asking permission from the Australian Government Publisher. So I sent another letter and after the usual prompting received a reply with almost shocking speed. Despite the lengthy explanations provided in the preceding letters, phone calls and the meeting, there still seemed to be a misunderstanding as to exactly what I was asking for and there was much legal debate about what the copyright could cover. It had been agreed that we could publish the much-revised and rewritten papers, but only on condition that we paid a 5 per cent royalty on retail price. This was to be paid in advance on all copies printed. The positive response I had so long awaited was, it stated, actually an invoice. The fees would have equated with the publisher's price royalties offered by Allen & Unwin's unsigned contract and of course took no account of the considerable photographic, mapping, indexing and other production costs to be incurred.

Yet more plea followed: by this time less than half of the book even emanated from the Royal Commission so the due royalty was whitfielded down slightly. I was too well versed in patent law to persist in our argument and demand full waiver of copyright. The works are far removed from the original works but in the official letter this was excluded as a valid argument. It later came to light that urine was December 1992 we were told that if the works were 'revised', 'substantially altered' or 'lengthened' this did not mean that they were 'new creations'. The Commonwealth retains the copyright on the unrevised paper and on the substantial part of any papers that are revised/altered.18

When I met a copyright lawyer recently at a pre-school (parents) get together, I eagerly told her the story and she stated that I had enjoyed a major victory. It doesn't feel that way. Just writing about all this gives me the horrors. It also reminds me of how I was spurred along by the numerous enquiries received from the contributing authors and of the encouragement, understanding and calm displayed by Mark Tredinnick, my publisher from Allen & Unwin. I often wondered, as I rang him yet again about my latest frustrations regarding the amorphous Crown, whether he thought I was always in an emotionally damaged state. Fellow-historians be warned: you too could be taken to the very edge for months, even years, by Crown copyright? Perhaps something of all this crept into the title of the consequently long-delayed but now forthcoming book, Contested Ground: A History of Australian Aboriginals under the British Crown.19

From the outset, one of my key goals in this project was to have the Commissioners acknowledge the vital relevance of the historical legacy to the situation of Aboriginal people today and especially to their over-imprisonment. They did this by approving the History Project but they went much further. By actually integrating history so thoroughly into the final reports they revealed its essential function as an explanatory tool offering crucial clues and insights into the present situation of Australian Aborigines. This would not have happened without the support and critiques provided by outstandingly energetic and incisive people such as Geoff Eames, Elliott Johnston, Pat Dodson, Hal Wooten and Marcia Langton.
Beyond this, the Project’s success relied heavily upon the patience, sensitivity, professionalism and conscientious efforts of all the participating consultants whose efforts played such a significant role in historically informing this important Commission. We have not yet received any acknowledgment from the Queen. But hopefully the near-aborted book, which bravely struggled to grow out of the Royal Commission into Aboriginal Deaths in Custody, will be the History Project’s ‘crowning’ glory.

Notes
1. This article reflects the views of the author and not necessarily those of the other historians involved in the History Project or that of the Commissioners themselves. I am writing as a private individual and this is not meant to reflect the view of the Royal Commission as such.
3. See the American Journal, The Public Historian, which contains frequent evidence of the role American professional historians play for government.
5. Because of the late notice, I was asked to continue to run my new course. I was therefore released on a four-fifths fractional basis in first session 1990 and on a full-time basis for second session. A position of Teaching Fellow was endorsed by Faculty and Julia Horne appointed to administer Gender and Frontier and provide all tutorials. My sole responsibility was to provide lectures. The course actually proved highly successful, so I must thank Julia for her excellent efforts in making it work so well.
7. At an AHA conference in 1992, Henry Reynolds argued that historians should forget their ‘epistemological angst’ and become aware of how they could contribute to legal issues since the Mabo decision. Heather Goodall has since written about this issue very forcefully in *The Whole Truth and Nothing But…: Some Interactions of Western Law, Aboriginal History and Community Memory* in *Journal of Australian Studies, No 35*.
13. See T. Murray, Aboriginal (Pre) History and Australian Archaeology: The Discourse of Australian Prehistoric Archaeology in Journal of Australian Studies, No 35, special edition B. Atwood and J. Arnold (eds), *Power, Knowledge and Aborigines*, p.14. Unfortunately there is a mistranscription in the quote published in the journal and it is unclear to what extent the analysis has been influenced by this mistake.