




## 6 Non-custodial approaches

**The recommendations in this chapter relate to: diversion from police custody (79-91); and imprisonment as a last resort (92-121).**

### Key themes from recommendations (43 recommendations)

- Legislation and guidelines for policing should be used to support decriminalisation and to reduce the number of arrests for minor offences, which disproportionately affect Aboriginal and Torres Strait Islander people.
- The adoption of the principle of imprisonment as a last resort and the use of alternative policies and programs is needed to reduce the pathways into prison for Aboriginal and Torres Strait Islander people, especially those who are less than 18 years old.
- Additional support for, and a greater understanding of, Aboriginal and Torres Strait Islander communities and individuals in the court system is needed.

Legend  Complete  Mostly Complete  Partially Complete  Not Implemented  Out of Scope

**Commonwealth | Key actions:** The Commonwealth has reinforced the principle of imprisonment as a last resort through AFP training and procedures. Funding is provided for legal representation and interpretation services for Aboriginal and Torres Strait Islander people. The Federal Circuit Court and the ATSILS provide services in regional and remote areas. The Federal Courts have implemented cross cultural training programs.

**Remaining gaps:** While each recommendation has been addressed to some extent, it does not appear that the status or implementation of these recommendations has been regularly reviewed or monitored. It does not appear that Federal Courts actively test whether a person requires an interpreter, as required by the recommendation.

**New South Wales | Key actions:** The New South Wales Government has introduced diversionary pathways and recognised the principle of imprisonment as a last resort under the *Law Enforcement (Powers and Responsibilities) Act 2003* (NSW). Alcohol and drug misuse has been addressed through various policy responses, including the introduction of sobering up centres and Mandatory Alcohol Interlocks.

**Remaining gaps:** In New South Wales, recommendations relating to bail application processes and interpretation services have not been fully met.

**Victoria | Key actions:** The Victorian Government provides that arrest should be a last resort, and has introduced non-custodial sentencing options through legislation. Measures to address alcohol misuse among Aboriginal and Torres Strait Islander people are continually monitored and improved upon, and remain a priority area under the Aboriginal Justice Agreements.

**Remaining gaps:** In Victoria, it does not appear that home detention has been provided as a sentencing option or as a means of early release for prisoners. Greater attention should also be turned towards bail application processes, the provision of interpreters in court hearings, and the implementation of work orders to ensure these do not replace opportunities for paid employment.

**Queensland | Key actions:** The Queensland Government has introduced sobering up centres and continued monitoring of alcohol-related policies under the *Liquor Act 1992* (Qld). Research has been conducted into the rehabilitative needs and treatment of Aboriginal and Torres Strait Islander people, and a database with information on recidivism has been maintained.

**Remaining gaps:** In Queensland, further action is required in relation to bail application processes and the right of Aboriginal and Torres Strait Islander prisoners to apply for bail. Legislative response is also required to address the powers of the Justice of the Peace, and home detention does not appear to have been provided to date.

**South Australia | Key actions:** The South Australian Government administers a range of drug and alcohol services through the Specialist Drug and Alcohol Assessment and Treatment Services Program. The South Australian Government has also introduced a range of non-custodial sentencing options, and employment initiatives for the recruitment of Aboriginal and Torres Strait Islander people into justice roles.



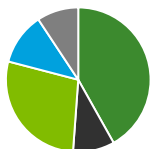
**Remaining gaps:** It does not appear that discretion is provided for the magistrate to choose non-custodial options in the event of a breach of community service order. Greater attention should also be applied to interpretation services, the breach of non-custodial order, and legal representation for the defendant.

**Western Australia | Key actions:** The Western Australian Government has introduced sobering-up centres and provide that these should be a first port of call for police dealing with intoxicated persons. The implementation of legislation has provided imprisonment as a last resort, introduced non-custodial sentencing alternatives, and addressed elements related to youth justice.



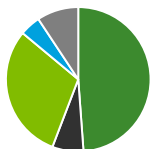
**Remaining gaps:** Recommendations relating to the establishment and monitoring of liquor licenses and localised liquor laws have not been fully addressed. Further monitoring is also required for bail and non-custodial sentencing alternatives. In many areas, it does not appear that consultation with Aboriginal and Torres Strait Islander people fully satisfies the requirements of the recommendations.

**Tasmania | Key actions:** The Tasmanian Government has introduced non-custodial sentencing under the *Sentencing Amendment (Phasing Out of Suspended Sentences) Bill 2017* (Tas). Cultural awareness has also been incorporated into training programs in the justice system, in line with benchbooks from other states.



**Remaining gaps:** The Tasmanian Government should provide greater prioritisation to consultation with Aboriginal and Torres Strait Islander people as it concerns sentencing, including probation and parole, and alcohol-related offences. Legislative change is required to align the powers granted to the Justice of the Peace, and bail application laws, with the principles in these recommendations. Efforts to recruit Aboriginal and Torres Strait Islander people to employment in the justice system are also required.

**Northern Territory | Key actions:** The Northern Territory's *New Era in Corrections* policy represented an undertaking to recruit sufficient staff to implement community based orders and electronic monitoring. Support for reduced recidivism in driving-related offences is provided through DriveSafe NT and the Elders Visiting Program.



**Remaining gaps:** In the Northern Territory, further action is required in relation to the decriminalisation of drunkenness, recognition of the principle of arrest or imprisonment as a last resort, and bail legislation. Greater prioritisation should also be given to powers granted to the Justices of the Peace, and consideration of Aboriginal Legal Services.

**Australian Capital Territory | Key actions:** The Australian Capital Territory has introduced the *Crimes (Sentencing) Act 2005* (ACT) in response to recommendations which called for arrest as a sanction of last resort and the introduction of non-custodial sentencing. Programs are provided to address cultural awareness among justice staff, to reduce recidivism concerning alcohol-related offences, and to recruit more Aboriginal and Torres Strait Islander people into the justice system.



**Remaining gaps:** The Australian Capital Territory should make greater efforts to implement recommendations relating to the regulation of alcohol consumption, consultation with Aboriginal and Torres Strait Islander communities concerning sentencing, and non-custodial sentencing options and monitoring.

## 6.1 Diversion from police custody (79-91)

### Recommendation 79

*That, in jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence of public drunkenness.*

#### Background information


The RCIADIC Report suggested that police arrested individuals for this offence as a means of social control, rather than as a response to criminal behaviour. The Report stated that this power was unfairly targeted at Aboriginal people by state police, and that the initial reason for custody in many of the circumstances where Aboriginal people died in custody was that they were intoxicated in public. Most States had abolished the offence by the time of the RCIADIC, but gave police powers of 'protective custody' effectively permitting arrest for public drunkenness.

#### Responsibility


All State and Territory governments are responsible for this recommendation.

#### Key actions taken and status of implementation


The **New South Wales** Government decriminalised drunkenness in a public place in 1979, but police retain a power of protective custody against intoxicated individuals under the *Law Enforcement (Powers and Responsibilities) Act 2003* (NSW). An individual can be given a move-on direction under the Act. If they are still intoxicated and disorderly in the same or another public place within 6 hours of the move-on direction, they can face a significant fine. Under section 9 of the *Summary Offences Act 1988* (NSW), it remains an offence to be intoxicated and disorderly in a public place if police have issued a move on direction and the person has failed to move on.

 *The New South Wales Government has implemented Recommendation 79. Public drunkenness was decriminalised in 1979, and is only punishable by fine after other mechanisms for resolution have been exhausted.*


In **Victoria**, drunk and disorderly offences still exist and can attract a penalty of up to one-month imprisonment.

 *The Victorian Government has not implemented Recommendation 79. Public drunkenness is still an offence, and is punishable by a maximum sentence of a one-month imprisonment.*

In **Queensland**, it remains an offence to drink alcohol in public or to be intoxicated in a public place, however, the *Police Powers and Responsibilities Act 2000* (Qld) permits a police officer to discontinue an arrest for being intoxicated in a public place and deliver the person to their house, hospital or other place that provides care for intoxicated people.

 *The Queensland Government has not implemented Recommendation 79. Public drunkenness is still an offence, and can carry a fine or imprisonment.*

**South Australia's** 2016 amendment of the *Public Intoxication Act 1984* section 7 decriminalised public drunkenness. Prior to then, protective custody provisions had a high threshold, requiring that a person must be unable to take proper care of himself before a police officer can detain them for intoxication. The person may be taken to their residence, a police station or a sobering-up centre. If they were taken to a police station they must be discharged or transferred to a sobering-up centre within ten hours. Drinking in legislated 'dry areas' still attracts a fine.

 *The South Australian Government has implemented Recommendation 79 under the Public Intoxication Act 1984 (SA) which decriminalises public drunkenness.*

In **Western Australia**, public drinking still attracts a fine of \$2,000. Although an intoxicated person may be detained in Western Australia, they cannot be detained any longer than is necessary to protect their own, or someone else's, health or safety, or to prevent serious damage to property. Detention in a police station or lock-up is a last resort measure. The Western Australian Government

notes that Recommendation 79 was implemented in 1990 through the repeal of s53 of the *Police Act 1892* (WA).

● *The Western Australian Government has implemented Recommendation 79 through the repeal of s53 of the Police Act 1892 (WA). However, fines and imprisonment are still provided for under existing legislation.*

**Tasmania** retains an offence to consume liquor in a public place. However, the penalty is a small fine. A police officer can take an intoxicated person into custody if they believe that person is likely to cause injury to themselves or another, or damage to property, or if they are incapable of protecting themselves from harm. A person can be held in custody for an initial period of 8 hours if they cannot be released or discharged to a place of safety.

● *The Tasmanian Government has implemented Recommendation 79. While it is an offence to consume liquor in a public place, it no longer appears that public drunkenness is considered a criminal offence.*

In the **Northern Territory**, the penalty for consuming alcohol in a regulated place under the *Liquor Act 2017* (NT) is forfeiture of the liquor, not detention. The *Stronger Futures in the Northern Territory Act 2012* (Cth) introduced an offence for consuming or bringing liquor into alcohol protected areas, with a potential penalty of a fine or imprisonment.

● *The Northern Territory Government has implemented Recommendation 79 through legislative response.*

In the **Australian Capital Territory**, drunkenness is not a criminal offence. ACT Policing may take an intoxicated person into protective custody but this will only be done in circumstances where there is no other reasonable alternative to ensure the person's care and protection. Where practicable, persons taken into custody for intoxication are diverted to the Sobering Up Shelter – a place to sober up while being offered support and assistance.

● *The Australian Capital Territory Government has implemented Recommendation 79. Public drunkenness is not a criminal offence.*

## Recommendation 80

*That the abolition of the offence of drunkenness should be accompanied by adequately funded programs to establish and maintain non-custodial facilities for the care and treatment of intoxicated persons.*

### Background information

Police have an interest in removing intoxicated individuals from public spaces to maintain public order and safety. Nonetheless the RCIADIC Report observed that, if these individuals were not otherwise at risk of committing further offences, sobering up centres provided a preferable alternative to police custody.

### Responsibility

All State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation

The **New South Wales** Government funds a number of community based Aboriginal alcohol abuse programs, including Oolong House, Orana Haven, Ngaimpe and several Specialist Homelessness Services centres. Drug and alcohol services also form a key part of the Magistrates Early Referral into Treatment and the Adult Drug Court programs.

● *The New South Wales Government has implemented Recommendation 80 through the provision of funding for community based Aboriginal alcohol abuse programs.*

**Victoria** has seven Koori Community Alcohol & Drug Resource Centres, essentially sobering-up centres specialising in the care of Aboriginal and Torres Strait Islander individuals. The Victorian

Government also noted the importance of sobering-up options as part of a place-based strategy for the North and West Metropolitan regions introduced in AJA 3.

- *The Victorian Government has supported the implementation of Recommendation 80 through the establishment of Koori Community Alcohol and Drug Resource Centres.*

**Queensland** specifically funded several sobering up centres, including the Lyons Street Centre in Cairns, in response to the recommendations of the RCIADIC.

- *The Queensland Government has implemented Recommendation 80 through the provision of funding for several sobering up centres.*

**South Australia** funds sobering up centres serving Aboriginal and Torres Strait Islander individuals in Adelaide and several regional and rural centres. South Australia Health contracts other non-government agencies to provide a range of drug and alcohol services through the Specialist Drug and Alcohol Assessment and Treatment Services Program, including: outpatient counselling, non-residential rehabilitation, residential rehabilitation, mobile assistance patrols, Sobering Up, and the Integrated Youth Substance Misuse Specialist Service.

- *The South Australian Government has supported the implementation of Recommendation 80 through the establishment of sobering up centres, and the provision of a range of drug and alcohol services through non-government organisations.*

**Western Australia** has funded sobering-up services since 1990 and currently funds 9 sobering-up centres with a total of 164 beds. Sobering-up services operate locally and provide safe, supervised overnight care to intoxicated people and referral to other services, where necessary to address underlying issues such as homelessness.

- *The Western Australian Government has implemented Recommendation 80 through the provision of funding for sobering-up centres and other support services.*

The **Tasmanian** Government funds charity-operated Places of Safety, providing facilities for intoxicated individuals to sober up.

- *The Tasmanian Government has supported the implementation of Recommendation 80 through the provision of funding for charity-operated Places of Safety.*

The **Northern Territory** Government funds sobering up centres in Darwin, Katherine, Nhulunbuy, Tennant Creek and Alice Springs. Additional Commonwealth funding of \$155,000 per year was provided to Mission Australia to expand the Sobering Up Shelter in Darwin to seven days per week.

- *The Northern Territory Government has supported the implementation of Recommendation 80 through the provision of funding for sobering up centres.*

The **Australian Capital Territory** Government and CatholicCare have jointly funded a sobering up shelter in Canberra.

- *The Australian Capital Territory Government has supported the implementation of Recommendation 80 through the provision of funding for sobering up centres.*

## **Recommendation 81**

*That legislation decriminalising drunkenness should place a statutory duty upon police to consider and utilise alternatives to the detention of intoxicated persons in police cells. Alternatives should include the options of taking the intoxicated person home or to a facility established for the care of intoxicated persons.*

### **Background information**


Building on Recommendation 80, this recommendation is aimed at ensuring that alternatives to police custody are used in practice.

## Responsibility


All State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation


In **New South Wales**, police officers have a statutory obligation to take intoxicated persons to a proclaimed place or to their home. However, police stations are a proclaimed place. Detention of an intoxicated person at a police station is a last resort.

 *The New South Wales Government has partially implemented Recommendation 81 through police policy. Detention of an intoxicated person at a police station is a last resort. However, no statutory duty exists to utilise other options and police cells are a proclaimed place.*


Although **Victoria** Police have a policy of directing intoxicated Aboriginal and Torres Strait Islander persons to sobering-up centres, this is not legislated. The *Victoria Police Manual – Guidelines – Safe Management of Persons in Police Care or Custody* provides guidance to alternatives to lodging intoxicated persons in police cells, and where appropriate provides for the intoxicated person to be released into the custody of an Aboriginal Community Justice Panel (ACJP). Additionally, the Victorian Government included as a focus of AJA 3 that service responses for intoxicated persons who come into contact with the justice system be improved. Currently, there are no sobering-up centres operating in Victoria.

 *The Victorian Government has partially implemented Recommendation 81 through police policy. However, no legislative provision is made that alternatives to detention of intoxicated persons are used for Aboriginal and Torres Strait Islander people.*


In **Queensland**, Section 378 of the *Police Powers and Responsibilities Act 2000* (Qld) and section 16.6.3 of the QPS Operational Procedures Manual (OPM) requires that alternatives to the detention of intoxicated persons in police cells should be considered. While it remains an offence to drink alcohol in public or be intoxicated in a public place in Queensland, the *Police Powers and Responsibilities Act 2000* (Qld) permits a police officer to discontinue an arrest for being intoxicated in a public place and deliver the person to their house, hospital or other place that provides care for intoxicated people.

 *The Queensland Government has implemented Recommendation 81 through the *Police Powers and Responsibilities Act 2000* (Qld).*


**South Australian** Police practice is to regard sobering up centres as the option of first resort for intoxicated individuals. However, it is not a statutory requirement.

 *The South Australian Government has partially implemented Recommendation 81, with it being police practice to regard sobering up centres as the option of first resort for intoxicated individuals. However, there is no statutory duty placed upon police officers.*

In **Western Australia**, under the *Protective Custody Act 2000* (WA), detention in a police lock up should only occur in exceptional circumstances. Sobering-up centres have been introduced (see Recommendation 80) and under the *Act* are to be the first port of call for police dealing with intoxicated persons.


 *The Western Australian Government has implemented Recommendation 81 through the *Protective Custody Act 2000* (WA).*

In **Tasmania**, a police officer must make reasonable inquiries to find a place of safety (namely a hospital, charitable institution or any other appropriate facility) before detaining an intoxicated person.


 *The Tasmanian Government has partially implemented Recommendation 81, with police officers required to find a place of safety before detaining an intoxicated person. However, there is no statutory duty placed upon police officers.*

The **Northern Territory** does not presently provide a legislative requirement for police to use sobering-up shelters as an alternative to incarceration. The *Northern Territory Police General Order* –

*Custody Part II* provides that police cells are the least preferred option for the custody of intoxicated persons, however it is also recognised that under many circumstances they are the most practicable option to ensure the safety of an intoxicated person. The Northern Territory police force also has detailed instructions to staff regarding the utilisation of alternatives to police watch houses for persons taken into protective custody.

 *The Northern Territory Government has partially implemented Recommendation 81. The Northern Territory Police General Order – Custody Part II provides that police cells are the least preferred option for the custody of intoxicated persons. However, there is no statutory duty placed upon police officers.*

In the **Australian Capital Territory**, police may only detain an intoxicated individual where there is no other reasonable alternative for the person's care and protection. Where possible, police members transport intoxicated persons to the sobering-up shelter. Additionally, ACT Policing contribute to the Canberra Nightcrew which adopts a multi-agency approach to support people in the Canberra nightlife district and operates to ensure their survey. Currently, ACT Policing are conducting a Watch House Review which will examine, among other issues, factors behind the high numbers of intoxicated persons entering the watchhouse.

 *The Australian Capital Territory Government has partially implemented Recommendation 81. While detention of an intoxicated individual is a last resort, there does not appear to be a statutory duty placed upon police.*

## Recommendation 82

*That governments should closely monitor the effects of dry area declarations and other regulations or laws restricting the consumption of alcohol so as to determine their effect on the rates of custody in particular areas and other consequences.*

### Background information

Dry areas – public spaces where drinking is not permitted – are a policy tool to minimise the social issues associated with public drinking. However, as with a general prohibition on public drunkenness, they raise the concern that people with no other criminal breaches may be incarcerated or otherwise brought unnecessarily into the criminal justice system. This recommendation suggested that state and territory governments monitored the effects of these regulations to better understand the impact of dry area declarations.

### Responsibility


All State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation


In **New South Wales**, local councils have the ability to declare alcohol-free zones in road-related areas and Alcohol Prohibited Areas in other public places under the *Local Government Act 1993* (NSW), provided that local Aboriginal groups are consulted in advance. Alcohol free zones apply to council managed land and Alcohol Prohibited Areas apply to public land vested in the Crown.

