

JUSTICE UNDER SCRUTINY

**REPORT RECOMMENDATIONS
AND THE
COMMONWEALTH GOVERNMENT'S
RESPONSE**

NOVEMBER 1995

INTRODUCTION

In March 1994, the Minister for Aboriginal and Torres Strait Islander Affairs, the Hon Robert Tickner MP, referred the *First Annual Report of the Implementation of the Commonwealth Government Responses to the Royal Commission into Aboriginal Deaths in Custody Report* to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs for inquiry. On 5 December 1994 the Standing Committee tabled in Parliament its inquiry report *Justice Under Scrutiny*.

The following submission contains the Commonwealth Government's responses to the Standing Committee's recommendations.

In relation to issues within the jurisdiction of State and Territory Governments, the Standing Committee has advocated that the Prime Minister pursue action through the Council of Australian Governments (COAG). The Commonwealth takes the view that Ministerial Councils were established specifically to deal with issues of this type and that it is inappropriate, in the first instance, to pursue these matters through COAG. The Committee also expresses a consistent preference to raise the issue of more urgent implementation at Ministerial level, where there are existing Ministerial Councils which provide opportunities to develop cooperation across jurisdictions. Accordingly, while supporting the relevant recommendations in principle, the Commonwealth will refer those recommendations to appropriate Ministerial forums for consideration.

The Standing Committee has also indicated a preference for unified monitoring, evaluation and reporting which embraces the implementation of Royal Commission recommendations by all jurisdictions. In this regard it has recommended that a separate and independent Monitoring and Evaluation Unit be established within the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner in the Human Rights and Equal Opportunity Commission (HREOC), and that it be sufficiently resourced to carry out these proposed functions.

The Royal Commission's recommendations addressed the responsibilities of virtually every government and non-government agency involved in policy development and program funding and delivery of indigenous peoples' affairs. Accordingly, implementation of the recommendations involves all those agencies. Primary responsibility for monitoring implementation rests with each agency. Deficiencies in implementation and in reports on implementation are primarily their responsibilities.

That said, the Commonwealth acknowledges that monitoring and reporting of the implementation of the Royal Commission's recommendations can be improved. However while welcoming the observations of the Standing Committee on how this might be done, the Commonwealth's preferred course is to strengthen existing monitoring and reporting arrangements in view of the fact that the Aboriginal and Torres Strait Islander Social Justice Commissioner has strongly opposed the transfer of the monitoring function to his Office, despite the original role intended by the Government for the Commissioner in this area and despite his wide powers conferred under legislation unanimously supported by the Parliament.

Additionally, because of its representative base and the need for accountability to Aboriginal peoples and Torres Strait Islanders, the Commonwealth supports retention by the Aboriginal and Torres Strait Islander Commission (ATSIC) of its monitoring and reporting responsibilities. In turn, ATSIC has agreed to examine how the process it applies might be improved within existing resources and accordingly, is reviewing its approach to its monitoring and reporting responsibilities. In particular, it will aim to adopt a more rigorous assessment of the monitoring, evaluation and reporting of policy initiatives and programs carried out by responsible agencies. This assessment will be reflected in an ATSIC overview to be incorporated in the Annual Report.

A functional level of scrutiny is also undertaken by the Aboriginal and Torres Strait Islander Social Justice Commissioner who has the authority to independently scrutinise the implementation of any of the Royal Commission recommendations by Commonwealth, State or Territory Governments.

The most significant test of the implementation of Royal Commission recommendations relates to progress in improving the lives of indigenous peoples in areas identified by the Royal Commission. Accordingly the most important perspective on monitoring implementation is that of indigenous peoples and their community organisations. The first three recommendations of the Standing Committee's report address the need to strengthen the capacity for meaningful community input through the further development of the Aboriginal Justice Advisory Committees established in response to Recommendation 2 of the Royal Commission. There are significant signs that critical community level monitoring is getting under way. The Commonwealth will continue to encourage and support initiatives which enable communities to meet their responsibilities in this regard.

The Commonwealth, as demonstrated in its Budget appropriations, is committed to the implementation of the recommendations of the Royal Commission, particularly because of their direct relationship to the fundamental causes of indigenous peoples' disadvantage. The Commonwealth will also review its monitoring and reporting processes to identify gaps in the implementation of the recommendations and to ensure accountability to Aboriginal peoples and Torres Strait Islanders.

Where State and Territory interests are involved, appropriate approaches are being made at Ministerial level to State and Territory governments and relevant Ministerial Councils.

JUSTICE UNDER SCRUTINY

REPORT RECOMMENDATIONS

AND THE

**COMMONWEALTH GOVERNMENT'S
RESPONSE**

Recommendations 1 - 3 will be addressed together

1. The Commonwealth give urgent consideration to the establishment of a National Aboriginal Justice Advisory Committee (AJAC), drawn from existing State and Territory Aboriginal Justice Advisory Committees. The members of the national AJAC should be selected at the national AJAC conference.
2. The national AJAC should be serviced by a small secretariat. This secretariat should be situated within the Commonwealth Attorney-General's department and provide the AJAC with independent policy advice on all Royal Commission recommendations. The secretariat will also provide administrative support to the national AJAC. The first priority of such a secretariat should be servicing of the national AJAC.
3. The terms of reference for the national AJAC is a matter to be negotiated between the Commonwealth and State and Territory AJACs. The Committee suggests that matters which may be considered by the national AJAC include, but not be confined to:
 - a The implementation of the recommendations made by the Royal Commission;
 - b The implementation of recommendations made by this report;
 - c Proposals for changes to policies which affect the operation of the criminal justice system;

- d. Programs for crime prevention and social control which enhance Aboriginal self-management and autonomy;**
- e. Programs which increase the recruitment of Aboriginal people to the staff of criminal justice agencies; and**
- f. The dissemination of information on policies and programs between different agencies and between parallel bodies in different states.**

The establishment of a *National Aboriginal Justice Advisory Committee* (AJAC) was agreed to by the Standing Committee of Attorneys-General (SCAG) in February 1995. Decisions on the role and function of the national committee will be determined in consultation with State and Territory Aboriginal Justice Advisory Committees.

A decision on the support needed for a National AJAC has been made by State and Territory Aboriginal Justice Advisory Committees. That decision is to be referred to SCAG for their further consideration.

The Commonwealth has committed funding to facilitate the meetings of the National AJAC. The role and function of the National AJAC will be determined by the indigenous stakeholders: the Chairs of State and Territory AJACs who discussed these issues at the 1995 National Conference of AJAC members held in Brisbane in August. The National AJAC held its first meeting in Adelaide on 31 October and 1 November 1995. The AJAC chair then made a presentation to SCAG on 3 November 1995.

Recommendations 4 - 7 will be addressed together

- 4. A separate and independent Monitoring and Evaluation Unit be established under the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner of the Human Rights and Equal Opportunity Commission.**
- 5. The major function of this Unit will be to monitor, evaluate and report on the progress of the implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody at the Commonwealth, State and Territory levels. The Unit will be involved in the continuous monitoring and assessment of the programs of all Commonwealth, State and Territory departments involved in implementing recommendations. It shall provide advice on an ongoing basis to all such departments and agencies.**
- 6. The Commonwealth should seek the cooperation of States and Territories in this process, through the Council of Australian**

Governments (COAG), for the establishment of an office of the Unit in each State and Territory and the subsequent monitoring, evaluation and reporting arrangements.

- 7. The work will be carried out by separate offices in each State and Territory and the Commonwealth operating with the authority of the Aboriginal and Torres Strait Islander Social Justice Commissioner. Each State and Territory office would be responsible for monitoring and evaluating implementation in that State or Territory jurisdiction. The Aboriginal and Torres Strait Islander Social Justice Commissioner will become responsible for overseeing the monitoring and evaluation of the implementation of all the recommendations of the Royal Commission across Commonwealth, State and Territory jurisdictions. Each State and Territory office is to be part of a national monitoring and evaluation network.**

The Commonwealth is committed to ensuring meaningful monitoring and reporting of the implementation of the RCIADIC recommendations. However it is important to distinguish between the responsibility of different Commonwealth agencies in this regard. ATSIC has primary statutory responsibility for monitoring policies and programs which impact on Aboriginal peoples and Torres Strait Islanders. This is consistent with ATSIC's assumption of responsibility for monitoring and reporting on implementation of responses to Royal Commission Recommendations. On the other hand, the Human Rights and Equal Opportunity Commission's role is that of an independent body established to protect and promote awareness of human rights and equal opportunity in Australia. It is able to investigate complaints under the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Privacy Act 1988* and the *Disability Discrimination Act 1992* and attempts to conciliate them.

To extend the Justice Commissioner's role to include monitoring the day to day implementation of all the recommendations of the RCIADIC would be inconsistent with his statutory role and responsibilities, and would detract from this human rights focus of the work of the office. It would also prejudice his ability to independently scrutinise and report on the enjoyment and exercise of human rights by Aboriginal peoples and Torres Strait Islanders, particularly where these relate to the implementation of RCIADIC Recommendations.

However, it should be noted that the Aboriginal and Torres Strait Islander Social Justice Commissioner has extensive powers under his constituting legislation to seek information about the implementation of any of the RCIADIC Recommendations by State and Territory Governments and to report on their performance in this regard.

Because of its representative base and the need for accountability to Aboriginal peoples and Torres Strait Islanders, the Commonwealth supports retention by ATSIC of its monitoring and reporting responsibilities. ATSIC will review its existing resources and their current deployment and assess its capacity to pursue more rigorously the monitoring, evaluation and reporting of policy initiatives and programs carried out by responsible agencies. Pending this review, priority will continue to be given to ATSIC's existing reporting responsibilities.