In areas with an Aboriginal population of 1,000 people or more, the Anti-Discrimination Board of NSW is also required to assess the proposal. The New South Wales Government studied the impact of alcohol free zones in 2007 and found that they were an effective tool to manage public safety (though it did not seek to correlate custody rates and the use of alcohol free zones).


Both regulatory powers aim to be pre-emptive in stopping the escalation of irresponsible public drinking through confiscating and disposing alcohol. From 2008, the power to fine people for drinking alcohol in alcohol-free zones was removed and authorised council officers and police were given the power to confiscate and dispose of alcohol without needing to issue a warning. Similarly, councils can erect signs establishing Alcohol Prohibited Zones in parks and other public places, but cannot fine people for drinking.

 *The New South Wales Government has partially implemented Recommendation 82 through a review conducted into the impact of alcohol free zones. However, it does not appear that there is a requirement for ongoing reporting.*


**Victorian** Government seeks to restrict supply and focus on harms due to assaults and anti-social behaviour. There are no new dry area declarations, as this power is not currently available to local government authorities in the liquor regulatory framework. As part of the restriction on late night venues, the Victorian Government monitors the inner Melbourne late night licence applications and decisions and the harm data related to late night assaults and anti-social behaviour.

 *The Victorian Government has partially implemented Recommendation 82 through monitoring the restriction on late night liquor licences in inner Melbourne. However, it does not appear that there is a requirement for ongoing review or reporting.*


In **Queensland**, sections 168B and 168C of the *Liquor Act 1992* (Qld) require ongoing reporting on the number of dry place declarations taken up in communities and on the number of unique people convicted for breaches of alcohol restrictions. Queensland undertook an extensive review of Alcohol Management Plans (AMPs) in Aboriginal and Torres Strait Islander communities in 2012. Notably, it found that around 15% of individuals convicted for breaching alcohol restrictions had no other convictions. The Queensland Government notes that this continued review into AMPs is current practice.

 *The Queensland Government has implemented Recommendation 82. The *Liquor Act 1992* (Qld) requires ongoing reporting on the number of dry place declarations taken up in communities and on the number of unique people convicted for breaches of alcohol restrictions*


**South Australia** undertook monitoring on the Port Augusta Total City Dry Area, noting that although it was difficult to measure the consequences of dry areas, they did potentially displace drinking back from public spaces into family homes. The Liquor Licensing Commissioner in consultation with Ceduna Service Reform and the Ceduna Regional Accord regularly reviews conditions on licences in Ceduna and monitors impacts of regulatory measures taken to determine consequences for communities.

 *The South Australian Government has partially implemented Recommendation 82 through regular monitoring of the conditions on licences in Ceduna and the impacts of regulatory measures taken to determine consequences for communities. It does not appear that these measures have been implemented on a State-wide basis.*


In **Western Australia**, dry area declarations are continually monitored by communities, government agencies, and local drug and alcohol services, though there has been no formal study to draw conclusions against this recommendation.

 *While the Western Australian Government notes that dry area declarations are continually monitored, the specific steps taken towards Recommendation 82 are unclear.*

**Tasmania** completed a report in 2012 on the topic, but noted limitations of data in examining the impacts of alcohol consumption.

 *The Tasmanian Government has partially implemented Recommendation 82 through the completion of a report in 2012.*


In the **Northern Territory**, the Commonwealth Government has monitored the impact of the *Northern Territory National Emergency Response Act 2007* (Cth) and then the *Stronger Futures in the Northern Territory Act 2012* (Cth), which included the declaration of dry areas. This included the conduct of a 2012 review of the *Stronger Futures in the Northern Territory Act* by KPMG and commissioned by the Commonwealth's PM&C. There is also ongoing process under the *Liquor Act* to monitor the effectiveness of General restricted areas in consultation with the community, including the considerations to declare such areas.

 *The Northern Territory Government has partially implemented Recommendation 82, and closely monitors the impact of the *Northern Territory National Emergency Response Act 2007* (Cth) and*



then the *Stronger Futures in the Northern Territory Act 2012 (Cth)*. It does not appear that reporting has occurred across all aspects, for example public areas where drinking is banned.

The **Australian Capital Territory** has not published any information on an ongoing monitoring process relating to this recommendation. Quarterly data on the number of criminal infringement notices issued for consumption of alcohol in a certain public place is published for a five-year period in the ACT Government's Criminal Justice Profile<sup>20</sup>.

 *The Australian Capital Territory has partially implemented Recommendation 82, however further publication and ongoing monitoring activities are required in order for full implementation.*

## Recommendation 83

That:

- a. *The Northern Territory Government consider giving a public indication that it will review the two kilometre law at the end of a period of one year in the expectation that all relevant organisations, both Aboriginal and non-Aboriginal, will negotiate as to appropriate local agreements relating to the consumption of alcohol in public that will meet the reasonable expectations of both Aboriginal and non-Aboriginal people associated with particular localities; and*
- b. *Other Governments give consideration to taking similar action in respect of laws operating within their jurisdictions designed to deal with the public consumption of alcohol.*

### Background information


The Northern Territory's two kilometre law prohibited the consumption of alcohol in public within two kilometres of licensed premises, and the consumption of liquor on unoccupied private land without the owner's permission. This recommendation sought to encourage governments to review and consult on these laws and similar laws with Aboriginal and Torres Strait Islander groups.

### Responsibility

All State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation

**New South Wales** has reviewed its alcohol-free zone laws, and the legislative requirements around establishing alcohol-free zones were subsequently changed (see Recommendation 82 above). The establishment of alcohol-free zones was extended to a maximum period of four years for newly established zones and consultation requirements with local Aboriginal communities were enhanced. To establish an alcohol-free zone councils must consult with their communities (including Aboriginal or culturally and linguistically diverse groups), the Police Local Area Commander, and (in areas with a higher Aboriginal population) the Anti-Discrimination Board of NSW. Further, every patrol in the NSW Police Service has committees to consult with Aboriginal communities, liquor licensees, and local governments.


 *The New South Wales Government has implemented Recommendation 83 through conducting a review into alcohol-free zones and ongoing consultation with Aboriginal communities.*

The **Victorian** Government observed that it supported the implementation of this recommendation in 1997, but does not appear to have implemented a specific review process for liquor laws beyond the regular reviews conducted by local governments, nor implemented explicit consultation procedures with Aboriginal and Torres Strait Islander communities. Victoria Police consults with local government and representatives of Aboriginal and Torres Strait Islander organisations in respect of local laws that relate to the consumption of alcohol in public places. The Victorian Government's AJA 3 noted its support for alcohol-free community and sporting events as part of the *Alcohol and Other Drug Strategy 2012-20* which involves community education. In 2013, a Roundtable was convened between the Aboriginal Justice Forum, Aboriginal and Torres Strait Islander health services, and alcohol and other drug services to develop responses to public intoxication arising from alcohol misuse. This


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<sup>20</sup> [http://justice.act.gov.au/criminal\\_and\\_civil\\_justice/criminal\\_justice\\_statistical\\_profiles](http://justice.act.gov.au/criminal_and_civil_justice/criminal_justice_statistical_profiles)


included the development of linkages between Koori Alcohol and Drug service networks and ACCHOs at local, regional, and state-wide levels to promote coordinated and informed responses.

 *The Victorian Government has partially implemented Recommendation 83. Victoria Police consults with local government and representatives of Aboriginal and Torres Strait Islander organisations on liquor laws and a Roundtable was convened in 2013. However, no specific review process or consultation procedures have been developed.*


In **Queensland**, while it is generally an offence to consume liquor in a public place, local governments may choose to designate public land they own or control as an area in which liquor can be consumed (i.e. a “wet area”). However, in the 19 Aboriginal and Torres Strait Islander community areas where an AMP has been declared, local governments cannot designate wet areas. Instead, the *Liquor Act 1992* (Qld) provides an ability for a place within a restricted area to be prescribed by regulation as a public place where liquor may be consumed (subject to the restrictions on the type and amount of liquor that may be possessed that otherwise apply in the area). Before designating a public place in a restricted area for liquor consumption, since designation occurs by regulation, consultation is generally required to occur with affected stakeholders such as community justice groups, and regulatory impact analysis under the Queensland Government Guide to Better Regulation.

 *The Queensland Government has mostly implemented Recommendation 83. While most local governments are able to negotiate their own rules on public drinking, there does not appear to be any requirement to consult with Aboriginal and Torres Strait Islander organisations.*


In **South Australia**, councils must publicly consult on declarations of dry areas. Local Crime Prevention plans of the South Australian Police address public drinking issues in communities.

 *The South Australian Government has mostly implemented Recommendation 83, and local councils must publicly consult communities on declarations of dry areas. However, there is no indication that consultation requirements apply to all alcohol and drug regulations.*


In **Western Australia**, local communities and licensees are permitted to vary rules relating to liquor licensing of their own accord through liquor accords. These liquor accords are established at the direction of the District Police Officer for the Police District.

 *The Western Australian Government has partially implemented Recommendation 83. While most local governments are able to negotiate their own rules on public drinking, there does not appear to be any requirement to consult with Aboriginal and Torres Strait Islander organisations.*


In **Tasmania**, councils are permitted to declare alcohol free zones, but there is no requirement for consultation. Police are involved in ongoing discussions alongside local government and the liquor licensing body on general issues of public drinking.

 *The Tasmanian Government has partially implemented Recommendation 83. While most local governments are able to negotiate their own rules on public drinking, there does not appear to be any requirement to consult with Aboriginal and Torres Strait Islander organisations.*

The **Northern Territory** Attorney General’s Department indicated in its 1994-95 Implementation Report that it did not intend to undertake a formal review of the two-kilometre rule. Nonetheless, a review of the *Summary Offences Act* was undertaken by the Department of Justice in 2010, which included consideration of the two-kilometre open consultation in this time. The rule remains in place, in the *Liquor Act* (NT) and in 2012 was incorporated as a regulated area. Issues relating to public drunkenness are discussed between police, local government bodies and representative Aboriginal and Torres Strait Islander groups. Additionally, a number of areas have been declared public restricted areas under the *Act* following consultations with local communities, including in Alice Springs, Tenant Creek, Katherine and Darwin.

 *The Northern Territory Government has partially implemented Recommendation 83. It does not appear that local agreements were negotiated following the formal review, nor does it appear that the review occurred at the end of one year as required in this recommendation.*

The **Australian Capital Territory** does not appear to require consultation on any alcohol-free place declarations, but the ACT Community Safety Committee consults with the community on public drinking. The ACT Government notes that currently there are few alcohol free places in the ACT, and that the independent two-year review of the *Liquor Act 2010* (ACT) did not raise any issues relating to the way that alcohol free areas were designated in the ACT.

 *The Australian Capital Territory Government has mostly implemented Recommendation 83, however it does not appear that consultation occurs with Aboriginal and Torres Strait Islander communities.*

## Recommendation 84

*That issues related to public drinking should be the subject of negotiation between police, local government bodies and representative Aboriginal organisations, including Aboriginal Legal Services, with a view to producing a generally acceptable plan.*

### Background information

Aboriginal and Torres Strait Islander consultation is a key theme throughout the RCIADIC Report, aimed at ensuring that any reforms align with cultural values.

### Responsibility

All State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation

The actions relating to this recommendation are summarised in Recommendation 83 above.

-  *The New South Wales Government has implemented Recommendation 84 and ongoing consultation takes place.*
-  *The Victorian Government has implemented Recommendation 84. Victoria Police consults with local government and representatives of Aboriginal and Torres Strait Islander organisations on liquor laws, and a Roundtable was convened to discuss policy options in response to public intoxication.*
-  *The Queensland Government has mostly implemented Recommendation 84. There does not appear to be any requirement to consult with Aboriginal and Torres Strait Islander organisations.*
-  *The South Australian Government has mostly implemented Recommendation 84. While local councils must publicly consult communities on declarations of dry areas, there is no indication that consultation requirements apply to all public drinking issues.*
-  *The Tasmanian Government has not implemented Recommendation 84; consultation does not appear to occur.*
-  *The Western Australian Government has not implemented Recommendation 84; consultation does not appear to occur.*
-  *The Northern Territory Government has implemented Recommendation 84. Issues relating to public drunkenness are discussed between police, local government bodies, and representative Aboriginal and Torres Strait Islander groups.*
-  *The Australian Capital Territory Government has not implemented Recommendation 84. Consultation does not appear to occur.*

### Additional commentary

In **New South Wales**, relevant consultation mechanisms in relation to public drinking include through the Police Aboriginal Consultative Committees (under the NSW Police Force Aboriginal Strategic Direction 2012-2017) and local Community Drug Action Teams. These teams are supported by the Australian Drug Foundation through the Community Engagement and Action Program funded by NSW Health.

In **Queensland**, the *Police Service Administration Act 1990* (Qld) requires police officers to work in partnership with the community. The Indigenous Community/Police Consultative Groups Charter have also been established to develop better relationships between police and Aboriginal and Torres Strait Islander communities. The Queensland Police *Operational Procedures Manual Issue 62 Public Edition* also requires officers to interact with local communities and developing and maintaining appropriate community-based projects.

The **Western Australian** Government notes that a number of communities have community-driven and negotiated Liquor Accords, established for the purpose of minimising harm caused in the local community by the excessive consumption of liquor, and promoting responsible practice in the sale, supply and service of alcohol.

## Recommendation 85

*That:*

- a. Police Services should monitor the effect of legislation which decriminalises drunkenness with a view to ensuring that people detained by police officers are not being detained in police cells when they should more appropriately have been taken to alternative places of care;*
- b. The effect of such legislation should be monitored to ensure that persons who would otherwise have been apprehended for drunkenness are not, instead, being arrested and charged with other minor offences. Such monitoring should also assess differences in police practices between urban and rural areas; and*
- c. The results of such monitoring of the implementation of the decriminalisation of drunkenness should be made public.*

### Background information

Correct monitoring of new legislation ensures significant changes such as the decriminalisation of public drunkenness is enforced and not bypassed in its implementation within communities.


### Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation


The **Commonwealth** Ombudsman released a detailed report in 2008 on the use of the Australian Federal Police's powers under the *Intoxicated People (Care and Protection) Act 1994*.

In the **Australian Capital Territory**, the review has not been able to find any published data indicating the successful implementation of parts (b) and (c). However, the AFP noted that while there is no formal monitoring or reporting on this issue specifically, the statistics regarding persons taken in to protective custody for intoxication, and statistics on arrest for minor offences, do not show a trend towards persons being charged with minor offences rather than being diverted to alternative places to sober up. Additionally, the ACT Government notes that ACT Policing undertake to monitor and make public statistics on the type of place that apprehended intoxicated persons are taken to.


 *Recommendation 85 is mostly implemented in the Commonwealth and the Australian Capital Territory. A review of the Australian Federal Police's powers under the Intoxicated People (Care and Protection) Act 1994 was published in 2008. However, there does not appear to have been actions taken in response to parts (b) and (c) of this recommendation.*

The **New South Wales** Police Service does not maintain a count of the number of intoxicated persons taken to alternative places of care, but does monitor the number of detentions under the *Intoxicated Persons Act*. The *Intoxicated Persons Act 1979* (NSW) designates all police stations as Proclaimed Places and the NSW Police Force continues to monitor this issue. Accordingly, it is difficult to determine whether individuals are taken to an alternative place, or charged with another offence as a substitute.


However, NSW has introduced legislation (*Law Enforcement Powers and Responsibilities Act 2002* (NSW) s 206(1)) to prevent intoxicated individuals being placed in police custody and later charged with minor offences. Under section 206 (Part 16) of the *Act*, a police officer may detain an intoxicated person found in a public place who is: (a) behaving in a disorderly manner or in a manner likely to cause injury; or (b) in need of physical protection. A person detained is to be taken to, and released into the care of, a responsible person who is willing to immediately take care of the intoxicated person. Detaining an intoxicated person in an authorised place of detention, such as a police station, is a last resort. The NSW Ombudsman reviewed the issue in a December 2012 issues paper.

 *The New South Wales Government has partially implemented Recommendation 85. However, it does not appear that results of monitoring are published.*


**Victoria** has retained its offence of public drunkenness, so monitoring relating to the use of alternative charges is not relevant in the state.

 *The Victorian Government has not implemented Recommendation 85. Victoria has retained its offence of public drunkenness.*


**Queensland** has not engaged in any monitoring process around its decriminalisation of public drunkenness, besides those relating to Alcohol Management Plans (see Recommendation 82). Queensland has not decriminalised the public consumption of alcohol or being intoxicated in a public place.

 *The Queensland Government has not implemented Recommendation 85. Queensland has not engaged in any monitoring around the decriminalisation of public drunkenness, except for monitoring related to Alcohol Management Plans. Public drunkenness remains an offence in Queensland.*


In **South Australia**, a review of the operations of a sobering-up centre in Ceduna was conducted by Brady et al (2006), observing that such centres avoided some of the harms associated with police custody for intoxicated individuals. However, the review did not identify any published research on detention of intoxicated individuals or the use of minor offence charges as substitutes for drunkenness charges. The South Australia Police *Annual Report* is the appropriate mechanism for reporting on its response to the *Public Intoxication Act 1984* (SA).

 *The South Australian Government has partially implemented Recommendation 85, with a review of sobering up centres conducted by Brady et al (2006). Research did not indicate any published research on detention of intoxicated individuals or the use of minor offence charges as substitutes for drunkenness charges.*


**Western Australia** monitors and publishes the number of individuals placed in sobering-up shelters and detained in lockups in its Police Services Annual Report. The Western Australian Government further notes that the effect of the decriminalisation of drunkenness is consistently monitored to inform policy and practices in relevant agencies. Currently, the Western Australia Police Force is taking actions to publish information associated with this monitoring.

 *The Western Australian Government has partially implemented Recommendation 85, with data on sobering-up centres monitored and published. However, research did not indicate any published research on the use of minor offence charges as substitutes for drunkenness charges.*


**Tasmania** Police have monitored the detention of individuals for intoxication. The most recently results available publicly were from 2007-08. No published monitoring or review process relating to the propriety of charging procedures was found. The Tasmanian Government note that police must submit a Public Intoxication Report for all instances where persons are taken into custody for public intoxication under s 4A *Police Offences Act 1935* (Tas).

 *The Tasmanian Government has partially implemented Recommendation 85 through the submission of Public Intoxication Reports under the Police Offences Act 1935 (Tas). However, it does not appear that results of monitoring are published.*

The **Northern Territory** publishes statistics on the use of protective custody in its police annual reports, which are also published in the Productivity Commission's *Report on Government Services*. No published monitoring or review process relating to the propriety of charging procedures was found. The Northern Territory Government noted that monitoring of the implementation of decriminalising public drunkenness is not applicable in the NT as the offence was decriminalised prior to the RCIADIC.

 *The Northern Territory Government has not implemented Recommendation 85. It does not appear that published monitoring or a review process relating to the propriety of charging procedures has been undertaken. Noting the Northern Territory Government does not consider this recommendation is applicable to them.*

Drunkenness is not a criminal offence in the **Australian Capital Territory**. As such, ACT Policing may take an intoxicated person into protective custody but this will only be done in circumstances where there is no other reasonable alternative to ensure the person's care and protection. Where practicable, persons taken into custody for intoxication are diverted to the Sobering Up Shelter – a place to sober up while being offered support and assistance. This is stated in the ACT Policing guidelines.