In addition, Departments and agencies implementing Royal Commission Recommendations are aware that they bear the principal responsibility for monitoring and evaluating the outcomes of their respective implementation of recommendations, and they will review their reports to ensure that additional relevant information is provided. In this context, ATSIC will continue to pursue such information for inclusion in the Annual Report on the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody it produces.

In relation to monitoring beyond the Commonwealth's sphere of responsibility, Governments have agreed that each jurisdiction will report annually and separately on its implementation of its responses to Royal Commission Recommendations. Further, Commonwealth Departments and agencies, including ATSIC, do and will continue to take account of implementation of other jurisdictions as they affect the policy interests of the respective Commonwealth Departments and agencies, and will ensure that appropriate forums for discussion of relevant issues will be vigorously utilised.

With specific reference to *Justice Under Scrutiny*, the Prime Minister has written to all State and Territory Premiers and Chief Ministers, drawing their attention to the findings of the Standing Committee and seeking their continued cooperation in achieving desired outcomes in respect of the recommendations of the RCIADIC. It would, however, be inappropriate for the Unit exercising reporting responsibility for the Commonwealth jurisdiction to monitor, evaluate and report on the responsibilities of other jurisdictions.

- 8. The Aboriginal and Torres Strait Islander Social Justice Commissioner will present the annual report of the Royal Commission into Aboriginal Deaths in Custody Monitoring and Evaluation Unit to the Council of Australian Governments, and it shall be tabled subsequently in the Australian Parliament and each State and Territory parliament.**

The Commonwealth's Annual Report on the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody will be made available to the Council of Australian Governments through provision of the Annual Report to all Premiers and Chief Ministers. The Commonwealth will continue to table its annual report and those of State and Territory governments in the Federal Parliament.

9. **This separate Unit must be established with sufficient resources from the Commonwealth, State and Territory governments to enable it to effectively carry out its functions. This must be significantly greater than the resources currently allocated to ATSIC for the establishment of the Royal Commission Government Response Monitoring Unit. The Monitoring and Evaluation Unit would subsume the roles, staff allocation and funding currently provided to the ATSIC Monitoring Unit. Each State and Territory government should assist in the funding of separate State units, through the transfer of existing resources involved in the monitoring process, to this new structure.**

The Commonwealth notes recommendations relating to the allocation of significant resources for monitoring and reporting. The Commonwealth is satisfied with the current levels of funding allocated to the Royal Commission Monitoring Unit within ATSIC and is satisfied that improvements can be achieved within the existing level of resources.

Responses to Recommendations 4,5, 6 and 7 above, also refer.

10. **The unit should also be in a position to investigate concerns that Aboriginal and Torres Strait Islander individuals and organisations have in relation to breaches of Royal Commission recommendations at all levels.**

HREOC is the most appropriate authority to handle complaints of human rights abuses and of racial discrimination, in any form, against Aboriginal peoples and Torres Strait Islanders. If a conciliated outcome cannot be reached the matter may proceed to a public hearing and a determination. If this is not complied with, the complainant or HREOC may commence action in the Federal Court which will conduct a fresh hearing of the matter. Appropriate organisations and persons to contact in regard to broader concerns about inadequate implementation of Royal Commission recommendations generally include elected ATSIC Commissioners, Regional Councillors or State offices and State and Territory AJAC.

11. **The Unit would operate for a period of five years, and should commence within the next four months.**

The 1992 Response by Governments to the Royal Commission gave a commitment to consideration of a comprehensive evaluation of implementation after three years. During the 1994-95 reporting period, the Commonwealth implementation of RCIADIC recommendations was scrutinised in three reports: the House of Representatives Standing Committee Report *Justice Under Scrutiny*, the Aboriginal and Torres Strait Islander Social Justice Commissioner's 1994 Annual Report, and the 1995 report of the Office of Evaluation and Audit in ATSIC. These reports reflect a comprehensive evaluation of implementation of RCIADIC recommendations.

The Monitoring Unit in ATSIC has adopted these reports to provide a focus for future monitoring of implementation.

12. **The Attorney-General introduce any necessary legislation to amend the *Human Rights and Equal Opportunity Commission Act 1986* to give effect to these recommendations.**

Based on the responses to recommendations 4 - 10 there would be no changes required to the *Human Rights and Equal Opportunity Commission Act 1986*.

13. **The Prime Minister table in Parliament as soon as possible a full Commonwealth Government response to Royal Commission Recommendation 188.**

Royal Commission Recommendation 188 states that governments should negotiate with appropriate Aboriginal and Torres Strait Islander organisations and communities to determine guidelines on process and procedure that are consistent with the principles of self determination.

The Commonwealth notes the intent of this Recommendation and will pursue its implementation through enhancement of existing reporting in the Annual Report on the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody.

The 1994/95 Annual Report by the Commonwealth will give particular attention to providing an expanded report on Recommendation 188 of the Royal Commission, synthesising the range of developments affecting the application of the self determination principle in policies and programs affecting indigenous peoples.

14. **The Minister for Finance and the Minister for Aboriginal and Torres Strait Islander Affairs immediately institute procedures to implement Recommendation 193 to simplify accounting procedures for Aboriginal and Torres Strait Islander communities and organisations and to ensure they are in the least onerous and most convenient and simple forms as possible.**

Royal Commission Recommendation 193 states "That the Commonwealth Government, in negotiation with appropriate Aboriginal organisations, devise a procedure which will enable Aboriginal communities and organisations to properly account to government for funding but which will be least onerous and as convenient and simple as possible for the Aboriginal organisations and communities to operate. The Commission further recommends that State and Territory Governments adopt the same procedure, once agreed, and with as few modifications as may be essential for implementation, in programs funded by those governments".

ATSIC maintains a continuous review of its accounting requirements of funded organisations, which are consistent with the Commonwealth Government's financial policies and practices. Simplification of requirements is a principal objective of the review process and a number of procedures have been streamlined. The issue of collaboration with State and Territory governments will be proposed by ATSIC for discussion between the relevant Ministers. The Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs has formally raised this issue with the Minister for Finance.

Further, consistent with recent financial management reforms, it is for each Commonwealth agency to determine internal accounting procedures for the acquittal of grants and advances, within the broad requirements of the Commonwealth's financial legislative framework. If Departments and agencies wish to involve Finance in a review of accounting procedures or aim to identify best practice methods from other sources, the Department of Finance is happy to provide advice or assistance.

15. **The Minister for Aboriginal and Torres Strait Islander Affairs ensure that in future Annual Implementation Reports the response to Recommendation 197 is fully addressed by outlining the consultation that has taken place by ATSIC Councillors and Commissioners with Aboriginal and Torres Strait Islander organisations in the development of training programs providing appropriate management and accounting procedures.**

Royal Commission Recommendation 197 outlines the need for ATSIC Councillors and Commissioners to consult, at an early stage, with Aboriginal and Torres Strait Islander organisations and communities to develop staff training programs that will enhance the efficiency and integrity of those organisations in the areas of administration, management and accounting.

Reporting on Recommendation 197 will be further expanded, commencing with the 1994/95 Annual Report on Implementation of Recommendations. Elected ATSIC Commissioners and Regional Councillors have a role in representing the needs of community organisations and in developing an annual program for funding. However, the development, negotiation and administration of particular projects is primarily a responsibility of ATSIC's administrative officers.

16. **The Commonwealth at the next Corrective Services Ministers' Conference seek resolutions that the South Australian Government submit to the Australian Institute of Criminology, prison census data for 1993 and 1994 without any further delays.**

In support of this Recommendation, the Prime Minister is writing to the South Australian Premier regarding outstanding Royal Commission issues and the

Commonwealth Minister for Justice will write to the South Australian Minister for Corrective Services seeking his efforts in facilitating the submission of prison census data to the Australian Bureau of Statistics which has taken over this responsibility from the Australian Institute of Criminology.

17. **The Commonwealth at the next Corrective Services Ministers' Conference seek resolutions that all State and Territory governments promptly submit prison census data to the Australian Institute of Criminology.**

This recommendation will be referred by the Commonwealth Minister for Justice to the Ministerial Council on the Administration of Justice and a resolution at the next Corrective Services Ministers' Conference that all State and Territory governments promptly submit prison census data to the relevant collecting agency will be sought.

Recommendations 18 and 19 will be addressed together

18. **The Prime Minister through the Council of Australian Governments gains a commitment that each State and the Northern Territory will immediately investigate the failure to reduce the over-representation of Aboriginal and Torres Strait Islander people in prison.**
19. **The Prime Minister through the Council of Australian Governments ensure that the results of these investigations are made public together with a program of action to reduce the over-representation of Aboriginal and Torres Strait Islander people in prison. This should include target rates and timelines. The action to be implemented by each jurisdiction is to be published in their Annual Implementation Reports.**

In support of these recommendations, the Commonwealth Minister for Justice is referring the matter to the Ministerial Council on the Administration of Justice for consideration and action.

20. **The AIC continue to be funded to conduct research into the demographic and sentencing components of changes in Aboriginal and Torres Strait Islander imprisonment rates.**

The Commonwealth notes this Recommendation and will continue to support and encourage the undertaking of such research.

Recommendations 21 and 22 will be addressed together

21. **The Institute include in future National Prison Census reports tables showing the rates of imprisonment by age, sex, and Aboriginality.**

22. **The Institute produce line graphs which show the projections, based on 1992 imprisonment data, on the numbers of indigenous people in prison to the year 2011. The graph should also progressively show each year the actual rates of imprisonment. Separate graphs are to be produced to show the position nationally and for each State and Territory. The graphs should be published in the Commonwealth Government's Annual Implementation Report.**

In support of these recommendations, the Commonwealth Attorney-General is referring them to the relevant statistical collection and analysis agencies for consideration and action.