 *Recommendation 85 is mostly complete in the Australian Capital Territory through the decriminalisation of drunkenness. However, it appears that intoxicated persons may still be taken into custody in certain cases.*

## Recommendation 86

*That:*

- a. The use of offensive language in circumstances of interventions initiated by police should not normally be occasion for arrest or charge; and*
- b. Police Services should examine and monitor the use of offensive language charges.*

### Background information


The RCIADIC Report noted that drunkenness is not the only offence which affects Aboriginal and Torres Strait Islander people disproportionately. Offensive language charges are also disproportionately used against Aboriginal and Torres Strait Islander people. This has resulted in imprisonment as a consequence of default in payment of fines imposed by the court in relation to the offence.

### Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


### Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The offence for offensive language is encompassed within the offence of offensive behaviour contrary to section 392 of the *Crimes Act 1900*. The legislation does not prohibit the offence occurring in front of a police officer. The case of *Saunders v Herold* (SCA 263–264/1990) provides precedent that, in order to make out a charge of offensive language, the language must be made to another member of the public, not a police officer. Further, the ACT Government notes that ACT Policing undertake to examine and monitor the use of offensive language charges.


 *The Commonwealth and the Australian Capital Territory Government have mostly implemented Recommendation 86 through precedent from case law about offensive language in front of a police officer. However, it does not appear that actions have been taken to provide this in statute.*

**New South Wales** has a Commissioner's Instruction in place requiring police not to arrest an individual for a minor offence (such as the use of offensive language) when a summons would guarantee their appearance in court. Additionally, the Police Commissioner's Instructions 155.01 and 155.11.04 state "do not detain Aboriginals in police custody when other procedures or facilities are


available; do not detain Aboriginals in police custody for intoxication or other minor offence, unless the offender is violent or the offence is likely to continue". The NSW Police Force statistician produces monthly and annual activity reports detailing arrest and detention rates in all categories of offending, including Offensive Behaviour and Offensive Language. Those statistics show the state-wide and patrol-by-patrol incidence of those charges as raw data, monthly averages and trend patterns.

 *The New South Wales Government has implemented Recommendation 86 through Police Commissioner's Instructions and the function of the NSW Police Force (NSWPF) statistician.*


**Victoria** monitors the use of the charge of offensive language through broader crime statistics published online. From April 2016 to March 2017, 922 individuals were charged with the use of offensive language. It is unclear whether Victoria Police monitors the use of these charges to ensure that they are not a response to circumstances initiated by police. The Victorian Government notes that discretionary implementation exists and that the individual circumstances of the offence are taken into account, with most offences not escalating beyond initial intervention.

 *The Victorian Government has partially implemented Recommendation 86. While Victoria monitors the use of the charge of offensive language, more work is required to fully implement Part (a) of Recommendation 86.*


In **Queensland**, a magistrate ruled in 2010 in *R v Kaitira* that offensive language used towards a police officer did not amount to a criminal offence, because it did not interfere with the broader public. Arrest is a sanction of last resort for juveniles, but not adults. However, police must consider whether it is reasonably necessary to arrest a person, and may issue notices to appear in court without the need for formal summons.

 *The Queensland Government has partially implemented Recommendation 86. It does not appear that any action has been taken towards the implementation of this recommendation, except through common law which addresses part (a).*

**South Australia** has incorporated guidance on the use of offensive language charges into its police training. The Recruit Training Course addresses issues relating to the use of offensive language by offenders when in contact with police personnel, and training of new cadets includes discussions relating to discretionary interpretation of whether language is offensive or not. There is also a strong emphasis on the use of cautioning to deal with offensive language, whereby instructors make special mention of the use of offensive language and Aboriginal and Torres Strait Islander offenders. In addition, South Australia Police *General Orders* prescribe the criteria for arrest and the South Australia Police *Adult Cautioning Program* involving cautionary scheme for minor offences.

 *The South Australian Government has partially implemented Recommendation 86. The use of offensive language by an offender is met by caution and forms a significant aspect of recruit training requirements. However, there is no evidence that South Australia monitors the use of the charge of offensive language.*


In **Western Australia**, the use of offensive language is not an arrestable offence under the Criminal Code, and supervisors and senior officers monitor the use of these charges.

 *The Western Australian Government has implemented Recommendation 86 through the Criminal Code and monitoring functions performed by police members.*

**Tasmania's** Police Manual instructs officers to only arrest individuals for offensive language where the intervention was not initiated by police and was clearly audible to the public. Supervisors monitor arrests under the charge to ensure compliance.

 *The Tasmanian Government has implemented Recommendation 86 through the Police Manual.*

The **Northern Territory** has incorporated the intent of this recommendation into the general order governing arrests. There does not appear to be an ongoing monitoring process on the issue.

 *The Northern Territory Government notes that Recommendation 86 has been incorporated into the general order governing arrests. However, there does not appear to be an ongoing monitoring process on the issue.*

## **Recommendation 87**

*That:*

*a. All Police Services should adopt and apply the principle of arrest being the sanction of last resort in dealing with offenders;*

*b. Police administrators should train and instruct police officers accordingly and should closely check that this principle is carried out in practice;*

*c. Administrators of Police Services should take a more active role in ensuring police compliance with directives, guidelines and rules aimed at reducing unnecessary custodies and should review practices and procedures relevant to the use of arrest or process by summons and in particular should take account of the following matters:*

*i. all possible steps should be taken to ensure that allowances paid to police officers do not operate as an incentive to increase the number of arrests;*

*ii. a statistical data base should be established for monitoring the use of summons and arrest procedures on a Statewide basis noting the utilisation of such procedures, in particular divisions and stations;*

*iii. the role of supervisors should be examined and, where necessary, strengthened to provide for the overseeing of the appropriateness of arrest practices by police officers;*

*iv. efficiency and promotion criteria should be reviewed to ensure that advantage does not accrue to individuals or to police stations as a result of the frequency of making charges or arrests; and*

*v. procedures should be reviewed to ensure that work processes (particularly relating to paper work) are not encouraging arrest rather than the adoption of other options such as proceeding by summons or caution; and*

*d. Governments, in conjunction with Police Services, should consider the question of whether procedures for formal caution should be established in respect of certain types of offences rather than proceeding by way of prosecution.*

### **Background information**

It is possible that policing becomes more intense in relation to Aboriginal and Torres Strait Islander people as a result of local law and order campaigns. Outlined in the RCIADIC Report were other issues which included the allocation of police resources and possible incentives, both financial and performance based, in some police procedures and practices.

### **Responsibility**

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


### **Key actions taken and status of implementation**

The sanction of last resort is addressed in s.3W of the **Commonwealth's** Crimes Act 1914 (Cth). **Australian Capital Territory** Policing powers of arrest are covered in s.212 of the Crimes Act 1900 (ACT). The Attorney General's Department (AGD) also noted that under the Act a Constable may only arrest someone, if they believe on reasonable grounds that proceeding by way of summons would not achieve one or more of the following purposes: preventing the repetition or continuation of the offence or the commission of another offence, preventing the destruction or fabrication of evidence, ensuring appearance before the Court, preserving the safety of the person, or preventing the harassment or intimidation of witnesses.



In the Australian Capital Territory, the AFP has adopted the principle of arrests as a sanction of last resort, and does not offer incentives for officers to increase the number of arrests. AFP training and procedures reinforce the principle of arrests being a sanction of last resort. Part (c) of the recommendation has been addressed in the ACT by ensuring AFP officers are not paid an allowance on the basis of the number of arrests, a database is maintained for monitoring purposes, officers are not promoted on the basis of frequency of charges and AFP work processes do not encourage the use of arrest rather than proceeding by summons or caution.


ACT Policing also have stringent provisions that define the circumstances under which arrest may be carried out. Each arrest is reviewed by the Watch House Sergeant, and if the circumstances don't warrant an arrest, then the charge is not accepted. ACT Policing has a standard operating procedure which outlines the circumstances surrounding the issuing of Police Criminal Cautions.

 *The Commonwealth and Australian Capital Territory governments have implemented Recommendation 87 as the AFP has adopted the principle of arrests as a sanction of last resort, and does not offer incentives for officers to increase the number of arrests.*

The **New South Wales** Police Force Code of Practice advises police not to arrest unless it is necessary to pursue certain police aims (such as to prevent a person fleeing a scene or continuing to offend)<sup>21</sup>. The Code also provides that police must consider alternatives to arrest, including warning, caution, penalty notice, field or future CAN, or dealing with the matter under the *Young Offenders Act 1997* (NSW) where appropriate.

To ensure compliance with Part 99 of the Law Enforcement (Powers and Responsibilities) Act (LEPRA) when police enter a person arrest into the Custody Management System, the arresting police must indicate the detention reason from Part 99. This form is electronically submitted to the Custody Manager to review and accept.


The method of proceedings against alleged offenders is captured within the computerised operational police system (COPS), with the statistics released quarterly by the Bureau of Crime Statistics and Research.

 *The New South Wales Government has implemented Recommendation 87. The Police Force Code of Practice and ongoing initiatives.*

The **Victoria** Police Manual requires that arrest is only to be used to prevent the harm, or support the purpose, for which the arrest power has been conferred – that is, a limited set of welfare purposes. Frequency of arrest is not considered in promotions or salaries. The Victorian Government also included in AJA 3 a commitment to ensuring that arrest is a sanction of last resort. AJA 3 also incorporates a focus on continuing to increase the use of cautioning when Aboriginal and Torres Strait Islander people interact with the justice system.

 *The Victorian Government has implemented Recommendation 87 through the Victoria Police Manual and AJA 3.*

In **Queensland**, arrest is a sanction of last resort for juveniles, but not adults. However, police must consider the necessity of arrest when making one, and may issue notices to appear in court without the need for formal summons, reducing the need for arrest for minor offences as an administrative issue. The issues contained in this recommendation are addressed in the *Youth Justice Act 1992* (Qld).


 *The Queensland Government has addressed Recommendation 87 for young people through a range of initiatives, including the Youth Justice Act 1992 (Qld). However, there is no provision specifying that arrests should be the sanction of last resort provision for adults.*

**South Australia** provides in its Police General Order that arrest should be the last resort when dealing with intoxicated persons, but not for all cases. Changes to the General Orders were also made to remove incentives to arrest in line with Recommendation 87(c). South Australia Police has also


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<sup>21</sup> New South Wales Police Force Code of Practice (2015). Online: [http://www.police.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0007/108808/Code\\_of\\_Practice\\_for\\_Crime.pdf](http://www.police.nsw.gov.au/__data/assets/pdf_file/0007/108808/Code_of_Practice_for_Crime.pdf).


worked in conjunction with the Attorney-General's Department on improving access to bail via the Access to Bail Project. South Australia Police is also committed to a number of diversionary or alternative justice measures including: the Police Drug Diversion Initiative, the Shop Theft Infringement Notice Scheme, and the Adult Cautioning Program.

 *The South Australian Government has partially implemented Recommendation 87, recognising that arrest should be the last resort when dealing with intoxicated persons and removing incentives for arrests. However, no actions appear to have been taken in response to the other parts of this recommendation.*

In **Western Australia**, arrest is a sanction of last resort. Allowances paid to the arrest of individuals in custody were abolished in response to the RCIADIC Report. Currently, police officers in Western Australia are required to use their powers of arrest in accordance with the *Criminal Investigation Act 2006* (WA) which provides alternative actions to detention and prosecution. Diversionary initiatives include the Cannabis Infringement Notice, Move on Notices, and Criminal Code Infringement Notices, which enable police to issue an infringement as an alternative to a court appearance.

 *The Western Australian Government has mostly implemented Recommendation 87, however it does not appear that actions have been taken to fulfil part (c) of the recommendation.*


In **Tasmania**, under the Police Offences Act 1935 (Tas) s 55, a police officer must arrest an offender unless the purposes of the arrest power will be adequately served by issuing a summons. Allowances do not operate as an incentive, nor do frequency of arrests determine promotions.

 *The Tasmanian Government has not implemented Recommendation 87, arrest is not a sanction of last resort under the Police Offences Act 1935 (Tas). However, the Tasmanian Government has removed any incentives for arrest.*

The **Northern Territory** permits four-hour "paperless arrests" for individuals who would otherwise be fined for minor offences. This appears to support the use of arrest in place of other law enforcement tools, contrary to the intent of this recommendation. However, the Northern Territory Government note that they are committed to revoking these paperless arrests and the General Order Arrest provides that arrest should be an action of last resort, and only in the following circumstances:

- to prevent the continuation or repetition of an offence;
- to prevent the risk of further offences which may cause a danger to the public;
- if it is unlikely a summons or notice to appear will ensure the offender's in court;
- if the charge is of a serious nature; or
- if the person is intoxicated to the extent that they would not understand the consequences of their actions or the summons or notice to appear process.

Number of arrests form one criterion in the overall assessment of efficiency made of police officers during performance evaluation. The Northern Territory Government notes that Territory Families is currently reviewing the provisions of the *Youth Justice Act* in relation to the principle of arrest being the sanction of last resort.

 *The Northern Territory Government has partially implemented Recommendation 87 through General Order Arrest. However, there does not appear to have been actions taken in response to the other parts of this recommendation.*

## **Recommendation 88**

*That Police Services in their ongoing review of the allocation of resources should closely examine, in collaboration with Aboriginal organisations, whether there is a sufficient emphasis on community policing. In the course of that process of review, they should, in negotiation with appropriate Aboriginal organisations and people, consider whether:*

- a. There is over-policing or inappropriate policing of Aboriginal people in any city or regional centre or country town;*

*b. The policing provided to more remote communities is adequate and appropriate to meet the needs of those communities and, in particular, to meet the needs of women in those communities; and*

*c. There is sufficient emphasis on crime prevention and liaison work and training directed to such work.*

### Background information

Police resources may be used in ways which are likely to increase the rate of Aboriginal and Torres Strait Islander detentions. The RCIADIC Report indicated that it is important to review resource allocation in consultation with individual Aboriginal and Torres Strait Islander communities to develop policing responses which are acceptable to both groups.

### Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The AFP has an ACT Policing Aboriginal and Torres Strait Islander Community Liaison Officer to ensure open communication channels between police and the local Aboriginal and Torres Strait Islander community.

PM&C also noted that the Commonwealth provides funding to the Northern Territory Government for Community Engagement Police Officers through the IAS and the National Partnership Agreement on Remote Aboriginal Investment. The Commonwealth also provides financial support to ensure remote communities have access to adequate levels of policing.


In the Australian Capital Territory, ACT Policing are required to regularly engage with Aboriginal and Torres Strait Islander community forums to ensure that an adequate level of policing services and support is provided. The Chief Police Officer attends these forums on a three-monthly basis and the Aboriginal and Torres Strait Islander liaison officers work with Elders and community members daily. This information is fed into Malunggag Indigenous Officers in order to facilitate training for police. Through these forums, a number of potential initiatives have been discussed and work is underway to enhance ACT Policing capacity by providing more Liaison Officers and enhanced cultural advice for legislation and policy development.

 *The Commonwealth and the Australian Capital Territory Governments have mostly completed Recommendation 88 through the use of community engagement officers, but it does not appear that there has been a formal review to ensure there is no inappropriate policing of Aboriginal and Torres Strait Islander people.*


The **New South Wales** Police Force has a number of initiatives to consult with Aboriginal communities, including Aboriginal Community Liaison Officers, Police Aboriginal Consultative Committees, the Aboriginal Steering Direction Committee, and the Police Aboriginal Strategic Advisory Council. Policing levels and styles in the towns specifically mentioned in the RCIADIC Report were reviewed in response to the report.

The NSWPF have implemented the Aboriginal Strategic Direction Crime Prevention Grant program, which currently allocates \$200,000 per annum to fund initiatives negotiated by the Police Area Commands and Police Districts in consultation with the local Aboriginal community to develop crime prevention and community safety initiatives as well as break down barriers and build strong relationships between NSWPF and the Aboriginal community.

The establishment of the Corporate Sponsor Aboriginal Engagement role also supports the ongoing philosophy of the RCIADIC. The Program allocates a senior police officer to develop the NSWPF response to key Crime, Public Safety and Community and Partner issues. Corporate portfolios are allocated to the issues that have been identified as being of strategic importance to NSWPF, but generally do not have a substantive command assigned with an existing Head of Discipline/Crime Area who can lead the NSWPF response in this area.


 *The New South Wales Government has mostly implemented Recommendation 88 through the consultation procedures with Aboriginal communities, and the conduct of a review into police positions. It does not appear that there are specific measures addressed at women.*

In **Victoria**, Police Aboriginal Liaison Officers and Aboriginal Community Liaison Officers support Victorian Police in their engagement with Aboriginal and Torres Strait Islander communities to enhance perceptions of safety and positive engagement. The Victorian Government notes that following a review of the resources available across the state to enhance proactive policing services, the Minister for Police funded an additional 4 Aboriginal Community Liaison Officers in 2017, bringing the total number of Aboriginal Community Liaison Officers in Victoria to 13. Further, Aboriginal Justice Agreements (AJA) Phase 3 and 4 have a particular focus on supporting community-policing approaches to increase positive community-based activities between Aboriginal and Torres Strait Islander communities and police.

 *The Victorian Government has mostly implemented Recommendation 88 through the role of Police Aboriginal Liaison Officers and Aboriginal Community Liaison Officers, per the 2005 Victorian Implementation Review. However, it does not appear that there has been a review conducted into the inappropriate policing of Aboriginal and Torres Strait Islander people.*


In **Queensland**, the Queensland Police Service conducted a review of policing on remote Aboriginal and Torres Strait Islander communities in 1997. A number of roles exist to support liaison between Aboriginal and Torres Strait Islander communities and police, including Community Police Officers, Aboriginal and Torres Strait Islander Community/Police Consultative Groups, Police Liaison Officers and Cross-Cultural Liaison Officers.

In addition, the Queensland Police Service's Aboriginal and Torres Strait Islander Strategic Directions (2015-19) and associated Annual Plans contribute to the Commonwealth's implementation of Closing the Gap and Queensland Government Strategies including in response to research undertaken by the Crime and Misconduct Commission. The Queensland Government notes that the 2007 submission to the CMC Inquiry into Policing in Indigenous Communities and subsequent action plans address the requirements of this recommendation.

 *The Queensland Government has implemented Recommendation 88 through a range of initiatives, including the 2007 submission to the CMC Inquiry into Policing in Indigenous Communities, and subsequent action plans which followed the inquiry.*


**South Australia** trialled Aboriginal Police Liaison Officers from 2008 to 2012. It is unclear whether any such officers are still employed by South Australia Police. However, SA Police continues to employ Community Constables, who are Aboriginal and Torres Strait Islander individuals sworn in to the police with varying powers. SA Police's stated position is that irrespective of distance and isolation, like all other communities, those within the APY Lands can rightfully expect a policing service of no lesser standard than that provided elsewhere in the State. SA Police set out their delivery model for delivering its services to Aboriginal and Torres Strait Islander people, and this is subject to regular review. SA Police also established the Police Aboriginal Advisory Group Meeting, as part of its implementation of this recommendation, which includes in its terms of reference to:

- identify issues and concerns relative to police and the South Australian Aboriginal and Torres Strait Islander communities; and
- work together as a strategic consultative forum to advise the commissioner of Police and SAPOL regarding specific police issues affective South Australian Aboriginal communities.