23. **At the next Australasian Police Ministers' Council meeting the Commonwealth move to have the Royal Commission's definition of a 'death in custody' accepted without further delay. The Commonwealth should also seek agreement that all deaths that fall within the definition are promptly notified to the AIC for recording and reporting to government.**

At the November 1994 meeting of the Australasian Police Ministers' Council (APMC), Ministers endorsed a paper presented by the Australian Institute of Criminology (AIC). The AIC paper provides a useful resolution to the disagreement over what constitutes a death in custody, and ensures that the implementation of Recommendation 41 of the Royal Commission into Aboriginal Deaths in Custody occurs in a manner which enhances community understanding of the issue of deaths in custody and minimises the scope for the media and others to misinterpret the data emanating from the monitoring process.

The February 1995 issue of the AIC's "Deaths in Custody Australia" now entitled "Deaths in Custody Australia: Australian Deaths in Custody and Custody-related Police Operations", includes statistical information on the number of deaths in custody as agreed at the November 1994 APMC meeting and from this, it appears that reporting these incidents to the AIC has improved.

24. **The Commonwealth, through the Australasian Police Ministers' Council, seek a commitment that all police services establish computerised systems for collecting and reporting police custody data without further delay.**

In support of this recommendation the Commonwealth Minister for Justice is referring it to the Ministerial Council on the Administration of Justice.

Recommendations 25-30 will be addressed together.

- 25. The Treasurer and the Attorney-General ensure that changes to the collection of correctional statistics:**
 - **maintain the Australian Institute of Criminology's role in monitoring Royal Commission Recommendations;**
- 26.**
 - **do not increase delays in the availability of published statistics;**
- 27.**
 - **ensure that data collected is in sufficient detail to allow monitoring of the Royal Commission recommendations;**
- 28.**
 - **maintain the continuity of collection series affecting Royal Commission monitoring;**
- 29.**
 - **provide access by the Australian Institute of Criminology to raw data;**
- 30.**
 - **provide access by the Australian Institute of Criminology to the necessary ABS data without charge.**

These recommendations will be the subject of negotiation between the Australian Institute of Criminology (AIC) and the Australian Bureau of Statistics (ABS). The ABS is now responsible for the collection and publication of correctional statistics nationally (a role formerly carried out by the AIC), commencing with the 1994 National Prison Census. The AIC expects to obtain, from the ABS, national data on the operation of the criminal justice system. To be of most value, this should be in unit record form and be provided at no charge to the Institute. Negotiations on this are not yet finalised.

These recommendations will also be referred by the Commonwealth Minister for Justice to the Australasian Police Ministers' Council, through the Ministerial Council on the Administration of Justice for consideration and action.

- 31. There be established in each State and Territory, as a matter of urgency, a services support system to provide legal advice, trauma support and necessary material support to assist families to deal with the circumstances of a death in custody. Services support teams should be available immediately following notification of a death in custody and would include expertise from Aboriginal and Torres Strait Islander Health and Legal Services.**

In the event of a death in custody, ongoing services to support bereaved families are most appropriately provided by indigenous community organisations. State and Territory governments will be urged to provide funding to support appropriate organisations. The Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs is referring the matter to the Ministerial Council of Aboriginal and Torres Strait Islander Affairs for consideration and action.

Recommendations 32 and 33 will be addressed together

- 32. The Attorney-General should, as a matter of urgency, table in Parliament a response to the Australian Law Reform Commission's 1986 report on the *Recognition of Aboriginal Customary Laws* including a detailed account of the progress to date in implementing the recommendations contained in that report.**
- 33. The Attorney-General take immediate steps to report on the current status of the Aboriginal Law Reform Commission report on the *Recognition of Aboriginal Customary Laws* to those Aboriginal and Torres Strait Islander people who made contributions to that inquiry.**

It has been agreed at Ministerial level that the Minister for Aboriginal and Torres Strait Islander Affairs is responsible for coordinating the Commonwealth Government's response to the Australian Law Reform Commission (ALRC) Report with assistance from the Attorney-General's Department as required.

The 1993/94 Annual Report on the Implementation of Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody included a report on the 'Recognition of Aboriginal Customary Law' (Volume One) which outlines the Commonwealth position. The matter has also been taken up by the Standing Committee of Attorneys-General which will consider a report later in 1995.

The Minister for Aboriginal and Torres Strait Islander Affairs Mr Tickner has established an Inter-Departmental Committee on Indigenous Customary Law which held its first meeting on 27 June 1995. The Commonwealth Attorney-

General's Department will continue to provide assistance and support to ATSIIC which is responsible for the Government's response to the ALRC Report.

- 34. The Commonwealth funding of sobering-up shelters should be conditional on there being no religious coercion of people who are intoxicated or religious services performed in their presence.**

Providing there is general agreement between the funding agency and a grant-funded organisation on the general parameters of the services to be funded, the operations of the service, including its conduct and methods of delivery, are matters for determination by the organisation.

- 35. The Prime Minister through the Council of Australian Governments seek the prompt implementation of Recommendation 81 of the Royal Commission through the introduction by Western Australia of a statutory duty upon police to consider and utilise alternatives to the detention of intoxicated people in police cells.**

Recommendation 81 states that legislation decriminalising public drunkenness should place a duty upon police to utilise alternatives to the detention of intoxicated persons in police cells. These alternatives should include the options of taking the intoxicated person home or to a facility established for the care of intoxicated persons.

In support of this Recommendation, the Prime Minister is writing to the Western Australian Premier regarding outstanding Royal Commission issues and the Commonwealth Minister for Justice is writing to the Western Australian Minister for Police and Emergency Services requesting full implementation of Recommendation 35.

- 36. The Prime Minister, through the Council of Australian Governments, seek the prompt implementation of Royal Commission Recommendation 85 by Western Australia.**

Recommendation 85 places the onus on police services to monitor the effect of legislation decriminalising drunkenness. Police officers should ensure that people are not detained in police cells when they should be taken to alternative places of care. The Royal Commission also states that the effect of such legislation should be monitored. For example, persons who would have been apprehended for drunkenness, should not instead be arrested and charged with other minor offences. This monitoring must include an assessment of the different police practices of urban and rural areas. The results of this monitoring should also be made public.

In support of this Recommendation, the Prime Minister is writing to the Western Australian Premier regarding outstanding Royal Commission issues

and the Commonwealth Minister for Justice is writing to the Western Australian Minister for Police and Emergency Services requesting full implementation of this Recommendation.

37. The Prime Minister through the Council of Australian Governments seek, as a matter of urgency, the implementation of State and Territory commitments to the Royal Commission recommendations dealing with public intoxication. In particular State and Territory governments should:

- **promote and fund more Aboriginal-run street patrols;**
- **increase the provision of sobering-up shelters;**
- **ensure that police services act in the spirit of the Royal Commission by:**
 - **minimising their contact with and detention of intoxicated people;**
 - **not utilising substitute charges, such as drinking in public, as some form of social control over Aboriginal people on the street.**

Royal Commission Recommendations 79 - 85 deal with a range of issues relating to public intoxication.

Recommendations 79 - 81 outline the need for the decriminalisation of public drunkenness. Recommendation 82 states that governments should closely monitor the effect of dry area declarations and other regulations restricting the consumption of alcohol, on rates of custody.

Recommendations 83 - 84 nominate the use of agreements and negotiation between communities and the police as a means of resolving issues related to public drinking. Recommendation 83 specifically deals with the Northern Territory and the negotiation of agreements in particular areas between indigenous and non-indigenous peoples on the consumption of alcohol in public. Recommendation 84 states that public drinking should be the subject of negotiation between police, Local Government bodies and the representatives of Aboriginal and Torres Strait Islander organisations, including Aboriginal or Torres Strait Islander legal services, with a view to producing a mutually acceptable plan.

Recommendation 85 specifically targets police services as having a role in monitoring the effect of legislation which decriminalises public drunkenness, and having a duty to ensure that people detained under these offences are not detained in police cells.

In support of this Recommendation, the Commonwealth Minister for Justice is referring the matter to the Ministerial Council on the Administration of Justice for consideration and action.

- 38. The Prime Minister, through the Council of Australian Governments, seek the immediate implementation by the Queensland Government of Royal Commission Recommendation 79.**

Recommendation 79 states that governments should abolish public drunkenness as an offence.

In support of this Recommendation, the Prime Minister is writing to the Queensland Premier regarding outstanding Royal Commission issues and the Commonwealth Attorney-General is writing to the Queensland Attorney-General requesting full implementation of Royal Commission Recommendation 78.

- 39. The Prime Minister, through the Council of Australian Governments, seek the immediate implementation by the Victorian Government of Royal Commission Recommendation 79.**

Recommendation 79 states that governments should abolish public drunkenness as an offence.

In support of this Recommendation, the Prime Minister is writing to the Victorian Premier regarding outstanding Royal Commission issues and the Commonwealth Attorney-General is writing to the Victorian Attorney-General requesting full implementation of Royal Commission Recommendation 79.

- 40. The Prime Minister, through the Council of Australian Governments, seek undertakings from State and Territory governments that their agencies will not seek to divert resources from Commonwealth funded community organisations to provide State services.**

In support of this Recommendation, the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs is referring the matter to the Ministerial Council of Aboriginal and Torres Strait Islander Affairs for consideration and action.

In the case of ATSIC grants, ATSIC's Board of Commissioners determines whether its funding will be directed to State and Territory governments or to community organisations. It is concerned to ensure that indigenous peoples have access, in accordance with their priority of need, to services available to all citizens.

- 41. The Prime Minister, through the Council of Australian Governments, seek the agreement of the Queensland Government to address the poor liaison between police and Aboriginal and Torres Strait Islander communities.**

In support of this Recommendation, the Prime Minister is writing to the Queensland Premier regarding outstanding Royal Commission issues and the Commonwealth Minister for Justice is writing to the Queensland Minister for Police and Corrective Services requesting full implementation of this Recommendation.