 *The South Australian Government has implemented Recommendation 88 through a range of initiatives, including the function of the Police Aboriginal Advisory Group Meeting which serves as a strategic forum on police issues and identifies issues and concerns with current practices.*

In **Western Australia**, police training was reviewed in 1994 in response to the RCIADIC Report. Aboriginal people are encouraged to join the police as police officers, police auxiliary officers or as civilian staff; there is no longer a dedicated Aboriginal Police Liaison Officer role. Multi-Function Police


Facilities also provide a collaborative approach to service delivery for remote communities, incorporating consultation with key stakeholders.

 *Despite a number of measures targeted at collaboration and monitoring of policing, there does not appear to have been specific research conducted or steps taken by the Western Australian Government in accordance with the requirements of Recommendation 88.*

In **Tasmania**, Aboriginal Liaison Officers provide advice to police on their duties relating to Aboriginal and Torres Strait Islander individuals. The Tasmanian Police underwent significant restructuring and close analysis of all Aboriginal and Torres Strait Islander communities in response to the RCIADIC Report.

 *The Tasmanian Government has mostly implemented Recommendation 88 through the role of Aboriginal Community Liaison Officers and ongoing restructuring and service delivery analysis of police resources. However, further details on the implementation of this recommendation in Tasmania could not be located.*

In the **Northern Territory**, Aboriginal Community Police Officers are sworn members of NT Police who perform a liaison role between Aboriginal and Torres Strait Islander communities and other police officers. The Commonwealth also partly funds policing in Aboriginal and Torres Strait Islander communities. An independent review of policing in remote Aboriginal and Torres Strait Islander communities took place in 2010. The Aboriginal Liaison Officer program has been used to promote community engagement, communication and understanding to victims and witnesses. The program has received support from police, and Aboriginal and Torres Strait Islander leaders and community members.

 *The Northern Territory Government has implemented Recommendation 88 through the role of Aboriginal Community Liaison Officers, and the conduct of a review in 2010 into policing in remote Aboriginal and Torres Strait Islander communities.*

## Recommendation 89

*That, the operation of bail legislation should be closely monitored by each government to ensure that the entitlement to bail, as set out in the legislation, is being recognised in practice. Furthermore the Commission recommends that the factors highlighted in this report as relevant to the granting of bail be closely considered by police administrators.*

### Background information

Legislative changes require ongoing close monitoring of the legislation to ensure adequate and intended implementation.


### Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


### Key actions taken and status of implementation

The **Commonwealth** and the **Australian Capital Territory** Governments have responsibility for the AFP, which provides community policing in the ACT. The ACT Attorney-General announced a review of the *Bail Act 1992 (ACT)* in 1996. This review was released in 2001 and tabled in the ACT Legislative Assembly in the same year, resulting in amendments to the Act. Beyond this, the AFP has confirmed that all decisions in relation to the granting and refusal of bail made by a Watch House Sergeant are reviewed internally by ACT Policing, and offenders are given notice of the right to seek review by a court.


In the ACT, all detainees have the right to have a bail refusal reviewed as per s.38 of the *Bail Act 1992 (ACT)*. Section 16 of the Act stipulates that the Watch House Sgt is required to notify the detainee of this right when refusing bail, and facilitate a review if requested. By virtue of the process, decisions relating to the refusal of bail by Police are reviewed by the judiciary when an application to be released on bail is made to the Court. ACT Police have a checklist for consideration of bail for all persons arrested and charged.

 *The Commonwealth and the Australian Capital Territory Governments have mostly implemented Recommendation 89. Decisions on granting or refusing bail are reviewed internally or by the Courts. However, it is not clear if the AFP has considered the findings of the RCADIC in relation to decisions around bail.*


In **New South Wales**, a Bail Monitoring Group exists to support the Department of Justice in its ongoing review of bail laws. The group is made up of both prosecutorial and defendant representatives. The primary aim of this group, however, is to prevent bail being offered leniently, rather than to ensure the recognition of an individual's entitlement to bail. The Dubbo Bail Project also seeks to assist Aboriginal people through enabling police and courts to set more realistic and accountable bail conditions through local Aboriginal communities and staff giving the police and courts accurate information and helping offenders to understand their bail conditions.

 *The New South Wales Government has implemented Recommendation 89 through the function performed by the Bail Monitoring Group.*


In **Victoria**, the Bail Act was reviewed in 2007. Bail reform has been an ongoing part of Victorian political debate since this time. The Victorian Government included in AJA 3 a commitment to monitor and regularly report to the Aboriginal Justice Forum the numbers of Aboriginal and Torres Strait Islander people accessing bail.

 *The Victorian Government has partially implemented Recommendation 89, as there is no evidence of a clear effort to monitor the recognition of entitlement to bail in practice. However, AJA 3 supports the implementation of this recommendation through monitoring and reporting bail statistics to the Aboriginal Justice Forum.*


In **Queensland**, a review was conducted on the impact of bail on Aboriginal and Torres Strait Islander communities in 2011, considering several data sources. These issues are addressed in Queensland Police's *Operating Procedures Manual* and the *Bail Act 1980* (Qld).

 *The Queensland Government has partially implemented Recommendation 89, conducting a review on the impact of bail on Aboriginal and Torres Strait Islander communities in 2011. However, there is no evidence of a clear effort to monitor the recognition of entitlement to bail in practice on an ongoing basis.*


**South Australia** reviewed its *Bail Act 1985* (SA) after the Royal Commission, and changes were made to Police General Orders as a result. There does not appear to have been ongoing monitoring. In 2006, the Youth Court implemented changes as a result of a review into bail applications for children. In the event that the child or guardian applies for a telephone bail review by a magistrate, the telephone bail review must be conducted without any unnecessary delay.

 *The South Australian Government has partially implemented Recommendation 89, as there is no evidence of a clear effort to regularly monitor the recognition of entitlement to bail in practice. However, changes were made to the *Bail Act 1985* (SA) following a review of bail laws in the aftermath of the RCIADIC.*


In **Western Australia**, a review of the *Bail Act 1982* (WA) was conducted in 2010. No substantive amendments were made to the legislation as a result. The Western Australian Government notes that amendments are currently under consideration by the Department of Justice, and include measures which aim to support the reduction of recidivism among Aboriginal and Torres Strait Islander people.

 *The Western Australian Government has partially implemented Recommendation 89 through several bail monitoring initiatives. However, these do not appear to be undertaken continuously, and there does not appear to have been legislative amendments made to date.*

**Tasmania** last reviewed the operation of bail in 1996.

 *The Tasmanian Government has not implemented Recommendation 89, as there is no evidence of a clear effort to regularly monitor the recognition of entitlement to bail in practice.*

In the **Northern Territory**, the *Bail Amendment Act 2017* (NT) is reviewed and updated as required on a regular basis. The Northern Territory Police Force are also engaged in providing feedback on *Bail Act* amendments.

 *The Northern Territory Government has fully implemented Recommendation 89, the Bail Amendment Act 2017 (NT) is reviewed and updated as required on a regular basis and police members are required to provide feedback on the operation of bail laws.*

## Recommendation 90

*That in jurisdictions where this is not already the position:*

- a. Where police bail is denied to an Aboriginal person or granted on terms the person cannot meet, the Aboriginal Legal Service, or a person nominated by the Service, be notified of that fact;*
- b. An officer of the Aboriginal Legal Service or such other person as is nominated by the Service, be granted access to a person held in custody without bail; and*
- c. There be a statutory requirement that the officer in charge of a station to whom an arrested person is taken give to that person, in writing, a notification of his/her right to apply for bail and to pursue a review of the decision if bail is refused and of how to exercise those rights.*

### Background information

Given the overrepresentation of Aboriginal and Torres Strait Islander people in all levels of the justice system in Australia, it is important that they receive the necessary legal support when refused bail.

### Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


### Key actions taken and status of implementation

The AFP's guidelines addressed this recommendation for the **Commonwealth** and the **Australian Capital Territory** governments, prior to the RCIADIC Report. The AFP's guidelines addressed this recommendation, prior to the RCIADIC Report. The guideline states that "where an Indigenous Australian is taken into custody, the arresting member must ensure the Aboriginal Legal Services (ALS) is notified and notification is sent by facsimile. Members must record all ALS notifications and notification attempts in the relevant Police Real-time Online Management Information System (PROMIS) incident". Police are also required to supply information regarding eligibility for bail orally.

While ensuring access to legal services and the welfare of detained persons is the responsibility of state and territory governments, the Commonwealth Government supports custody notification arrangements to ensure the welfare of Aboriginal people coming into contact with the criminal justice system and prevent deaths in custody.

- All jurisdictions have some form of custody notification arrangements in place, however NSW and the ACT are the only jurisdictions where there is legislation in place that explicitly requires notification when an Aboriginal person comes into custody.
- The Commonwealth provided funding of \$1.8 million to NSW and the ACT from 2015-16 to 2018-19 to implement a 24-hour telephone legal advice service for Aboriginal people taken into custody by the police.
- The Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, has offered three years of funding to support the establishment of a Custody Notification System in the remaining jurisdictions, to reduce the likelihood of future Aboriginal and Torres Strait Islander deaths in custody. This is conditional on the States and Territories introducing legislation to mandate the use of the Custody Notification System and the agreement of jurisdictions to take on funding responsibility at the end of the initial three-year period.

The Minister is working with the States and Territories to support arrangements that are most suitable to each jurisdiction.


 *The Commonwealth and the Australian Capital Territory Governments have implemented Recommendation 90, noting that the AFP was compliant with this recommendation at the time of the RCIADIC.*

In **New South Wales**, the Aboriginal Legal Service is notified when an Aboriginal individual is detained, and detainees are offered access to a solicitor from the Service. Police officers are required to provide written bail eligibility information. These requirements are contained in statute and in Police Commissioner Instructions. ALS is also notified when an Aboriginal person comes into CSNSW custody. Additionally, Part 9 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) requires that if the person under detention has asked an Australian legal practitioner communicated with to attend at the place where the person is being detained, the custody manager must: (a) allow the person to consult with the Australian legal practitioner in private and provide reasonable facilities for that consultation; and (b) if the person has so requested, allow the Australian legal practitioner to be present during any such investigative procedure and to give advice to the person.


Police officers are required to provide written bail eligibility information to a person in custody as soon as practicable after they are charged with an offence. This information includes an explanation of the person's entitlement to be granted bail; or, if a show cause requirement applies, information about the requirement for the person to show cause as to why their detention is not justified. These requirements are contained in statute and in Police Commissioner Instructions. Additionally under the *Bail Act 2011* (NSW) part 5 Division 1 s 44, a police officer must ensure that as soon as reasonably practicable after a person in police custody is charged with an offence a bail decision is made for the offence and the person is given the bail eligibility information.

In New South Wales, the Bail Act Monitoring Committee Group continues to operate, and is monitoring the implementation of bail reforms. The committee includes representatives from the NSW Police Force, Office of the Director of Public Prosecutions, Legal Aid NSW and the Aboriginal Legal Service NSW/ACT. The Dubbo Bail Project is also an innovative reform to assist Aboriginal people. In early 2017 Dubbo was identified as an appropriate site to trial a new approach to supporting Aboriginal accused people on bail because of the high number of breaches of bail. The trial has been developed to reduce bail breaches by:

- helping the police and courts to set more realistic and accountable bail conditions, through local Aboriginal community members and staff giving the police and courts accurate information;
- helping accused people better understand their bail conditions and how to keep them;
- increasing the number of accused people seeking variations of their bail conditions instead of breaching them;
- encouraging accused people who are required to report to police, to present themselves to the police station to prevent a breach of their bail conditions; and
- linking accused people to community support services to reduce the likelihood of breaches of their bail conditions.


 *The New South Wales Government has implemented Recommendation 90 through existing practices and governing legislation.*

In **Victoria**, the Victorian Police Manual prescribes that the Victorian Aboriginal Legal Service should be notified within 60 minutes of an Aboriginal and Torres Strait Islander individual being detained in police custody. Victorian Police currently notify the legal service on the arrest of the Aboriginal and Torres Strait Islander accused and their lawyers can be given access to a person held in custody without bail. The proposed legislative bail reforms will also change this further and require a bail justice to be called for all Aboriginal and Torres Strait Islander accused if police bail is denied. The Victorian Bail Regulations 2012 require a statement to be given to a person in custody when bail is refused by police that they have a right to apply for bail from a bail justice (Form 7).


 *The Victorian Government has mostly implemented Recommendation 90 through the Victorian Police Manual. However, it does not appear that part (c) of this recommendation has been fully implemented.*



In **Queensland**, the *Police Operational Procedure Manual* sets out that prior to the questioning of Aboriginal and Torres Strait Islander defendants, police officers must inform a legal aid representative that such a defendant is being held in custody. Written notifications of bail rights are not provided. Duty lawyer services operate in Magistrates Courts to ensure that a person denied bail by a watch house keeper can be represented before a magistrate.


 *The Queensland Government has partially implemented Recommendation 90 through the Police Operational Procedure Manual. However, written notifications of bail rights are not provided.*

**South Australia** police practice is to notify the Aboriginal Legal Service and to provide written notification of bail eligibility.


 *The South Australian Government has partially implemented Recommendation 90. Police practice is to notify the Aboriginal Legal Service and to provide written notification of bail eligibility. It does not appear that actions have been taken to address part (b) of this recommendation.*

In **Western Australia**, an agreement was reached in 1995 that the Aboriginal Legal Service would be advised when an Aboriginal and Torres Strait Islander individual was charged. However, that agreement appears to have lapsed, as deaths in custody in 2016 led to calls by advocacy groups for a custody notification service to be implemented in the state.<sup>22</sup>


The Western Australian Government notes that the *Criminal Investigation Act 2006* (WA) allows for the accused to have contact with a lawyer, while police manuals provide direct guidance on notifying the Aboriginal Legal Service. In addition, the *Bail Act 1988* (WA) requires that the person accused be informed, in writing, of their rights for bail.

 *The Western Australian Government has mostly implemented Recommendation 90, however further action is required to fulfil part (a) of the recommendation as it concerns the role of the Aboriginal Legal Service.*

In **Tasmania**, the Aboriginal Legal Service is notified when an Aboriginal and Torres Strait Islander individual is detained. Written notifications of bail rights are not provided.

 *The Tasmanian Government has partially implemented Recommendation 90, providing that the Aboriginal Legal Service be notified when an Aboriginal and Torres Strait Islander individual is detained. However, there does not appear to have been actions taken to address parts (b) and (c) of this recommendation.*

In the **Northern Territory**, Police General Orders require that a person be informed if bail is refused of their right to apply to a magistrate for review. A statutory requirement was deemed unnecessary. The Northern Territory Government notes that all considerations are documented on the Bail Consideration form and that capacity for a review of a denial of bail is provided over a phone to a Local Court Judge. Additionally, the General Order Bail at section 34 requires that where an Aboriginal person is refused bail, all reasonable efforts be made to notify an appropriate legal aid provider or a person nominated by the provider, of the fact of refusal or the failure to meet conditions set.

 *The Northern Territory Government has partially implemented Recommendation 90 through current procedures and provisions made under the General Order – Bail. However, there is no formal requirement for ALS to be notified in all cases or for written notification of bail eligibility to be provided. Further, it does not appear that detainees are notified of their right to apply for bail.*

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<sup>22</sup> Denham Sadler (2016) *WA still waits for Indigenous custody notification*. Online: <https://www.thesaturdaypaper.com.au/news/indigenous-affairs/2016/08/20/wa-still-waits-indigenous-custody-notification/14716152003630>

## Recommendation 91

*That governments, in conjunction with Aboriginal Legal Services and Police Services, give consideration to amending bail legislation:*

- a. to enable the same or another police officer to review a refusal of bail by a police officer,*
- b. to revise any criteria which inappropriately restrict the granting of bail to Aboriginal people; and*
- c. to enable police officers to release a person on bail at or near the place of arrest without necessarily conveying the person to a police station.*

### Background information

Each of these proposals for reform are aimed at minimising the amount of time spent by Aboriginal and Torres Strait Islander individuals in police custody: by improving access to reviews of bail decisions; to ensure that Aboriginal and Torres Strait Islanders do not face obvious disadvantage in bail applications; and to permit bail before a person has been placed in custody.

### Responsibility

All State and Territory governments are responsible for this recommendation.


### Key actions taken and status of implementation

The review did not reveal legislative changes resulting from this legislation. However, some jurisdictions explicitly require judges to consider a person's cultural background in making a bail decision, which may help to ensure that bail criteria are not unfairly biased against an Aboriginal and Torres Strait Islander individual.


In **New South Wales**, a senior police officer may review a bail decision under the *Bail Act 2013* (NSW). Any bail decisions should take into account whether a person is Aboriginal. However, bail decisions can only be made at a police station.

In relation to (c) Field Court Attendance Notices provide police with the ability to issue a Notice in lieu of formal arrest.

The *Bail Act 2013* (NSW) contains clear guidance and restrictions on when bail conditions can be imposed, notably that conditions can only be imposed if there is an identified bail concern and must be appropriate to address that concern. Further, a bail condition can only be imposed if there are reasonable grounds to believe that the accused is likely to comply with the condition. This is to ensure that unduly onerous conditions, which the accused is not likely to be able to comply with, are not imposed.


 *The New South Wales Government has mostly implemented Recommendation 91 through the Bail Act 2013 (NSW). However, no evidence has been found in support of actions taken towards part (b) of this recommendation.*

In **Victoria**, bail applications may only be made to a court. However, the current *Bail Act 1977* (Vic) requires that a bail decision maker take into account any issues that arise due to a person's Aboriginality, including their ties to family or place and other relevant cultural issues or obligations. Where courts are unavailable, a system of bail justices is provided to enable the prompt review of police decisions to refuse bail. Generally, Aboriginal and Torres Strait Islander people are excluded from recent bail reforms, and in most cases an Aboriginal and Torres Strait Islander accused will be able to seek bail from a police officer, and if the police officer refuses bail, from a bail justice.


 *The Victorian Government has partially implemented Recommendation 91 through bail legislation. However, no evidence has been found in support of actions taken towards parts (a) or (c) of this recommendation.*

In **Queensland**, only courts may review bail decisions. Courts are not required to consider a person's cultural background, and some criteria (in particular, the use of records of minor offences) potentially restrict the granting of bail to Aboriginal and Torres Strait Islander people. A court may also consider any submissions made by a community justice group made on behalf of an Aboriginal and Torres


Strait Islander defendant. People served with a notice to appear in court in relation to an offence are not required to enter into a bail undertaking until after they have appeared in court and if the matter has been adjourned. The review has not revealed a power to enable police officers to release a person on bail outside of a police station.

 *The Queensland Government has not implemented Recommendation 91; legislation does not appear to respond to the requirements outlined in this recommendation.*


**South Australia** permits a senior police officer to act as a bail authority. The *Bail Act 1985* (SA) has provision for bail review by a magistrate and may be done by telephone after hours. There are no criteria that inappropriately restrict granting of bail to Aboriginal and Torres Strait Islander people. The South Australian Government does not support a person arrested by police to not be conveyed to a police station. Provisions in the Act are designed to ensure that when a person is arrested that the person is not kept in custody of the arresting officers but taken to a police station. The review has not revealed a power to enable police officers to release a person on bail outside of a police station.

 *The South Australian Government has partially implemented Recommendation 91 through bail legislation. However, no evidence has been found in support of actions taken towards part (c) of this recommendation.*

In **Western Australia**, only a judge may review a bail decision. Under s 6 of the *Bail Act 1982* (WA), in the event that bail is not granted the accused is to be brought before an authorised police officer or Justice of the Peace for consideration of bail. Clause 3 of Schedule 1 Part B of the Act provides that once an authorised officer refuses bail it cannot be considered by another officer of the same or more senior level. Bail may subsequently be considered by a Justice of the Peace or before a court as soon as is practicable.


 *The Western Australian Government has partially implemented Recommendation 91 through the *Bail Act 1982* (WA), however it does not appear that parts (a) or (c) have been met.*

In **Tasmania**, all bail refusals must be reviewed by a justice or magistrate, so no appeal to a senior police officer is available. All bail decisions are made at a police station.

 *The Tasmanian Government has not implemented Recommendation 91; legislation does not appear to respond to the requirements outlined in this recommendation.*

In the **Northern Territory**, only a magistrate or justice can review a refusal of bail by a police officer. Bail laws including s 24 of the *Bail Act 2005* (NT) require the bail authority to consider a person's ties to extended family, cultural background and community ties. The Northern Territory Police Force has strict guidelines on the identification of persons and as identification processes need to occur in a police station through Livescan access, there is no power to enable police officers to release a person on bail outside of a police station.


In the event that identification is not an issue, police have the power to issue a 'Notice to appear' which dispenses with the need for police bail. As discussed in Recommendation 90, the Bail Consideration form must also be submitted in relation to every bail decision and the General Order – Bail makes requirements towards the implementation of this recommendation.

 *The Northern Territory Government has partially implemented Recommendation 91; legislation does not appear to respond to all of the requirements outlined in this recommendation.*

In the **Australian Capital Territory**, accused individuals can request a review of a bail decision by the officer who made the decision or another officer. Bail criteria do not explicitly consider the interests of Aboriginal and Torres Strait Islander individuals but do not appear to discriminate against them directly or indirectly. Provisions are made under the *Bail Act 1992* (ACT) for the court to have regard to any relevant matter, including a person's character, background and community ties, including an Aboriginal and Torres Strait Islander person's circumstances.

The ACT Government is taking additional steps towards the implementation of part (b) of this recommendation through the provision of funding for the Ngurrambai bail support trial under which

Aboriginal and Torres Strait Islander individuals are provided with assistance to apply for bail, as well as ongoing support in complying with their bail conditions. Bail may only be granted to an accused person present at a police station. The ACT Government comments that given the size of the ACT and the strategic positioning of police stations, the distance that an arrested person is taken from the place of arrest does not incur the type of problems that other, larger jurisdictions may experience.

 *The Australian Capital Territory Government has mostly implemented Recommendation 91 through bail legislation. However, no evidence has been found in support of actions taken towards part (c) of this recommendation.*

## 6.2 Imprisonment as a last resort (92-121)

### Recommendation 92

*That governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort.*

#### Background information


One of the key aims of the RCIADIC Report was to reduce the rates of imprisonment of Aboriginal and Torres Strait Islander individuals. At its core, these recommendations sought to ensure that non-custodial penalties are used before imprisonment. Legislation is one way to hold governments accountable to this principle.

#### Responsibility


All State and Territory governments are responsible for this recommendation.

#### Key actions taken and status of implementation


In **New South Wales**, this principle is legislated in the *Crimes (Sentencing Procedure) Act 1991* (NSW) s 5.

 *The New South Wales Government has implemented Recommendation 92 through the Crimes (Sentencing Procedure) Act 1991 (NSW).*


In **Victoria**, this principle is legislated in the *Sentencing Act 1991* (Vic) ss 4B and 5(4), and the *Children, Youth, and Families Act 2005* (Vic) ss 11, 360 and 361.

 *The Victorian Government has implemented Recommendation 92 through the Sentencing Act 1991 (Vic) and the Children, Youth, and Families Act 2005 (Vic) which incorporate the principle that imprisonment should be a sanction of last resort.*

In **Queensland**, this principle is legislated in the *Penalties and Sentences Act 1992* (Qld) section 9(2). The principle does not apply to sentences for offences involving violence or which resulted in physical harm to another person or was an offence of a sexual nature committed against a child under the age of 16 years. The *Youth Justice Act 1992* (Qld) section 208 requires that a court be satisfied, after considering all other options and taking into account the desirability of not holding a child in detention, that no other sentence is appropriate in the circumstance of the case.


 *The Queensland Government has implemented Recommendation 92 through the Sentences Act 1992 (Qld) and the Youth Justice Act 1992 (Qld) which incorporate the principle that imprisonment should be a sanction of last resort.*

In **South Australia**, this principle is legislated in the *Criminal Law (Sentencing) Act 1988* (SA) s 11.


 *The South Australian Government has implemented Recommendation 92 through the Criminal Law (Sentencing) Act 1988 (SA) which incorporates the principle that imprisonment should be a sanction of last resort.*

In **Western Australia**, this principle is legislated in the *Sentencing Act 1995* (WA) ss 6(4) and 86, and the *Young Offenders Act 1994*. The Western Australian Government is also currently considering amendments to the *Fines and Infringement Notices Enforcement Act 1994* (WA) to reduce the reliance


on imprisonment for the enforcement of fines and penalties and to ensure that it is considered as a last resort.

 *The Western Australian Government has implemented Recommendation 92 through relevant legislation.*


In **Tasmania**, this principle is legislated for youth offenders in the *Youth Justice Act 1997* (Tas) s 5(1)(g), but does not apply to non-juvenile offenders. The *Sentencing Act 1997* (Tas) provides courts with discretion to use non-custodial sentencing options should they be deemed more appropriate than imprisonment.

 *The Tasmanian Government has partially implemented Recommendation 92 through the Youth Justice Act 1997 (Tas). However, no corresponding provision exists for adults.*

In the **Northern Territory**, this principle has been legislated with respect to youth offenders.

 *The Northern Territory Government has partially been implemented, as this is only a requirement for youth offenders.*

In the **Australian Capital Territory**, this principle is legislated in the *Crimes (Sentencing) Act 2005* (ACT) s 10.

 *The Australian Capital Territory Government has implemented Recommendation 92 through the Crimes (Sentencing) Act 2005 (ACT).*

#### **Additional commentary**

Mandatory sentencing laws for particular crimes have been implemented in most Australian jurisdictions. For these charges, imprisonment is inherently not an option of last resort.

### **Recommendation 93**

*That governments should consider whether legislation should provide, in the interests of rehabilitation, that criminal records be expunged to remove references to past convictions after a lapse of time since last conviction and particularly whether convictions as a juvenile should not be expunged after, say, two years of non-conviction as an adult.*

#### **Background information**


Removing references to past convictions helps to enable individuals to seek employment and otherwise promotes their rehabilitation.

#### **Responsibility**


All State and Territory governments are responsible for this recommendation.

#### **Key actions taken and status of implementation**

In **New South Wales**, under the *Criminal Records Act 1991* (NSW), a conviction for which a person received a sentence of less than 6 months is "spent" after a crime-free period of 10 years for adults, or 3 years for juveniles.

 *The New South Wales Government has implemented Recommendation 93 through the Criminal Records Act 1991 (NSW).*

In **Victoria**, criminal records list crimes for 5 years from the time of sentencing for juveniles, and 10 years for adults. The Victorian Government notes that the merits of a legislative spent convictions scheme are currently under consideration, which would replace the current administrative scheme. This includes consideration of reducing the qualifying period of non-conviction for juvenile offenders.

 *The Victorian Government has implemented Recommendation 93 through expunging criminal records after 5 years of non-conviction for juveniles and 10 years for adults.*

In **Queensland**, the *Criminal Law (Rehabilitation of Offenders) Act 1986* permits a person to deny certain criminal convictions after the rehabilitation period has passed. That period is 5 years for juveniles and 10 years for adults.

● *The Queensland Government has implemented Recommendation 93 through expunging criminal records after 5 years of non-conviction for juveniles and 10 years for adults.*

In **South Australia** under the *Spent Convictions Act 2009* (SA), criminal records list crimes for 5 years from the time of sentencing for juveniles, and 10 years for adults.

● *The South Australian Government has implemented Recommendation 93 through expunging criminal records after 5 years of non-conviction for juveniles and 10 years for adults.*

In **Western Australia** there is currently no legislative basis to expunge a conviction. The *Sentencing Act 1995* (WA) allows a court to make a spent conviction at the time of sentencing, while the *Spent Convictions Act 1988* (WA) provides for convictions to be spent based on the severity and nature of the offence, once the prescribed period for the conviction has elapsed. Section 189 of the *Young Offenders Act 1994* (WA) provides for certain offenders to be regarded as not convicted, in prescribed circumstances which do not apply to a young person convicted of murder, attempt to murder, or manslaughter.

○ *Recommendation 93 has not been implemented in Western Australia, as there is currently no legislative basis to expunge a conviction.*

In **Tasmania**, criminal records list crimes for 5 years from the time of sentencing for juveniles, and 10 years for adults. This is provided under the *Annulled Convictions Act 2003* (Tas) for minor infringements.

● *The Tasmanian Government has implemented Recommendation 93 through expunging criminal records after 5 years of non-conviction for juveniles and 10 years for adults.*

In the **Northern Territory**, criminal records list crimes for 5 years from the time of sentencing for juveniles, and 10 years for adults.

● *Government has implemented Recommendation 93 through expunging criminal records after 5 years of non-conviction for juveniles and 10 years for adults.*

In the **Australian Capital Territory**, criminal records list crimes for 5 years from the time of sentencing for juveniles, and 10 years for adults.

● *The Australian Capital Territory Government has implemented Recommendation 93 through expunging criminal records after 5 years of non-conviction for juveniles and 10 years for adults.*

## Recommendation 94

That:

a. *Sentencing and correctional authorities should accept that community service may be performed in many ways by an offender placed on a community service order; and*

b. *Consistent with the object of ensuring that offenders do not re-offend, approval should be given, where appropriate, for offenders to perform Community Service work by pursuing personal development courses which might provide the offender with skills, knowledge, interests, treatment or counselling likely to reduce the risk of re-offending.*

### Background information

Community service orders provide an alternative to imprisonment as a penalty for committing an offence. This recommendation considers permitting an offender to fulfil their community service obligation by undertaking a personal development course. This is done with the aim of reducing recidivism (and the likelihood of an individual going to prison).


## Responsibility

All State and Territory governments are responsible for this recommendation.


### Key actions taken and status of implementation

In **New South Wales**, personal development programs may be counted as community service work under the *Crimes (Administration of Sentences) Act 1999* (NSW) s 3. CSNSW offers a range of methods for completing community-service obligations depending on the offender's personal circumstances, work commitments and obligations, and other factors.


The NSW Government is currently undertaking reforms to Intensive Corrections Orders which will enable more Aboriginal offenders to participate in work and other activities and avoid custodial sentences. This reform addresses the lack of available paid employment in regional and rural locations.

 *The New South Wales Government has incorporated Recommendation 94 into legislation and has implemented personal development programs through CSNSW.*


In **Victoria**, personal development programs may be counted as community service work under the *Sentencing Act 1991* (Vic) ss 48C and 48D.

 *The Victorian Government has incorporated Recommendation 94 into legislation. The Sentencing Act 1991 (Vic) allows personal development programs to count as community service work.*


In **Queensland**, community service projects are run by local groups and developed in conjunction with Aboriginal and Torres Strait Islander communities. Offenders also have the opportunity to undertake education and training courses and rehabilitation programs which can contribute up to 50% of their ordered hours. Youth Justice has procedures that enable community service orders to include up to 50% of hours that take into account personal development courses which might provide the offender with skills, knowledge, interests, treatment or counselling likely to reduce the risk of re-offending. Section 302 of the *Youth Justice Act 1992* (Qld) enables Youth Justice to determine what a community service order is comprised of.

 *The Queensland Government has implemented Recommendation 94. Community service projects are developed in conjunction with Aboriginal and Torres Strait Islander communities, and offenders have the option to undertake education and training courses and rehabilitation programs.*


In **South Australia**, the *Youth Justice Community Service Order Program Framework* sets out the requirements from this recommendation, which are achieved through community-based partnerships and the development of individualised plans. Sentencing authorities can impose community service as a specific order, or as a condition of a bond. Part 5 of the *Youth Justice Administration Act 2016* (SA) provides that when undertaking assessment of a youth who is required to be under supervision in the community, regard must be had to the cultural identity, developmental and cognitive capacity, ability or disability, and any special needs, of the youth in respect of education or training. Repay SA provides an avenue for offenders to repay their debt to society through supervised community work projects, and to gain meaningful skills that will assist in obtaining employment.

 *In South Australia, the Youth Justice Community Service Program Framework and the Youth Justice Administration Act 2016 (SA) implement Recommendation 94.*


In **Western Australia**, a wide range of community-based orders, including personal development programs, are provided under the *Young Offenders Act 1994* (WA) and the *Sentencing Act 1995* (WA) s 66. The *Sentencing Act 1995* (WA) allows up to 25% of an Order for Community Service to be satisfied by way of personal development. These Acts emphasise rehabilitation, such as through attendance at drug-education courses or participation in programs focused on issues such as substance abuse or skills development. For young people on orders, a Youth Support Plan is prepared which may include attendance at relevant treatment or personal development courses.

 *The Western Australian Government has implemented Recommendation 94 through the Young Offenders Act 1994 (WA) and the Sentencing Act 1995 (WA).*


In **Tasmania**, personal development programs may be counted as community service work under the *Sentencing Act 1997* (Tas) ss 4, 8 and Part 3A.

 *The Tasmanian Government has implemented Recommendation 94 through the Sentencing Act 1997 (Tas).*

In the **Northern Territory**, rehabilitation programs may be counted as community service work under the *Sentencing Act* (NT) s 34. The Act allows for rehabilitation and personal development as part of Community Custody orders. The Northern Territory Government has implemented strategies to provide opportunities for training and development while an offender is subject to a community work order, such as the inclusion of White Card Training, First Aid, cultural courses, and Basic Living Skills within the Community Work Program. In 2013, the *Sentencing Act* (NT) was amended to create Community Custody Orders which incorporates a community work component.

 *The Northern Territory Government has implemented Recommendation 94 through the Sentencing Act (NT).*

In the **Australian Capital Territory**, the *Crimes (Sentencing) Act 2005* (ACT) provides for custodial and non-custodial sentences. The ACT Government notes that the objects of the Act include providing a range of sentencing options to promote flexibility in sentencing and to maximise the opportunity for imposing sentences that are adapted to individual offenders. Current ACT legislation does not allow for offenders to perform community service work conditions by pursuing personal development courses.

 *The Australian Capital Territory Government has partially implemented Recommendation 94 as current ACT legislation does not allow for offenders to perform community service work.*

## Recommendation 95

*That in jurisdictions where motor vehicle offences are a significant cause of Aboriginal imprisonment the factors relevant to such incidence be identified, and, in conjunction with Aboriginal community organisations, programs be designed to reduce that incidence of offending.*

### Background information


Aboriginal and Torres Strait Islander people in remote communities particularly face barriers to obtaining a licence. Escalating penalties for offences of this nature – for instance, being charged for driving without a licence, being disqualified from driving as a penalty, and then breaching that disqualification – contributes to a cycle of recidivism. Reducing the incidence of these offences is one means of reducing the number of Aboriginal and Torres Strait Islanders being imprisoned.

### Responsibility

All State and Territory governments are responsible for this recommendation.


### Key actions taken and status of implementation

In **New South Wales**, the Community Based Knowledge-Testing Program is one program aimed at supporting Aboriginal individuals with driver's licence knowledge tests. The Driving Change program provides support in Aboriginal communities to enable individuals to obtain a licence. The Sober Driver Program is an evidence-based, nine session group program that targets serious and /or repeat drink drivers. In 2017 the Corrective Services NSW (CSNSW) Data Verification Project collected information on the licensee status of Aboriginal offenders and provided the details to Education staff, allowing them to tailor a program pathway to address licensing issues. Other programs have also been established, including the Driver Licensing Access Program and the Safer Driver Course which both target young drivers. Mandatory alcohol interlocks have also been introduced under the Mandatory Alcohol Interlock Program (MAIP).

 *The New South Wales Government has implemented Recommendation 95 through a range of programs aimed at addressing the issues raised in this recommendation.*

In **Victoria**, accredited drink-drive programs, alcohol and drug counselling programs, and motor vehicle offender programs are all aimed at reducing recidivism for motor vehicle offences.




 *The Victorian Government has implemented Recommendation 95 through a range of drink-drive programs, alcohol and drug counselling programs, and motor vehicle offender programs targeted at reducing recidivism for motor vehicle offences.*


The **Queensland** Government's Just Futures strategy includes an initiative for all prisons to provide driver education support to assist individuals with obtaining or regaining their licence. The Queensland Youth Justice reports on unlawful use of a motor vehicle offenders and sentence outcomes.

In addition, Queensland Corrective Services has implemented a working group to develop a strategy regarding program implementation for Aboriginal and Torres Strait Islander people that has been developed and delivered by Aboriginal and Torres Strait Islander people, including driver education. Currently, the Indigenous Driver Licensing Program aims to reduce unlicensed driving in remote communities including Cape York, the Gulf and Torres Strait Islands.


The Queensland Government has also developed the Austroads Learning to Drive kit and handbook, to help Aboriginal and Torres Strait Islander people get a better understanding of the road rules and driving safely. The Department of Transport and Main Roads also supports communities in the development of sustainable licensing and road safety initiatives, particularly those focused on assisting learner drivers progress to their provisional licence

 *The Queensland Government has implemented Recommendation 95 through initiatives such as their Just Futures strategy which includes an initiative for all prisons to provide driver education support.*


In **South Australia**, mandatory alcohol interlocks aim to reduce motor vehicle offence recidivism. The government's On the Right Track program delivers driver licensing services to Aboriginal and Torres Strait Islander people in the remote communities of the APY and MT Lands. In these communities the Mandatory Alcohol Interlock is not necessarily effective; as such, an alternative approach is currently being explored.

 *The South Australian Government has implemented Recommendation 95 through the introduction of mandatory alcohol interlocks, and the On the Right Track program, which delivers driver-licensing services to Aboriginal and Torres Strait Islander people in the remote communities of the APY and MT Lands.*


In **Western Australia**, mandatory alcohol interlocks aim to reduce motor vehicle offence recidivism. The Remote Areas Licensing program, a partnership between the Department of Transport, private industry and Aboriginal communities, provides driver's licence testing services to remote parts of Western Australia and supports individuals with lower levels of reading and numeracy comprehension. Western Australia currently offers an Aboriginal Driver Training and Education program in nine rural and remote Aboriginal and Torres Strait Islander communities.