- 42. The Prime Minister through the Council of Australian Governments gain the agreement of the Western Australian Government to end the present prisoner meal allowance scheme and introduce a scheme which does not encourage arrest and incarceration.**

In support of this Recommendation, the Prime Minister is writing to the Western Australian Premier regarding outstanding Royal Commission issues and the Commonwealth Minister for Justice is writing to the Western Australian Minister for Police and Emergency Services requesting full implementation of this Recommendation.

- 43. The Commissioner for Taxation examine the operations of the Western Australian meal allowance scheme for police prisoners to ensure that tax evasion has not been occurring.**

The Western Australian Police Department does not deduct tax instalments from amounts paid in respect of the Prisoners' Meal Allowance and the allowance is not shown on the group certificates of the receiving officers. The Australian Taxation Office has written to the Western Australian Police Department confirming that the current taxation treatment is correct and in accordance with the provisions of section 221D (variation of tax instalment deductions) of the *Income Tax Assessment Act 1936* where the following conditions are satisfied:

- the police officers receiving the allowance can reasonably be expected to incur expenditure of an amount equal to or greater than the amount of the allowance paid;
- the allowance can reasonably be expected to be expended for the purpose for which it paid; and
- the expenditure incurred can reasonably be expected to be deductible on assessment.

- 44. The Prime Minister, through the Council of Australian Governments gain an undertaking from Western Australia that the oppressive, inefficient and ineffective policing in Wiluna be discontinued immediately.**

In support of this Recommendation, the Prime Minister is writing to the Western Australian Premier regarding outstanding Royal Commission issues and the Commonwealth Minister for Justice is writing to the Western Australian Minister for Police and Emergency Services requesting full implementation of this Recommendation.

- 45. The Prime Minister, through the Council of Australian Governments, seek the agreement of State and Territory governments to fully implement those Royal Commission recommendations concerning the diversion of Aboriginal and Torres Strait Islander people from police custody.**

The Royal Commission Recommendations which relate to diversion of indigenous peoples from police custody are Recommendations 79-88.

The Commonwealth has made significant progress in implementing these recommendations. The *Commonwealth Crimes Act* now incorporates the principle of arrest being a sanction of last resort. The Australian Federal Police (AFP) have also reinforced this principle in their administration in several ways; AFP supervisors now oversee the appropriateness of arrest practices, AFP officers are not promoted on the basis of frequency of charges and arrests; and processes have been adopted that do not encourage the use of arrest. A data base is also kept to monitor progress against these standards.

In support of this Recommendation, the Commonwealth Minister for Justice is referring it to the Australasian Police Ministers' Council, through the Ministerial Council on the Administration of Justice for consideration and action.

- 46. The Commonwealth give greater priority and commitment to the implementation of Royal Commission Recommendation 96.**

Recommendation 96 relates to the cultural awareness training of judicial officers and persons employed in court service. The Commonwealth is supportive in the implementation of Recommendation 96, however the ultimate resolution of this issue rests largely in responsibilities of State and Territory Governments. The Commonwealth Government has attempted to provide catalysts for States and Territories to fulfil their obligations.

A series of pilot cultural awareness programs are being established under the auspices of the Australian Institute of Judicial Administration (AIJA). Sub-committees are currently operating in Western Australian and Queensland. The Australian Capital Territory has advised that Aboriginal and Torres Strait Islander cultural awareness is not a major issue for their judiciary and the Northern Territory are yet to provide advice to the AIJA on their plans. Victoria, Tasmania, South Australia and New South Wales are still in the process of establishing their sub-committees. The sub-committees are

formed to develop consultative arrangements between judicial officers, Aboriginal Legal Service representatives and indigenous cultural awareness trainers and presenters. The sub-committees also set the direction, timing, venue and duration of the cultural awareness programs.

The Commonwealth, although not directly responsible, continues to make efforts to encourage and advance the cultural awareness of judicial officers and employees in the court services in the State and Territories. Consultations are ongoing with Aboriginal and Torres Strait Islander legal services, ATSIC and members of the judiciary in the various jurisdictions. Further work needs to be done in some States to obtain consensus on involvement and materials for drafting of the programs.

A pilot program for Masters and Judges of the Supreme Court of Western Australia was conducted in September 1993. The pilot program was attended by thirteen judges of the District Court which, excluding three judges who were on leave and one judge who was presiding over a trial at the time constitutes all judges of the court. This was followed in December 1994 with another seminar which was attended by 35 of a total of 41 Western Australian magistrates. The program included the following topics: Aboriginal and Torres Strait Islander world view, customary law; past legislation and contemporary implications; identity and diversity; how to communicate with Aboriginal peoples and Torres Strait Islanders; the Royal Commission into Aboriginal Deaths in Custody; and national and international perspectives.

In April 1995 a pilot cultural awareness seminar was conducted for Queensland Supreme Court and Queensland based judges of the Federal Court of Australia. During July/August 1995 a series of three seminars in various parts of the State, directed at the 70 Queensland magistrates, was also conducted.

Funding for the program in the 1995/96 financial year is \$50,000. This amount reflects the Commonwealth's role as developing pilot programs which would provide a catalyst for further action by the States and Territories.

- 47. The Commonwealth Government introduce legislation within six months, which will protect the rights of Aboriginal and Torres Strait Islander peoples in accordance with Article 14, clauses (a) (b) and (f) of the International Covenant on Civil and Political Rights. In addition, the legislation should guarantee that a person convicted of an offence will be informed promptly of that fact and the consequent penalty, in detail and in a language which that person understands.**

It is assumed that this recommendation refers to Article 14, Clauses 3(a), (b) and (f) of the International Covenant on Civil and Political Rights. Article 14, Clause 3(a) refers to the entitlement of a person to be informed promptly and in detail, in a language which he/she understands, of the nature and cause of the charge against him/her. Clause 3(b) refers to the entitlement to have

adequate time and facilities for the preparation of a defence and to communicate with counsel of one's own choice. Clause 3(f) refers to the right to have the free assistance of an interpreter if a person cannot understand or speak the language used in court. There are some existing provisions in Commonwealth statutes which address these matters.

Article 14, clause 3(a)

The *Crimes Act 1914* provides certain safeguards during the investigation of Commonwealth offences for those who cannot speak English. One such requirement is that investigating officials provide the assistance of an interpreter where the person arrested is unable to communicate orally with reasonable fluency in the English language (section 23N). Questioning or investigation must be deferred until the interpreter is present.

After a person is arrested for a Commonwealth offence, an investigating official must caution the person that he or she does not have to say or do anything and that anything the person does say or do may be used in evidence (subsection 23 F(1)). This caution must be given in, or translated into, a language in which the person is able to communicate with reasonable fluency (subsection 23F(2)). In addition, Aboriginal and Torres Strait Islander peoples generally cannot be questioned even prior to arrest, unless an interview friend is present (subsection 23H(2)). The Commonwealth is required to maintain and update regional lists of individuals who are able to assist and interpret for Aboriginal and Torres Strait Islander peoples who are under arrest and under investigation for Commonwealth offences (section 23J).

Article 14, clause 3(b)

The *Crimes Act* also requires that a person under arrest for a Commonwealth offence must be allowed to communicate with a legal practitioner of the person's choice (subsection 23G(1)) and be given reasonable facilities in which to communicate (subsection 23G(2)). Also, unless an investigating official is aware that an Aboriginal or Torres Strait Islander person has arranged for a legal practitioner to be present during questioning, the official must inform the person that a representative of an Aboriginal legal aid organisation will be notified that the person is under arrest and notify such a representative accordingly (subsection 23 H(1)).

Article 14, clause 3(f)

Section 30 of the *Evidence Act 1995* is relevant where the person cannot adequately understand or speak the language used in court. It provides that a witness may give evidence about a fact through an interpreter unless he or she can understand and speak English sufficiently to understand and make adequate replies to questions that may be put about the fact. Any witness (including a defendant in a criminal proceeding) in a proceeding to which the Act applies is therefore entitled to an interpreter where the conditions in the

section are met. The provision applies in all proceedings in federal courts and courts of the Australian Capital Territory. Section 30 of the New South Wales Evidence Act 1995, which applies in NSW courts, is identical.

Sentencing

Federal penalties other than fines must be explained to an offender in a language likely to be understood by that person. Provisions of the Crimes Act, relating to the imposition of terms of imprisonment with non-parole periods and orders for the conditional release of federal offenders (such as orders relating to parole, recognisance release and community service), require a sentencing court to explain or cause to be explained to the offender in language likely to be understood by him or her, the purpose and effect of the order and the consequences of failing to comply with a condition of the order (sections 16F, 19B, 20 and 20AB of the Act).

Issues related to informing an offender of his or her conviction and sentence in a language which he or she understands will be further considered as part of the review of sentencing provisions in Part 1B of the Crimes Act.

Human Rights and Equal Opportunity Commission

It should be noted also that if a person's rights under the International Covenant on Civil and Political Rights (ICCPR) are breached, that person is at liberty to bring a complaint to the Human Rights and Equal Opportunity Commission. The Commission has the power to investigate alleged breaches of the ICCPR and to attempt to conciliate the matter.

Standing Committee of Attorneys-General

The ICCPR does not oblige the Commonwealth Government to legislate to guarantee the rights set out therein. The obligations under the ICCPR may equally be met through administrative measures. The issue of whether the Commonwealth Government has power to legislate to guarantee rights under the ICCPR in such a way as to affect proceedings in State courts raises complex legal and constitutional issues.