 *The Western Australian Government has implemented Recommendation 95 through the introduction of mandatory alcohol interlocks, along with a range of other initiatives.*


In **Tasmania**, mandatory alcohol interlocks aim to reduce motor vehicle offence recidivism. The Learner Driver Mentor Program provides support to disadvantaged individuals in undertaking the minimum hours required under a learner's permit to obtain their licence. The *Back on Track Program* has also been introduced with the aim to reduce re-offending by moderate-high to high risk young adult offenders who are new to the justice system.

 *The Tasmanian Government has implemented Recommendation 95 through the introduction of alcohol interlocks and driver education courses which aim to end re-offending by young adult offenders.*

In the **Northern Territory**, alcohol interlocks and drink-driver education courses both aim to end cycles of recidivism for motor vehicle offences. The DriveSafe NT Remote supports individuals in 74 remote communities in obtaining their drivers licence.

 *The Northern Territory Government has implemented Recommendation 95 through the introduction of alcohol interlocks and drink-driver education courses which aim to end cycles of recidivism for motor vehicle offenders.*

The **Australian Capital Territory** made a grant to the Aboriginal Legal Services in 2017 for a two-year Aboriginal and Torres Strait Islander Driver Licensing project pilot which seeks to increase licensing rates of Aboriginal and Torres Strait Islander people, while building employment opportunities for Aboriginal and Torres Strait Islander driving instructors. Focus is also provided to ensuring program participants maintain their license and are prevented from coming into contact with the justice system as a result of driving without a license.

 *The Australian Capital Territory Government has mostly implemented Recommendation 95. While a pilot program is being offered, this does not appear to be ongoing or available for all Aboriginal and Torres Strait Islander people within the ACT.*

## Recommendation 96

*That judicial officers and persons who work in the court service and in the probation and parole services and whose duties bring them into contact with Aboriginal people be encouraged to participate in an appropriate training and development program, designed to explain contemporary Aboriginal society, customs and traditions. Such programs should emphasise the historical and social factors which contribute to the disadvantaged position of many Aboriginal people today and to the nature of relations between Aboriginal and non-Aboriginal communities today. The Commission further recommends that such persons should wherever possible participate in discussion with members of the Aboriginal community in an informal way in order to improve cross-cultural understanding.*

### Background information

It is important for individuals who work alongside Aboriginal and Torres Strait Islander people to be aware of the sensitivities involved in their society, customs and trainings.


### Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.


### Key actions taken and status of implementation

The **Commonwealth** Government's AGD has committed to developing a Cultural Competency eLearning package, to develop cultural awareness of Aboriginal and Torres Strait Islander people for judicial officers and staff working in the federal courts. Launched in October 2015, this training comprises six modules and aims to:


- improve knowledge and understanding of the culturally diverse communities who access the courts;
- use critical reflection to understand the impact of stereotypes; and
- provide staff with the skills to adapt and deliver services to best meet the needs of culturally and linguistically diverse clients.

 The Commonwealth has implemented Recommendation 96 through the development of cultural awareness training programs.


In **New South Wales**, cultural awareness training is mandatory for all CSNSW Community Corrections staff as part of broader Justice policy, and other more specific programs are also available on request through the Brush Farm Academy and external to the Department. The CSNSW Aboriginal Strategy and Policy Unit works with internal and external stakeholders, partnering with organisations to deliver culturally sensitive services to Aboriginal offenders and their families.

 *The New South Wales Government has implemented Recommendation 96 through the introduction of cultural awareness training and ongoing consultation with Aboriginal organisations.*


In **Victoria**, Koori Community Engagement Officers and Koori Liaison Officers support courts in engaging with Aboriginal and Torres Strait Islander individuals. The Victorian Government also noted in AJA 3 that the Department of Justice *Koori Cultural Awareness Training Program* had been developed to increase the understanding of Aboriginal and Torres Strait Islander culture amongst justice staff. This initiative stands alongside Indigenous Cultural Awareness Training and Aboriginal Community Justice Panels.

 *The Victorian Government has implemented Recommendation 96 through a range of programs outlined as part of AJA 3. Additionally, the Victorian Government provides support for Koori Community Engagement Officers and Koori Liaison Officers who provide a link between courts and local Aboriginal and Torres Strait Islander communities.*


The **Queensland** judiciary's *Equal Treatment Benchbook* offers guidance and background knowledge to judicial officers on issues of equality that, if overlooked, could result in an injustice or perceived injustice. This includes information on Aboriginal and Torres Strait Islander culture. The Murrighagun Cultural Centre develops and delivers cultural capability training to Queensland Corrective Services staff and provides advice to senior management and others in relation to Aboriginal and Torres Strait Islander culture and tradition. The Queensland Corrective Services Academy provides training and online courses relating to cultural awareness and capability. Custodial and probation and parole officers complete a cultural awareness component as part of their entry-level training. Cultural capability actions relevant to Probation and Parole include a commitment to increase staff participation in cultural competence training; appointment of additional cultural liaison officers; and development of culturally specific education, training and rehabilitation programs.

 *The Queensland Government has implemented Recommendation 96 through a range of initiatives, including the *Equal Treatment Benchbook*, the work of the Murrighagun Cultural Centre, and the introduction of cultural capability to mandatory training requirements.*


In **South Australia**, Aboriginal Cultural Awareness training was introduced for all new court staff in 2003. Funding has also previously been sought and received from the National Judicial College of Australia by the SA Indigenous Justice Committee to allow Judicial Officers to travel to various locations within SA for cultural activities and education. The establishment of the Courts Aboriginal Cultural Awareness Training was developed by Courts Administration Authority (CAA) Aboriginal Justice Officers, and it has been attended by the Aboriginal Legal Rights Movement and other organisations.

 *The South Australian Government has mostly implemented Recommendation 96 through the development of Aboriginal Cultural Awareness training for staff. However, the extent to which informal conversations occur with Aboriginal and Torres Strait Islander communities is unclear.*


In **Western Australia**, the Aboriginal Benchbook for Western Australian Courts offers guidance to the judiciary on cross-cultural issues. Additional publications to educate the judiciary and employees on relevant aspects of Aboriginal and Torres Strait Islander history and culture include the *Equality Before the Law Benchbook* and the *Aboriginal Liaison Officer's Community Kit*. The Department of Justice is currently preparing a RAP which will include emphasis on improving the Aboriginal and Torres Strait Islander cultural competency of all employees as a key initiative, including through the provision of online cultural awareness training to all employees. Training and advice is also provided at the annual Magistrates' Conference.

 *The Western Australian Government has mostly implemented Recommendation 96 through the development of training and guidance for staff. However, the extent to which informal conversations occur with Aboriginal and Torres Strait Islander communities is unclear.*


In **Tasmania**, resources from benchbooks in other states have been used, and ad hoc training has been provided on cross-cultural issues (for instance, the use of interpreters in court). It does not appear that there exists an ongoing training and development program on Aboriginal and Torres Strait Islander culture. The Tasmanian State Service Aboriginal Employment Strategy is in development and will seek to improve recruitment and retention practices, including in the Department of Justice.

 *The Tasmanian Government has partially implemented Recommendation 96 through the introduction of ad-hoc training and recruitment efforts under the Tasmanian State Service Aboriginal Employment Strategy. However, there does not appear to be an ongoing training and development program for the purposes of this recommendation.*

In the **Northern Territory**, court user forums facilitate consultation between the North Australian Aboriginal Justice Agency (NAAJA) and the Supreme Court. Northern Territory police officers and Community Corrections Officers are required to undergo training on engagement with Aboriginal and Torres Strait Islander people as part of Customer Service training and Respect, Equity and Diversity training. Parole officers are required to complete Certificate IV in Correctional Practice, which incorporates a strong cross-cultural component. The Elders Visiting Program also serves to link Aboriginal and Torres Strait Islander offenders with Elders from their own community through scheduled visits at correctional centres, thereby contributing to the resolution of community based issues and validation of cultural identity.

 *The Northern Territory Government has implemented Recommendation 96 through a range of programs, including the introduction of court user forums, cultural sensitivity training requirements, and the Elders Visiting Program.*

The **Australian Capital Territory** offered cultural awareness training to courts staff in the past (as reported in its 1998 implementation report). Currently, ACT Government employees are required to undertake cultural awareness training as part of mandatory training on an ongoing basis. ACT Courts & Tribunals (ACTCT) supports ongoing judicial and staff training, including cultural competency development sessions for the Judiciary and registrars. The ACT Correctional Services engages an Aboriginal Client Support Officer within its Community Corrections section to provide cultural advice and support to Community Corrections Officers working with Aboriginal and/or Torres Strait Islander clients.

 *The Australian Capital Territory Government has implemented Recommendation 96 through ongoing training and consultation through an Aboriginal Client Support Officer.*

## Recommendation 97

*That in devising and implementing courses referred to in Recommendation 96 the responsible authorities should ensure that consultation takes place with appropriate Aboriginal organisations, including, but not limited to, Aboriginal Legal Services.*

### Background information

Organisations involving Aboriginal and Torres Strait Islander people should be consulted in the development of Recommendation 96 to ensure it is implemented adequately.

### Responsibility






The Commonwealth, and all State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation

The **Commonwealth** Government's AGD noted the Aboriginal and Torres Strait Islander Access to Justice Committee continues to collaborate with the Courts and to facilitate the Courts' engagement with Aboriginal and Torres Strait Islander communities around Australia. Additionally, Indigenous Community Consultative members work with judges and staff.

 *The Commonwealth has implemented Recommendation 97 through the Courts' continued consultation with Aboriginal and Torres Strait Islander organisations and communities.*

The Aboriginal and Torres Strait Islander cross-cultural awareness programs for judicial officers outlined in Recommendation 96 above also relate to Recommendation 97. With the exception of Tasmania and the Australian Capital Territory, the other jurisdictions consulted with Aboriginal and Torres Strait Islander communities in the development of the programs. The ACT has partially undertaken consultation through the function of an Aboriginal Client Support Officer.

-  *The New South Wales Government has implemented Recommendation 97 as part of their response to Recommendation 96.*
-  *The Victorian Government has implemented Recommendation 97 as part of their response to Recommendation 96.*
-  *The Queensland Government has implemented Recommendation 97 as part of their response to Recommendation 96.*
-  *The South Australian Government has implemented Recommendation 97 as part of their response to Recommendation 96.*
-  *The Western Australian Government has implemented Recommendation 97 as part of their response to Recommendation 96.*
-  *The Tasmanian Government has not implemented Recommendation 97. It does not appear that consultation occurs with Aboriginal and Torres Strait Islander organisations.*
-  *The Northern Territory Government has implemented Recommendation 97 as part of their response to Recommendation 96.*
-  *The Australian Capital Territory Government has mostly implemented Recommendation 97. It does not appear that consultation specifically occurs with Aboriginal and Torres Strait Islander organisations such as the ALS.*

## Recommendation 98

*Those jurisdictions which have not already done so should phase out the use of Justices of the Peace for the determination of charges or for the imposition of penalties for offences.*

### Background information

Justices of the Peace are not judicial officers, but rather, civilians who are authorised to witness and sign statutory declarations, affidavits, and copies of documents. Some jurisdictions have broadened the powers of a Justice of the Peace to support magistrates in the discharge of their duties. The RCIADIC Report observed that Justices of the Peace were more likely to impose custodial sentences than trained judges.

### Responsibility


All State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation


In **New South Wales**, Justices of the Peace do not have these powers.

-  *The New South Wales Government has implemented Recommendation 98; Justices of the Peace do not have the powers listed in this recommendation.*


In **Victoria**, Justices of the Peace do not have these powers.

-  *The Victorian Government has implemented Recommendation 98; Justices of the Peace do not have the powers listed in this recommendation.*


**Queensland** continues to use Justices of the Peace in its Magistrates Court to prevent cases being adjourned for hearing by a Magistrate. A defendant may not be sentenced to more than six months' imprisonment in respect of indictable offences when sentenced in a Magistrates Court constituted in this way. Summary proceedings can be heard by two or more justices.

-  *The Queensland Government has not implemented Recommendation 98; Justices of the Peace still have the powers listed in this recommendation.*


In **South Australia**, Special Justices (Justices of the Peace who undertake further training) sit in the Magistrates and Youth Courts to hear minor matters.

-  *The South Australian Government has not implemented Recommendation 98; Justices of the Peace still have the powers listed in this recommendation.*


In **Western Australia**, two Justices of the Peace may hear matters in the Magistrates Court where the accused has pleaded guilty, under the *Magistrates Court Regulations 2005 (WA)*. Justices of the Peace (a) are required to undertake compulsory tertiary training before the appointment is ratified; (b) cannot impose a sentence of imprisonment without the sentence being confirmed by a magistrate; and (c) have a retirement age of 70 years imposed on them by the Western Australian Attorney-General if presiding in court. The Department of Justice is proactive in recruiting Aboriginal Justices and establishing a more representative mix of Justices of the Peace appointments.

-  *The Western Australian Government has mostly implemented Recommendation 98, although Justices of the Peace are still able to impose a sentence of imprisonment provided that the sentence is confirmed by a magistrate.*


In **Tasmania**, Justices of the Peace do not have these powers.

-  *The Tasmanian Government has implemented Recommendation 98; Justices of the Peace do not have the powers listed in this recommendation.*

In the **Northern Territory**, Justices of the Peace are not used for offences where imprisonment is a penalty.

-  *The Northern Territory Government has partially implemented Recommendation 98; Justices of the Peace still have the powers listed in this recommendation. However, Justices of the Peace are not used for offences where imprisonment is an available sentence.*

In the **Australian Capital Territory**, Justices of the Peace do not have the power to determine charges or impose penalties for offences.

-  *The Australian Capital Territory Government has implemented Recommendation 98; Justices of the Peace do not have the powers listed in this recommendation.*

## Recommendation 99

*That legislation in all jurisdictions should provide that where an Aboriginal defendant appears before a Court and there is doubt as to whether the person has the ability to fully understand proceedings in the English language and is fully able to express himself or herself in the English language, the court be obliged to satisfy itself that the person has that ability. Where there is doubt or reservations as to these matters proceedings should not continue until a competent interpreter is provided to the person without cost to that person.*

### Background information

To ensure a defendant's understanding of court proceedings in the English language, they should be provided with the option of accessing an interpreter without cost. Aboriginal and Torres Strait Islander people's background and use of disappearing languages should be no reason not to provide this service.

### Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation


The federal courts, which the **Commonwealth** has responsibility for, provide translators free of charge for people attending court to ensure that they have the ability to fully understand proceedings in the English language and are fully able to express themselves in the English language. This includes translators for Aboriginal and Torres Strait Islander people.

AGD has been funded to develop a program for the use of interpreters for Aboriginal and Torres Strait Islander people in court. The program involves liaison and consultation with Aboriginal and Torres Strait Islander groups, state and federal courts and relevant legal bodies, such as the ATSILS. These


translation services are provided free-of-charge and assist Aboriginal and Torres Strait Islander people to fully understand proceedings in the English language and to express themselves in the English language.

PM&C noted that the Minister for Indigenous Affairs committed \$5 million in 2016-17 to improve access to Aboriginal and Torres Strait Islander interpreting services, including for the use in courts, and to ensure the ongoing supply of Aboriginal and Torres Strait Islander interpreters.


This is in addition to the Commonwealth's investment through the IAS of \$2.7 million over two years for free legal interpretation for ATSILS and Family Violence Prevention Legal Services in the Northern Territory, and to improve legal interpreting, training, accreditation and support.

 *The Commonwealth has partially implemented Recommendation 99 by providing national funding for a program for interpreters in courts that Aboriginal and Torres Strait Islander people can access without cost as needed. While services are available, it is not clear if testing of whether the services are needed is undertaken.*


Courts in **New South Wales** provide interpreters for defendants who do not speak English under the *Evidence Act 1995* (NSW) s 30. Supporting procedures also implement this recommendation, such as the Local Court Bench Book.

 *The New South Wales Government has partially implemented Recommendation 99, and provides interpreters for defendants who do not speak English under the Evidence Act 1995 (NSW). While services are available, it is not clear if testing of whether the services are needed is undertaken.*


Courts in **Victoria** provide interpreters for defendants who do not speak English under the *Criminal Procedure Act 2009* (Vic) s 335.

 *The Victorian Government has partially implemented Recommendation 99, and provides interpreters for defendants who do not speak English under the Criminal Procedure Act 2009 (Vic). While services are available, it is not clear if testing of whether the services are needed is undertaken.*


Courts in **Queensland** provide interpreters for defendants who do not speak English under the *Evidence Act 1977* (Qld) s 131A. A lawyer acting for an Aboriginal and Torres Strait Islander may also engage an interpreter for the purposes of court proceedings.

 *The Queensland Government has partially implemented Recommendation 99, and provides interpreters for defendants who do not speak English under the Evidence Act 1977 (Qld). A lawyer acting for an Aboriginal and Torres Strait Islander may also engage an interpreter. While services are available, it is not clear if testing of whether the services are needed is undertaken.*


Courts in **South Australia** provide interpreters for defendants who do not speak English under the *Evidence Act 1929* (SA) s 14. Interpreters are provided to defendants upon the defendant notifying the Court that they require an interpreter; the solicitor or police advise that a party to the case requires an interpreter; or it is determined by the Magistrate that an interpreter is required. All interpreters are provided free of charge by the Courts Administration Authority to the party involved in the case.

 *The South Australian Government has partially implemented Recommendation 99, and provides interpreters for defendants who do not speak English under the Evidence Act 1929 (SA). While services are available, it is not clear if testing of whether the services are needed is undertaken.*


Courts in **Western Australia** provide interpreters for defendants who do not speak English under the *Criminal Investigation Act 2006* (WA) ss 137 and 138. Additionally, the *Criminal Procedure Act 2004* (WA) provides for the use of interpreters in court where a witness or defendant is unable to understand or speak English. The Department of Justice has developed a policy for interpreters to be provided for all court and registry dealings as required, at no cost to the offender or other parties to the action.

 *While Recommendation 99 has been partially implemented in Western Australia, it does not appear to be a requirement that trials not commence until an interpreter is provided.*


Courts in **Tasmania** provide interpreters for defendants who do not speak English under the *Evidence Act 2001 (Tas)* ss 26 and 30.

 *The Tasmanian Government has partially implemented Recommendation 99, and provides interpreters for defendants who do not speak English under the Evidence Act 2001 (Tas). While services are available, it is not clear if testing of whether the services are needed is undertaken.*

Courts in the **Northern Territory** provide interpreters for defendants who do not speak English under the *Evidence (National Uniform Legislation) Act 2011 (NT)* s 30. This is also provided for under the *Northern Territory Police General Order – Interpreters and Translators*. The Northern Territory Government funds a dedicated Aboriginal Interpreter Services that covers close to 100 languages and dialects.