Recommendations 48 and 49 will be addressed together

48. **The Minister for Employment, Education and Training ensure that Royal Commission Recommendation 110 is implemented by undertaking the consultation called for in the Recommendation.**
49. **The Minister for Employment, Education and Training ensure that Royal Commission Recommendation 110 is implemented by undertaking the national study called for in the Recommendation.**

Corrective Services authorities and a range of other agencies are responsible for a wide variety of pre-release and post-release schemes throughout Australia. Royal Commission Recommendation 110 argues the need for a national study which is capable of ascertaining the best features of existing schemes. This study should be designed in consultation with relevant indigenous communities.

The Australian Institute of Criminology report *"Keeping Them In, Keeping Them Out"* was produced within resource constraints and provides a very firm base on which Departments of Corrective Services in conjunction with State/Territory training authorities can assess existing courses or introduce new or additional courses. DEET regards the AIC report as the national study and the work that has been done subsequently is a result of the findings of the AIC report.

The aim of the strategy outlined in this report seeks to obtain a greater commitment from State and Territory governments which are primarily responsible for prisoner education, to give more emphasis to the provision of education and training to those in custody.

Further, the Commonwealth through the negotiating processes of the Aboriginal Education Strategic Initiatives Program (AESIP) will also take an active role in this aspect of implementing the strategy.

The Commonwealth through the AESIP currently makes a substantial commitment (in excess of \$1.2 million) to prisoner education in the current triennium until the end of the 1996 calendar year. The Commonwealth will seek the cooperation of education providers to increase their efforts in prisoner education and training for the next triennium (1997-99).

50. The Commonwealth seeks the agreement of the Corrective Services Ministerial Council for the Commonwealth to fund the Australian Institute of Criminology to further implement Royal Commission Recommendation 115.

Recommendation 115 states that governments have a responsibility to ensure statistical and other information is recorded to enable understanding of Aboriginal and Torres Strait Islander rates of recidivism, and to measure the effectiveness of various non-custodial sentencing orders and parole.

Decisions relating to the funding of the Australian Institute of Criminology (AIC) are a matter for the Commonwealth. The AIC will provide advice about methodologies and the source of funding, should it be decided that the AIC participate actively.

51. The Commonwealth promptly implement Part (a) of Royal Commission Recommendation 121.

Part (a) of Recommendation 121 states that, where legislation does not already so provide, governments should ensure that sentences of imprisonment are not automatically imposed in default of payment of a fine.

Federal enforcement of fines, including default imprisonment and alternatives to default imprisonment, is governed by applied State and Territory laws. In the *Response by Governments to the Royal Commission*, all States and Territories indicated that they had, or were implementing the recommendation.

All jurisdictions, with the exception of the Australian Capital Territory (ACT), have since implemented this recommendation. The ACT is currently considering alternatives to the imposition of default imprisonment with a view to the introduction of legislation in 1996.

Further, in the case of federal offenders, the potential for default is minimised by section 16C of the Crimes Act. It requires a sentencing court to have regard to the financial circumstances of the offender, which requires a consideration of the capacity to pay, in determining whether a fine or any other sentencing option, such as a community based order, should be imposed. Part 7 of the *Service and Execution of Process Act 1992*, which provides for interstate enforcement of fines imposed by lower courts, has been interpreted as not requiring default imprisonment.

52. The Minister for Environment, Sport and Territories table in Parliament within 3 months Commonwealth responses to all recommendations of the Royal Commission as they relate to the Jervis Bay Territory.

The Department of Environment, Sport and Territories contributed a response to 71 recommendations of the Royal Commission relevant to the Jervis Bay Territory, to the second annual implementation report prepared by the RCIADIC monitoring unit in ATSIC. This report was tabled in the Parliament in June 1995.

53. The Prime Minister, through the Council of Australian Governments, seek an undertaking from the Australian Capital Territory Government to implement Recommendations 93, 97, 103, 109, 120 and 121 of the Royal Commission without further delay.

Recommendations 103, 109, 120 and 121 all deal with issues related to the imposition of sentences or sanctions on offenders. Recommendation 103 states that where a Community Service Order is imposed for fine default, the dollar value of a day's service should be greater than and certainly not less than, the dollar value of a day served in prison. Recommendation 109 specifically nominates State and Territory Governments to examine the range of non-custodial sentencing options available to ensure an appropriate range of these options are available. Recommendation 120 appeals for Governments to consider the introduction of an ongoing amnesty on the

execution of long outstanding warrants of commitment for unpaid fines. Recommendation 121 argues for States and Territories to introduce legislation so that sentences of imprisonment are not automatically imposed in default of payment of fine. It also states that this legislation should provide alternative sanctions and impose a statutory duty upon sentencers to consider, in the first instance, a defendant's capacity to pay.

Recommendation 93 calls for governments to legislate so criminal records may be expunged to remove references to past convictions, after a lapse of time since the last conviction. Recommendation 97 focuses on community liaison, stating that consultation with communities should occur prior to the implementation of Recommendation 96 which relates to the cultural awareness training of judicial officers and persons employed in court service.

In support of this Recommendation, the Prime Minister is writing to the Chief Minister of the Australian Capital Territory regarding outstanding Royal Commission issues and the Commonwealth Minister for Justice is writing to the Australian Capital Territory Attorney-General requesting full implementation of this Recommendation.

54. The Prime Minister, through the Council of Australian Governments, seek an undertaking from the Australian Capital Territory Government to expedite the implementation of Recommendation 115.

Recommendation 115 relates to Government records on Aboriginal and Torres Strait Islander rates of recidivism and the effectiveness of various non-custodial sentencing orders and parole. The Commonwealth response to this Recommendation states that the Australian Institute of Criminology is available to advise State and Territory authorities on the collection of statistical and other information.

The Institute throughout 1993-94 has been liaising with State and Territory Corrections Departments over a uniform approach to the collection and recording of statistics on individuals in prison and other parts of the criminal justice system. The Institute will continue to assist State and Territory corrections administrations in maintaining uniform statistics.

In support of this Recommendation, the Prime Minister is writing to the Chief Minister of the Australian Capital Territory regarding outstanding Royal Commission issues and the Commonwealth Minister for Justice is writing to the Australian Capital Territory Attorney-General requesting full implementation of this Recommendation.

- 55. Where necessary the Commonwealth renegotiate the agreements with State and Territory governments on the provision of legal aid funding to ensure that Aboriginal and Torres Strait Islander people are not disadvantaged in using Aboriginal Legal Services compared with using the Legal Aid Commission.**

The Aboriginal and Torres Strait Islander Legal Services program is separate from the Commonwealth's legal aid program, and is administered by ATSIC. There will be no involvement by Legal Aid and Family Services, which has responsibility for administering agreements with States and Territories for the provision of mainstream legal aid services.

Aboriginal and Torres Strait Islander Legal Services (ATSILS) are funded exclusively by the Commonwealth and are totally independent of Government control over their operations. The ATSILS are community controlled organisations with total discretion over policy making and management practices. Each service is free to determine which cases it will run and whom it will assist. As there is no State or Territory government involvement in the funding or operation of these services, no useful purpose could be served in raising the issue of their operation with these governments.

Legal Aid Commissions are established under State or Territory legislation, but jointly funded by the Commonwealth and the relevant State or Territory Government. While Legal Aid Commissions are free from Government interference in the delivery of services, they are subject to broad policy and management direction by Government.

Aboriginal peoples and Torres Strait Islanders benefit from being able to access the specific services that are provided through the ATSILS, which are generally provided free of any consideration of the applicant's means or the likelihood of success of the case. Under existing arrangements Aboriginal peoples and Torres Strait Islanders also have the same access to Legal Aid Commission services as all Australians. Aboriginal peoples and Torres Strait Islanders can access the services of Legal Aid Commissions if they choose to use these services, subject to the same eligibility criteria that are applied to any applicant for legal aid. The ATSILS are simply additional services that have been made available for Aboriginal peoples and Torres Strait Islanders, without placing any restriction on their use of mainstream legal aid services provided through the Legal Aid Commissions.

The Australian Law Reform Commission's report on women's access to the legal system observed that 'Aboriginal and Torres Strait Islander women are least well served by the legal system', identifying 2 factors which limit the access by Aboriginal and Torres Strait Islander women to ATSILS. These were a policy of not acting for either party in a dispute between indigenous peoples and a preference for criminal cases. The ALRC recommended the establishment of specialist legal services for Aboriginal and Torres Strait Islander women. The Commonwealth is committed to addressing this issue and announced in the Justice Statement specific funding for provision of

services for Aboriginal and Torres Strait Islander women through a new network of women's legal centres, adding a third potential source of assistance. The achievements of this service 'will contribute to the pool of information and advice on which the Aboriginal and Torres Strait Islander Commission and the Government will make future decisions about how best to meet the legal needs of the entire Aboriginal and Torres Strait Islander community.' (Justice Statement, p.81)

- 56. The Prime Minister, through the Council of Australian Governments, seek the cooperation of State and Territory governments to ensure that all magistrates are aware of Recommendation 86 and its role in the 'trifecta' multiple charge syndrome.**

Recommendation 86 states that the use of offensive language in circumstances of interventions initiated by police should not normally be occasion for arrest or charge; and that police services should examine and monitor the use of offensive language charges.

To draw the content of Recommendation 86 to the attention of magistrates, the Commonwealth Attorney-General is referring it to the Standing Committee of Attorneys-General.

- 57. The Prime Minister, through the Council of Australian Governments, seek assurances from the New South Wales Government that Recommendations 150 and 152 of the Royal Commission are fully implemented.**

Recommendation 150 and 152 call for the standard of health care available to all persons in correctional institutions to be equal to the care provided to the general public. Many issues are covered in the recommendations including; adequate resources, staffing, an emphasis on culturally 'appropriate' services and 24 hour access to medical staff. A significant priority is placed on the need to monitor and review the standard of current health care and to report on the outcomes of this review.

In support of this Recommendation, the Prime Minister is writing to the New South Wales Premier regarding outstanding Royal Commission issues and the Commonwealth Minister for Human Services and Health is writing to the New South Wales Minister for Health requesting full implementation of the Royal Commission Recommendations referred to in this Recommendation.

- 58. The Prime Minister, through the Council of Australian Governments, seek the agreement of the New South Wales Government to implement Recommendation 188 and 192 in relation to programs for Aboriginal prisoners and post-release schemes.**

Recommendations 188 and 192 deal with issues related to self-determination for Aboriginal peoples and Torres Strait Islanders. Recommendation 188 focuses on the need for governments to deliver culturally appropriate services and programs to Aboriginal peoples and Torres Strait Islanders, consistent with the principle of self-determination. Guidelines for the delivery of these programs should be formed on the basis of consultation with Aboriginal and Torres Strait Islander community organisations. Recommendation 192 states that preference should be given to Aboriginal or Torres Strait Islander organisations to deliver services to Aboriginal or Torres Strait Islander communities. Where services are provided by Government agencies, emphasis should be given to the employment of Aboriginal peoples or Torres Strait Islanders in those agencies.

In support of this Recommendation, the Prime Minister is writing to the New South Wales Premier regarding outstanding Royal Commission issues and the Commonwealth Minister for Justice is writing to the New South Wales Minister for Justice and the New South Wales Attorney-General requesting full implementation of the Royal Commission Recommendations referred to in this Recommendation.

Recommendations 59 - 61 will be addressed together

59. The Prime Minister, through the Council of Australian Governments, seek the agreement of the South Australian Government to:

- **implement Royal Commission Recommendations 93, 98, 100, 101, 102 and 121 (a);**

60.

- **expedite the implementation of Royal Commission Recommendations 94, 114 and 117;**

61.

- **ensure that consultation with Aboriginal organisations occurs on Royal Commission Recommendation 109.**

Recommendations 93, 117 and 121 all advocate legislative changes. Recommendation 93 calls for governments to legislate so criminal records may be expunged to remove references to past convictions, after a lapse of time since the last conviction. Recommendation 117 and 121 argue for consideration of alternatives to the penalty of imprisonment.

Recommendations 100 and 114 both relate to training. Recommendation 100 argues for governments to recruit and train Aboriginal peoples and Torres Strait Islanders as court staff and interpreters, particularly in locations where large numbers of Aboriginal peoples or Torres Strait Islanders appear before courts. Recommendation 114 places the emphasis on departments and

agencies to train and employ Aboriginal peoples or Torres Strait Islanders to run non-custodial sentencing programs.

The remaining recommendations cover a range of issues. Recommendation 98 argues for phasing out the use of Justices of the Peace for the determination of charges or for imposition of penalties. Recommendation 101 deals with the effectiveness of non-custodial sentencing orders. Recommendation 94 states that sentencing and correctional authorities should accept that community service can be performed in many ways by an offender placed on a Community Service Order. This can include the pursuit of personal development courses that may provide the offender with skills and knowledge, interests and counselling likely to reduce the risk of re-offending. Recommendation 102 deals with breaches of non-custodial orders being followed by a summons in preference to an arrest. Recommendation 109 argues for State and Territory Governments to examine the range of non-custodial sentencing options available in each jurisdiction.

In support of this Recommendation, the Prime Minister is writing to the South Australian Premier regarding outstanding Royal Commission issues and the Commonwealth Attorney-General is writing to the South Australian Attorney-General requesting full implementation of the Royal Commission recommendations referred to in this Recommendation.

- 62. The Prime Minister, through the Council of Australian Governments, seek the cooperation of the Northern Territory Government to ensure that legislative changes are in accordance with the Royal Commission recommendations and will result in fewer Aboriginal and Torres Strait Islander people being incarcerated.**

In support of this Recommendation, the Prime Minister is writing to the Chief Minister for the Northern Territory regarding outstanding Royal Commission issues and the Commonwealth Attorney-General is writing to the Northern Territory Attorney-General requesting full implementation of this Recommendation.

- 63. The Prime Minister, through the Council of Australian Governments, seek the cooperation of the Northern Territory Government to implement Royal Commission recommendations 92, 94, 99, 100, 102, 103, 109, 111 and 171.**

Recommendations 92, 94, 102 and 109 all deal with alternatives to imprisonment sentences. Recommendation 92 calls for governments to legislate the principle of 'imprisonment as a sanction of last resort'. Recommendation 94, 102 and 109 are described under response to Recommendation 61 above.

Recommendations 99 and 100 argue for the use of competent interpreters for Aboriginal and Torres Strait Islander defendants. Recommendation 100 acknowledges that this is particularly important in locations where large numbers of Aboriginal peoples or Torres Strait Islanders appear before the courts. Any necessary training should be provided by Government, to ensure the employment of Aboriginal peoples or Torres Strait Islanders.

The remaining recommendations cover a range of issues. Recommendation 103 states that where a Community Service Order is imposed for fine default, the dollar value of a day's service should be greater than and certainly not less than, the dollar value of a day served in prison. Recommendation 111 emphasises the responsibility of Governments to consult with Aboriginal and Torres Strait Islander communities and groups, in reviewing options for non-custodial sentences. Corrective services are targeted in Recommendation 171, emphasising that recognition be given to the special kinship relationships and family obligations of Aboriginal and Torres Strait Islander prisoners, to attend occasions of family significance.

In support of this Recommendation, the Prime Minister is writing to the Chief Minister for the Northern Territory regarding outstanding Royal Commission issues and the Commonwealth Attorney-General is writing to the Northern Territory Attorney-General requesting full implementation of the Royal Commission Recommendations referred to in this Recommendation.

- 64. The Prime Minister, through the Council of Australian Governments, seek the agreement of the Queensland Government to implement Recommendation 96 of the Royal Commission to ensure greater cultural sensitivity by judicial officers.**

Recommendation 96 deals with the cultural awareness training of judicial officers and persons employed in court service. The Recommendation highlights that programs designed for cultural education on indigenous issues should include: historical and social factors, information on contemporary Aboriginal and Torres Strait Islander societies, and customs and traditions.

In support of this Recommendation, the Prime Minister is writing to the Queensland Premier regarding outstanding Royal Commission issues. The Commonwealth Attorney-General is writing to the Queensland Attorney-General requesting full implementation of the Royal Commission Recommendation referred to in this Recommendation.

- 65. The Prime Minister, through the Council of Australian Governments, seek a commitment from the Queensland Government to implement Recommendation 108 particularly in conjunction with the full implementation of Recommendation 96.**

Recommendation 108 states that Aboriginal or Torres Strait Islander legal services, funding authorities and courts should recognise that lawyers cannot adequately represent clients unless they have been given adequate time to

instruct and prepare cases. This is a special problem in communities without access to lawyers other than at the time of court hearings.

The education of these authorities, legal services and courts is addressed by Recommendation 96 which advocates cultural awareness training of judicial officers and persons employed in court service. The recommendation highlights that programs designed for cultural education on indigenous issues should include; historical and social factors, information on contemporary Aboriginal and Torres Strait Islander societies, customs and traditions.

In support of this Recommendation, the Prime Minister is writing to the Queensland Premier regarding outstanding Royal Commission issues and the Commonwealth Attorney-General is writing to the Queensland Attorney-General requesting full implementation of the Royal Commission Recommendations referred to in this Recommendation.

66. The Prime Minister, through the Council of Australian Governments, seek the cooperation of the Queensland Government to fully implement Royal Commission Recommendations 94, 95, 96, 99, 100, 108, 111, 117 and 118.

Recommendations 94, 95, 111, 117 and 118 all deal with strategies to reduce the high rates of imprisonment for indigenous peoples, and offer alternatives to the current procedures for sentencing. Recommendation 94 is described in the response to Recommendation 61 above. Recommendation 111 emphasises the responsibility of governments to consult with Aboriginal and Torres Strait Islander communities and groups, in reviewing options for non-custodial sentences. Recommendation 117 is a general recommendation, arguing for the consideration of alternatives to the penalty of imprisonment. Home detention is offered as an alternative sentencing option in Recommendation 118. Recommendation 95 states that in jurisdictions where motor vehicle offences are a significant cause of Aboriginal and Torres Strait Islander imprisonment, programs should be designed to reduce the incidence of offending.

Recommendations 96, 99 and 108 all relate to court process and procedure. Recommendation 96 advocates the cultural awareness training for judicial officers and persons employed in court service. Recommendation 99 calls for the use of competent interpreters for Aboriginal and Torres Strait Islander defendants, where this is deemed necessary. Recommendation 100 argues for Government to recruit and train Aboriginal peoples and Torres Strait Islanders as court staff and interpreters, particularly in locations where large numbers of Aboriginal peoples or Torres Strait Islanders appear before courts. Recommendation 108 described under Recommendation 65 above.

In support of this Recommendation, the Prime Minister is writing to the Queensland Premier regarding outstanding Royal Commission issues and the Commonwealth Attorney-General is writing to the Queensland Attorney-

General requesting full implementation of the Royal Commission Recommendations referred to in this Recommendation.

- 67. The Prime Minister, through the Council of Australian Governments, seek the assurance of the Western Australian Government that the use of Justices of the Peace to determine cases cease as soon as possible.**

In support of this Recommendation, the Prime Minister is writing to the Western Australian Premier regarding outstanding Royal Commission issues and the Commonwealth Attorney-General is writing to the Western Australian Attorney-General requesting full implementation of this Recommendation.