 *The Northern Territory Government has implemented Recommendation 99, and provides interpreters for defendants who do not speak English under the Evidence (National Uniform Legislation) Act 2011 (NT) and the Northern Territory Police General Order – Interpreters and Translators.*

Courts in the **Australian Capital Territory** provide interpreters for defendants who do not speak English under the *Evidence Act 2011 (ACT)* s 30. The ACT Government notes that under s 22(2)(a) of the *Human Rights Act 2004 (ACT)* anyone charged with a criminal offence is entitled to have the free assistance of an interpreter if (s)he cannot understand or speak the language used in court. Translation services for domestic and family violence cases are organised through the ACT Aboriginal and Torres Strait Islander support services and reimbursed by the ACT Government under the Translating and Interpreting Services program.

 *The Australian Capital Territory Government has partially implemented Recommendation 99, and provides interpreters for defendants who do not speak English under the Evidence Act 2011 (ACT). While services are available, it is not clear if testing of whether the services are needed is undertaken.*

#### **Additional commentary**

The Commonwealth's 2016-17 investment also included:

- Support for the quality and supply of interpreting provided by existing services in the Kimberley and the Northern Territory;
- A cross-border trial for the provision of interpreting services in the South Australia Anangu Pitjantjatjara Yankunytjatjara Lands and Western Australia Ngaanyatjarra Lands by the Northern Territory Aboriginal Interpreter Service; and
- Provision of training and accreditation to increase the number and quality of accredited Aboriginal and Torres Strait Islander interpreters.

In December 2016, the Commonwealth Ombudsman released an own motion report, *Accessibility of Indigenous Language Interpreters*. This report focused on the use of, and access to, interpreters by Commonwealth agencies. The report found that there has been some progress since 2011. The Australian Government has agreed with the Commonwealth Ombudsman's report recommendations, including the development of Best Practice Principles for interpreting for Aboriginal and Torres Strait Islander people and the establishment of a national model.

While services are available in all states, it is not clear if testing of whether the services are needed is undertaken in practice. Evidence exists that interpreters are not always provided for defendants that require them. For instance, 14.9% of requests from South Australian courts for an Aboriginal and Torres Strait Islander language interpreter were not satisfied in 2010.<sup>23</sup> The significant number of

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<sup>23</sup> Statistics from Multicultural SA, cited in Paper Tracker (2011) Royal Commission: access to interpreters <http://www.papertracker.com.au/archived/royal-commission-access-to-interpreters/>



Aboriginal and Torres Strait Islander languages in Australia with a declining number of speakers poses an ongoing barrier to implementation.

### Recommendation 100

*That governments should take more positive steps to recruit and train Aboriginal people as court staff and interpreters in locations where significant numbers of Aboriginal people appear before the courts.*

#### Background information

The employment of Aboriginal and Torres Strait Islander people in the Australian justice system is important to ensure the perception and ruling of a non-biased court system.

#### Responsibility

The Commonwealth and all State and Territory governments are responsible for this recommendation.

#### Key actions taken and status of implementation


The **Commonwealth** initially referred Recommendation 100 to the Chief Executive Officers of the federal courts, for implementation by the courts (*Annual Report 1992-93*).

The Federal Circuit Court has developed a Reconciliation Action Plan, which includes developing opportunities for members of the Aboriginal and Torres Strait Islander community to enhance their educational and career prospects, through offering placements and work experience opportunities for law students/graduates and through establishing traineeships and work experience for other Aboriginal and Torres Strait Islander people.


The Family Court through its *Indigenous Plan 2014–2016* has created Aboriginal and Torres Strait Islander positions and is in the process of developing a Reconciliation Action Plan.

AGD noted that federal courts provide information in their annual reports on the Aboriginal and Torres Strait Islander status of their employees. As at 30 June 2016, there were nine employees in the Federal Court and seven employees in the Family Court/Federal Circuit Court. These reports do not report corresponding information on the location of employees.


Additional funding and support for interpreters has been provided, see Recommendation 99.

 *Recommendation 100 has been mostly implemented through the actions taken by the Federal courts. However, work is ongoing to develop measures to recruit and train Aboriginal and Torres Strait Islander people as court staff.*


In **New South Wales**, the Attorney General's Department implemented an Aboriginal and Torres Strait Islander Employment Strategy leading to a 4% increase in Aboriginal staff numbers by 2013. The Department of Justice has also established plans to increase employment of Aboriginal people across the justice cluster including in Courts, including through the Aboriginal and Torres Strait Islander Employment Strategy 2015-2017.

 *The New South Wales Government has implemented Recommendation 100 through ongoing strategies to increase Aboriginal employment in the justice system.*


In **Victoria**, Aboriginal Bail Officers, and Koori Liaison Officers in both the Magistrates and Supreme Courts form part of an ongoing strategy to increase Aboriginal and Torres Strait Islander employment in the state's justice system. The continued implementation of this recommendation has been encouraged by the Department of Justice's *Koori Employment Strategy 2011-15*, outlined in AJA 3, which seeks to increase Aboriginal and Torres Strait Islander employment in the justice system.

 *The Victorian Government has implemented Recommendation 100 through ongoing strategies to increase Aboriginal and Torres Strait Islander employment in the justice system.*

The **Queensland** Department of Justice and Attorney-General has developed and implemented an Aboriginal and Torres Strait Islander Trainee Employment Strategy, focusing on areas where significant numbers of Aboriginal people appear before the courts. This incorporates efforts to recruit and train Aboriginal and Torres Strait Islander officers.

 *The Queensland Government has implemented Recommendation 100 through Department of Justice and Attorney-General's Aboriginal and Torres Strait Islander Trainee Employment Strategy.*


In **South Australia**, the Courts Administration Authority observed difficulty in obtaining suitable Aboriginal staff in 1994 in response to the RCIADIC Report. Currently, the South Australian Government encourages Aboriginal and Torres Strait Islander people to apply for jobs, and employs a number of Aboriginal Justice Officers to assist Aboriginal and Torres Strait Islander court users with information and support.

 *The South Australian Government has partially implemented Recommendation 100 through the employment of Aboriginal Justice Officers. However, no specific program appears to have been implemented in response to this recommendation.*


In **Western Australia**, the Department of Corrective Services increased the number of permanent Indigenous staff to 4.7% in 2014. The Western Australian Government has also implemented a broader Aboriginal Employment Strategy, with apparent success in increasing the number of Aboriginal and Torres Strait Islander individuals in public service employment.

Aboriginal Liaison Officers are employed to provide assistance and advice to Aboriginal and Torres Strait Islander people involved in court processes, to provide cultural advice to judicial officers and court employees, and to work collaboratively with other service providers and Aboriginal and Torres Strait Islander communities to address underlying issues and reduce recidivism.


The Department of Justice is seeking to increase the number of Aboriginal and Torres Strait Islander employees across the sector, through strategies identified in the Reconciliation Action Plan, with a strong focus on non-metropolitan areas.

 *The Western Australian Government has implemented Recommendation 100 through the introduction of employment plans and other initiatives to increase the employment of Aboriginal and Torres Strait Islander people in the justice system.*


In **Tasmania**, Aboriginal and Torres Strait Islander interpreters are not generally necessary because very few individuals in the State use traditional languages in day-to-day engagement. An Aboriginal Court Support Officer is available to Aboriginal people who appear before the courts.

 *The Tasmanian Government has partially implemented Recommendation 100 through providing an Aboriginal Court Support Officer. However, there does not appear to have been specific actions taken towards implementing this recommendation*

In the **Northern Territory**, Aboriginal and Torres Strait Islander employees have made up an increasing number of the employees of the Department of Justice in recent years. The Northern Territory Public Service has adopted an Indigenous Employment and Career Development Strategy which, in conjunction with the introduction of a Special Measures Plan, seeks to promote equal employment opportunities for Aboriginal and Torres Strait Islander people. A special measure is a form of more favourable treatment of certain groups, such as the introduction of plans by the Department of Attorney-General and Justice to promote greater workplace diversity and to address inequality of employment opportunity.

 *The Northern Territory Government has mostly implemented Recommendation 100, through an increased employment of Aboriginal and Torres Strait Islander people in the Department of Justice. However, there does not appear to have been specific actions taken towards implementing this recommendation among court staff and interpreters.*

In the **Australian Capital Territory**, efforts have been ongoing to increase the number of Aboriginal and Torres Strait Islander individuals working in the Justice and Community Safety Directorate from 2012, with an overall increase from less than 1 percent in 2012 to 1.7 percent in 2015. The ACT Government notes that the ACTCT has an inclusion Employment Plan; however, no further information was located on this.

 *The Australian Capital Territory Government has partially implemented Recommendation 100 through ongoing strategies to increase Aboriginal and Torres Strait Islander employment in the justice system. However, there does not appear to have been specific actions taken towards implementing this recommendation.*

## **Recommendation 101**

*That authorities concerned with the administration of non-custodial sentencing orders take responsibility for advising sentencing authorities as to the scope and effectiveness of such programs.*

### **Background information**


The RCIADIC Report indicated that sentencing authorities are more likely to use non-custodial options if they are given explicit guidance on their use and results.

### **Responsibility**


All State and Territory governments are responsible for this recommendation.

### **Key actions taken and status of implementation**


In **New South Wales**, the results of non-custodial program reviews are provided to judicial officers. Non-custodial sentencing options have been regularly evaluated by the Bureau of Crime Statistics and Research. The recent sentencing reforms enacted in NSW include comprehensive evaluation of community based sentencing options including performance for Aboriginal people.

 *The New South Wales Government has implemented Recommendation 101. The Bureau of Crime Statistics and Research regularly evaluates non-custodial sentencing options.*


In **Victoria**, the Community Based Corrections team advise magistrates and judges on consistency of sentencing and on least-restrictive appropriate sentencing options for given offenders. The Victorian Government also noted in AJA 3 that support would be provided to expand Community Corrections based delivery of culturally specific programs, aligned to the identified needs of Aboriginal and Torres Strait Islander offenders.

 *The Victorian Government has implemented Recommendation 101. The Community Based Corrections team advises sentencing authorities on matters related to the administration of non-custodial sentencing orders.*


In **Queensland**, a Community Corrections Policy and Procedures manual was already provided to judiciary and to magistrates prior to the RCIADIC Report. In addition, the Queensland Government publishes educational material for the public about the benefits of non-custodial orders. Probation and Parole's Court Advisory Service and regional managers state-wide work closely with local Magistrates and Judges. Probation and Parole also provides advice to the court via verbal and written Pre-Sentence Reports which cover the different community supervision options available and the suitability of the offender for such options. These reports can also detail the different rehabilitative programs available in the community.

 *The Queensland Government has implemented Recommendation 101 through the Community Corrections Policy and Procedures Manual, the ongoing publication of educational material on the benefits of non-custodial orders, and the function of Probation and Parole's Court Advisory Service.*


In **South Australia**, judicial officers are provided with information about departmental programs including relevant statistics on non-custodial programs. The Department for Correctional Services compiles information which identifies the scope and effectiveness of community-based orders requiring supervision by order of the Courts. Regular meetings occur between Community Youth Justice, the judiciary, SA Police Prosecutions, Legal Services Commission, and Aboriginal Legal Rights Movement to ensure the ongoing scope and effectiveness of community youth justice programs.

 *The South Australian Government has implemented Recommendation 101 through ongoing meeting and reporting arrangements.*


In **Western Australia** judicial officers engage in regular consultation with the Community Based Services team and are informed of statistical outcomes for non-custodial programs. There is ongoing monitoring and reporting to the courts, parole and release boards on the overall progress with community-based orders in terms of their completion rates, individual engagement with order requirements, engagement with the community, and the programs undertaken. Comprehensive statistics are generated quarterly, and made available to inform the judiciary.

 *The Western Australian Government has implemented Recommendation 101 through ongoing monitoring and reporting activities in relation to community-based orders.*

In **Tasmania**, regular meetings between Corrective Services and the Chief Magistrate involve discussions around effectiveness of non-custodial sentencing programs. Tasmania Community Corrections reports back on the success of individual cases; however, there is currently no formal mechanism to report to sentencing authorities on the overall effectiveness of programs.


 *The Tasmanian Government has mostly implemented Recommendation 101 through meetings between the Corrective Services and Chief Magistrate, and Tasmania Community Corrections reporting requirements. However, there is no formal mechanism to report to sentencing authorities on the overall effectiveness of programs.*

In the **Northern Territory**, Correctional Services informs magistrates and judges about the statistics relating to community-based programs. Community Corrections staff attend most urban and circuit court sitting in the Northern Territory and provide oral or written reports to the court on sentencing options available in that location, including availability of programs. Courts also receive compliance (progress) reports on offenders returning to courts. Community Corrections managers attend Court Users Forum Meetings with judiciary to provide feedback, and high level meetings occur with the Chief Judge of the Local Court that include information on current programs and initiatives.

 *The Northern Territory Government has implemented Recommendation 101. Community Corrections Staff attend urban and circuit court sitting and provide oral or written reports advising on sentencing options.*

In the **Australian Capital Territory**, ACT Corrective Services provide Pre-Sentence reports which indicate appropriate programs and sentencing options available, and include information such as an offender's cultural background, any prior sentences, and education history. The Aboriginal Client Support Officer helps to advise the Galambany Circle Sentencing Court on issues relating to relevant corrections clients, as well as working collaboratively with Aboriginal and Torres Strait Islander organisations.

The ACT Government is also developing a trial of a new style of report (modelled on Canadian 'Gladue reports' to be called 'Ngattai reports') that would give the sentencing court further information about culturally appropriate rehabilitation options available in the community for Aboriginal and Torres Strait Islander offenders.

 *The Australian Capital Territory Government has partially implemented Recommendation 101, however it does not appear that advice incorporates the effectiveness of non-custodial programs.*

## **Recommendation 102**

*That, in the first instance, proceedings for a breach of a non-custodial order should ordinarily be commenced by summons or attendance notice and not by arrest of the offender.*

### **Background information**


In line with Recommendation 87 (that arrest is a measure of last resort), arrests should only be made for individuals who are otherwise unlikely to appear in court. Avoiding arrest diverts individuals from police custody.

### **Responsibility**


All State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation

In **New South Wales**, summons or attendance notices are the ordinary course for dealing with a breach of a non-custodial order. Under the Sentencing and Parole reforms which passed Parliament in October 2017, a legislative sanctions regime will be introduced for parole orders and intensive correction orders whereby the parole authority and Community Corrections officers will have clear authority to deal with lower level breaches in the community as an alternative to revoking the order.


 *The New South Wales Government has implemented Recommendation 102. Summons are the first instance response to a breach of a non-custodial order when the offender's whereabouts are known.*

In **Victoria**, summons are the first instance response to a breach of a non-custodial order when the offender's whereabouts are known. Breaches of Parole Orders and Pre-Release Permits, however, must be followed by the issue of an arrest warrant. Warrants for arrest are also issued for non-payment of fines, but arrests are not effected until a person has had an opportunity to go to court to request to pay the fine in instalments, seek time to pay, or consent to a community based order as an alternative.


 *The Victorian Government has mostly implemented Recommendation 102. While summons are the first instance response to a breach of a non-custodial order when the offender's whereabouts are known, they are not the first instance response when the offender cannot be located.*

In **Queensland**, the *Penalties and Sentences Act 1992* (Qld) permits proceedings for a breach of a community based order to be commenced by complaint and summons rather than complaint and warrant unless the offender cannot be located. When a child contravenes a community-based order they must first be issued with a warning under section 237 of the *Youth Justice Act 1992* (Qld). If they continue to contravene, Youth Justice may bring action by way of a complaint and summons served on the child (s238).


A warrant may only be issued if a child fails to appear or their whereabouts are unknown and cannot be reasonably determined. The Queensland Government notes that issuing a complaint and summons for a person where their whereabouts are unknown results in duplication of resources due to a summons requiring the matter to be listed at court for hearing. The offender is considered unlikely to show as the summons would have been mailed to the last known address. The Court is then required to issue a warrant in relation to the summons.

 *The Queensland Government has mostly implemented Recommendation 102 under the *Penalties and Sentences Act 1992* (Qld). While summons are the first instance response to a breach of a non-custodial order when the offender's whereabouts are known, they are not the first instance response when the offender cannot be located.*


In **South Australia**, courts still have discretion to issue either a warrant for arrest or a summons for breaches of bond or community service orders.

 *The South Australian Government has not implemented Recommendation 102. Courts still have discretion to issue either a warrant for arrest or a summons for breaches of bond or community service order.*


In **Western Australia**, the policy of Community Based Services is to issue warrants for arrest as a last resort. The Department of Justice has contracted process servers to search for all adult absentee offenders to ensure that all possible efforts have been made before issuing a warrant. Matters before the Children's Court may be commenced by way of a notice to attend. Young people who are dealt with by the Supervised Release Board or the Children's Court for breaches may be subject to warrants, however the Western Australian Government notes that this is the least favoured method.

 *Recommendation 102 has been implemented in Western Australia, with warrants only used for juveniles as a last resort.*


In **Tasmania**, a breach of a non-custodial order should be followed in the first instance by summons or attendance notice.

 *The Tasmanian Government has implemented Recommendation 102 and comments that a breach of a non-custodial order should be followed in the first instance by summons or attendance notice.*

In the **Northern Territory**, a breach of a non-custodial order should be followed in the first instance by summons or attendance notice. It is the Northern Territory Government's position that the only time a summons would not be used in the first instance is where the location of an offender is unknown and corrections staff have exhausted all options for contacting the offender. An affidavit is required in these instances. A warrant can be issued where the court is satisfied the offender may not appear. Recommendation 102 has also been incorporated to the *International Operational Guidelines* and the *Standard Guidelines for Corrections in Australia*.

 *The Northern Territory Government has mostly implemented Recommendation 102. While summons are the first instance response to a breach of a non-custodial order when the offender's whereabouts are known, they are not the first instance response when the offender cannot be located.*

In the **Australian Capital Territory**, a court may only issue summons in the first instance for offenders who have breached good behaviour obligations. Only after an individual has failed to comply with summons will an arrest warrant be issued.

 *The Australian Capital Territory Government has implemented Recommendation 102, and a court may only issue summons in the first instance for offenders who have breached good behaviour bonds.*

## Recommendation 103

*That in jurisdictions where a Community Service Order may be 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.*

### Background information


Individuals who cannot afford to pay a fine may incur either community service or imprisonment sentences for their default. These sentences are calculated in proportion to the dollar value of the fine. This Recommendation is aimed at ensuring that there is no incentive for an individual to request a custodial sentence over a community service order.

### Responsibility


All State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation

In **New South Wales**, an eight-hour day of community service is equal to the dollar value of a day of imprisonment under the *Fines Act 1996* (NSW), Part 4, Division 5.


 *The New South Wales Government has mostly implemented Recommendation 103. Under the *Fines Act 1996* (NSW), one day of community service is equal to the dollar value of one day of imprisonment. This does not satisfy the requirement in this recommendation that the dollar value of a day's community service be greater than the dollar value of a day served in prison.*

In **Victoria**, five hours of community service is equal to the dollar value of a day of imprisonment under the *Sentencing Act 1991* s 63.