- 68. The Prime Minister, through the Council of Australian Governments, seek the agreement of the Western Australian Government to implement Recommendations 93, 95, 98, 99, 102, 103, 111, 117 and 121 without further delay.**

Recommendations 95, 102, 111, 117 and 121 specifically propose strategies to keep Aboriginal persons or Torres Strait Islanders out of prison. Recommendation 95 states that in jurisdictions where motor vehicle offences are a significant cause of Aboriginal and Torres Strait Islander imprisonment, programs should be designed to reduce the incidence of offending. Recommendation 102 deals with breaches of non-custodial orders being followed by a summons in preference to an arrest. Recommendation 111 emphasises the responsibility of governments to consult with Aboriginal and Torres Strait Islander communities and groups, in reviewing options for non-custodial sentences. Recommendations 117 and 121 argue for consideration of alternatives to the penalty of imprisonment.

The remaining recommendations deal with a range of issues. Recommendation 93 calls for Governments to legislate so criminal records may be expunged to remove references to past convictions, after a lapse of time since the last conviction. Recommendation 98 argues for phasing out the use of Justices of the Peace for the determination of charges or for imposition of penalties. Recommendation 99 calls for the use of competent interpreters for Aboriginal and Torres Strait Islander defendants, where this is deemed necessary.

Recommendation 103 states that where a Community Service Order is imposed for fine default, the dollar value of a day's service should be greater than and certainly not less than, the dollar value of a day served in prison.

In support of this Recommendation, the Prime Minister is writing to the Western Australian Premier regarding outstanding Royal Commission issues and the Commonwealth Attorney-General is writing to the Western Australian Attorney-General requesting full implementation of the Royal Commission recommendations referred to in this Recommendation.

- 69. The Prime Minister, through the Council of Australian Governments, seek an assurance from the Western Australian Government that the staffing of courts will be reviewed and monitored to ensure that court staff and procedures do not act to the detriment or disadvantage of people coming before the court, in breach of the intent of legislation.**

In support of this Recommendation, the Prime Minister is writing to the Western Australian Premier regarding outstanding Royal Commission issues and the Commonwealth Attorney-General is writing to the Western Australian Attorney-General requesting full implementation of this Recommendation.

- 70. Additional resources be provided to the Human Rights and Equal Opportunity Commission to allow a number of small task forces to be established. These task forces should be sent to trouble spots such as Cairns to gather evidence on human rights breaches that are regularly occurring and to launch prosecutions against offenders.**

Sending task forces to human rights trouble spots is not a practical solution to often very localised problems. It is considered to be more appropriate to involve the local community and police and to rely on local expertise in the Human Rights and Equal Opportunity Commission (HREOC) regional offices, such as Cairns and the Brisbane office, to attempt to reach a solution.

It should be noted that HREOC does not prosecute offenders. Rather, civil complaints of alleged breaches of the *Racial Discrimination Act 1975* are investigated by the Race Discrimination Commissioner who then attempts to conciliate the matter or, if a conciliated outcome cannot be reached, may proceed to a public hearing and a determination. To enforce the determination, in the event that it is not complied with voluntarily, the complainant or HREOC may commence action in the Federal Court which will conduct a fresh hearing of the matter. The Government is presently considering options for an effective, affordable and accessible enforcement mechanism as a result of the High Court's decision in *Brandy v HREOC*.

Prosecutions under criminal laws are a matter for State or Federal Police and the Director of Public Prosecutions. It should be noted also that it is not the Aboriginal and Torres Strait Islander Social Justice Commissioner, but the Race Discrimination Commissioner, who would be responsible for investigating complaints of breaches of the *Racial Discrimination Act*.

The Commonwealth does not propose to allocate funds for the establishment of small task forces.

- 71. The Prime Minister, through the Council of Australian Governments, seek the cooperation of the Queensland Government to a review being undertaken by the Human Rights and Equal Opportunity Commission to assess the level of institutionalised racism within the senior levels of the Queensland Police Service.**

The report of the Royal Commission into Aboriginal Deaths in Custody is itself an investigation into institutionalised racism, as is the report of the National Inquiry into Racist Violence. Both these inquiries committed extensive resources to such investigations and it would not be useful to duplicate that work. The issue of implementation of the recommendations of those inquiries in Queensland is now one for consideration by the Queensland Government.

- 72. The Human Rights and Equal Opportunity Commission scrutinise police activities in the inner Brisbane area to gather information on any breaches of the *Racial Discrimination Act* and to launch prosecutions against offenders.**

See response to Recommendation 70.

- 73. The Prime Minister, through the Council of Australian Governments, seek the cooperation of State and Territory governments to urgently implement recruitment policies which will increase indigenous representation within Police Services.**

In support of this Recommendation, the Commonwealth Minister for Justice is referring it to the Ministerial Council on the Administration of Justice for consideration and action.

Further, with funding provided by the Department of Employment, Education and Training (DEET), the Australian Federal Police (AFP) engaged the services of consultants, "Groundwork Development", in 1994, to develop a strategy for the employment and recruitment of Aboriginal peoples and Torres Strait Islanders. The strategy was approved by the Commissioner and formally launched in July 1995. At the launch, a Memorandum of Understanding between DEET and the AFP was signed, effectively committing \$5.2 million in funding over the next five years.

Action has been taken to implement the strategy including: a central co-ordination resource; an Indigenous Officers Seminar and Network; continuing cross-cultural training; and concerted effort from regions when selecting candidates to include indigenous representation on the selection panel, and indigenous candidates for the positions.

The co-ordination centre is named the Aboriginal and Torres Strait Islander Unit and comprises three positions. One is a Sergeant/Work Level Three

who undertakes policy responsibility for the strategy and related issues, a Constable/Work Level Two who provides day to day assistance with the implementation of the strategy and a Work Level One who provides general office assistance.

An Indigenous Officers Seminar was held for one week in July. All indigenous officers were invited to attend and the seminar comprised cross-cultural training, networking, mentoring and discussion on the strategy. The result of the seminar was the formation of the Indigenous Officers Network which will meet bi-monthly to discuss policy formation and strategy implementation. The Indigenous Officers Network is also making a concerted effort to maintain a high profile within the indigenous community, as they realise they are role models. As such they are attending career days, schools, community and other events.

Cross-cultural training has been a feature of AFP course for the past three years. It is now an integral component of basic training for all members.

The number of Aboriginal and Torres Strait Islander peoples currently employed by the AFP is eight or approximately 0.3% of total staffing. As a result of the strategy, cost centre managers Australia wide have been made aware of the lack of indigenous peoples employed within the organisation. Subsequently, by late 1995 the AFP anticipates that it will have recruited three indigenous staff members. The recruitment objectives in the strategy commences in 1995/96 and sets an initial intake of approximately ten indigenous peoples per year for five years. Taking into account general attrition, it is anticipated that a target of 2% will be reached by the year 2000, resulting in around 60 indigenous employees.

NEW SOUTH WALES

There are approximately 147 Aboriginal persons currently in the employ of the NSW Police Service, both as sworn and unsworn officers. The Aboriginal Employment Strategy was launched in 1991 with the position of Aboriginal Employment Strategy Coordinator, based in Headquarters allocated responsibility for the on-going development of the Aboriginal Employment Strategy. The strategy has a target of 2% employment of Aboriginal peoples across the service. A target of 4% recruitment of Aboriginal peoples as Student Police officers was slightly exceeded (4.07%) in the 1992-93 year. For base grade Administrative Officers, the level of Aboriginal representation rose from 3.23% to 6.41%, thereby exceeding the target by 1.41% (Ethnic Affairs Policy Statement, Page 13). Recent Police Academy classes have included between one and seven Aboriginal Student Police Officers. As part of the Strategy a Tertiary Preparation Certificate Course, offered by TAFE, has been designed to assist Aboriginal peoples and Torres Strait Islanders meet educational entrance requirements. Successful TAFE students will be accepted into the Police Academy if they meet police recruiting requirements.

NORTHERN TERRITORY

The Aboriginal Community Police Officer Scheme

Since its introduction in 1979, the Aboriginal Community Police Officers (previously Police Aides) Scheme in the Northern Territory has developed to the stage where there are now 34 Aboriginal Community Police Officers employed throughout the Northern Territory in rural and urban areas. The Scheme has been widely acclaimed and emulated by other jurisdictions. The success of the scheme is due in part to the communities selecting their own people to be trained as Aboriginal Community Police Officers.

The Aboriginal Community Warden and Town Night Patrol Schemes

As with Aboriginal Community Police Officers, Wardens will be selected by the community and will be working within their own community. The Warden Scheme proposes that the warden will enforce rules and standards of behaviour set by the particular community in order to maintain a level of peace and harmony. A pilot scheme commenced in 1991 at Ngukurr community has now been in progress for some time and has proved very successful with regard to promoting peace and acceptable community behaviour. The Julalikari Aboriginal Council at Tennant Creek initiated night patrols over five years ago. Selected members of the Council established a town patrol system in conjunction with police and by this process the Council sought to resolve family disputes and disturbances. Additionally, the patrols convey intoxicated Aboriginals to a sobering-up shelter. Similar patrols have been established by the Gurungu Council at Elliot, the Tangentyere Council at Alice Springs, and the Kalano Council at Katherine. All work in close co-operation with normal police patrols. These schemes have expanded to 22 remote Aboriginal communities.

SOUTH AUSTRALIA

A major scheme for the engagement of Aboriginal police aides was commenced in 1986 and has since extended from the originating areas in the remote parts of the State through to rural provincial centres and the metropolitan area of Adelaide. Police aides perform many roles and duties, working independently in some cases and with police officers in others. This system adds a practical and important dimension to the objectives of South Australia's police-Aboriginal relationships as first set up in 1973 and continues to serve productive purposes.

TASMANIA

In May 1993, Tasmania Police hired a consultant to undertake a three month study of Aboriginal recruitment, training and career development within Tasmania Police. As part of this study a survey was conducted to identify the number of Aboriginals within Tasmania Police and identify the number of police officers who had undertaken cross-cultural awareness training. Recommendations from this study are now being considered for implementation. During June 1994 the Riawunna Centre for Aboriginal Education at the University of Tasmania staged an event which was an exposition of information on education, employment and culture for Tasmanian Aboriginal peoples at which Tasmania Police conducted a

display. Numerous inquiries resulted concerning Aboriginal peoples seeking employment with Tasmania Police.

WESTERN AUSTRALIA

A strong emphasis has been placed upon the need to encourage Aboriginal peoples to become serving members of the Western Australia Police Force and as a positive step to assist in identifying potential police officers, a special Aboriginal Police Cadet Scheme has been introduced. Initially some 20 young people were encouraged to join as Cadets.

Some of those original 20 have gone on to become serving officers and some have opted to join the Aboriginal Police Aides Scheme.

It has been identified that a number of Aboriginal cadets had difficulty with literacy and numeracy which saw them lacking when attempting the recruitment entry examination. As a result of this, and to positively assist them bridge any gap, a special literacy and numeracy course has been designed by the Police Academy, in conjunction with TAFE, to boost their levels and increase their confidence when completing the recruit entrance examination.

- 74. The Prime Minister, through the Council of Australian Governments, seek the cooperation of State and Territory governments to urgently implement the community based policing recommendations of the Royal Commission.**

Royal Commission into Aboriginal Deaths in Custody Recommendations 214 and 215 relate to all States and Territories and refer to the involvement of Aboriginal and Torres Strait Islander communities and organisations in police management and practice. Recommendations 216-218 relate specifically to the Northern Territory. In all cases, the recommendations were supported by the relevant state.

In support of this Recommendation, the Commonwealth Minister for Justice is referring it to the Ministerial Council on the Administration of Justice for consideration and action.

- 75. The Office of Indigenous Affairs be responsible for coordinating the development of a comprehensive National Aboriginal and Torres Strait Islander Youth Strategy across all relevant Commonwealth departments and agencies. The Strategy should be cognisant of the role of State and Territory governments.**

The Australian Bureau of Statistics (ABS) 1991 Population and Housing Census shows that 61% or 162,068 of indigenous Australians are aged 24 years or less.

In this context the Commonwealth, in its response to the Royal Commission Recommendation 62, undertook to implement a comprehensive national Aboriginal and Torres Strait Islander Youth Strategy to assist local communities to address youth issues. A particular aim of this undertaking was to reduce the rate at which Aboriginal and Torres Strait Islander juveniles are involved in the welfare and criminal justice systems. Efforts have been made in response to the Royal Commission to achieve improved outcomes for indigenous youth.

The Commonwealth recognises that more could be done to ensure its Aboriginal and Torres Strait Islander policies and programs reflect and accommodate the special needs of young people and that all mainstream programs addressing the particular needs of youth also take account of and include indigenous youth. Accordingly, the Commonwealth Department of Employment, Education and Training, through its Youth Bureau and in close liaison with ATSIC, will assume responsibility for the development of a National Aboriginal and Torres Strait Islander Youth Strategy.

- 76. Future Commonwealth, State and Territory government Annual Implementation Reports should include evaluations by Aboriginal and Torres Strait Islander organisations and communities of the appropriateness and effectiveness of programs implemented in response to Recommendation 62.**

Royal Commission Recommendation 62 deals with strategies to reduce the rate at which indigenous juveniles are involved in the welfare and criminal justice systems. The Recommendation received support from all States and Territories and the Commonwealth Government.

The Commonwealth, under advice from ATSIC, takes the view that strategies for youth should be developed in the context of a family based policy. This view is based on the links between the treatment of families and the proportion of Aboriginal and Torres Strait Islander youth following a pathway through the child-welfare system into the juvenile justice/criminal justice system. An awareness of the potential for indigenous youth to become involved in this cycle underpins the logic of many of the programs currently being administered.

In support of this Recommendation, the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs is referring it to the Ministerial Council of Aboriginal and Torres Strait Islander Affairs for consideration and action.

- 77. The Young Person's Sport and Recreation Development Program be reviewed to ensure that it maximises the role of Aboriginal and Torres Strait Islander organisations in the delivery of the program and maximises the empowerment of Aboriginal and Torres Strait Islander youth.**

At the time of its establishment, provisions were made for the Young Person's Sport and Recreation Development Program to be evaluated after two years of operation. Evaluation has been completed in South Australia, Victoria and the Northern Territory, and is under way in Queensland. Future funding will take account of the findings of the evaluations.

Recommendations 78-81 will be addressed together

78. The Prime Minister, through the Council of Australian Governments, gain agreement that future Annual Implementation Reports of Commonwealth, State and Territory governments include information on:

- **the programs and strategies that are community based and devised which specifically target youth;**

79.

- **the extent of negotiations with Aboriginal and Torres Strait Islander communities and organisations on the development of indigenous youth programs and strategies;**

80.

- **the extent to which program guidelines and performance indicators were negotiated with Aboriginal and Torres Strait Islander people;**

81

- **Aboriginal and Torres Strait Islander community assessment of the programs and strategies implemented for young indigenous people.**

In support of these Recommendations, the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs has referred them to the Ministerial Council of Aboriginal and Torres Strait Islander Affairs (MCATSIA) for consideration and action. The relevant MCATSIA resolution follows:

MCATSIA

- notes the paper provided by the Northern Territory;
- endorses governments continuing annual reporting on implementation of each of the Royal Commission's recommendations including strategies that they pursue and the programs delivered within the areas covered by underlying issues identified by the Royal Commission;
- notes that the formats of these reports will be determined by each jurisdiction to reflect the needs and priorities of each jurisdiction;
- endorses governments continuing to pursue the aims of the National Commitment in the involvement of Aboriginal organisations in the

monitoring process by utilising partnerships between relevant Aboriginal representative groups and governments in the monitoring of outcomes in agreed areas of program activity with specific emphasis on outcomes achieved in the following areas:

- education and training;
- health housing and welfare;
- employment and income levels;
- economic development
- justice (including strategies associated with reducing the levels of imprisonment of Aboriginal people and Aboriginal deaths in custody).

Recommendations 82 & 83 will be addressed together

82. The Prime Minister, through the Council of Australian Governments, seek agreement that:

- **police procedures and practices maximise the use of informal and formal cautioning of young people;**

83.

- **data on the cautioning of young Aboriginal and Torres Strait Islander youths is collected and recorded by all police stations on the computerised custody data system;**

In support of these Recommendations, the Commonwealth Minister for Justice is referring them to the Ministerial Council on the Administration of Justice for consideration and action.

84.

- **statistics on the number of juveniles cautioned are included in Annual Implementation Reports**

In support of this Recommendation, the Commonwealth Minister for Justice is referring it to the Ministerial Council on the Administration of Justice for consideration and action.

Recommendations 85-86 will be addressed together

85. The Prime Minister, through the Council of Australian Governments, seek agreement for:

- **the Family Group Conferencing program to be placed on the agenda of a number of Ministerial forums including the Australian Aboriginal Affairs Council and the Ministerial Council for Education, Employment, Training and Youth Affairs for consideration; and**

86.

- **an evaluation to be undertaken of the effectiveness and appropriateness of Family Group Conferencing in relation to Aboriginal and Torres Strait Islander youth with a view to the program being taken up by other States and Territories.**

The Australasian Police Ministers' Council (APMC) meeting in November 1994 resolved that jurisdictions should evaluate, including trials where they wish, diversionary conferencing in both urban and rural environments. Jurisdictions should also report to the 29th meeting of the Council (November 1995) on their evaluation of the trials, in terms of effectiveness and efficiency, with a view to allowing consideration of national adoption of diversionary conferencing. However, it should be noted that Family Group conferencing was not directly developed for, nor limited to, diversionary proceedings for Aboriginal peoples and Torres Strait Islanders.

The ACT region of the Australian Federal Police commenced a trial of 'diversionary conferencing' on 1 July 1995 for a range of offences including both juvenile and adult offenders. A report will be prepared on progress of the trial for presentation to APMC in November 1995.

87. **The Prime Minister, through the Council of Australian Governments seek undertakings from the Western Australian Government that prolonged and unnecessary detentions of young Aboriginal and Torres Strait Islander people be discontinued.**

In support of this Recommendation, the Prime Minister is writing to the Western Australian Premier regarding outstanding Royal Commission issues and the Commonwealth Minister for Justice is writing to the Western Australian Minister for Police and Emergency Services urging full implementation of this Recommendation.

88. **The Prime Minister, through the Council of Australian Governments, gain undertakings from State and Territory governments to provide bail accommodation for Aboriginal and Torres Strait Islander youths.**

The Commonwealth, through ATSIC, provides funding for the development of community-based bail accommodation and supervision options for young Aboriginal peoples and Torres Strait Islanders on remand. There is, however, a need for increased commitment from States and Territories to further develop youth bail accommodation. The Commonwealth Minister for Justice will therefore also refer this matter to the Ministerial Council on the Administration of Justice for consideration and action.

- 89. The Prime Minister, through the Council of Australian Governments, seek the agreement of State and Territory governments to develop an integrated approach to the prevention, screening and treatment of Otitis Media.**

In the 1995/95 Budget, \$5.7m was allocated to indigenous hearing services over the next four years. In support of this recommendation the Commonwealth Minister for Human Services and Health will raise the potential for joint Commonwealth/State projects for the prevention, screening and treatment of Otitis Media in bilateral discussions.

- 90. The Prime Minister, through the Council of Australian Governments, seek the agreement of State and Territory governments to have schools better prepared to deal with the hearing impairment of Aboriginal and Torres Strait Islander children.**

In the 1995/96 Budget, \$5.7m was allocated to indigenous hearing services over the next four years. In support of this recommendation the Commonwealth Minister for Human Services and Health will raise the potential for joint Commonwealth/State projects to deal with the hearing impairment of Aboriginal and Torres Strait Islander children in bilateral discussions.