 *The Victorian Government has implemented Recommendation 103 through the *Sentencing Act 1991*, which provides that the dollar value of a day of community service is greater than the dollar value of a day of imprisonment.*

In **Queensland**, a community service order cannot be imposed for a fine default. Fines can be converted to community service under the *Penalties and Sentences Act 1992* (Qld) and the *State Penalties Enforcement Act 1999* (Qld) through a fine option order. Currently, ten hours of community


services is equal to the dollar value of 14 days of imprisonment. Neither Act permits community service to be imposed; it must be requested by the offender.

 *The Queensland Government has implemented Recommendation 103 through the Penalties and Sentences Act 1992 (Qld) and the State Penalties Enforcement Act 1999 (Qld). Ten hours of community services is equal to the dollar value of 14 days of imprisonment.*


In **South Australia**, one day of community service is equal to the dollar value of one day of imprisonment under s 47 of the *Fines Enforcement and Debt Recovery Act 2017* (SA). Repay SA provides an avenue for offenders to repay their debt to society through supervised community work projects. It is an opportunity at making a positive contribution to their community.

 *The South Australian Government has mostly implemented Recommendation 103. Under s 47 of the Fines Enforcement and Debt Recovery Act 2017 (SA), one day of community service is equal to the dollar value of one day of imprisonment. This does not satisfy the requirement in this recommendation that the dollar value of a day's community service be greater than the dollar value of a day served in prison.*


In **Western Australia**, the conversion rate of fines served through a Work and Development Order is \$300 per six hour day, whereas the cut-out rate for fines served while incarcerated is \$250 per day.

 *The Western Australian Government has implemented Recommendation 103, as the conversion rates for fines served through a Work and Development Order is higher than the value of fines served while incarcerated.*


In **Tasmania**, a seven-hour day of community service is equal to the dollar value of a day of imprisonment under the *Monetary Penalties Enforcement Act 2005* (Tas) ss 27 to 38.

 *The Tasmanian Government has mostly implemented Recommendation 103. Under the Monetary Penalties Enforcement Act 2005 (Tas) the dollar value of a day of community work is equal to the dollar value of a day in prison serving for fine default. This does not satisfy the requirement in this recommendation that the dollar value of a day's community service be greater than the dollar value of a day served in prison.*

In the **Northern Territory**, the dollar value of a day of imprisonment is established under the *Fines and Penalties (Recovery) Act* (NT) ss 14 and 15. The Northern Territory Government notes that the current conversion rate from fines to community work is \$38.50 (0.25 of a penalty unit) per one hour of community work, and that the dollar value of a day in prison is equal to 2 penalty units. This means that an 8 hour day is equal to a day in prison serving for fine default.

 *The Northern Territory Government has mostly implemented Recommendation 103. Under the Fines and Penalties (Recovery) Act (NT) the dollar value of a day of community work is equal to the dollar value of a day in prison serving for fine default. This does not satisfy the requirement in this recommendation that the dollar value of a day's community service be greater than the dollar value of a day served in prison.*

In the **Australian Capital Territory**, under the *Crimes (Sentence Administration) Act 2005* (ACT) s 116ZG a fine defaulter performing work under a voluntary community work order discharges their outstanding fine at an hourly rate of \$37.50 up to a maximum of 8 hours, or \$300, per day. Section 116ZM of the Act states that the rate of discharge of the outstanding fine for a fine defaulter is \$300 per day for which the defaulter is imprisoned. For a fine defaulter under 18 years at the time of the offence, the rate is \$500 for each day for which the person is imprisoned. This means that the rate of fine discharge is quicker for a young person under an imprisonment order than a young person on a voluntary community work order.

 *The Australian Capital Territory has partially implemented Recommendation 103 through the Crimes (Sentencing Administration) Act 2005 (ACT). However, the rate of fine discharge for a young person is faster under an imprisonment order than under a voluntary community work order.*

## Recommendation 104

*That in the case of discrete or remote communities sentencing authorities consult with Aboriginal communities and organisations as to the general range of sentences which the community considers appropriate for offences committed within the communities by members of those communities and, further, that subject to preserving the civil and legal rights of offenders and victims such consultation should in appropriate circumstances relate to sentences in individual cases.*

### Background information


This Recommendation is aimed at integrating Aboriginal and Torres Strait Islander consultation into the sentencing process.

### Responsibility

All State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation


In **New South Wales**, pre-court and post-court offence resolution mechanisms including the provision of pre-sentencing reports involve consultation with Aboriginal communities, but these do not inform sentencing. Circle Sentencing is also available for eligible Aboriginal people across NSW. The Circle includes at least three Aboriginal people from the relevant community and it determines an intervention plan for an offender and it may make recommendations as to sentence.

 *The New South Wales Government has partially implemented Recommendation 104 as consultations do not form a part of sentencing decisions except in cases that are resolved through circle sentencing.*


In **Victoria**, consultation is undertaken through Aboriginal Liaison Officers during the court advice process, but this does not necessarily form part of the sentencing decisions for a court. As noted in AJA 3, the Victorian Government has engaged with the views of local Aboriginal and Torres Strait Islander communities in informing the enhancement of Community Corrections based programs under the Sentencing Reform Implementation Program.

The Victorian Government also introduced Koori Court Officers in Koori Court process who contribute during the hearing to ensure that court orders are appropriate to the cultural needs of the Koori accused. Aboriginal Elders or Respected Persons sit with the presiding magistrate and provide cultural advice regarding the accused's background, and possible reasons for the offending behaviour. They may also advise on cultural practices, protocols and perspectives relevant to sentencing. Examples of support given by Aboriginal Elders or Respected Persons include:

- providing assistance and advice to the presiding Magistrate and judicial officers on Aboriginal cultural and community matters;
- reinforcing cultural values and perspectives of the Aboriginal community to the accused in relation to their offending behaviour; and
- working with Koori Court staff, in particular the Koori Court Officer, to gain knowledge of the local services and programs available to Aboriginal accused.


 *The Victorian Government has mostly implemented Recommendation 104 through the work of Aboriginal Liaison Officers, and the Sentencing Reform Implementation Program introduced under AJA 3. However, there is no evidence that Aboriginal and Torres Strait Islander views will be consulted in relation to individual cases.*

In **Queensland**, under the section 9(2)(p) of the *Penalties and Sentences Act 1992 (Qld)*, when sentencing an Aboriginal and Torres Strait Islander defendant a court must take into account any submission made by a Community Justice Group that is relevant to sentencing the offender, including the offender's relationship to the community, any cultural consideration, and any programs or services established for offenders in which the community justice group participates.


 *The Queensland Government has implemented Recommendation 104 through the *Penalties and Sentences Act 1992 (Qld)*, which requires that any submission made by a Community Justice Group be considered when sentencing an Aboriginal and Torres Strait Islander defendant.*




In **South Australia**, as a matter of policy, consultation with Aboriginal communities form part of sentencing decisions. The court conducts circuits to Aboriginal communities on a regular basis and has done so for many years. At the Yalata Anangu Court a Magistrate sits with two Elders and consults the Elders about the appropriate penalty before imposing a sentence. The Elders also engage with the defendant and explain why the offending was wrong and the impact is on community.

 *The South Australian Government has implemented Recommendation 104. As a matter of policy, consultation with Aboriginal and Torres Strait Islander communities forms a part of sentencing decisions.*


In **Western Australia**, current practice is to obtain input from Aboriginal and Torres Strait Islander communities on the range of sentences considered appropriate for particular offences. However, the variety and diversity of communities means that this consultation is not always feasible. Community Corrections Officers and Juvenile Justice Officers are available to provide advice to all courts at all levels and to liaise with the communities and report back to the courts. Access is also provided to the communities for members of the judiciary who are interested in meeting with elders and visiting communities.

 *The Western Australian Government has partially implemented Recommendation 104 through occasional consulting with Aboriginal and Torres Strait Islander communities. However, the extent to which this occurs in practice is unclear.*


In **Tasmania**, Aboriginal and Torres Strait Islander communities are consulted “on occasion” on programs appropriate for Aboriginal and Torres Strait Islander individuals. There does not appear to be programs for Aboriginal and Torres Strait Islander community consultation in sentencing decisions.

 *The Tasmanian Government has partially implemented Recommendation 104 through “on occasion” consulting of Aboriginal and Torres Strait Islander individuals. It does not appear that there exist programs for Aboriginal and Torres Strait Islander community consultation in sentencing decisions.*

In the **Northern Territory**, circuit courts in Aboriginal and Torres Strait Islander communities informally consult with individuals and organisations to obtain information for sentencing decisions. Aboriginal and Torres Strait Islander elders participate in the hearing process where appropriate and judicial officers have discretion to take into account Aboriginal and Torres Strait Islander heritage and customs in selecting a sentence. Some Local Court Judges do sit in Community Courts where community members do participate and advise the Court on sentencing. Pre-sentence reports from Community Corrections also address community and family attitudes in individual cases.

 *The Northern Territory Government has implemented Recommendation 104 through informal consultation with Aboriginal and Torres Strait Islander individuals and communities to obtain information for sentencing decisions. Elders are also provided the option to participate in the hearing process where appropriate.*

The **Australian Capital Territory** does not consider this recommendation applicable as there are no discrete or remote Aboriginal and Torres Strait Islander communities in the Territory.

 *The Australian Capital Territory Government does not consider Recommendation 104 relevant to this jurisdiction.*

## **Recommendation 105**

*That in providing funding to Aboriginal Legal Services governments should recognise that Aboriginal Legal Services have a wider role to perform than their immediate task of ensuring the representation and provision of legal advice to Aboriginal persons. The role of the Aboriginal Legal Services includes investigation and research into areas of law reform in both criminal and civil fields which relate to the involvement of Aboriginal people in the system of justice in Australia. In fulfilling this role Aboriginal Legal Services require access to, and the opportunity to conduct, research.*

### Background information

Legal Services and research into law reform that benefit Aboriginal and Torres Strait Islander people is important to address their overrepresentation in the Australian justice system.

### Responsibility

This recommendation is solely the responsibility of the Commonwealth Government.


### Key actions taken and status of implementation

The **Commonwealth** provided \$9 million of additional funding to the ALSs in the 1993-94 financial year to enhance services including investigations and research into areas of law reform. The additional funding was to continue for the following three years (*Annual Report 1993-94*).

Ongoing implementation of Recommendation 105 is supported by the Commonwealth's continued funding of legal support services for Aboriginal and Torres Strait Islander people. This includes funding to ATSILS under the *Indigenous Legal Assistance Program* (\$370 million from 2015 to 2020). The funding agreements with the ATSILS do not include a restriction on public commentary, research, policy reform work or making submissions to government bodies or inquiries. However, the Government has determined that funding priority should be given to the delivery of front-line legal services to help disadvantaged Aboriginal and Torres Strait Islander people resolve their legal problems.

AGD also provides funding to the National Aboriginal and Torres Strait Islander Legal Services (NATSILS). NATSILS is the peak body for ATSILS and facilitates effective engagement and collaboration across the sector and government and provides constructive policy advice and research.

PM&C also provides funding to maintain the Family Violence Prevention Legal Services Secretariat. This provides the Services with a national voice and the ability to provide research, policy advice and capacity building across the sector.

 *Recommendation 105 has been implemented by the Commonwealth through an increase in funding for legal services for Aboriginal and Torres Strait Islander people and funding for NATSILS.*

## Recommendation 106

*That Aboriginal Legal Services recognise the need for maintaining close contact with the Aboriginal communities which they serve. It should be recognised that where charges are laid against individuals there may be a conflict of interests between the rights of the individual and the interests of the Aboriginal community as perceived by that community; in such cases arrangements may need to be made to ensure that both interests are separately represented and presented to the court. Funding authorities should recognise that such conflicts of interest may require separate legal representation for the individual and the community.*

### Background information

The RCIADIC Report indicated that the most important safeguard to the rights of Aboriginal and Torres Strait Islander people, especially given their current overrepresentation in prison, was the provision of competent legal representation.

### Responsibility

This recommendation is solely the responsibility of the Commonwealth Government.

### Key actions taken and status of implementation


The additional funding provided by the **Commonwealth** Government to the ATSILSs outlined in the actions from Recommendation 105 is also aimed to address Recommendation 106. Currently, the eight AITSILS are funded under the *Indigenous Legal Assistance Program* to deliver services at a number of permanent sites, court circuits and outreach locations in urban, rural and remote areas (\$370 million from 2015 to 2020).

AGD requires that Aboriginal and Torres Strait Islander legal assistance providers have strong links to the communities which they service. These links assist with identifying legal need within the

community. The Commonwealth provides funding for legal assistance and women's legal services to supplement the AGD's initiatives in the Northern Territory. AGD noted that it is a matter for each individual provider to manage conflicts of interest.

The Family Violence Prevention Legal Services program was established in 1998 by ATSIC to provide culturally appropriate legal assistance to victims of family violence and/or sexual assault. Now administered by PM&C, the program now supports 14 service providers who are located in regional and remote areas across Australia. The Commonwealth has provided support of over \$92 million to these Services over the four years through to 30 June 2018.

Additional funding has also been provided under the Third Action Plan to Reduce Violence against Women and their Children. This funding will increase the capacity of the program to deliver holistic, case managed crisis support to Aboriginal and Torres Strait Islander women and children experiencing family violence.

 *The Commonwealth has implemented Recommendation 106. Funding is provided for legal services in urban, rural and remote communities and providers are required to have strong links with the community and manage conflicts of interest.*

## **Recommendation 107**

*That in order that Aboriginal Legal Services may maintain close contact with, and efficiently serve Aboriginal communities, weight should be attached to community wishes for autonomous regional services or for the regional location of solicitors and field officers.*

### **Background information**

The provision of legal services for Aboriginal and Torres Strait Islander people is important in reducing their overrepresentation in prison. In doing this, it is important to consult and work with the communities in which ALS are likely to be working heavily with.


### **Responsibility**

This recommendation is solely the responsibility of the Commonwealth Government.

### **Key actions taken and status of implementation**

There are eight Aboriginal and Torres Strait Islander legal assistance providers nationally which deliver services from 65 permanent locations in regional and remote areas, as well as court circuits, bush courts and outreach locations. AGD noted that in 2015-16 more than 66 per cent of services nationally are delivered in regional and remote areas of Australia.

The **Commonwealth** Government's AGD acknowledges that ATSILS are best placed to identify the needs of Aboriginal and Torres Strait Islander people and appropriate service approaches. Accordingly, ATSILS have flexibility in their planning, consultation and delivery approaches to ensure the wishes of Aboriginal and Torres Strait Islander communities have been met.

 *Recommendation 107 has been implemented by the Commonwealth through the provision of legal services for Aboriginal and Torres Strait Islander people in regional and remote areas.*

## **Recommendation 108**

*That it be recognised by Aboriginal Legal Services, funding authorities and courts that lawyers cannot adequately represent clients unless they have adequate time to take instructions and prepare cases, and that this is a special problem in communities without access to lawyers other than at the time of court hearings.*

### **Background information**

The RCAIDIC noted the difficulties faced by Aboriginal and Torres Strait Islander communities in accessing the court system. Legal representation is a significant determinant of court outcomes.

## Responsibility


The Commonwealth, and all State and Territory governments are responsible for this recommendation.

## Key actions taken and status of implementation


The **Commonwealth's** AGD noted that the Federal Circuit Court facilitates access to justice to regional communities through its circuit program. The Court sat in 30 locations across Australia on 165 occasions in 2015-16.

In addition, the Federal Circuit Court began implementing its Reconciliation Action Plan (RAP) which outlines how the Court engages with Aboriginal and Torres Strait Islander communities in order to improve legal access for members of these communities. Federal Circuit Court judges have also assisted with establishing regional family law pathways networks with a focus on Aboriginal and Torres Strait Islander law. This included conducting a 'Roadshow' in Redfern and Broken Hill, attended by community members and judges of the Federal Circuit Court.


Legal services are also provided across Australia (see Recommendation 107).

 *The Commonwealth has implemented Recommendation 108 through the work of the Federal Circuit Court.*


In **New South Wales**, magistrates balance the need to conduct court lists in a just and expeditious manner with the heavy demand placed on ATSILS and Legal Aid solicitors, and may permit solicitors who have not had adequate time to take instructions to obtain an adjournment. NSW administers the funding for the legal aid commission through the National Partnership Agreement. The Aboriginal Legal Services is funded by the Commonwealth directly.

 *The New South Wales Government has implemented Recommendation 108 through enabling solicitors to attain an adjournment in certain cases.*


In **Victoria**, Aboriginal Community Justice Panel members provide support for Aboriginal and Torres Strait Islander people who are appearing in court in addition to that provided by the Victorian ATSILS. Courts have a general discretion to adjourn a matter where it is in the interests of justice to do so (for instance, where a solicitor has not had an opportunity to take instructions).

 *The Victorian Government has implemented Recommendation 108 through the function of the Aboriginal Community Justice Panel in providing support for Aboriginal and Torres Strait Islander people appearing in court.*


The **Queensland** Government considers that funding of ATSILS is a Commonwealth responsibility. Courts have a general discretion to adjourn a matter where it is in the interests of justice to do so (for instance, where a solicitor has not had an opportunity to take instructions). The Queensland Government contends that the recommendation does not provide that the court must have specific directions to follow when deciding on case adjournment, and that the court continually recognises the difficulty in lawyers taking instructions in remote or regional communities.

 *While ATSILS funding is not considered by the Queensland Government to be within their responsibility, the Queensland Government has partially implemented this recommendation through a general discretion to adjourn cases. However, there are no specific directions to follow when deciding on case adjournment.*


**South Australia** has recognised that the shortfall in funding for ATSILS creates court delays but has not implemented any responses to this. Magistrates who circuit to remote communities recognise the time constraints that the lawyers have with their clients due to remoteness and lack of access to communication facilities.

 *The South Australian Government has partially implemented Recommendation 108. While the South Australian Government and Magistrates recognise that recognise the time constraints that lawyers have with their clients. However, there does not appear to have been a specific response to these issues.*


The **Western Australian** Government considers that funding of ATSILS is a Commonwealth responsibility. Courts have a general discretion to adjourn a matter where it is in the interests of justice to do so (for instance, where a solicitor has not had an opportunity to take instructions). The Western Australian Government notes that judicial officers recognise that lawyers cannot adequately represent clients unless they have time to take instructions and prepare cases, and that judicial officers ordinarily allow a defendant an adjournment to provide an opportunity to give full instructions to their counsel.

 *The Western Australian Government has mostly implemented Recommendation 108, however it does not appear that the principles of this recommendation have been incorporated to formal policy or legislation.*


In **Tasmania**, courts have a general discretion to adjourn a matter where it is in the interests of justice to do so (for instance, where a solicitor has not had an opportunity to take instructions). It is court practice that no trial proceeds until such time as the defendant is ready to plead, even if multiple adjournments have already occurred.

 *The Tasmanian Government has implemented Recommendation 108, allowing as a matter of course for courts to adjourn a court where it is in the interest of justice to do so and that no trial proceeds until the defendant is ready to plead.*

The **Northern Territory** considers funding of ATSILS, and this recommendation broadly, a Commonwealth responsibility. The Northern Territory Government funds the Northern Territory Legal Aid Commission which provides legal services for all Territorians, including Aboriginal and Torres Strait Islander people. The Northern Territory Government has increased funding to the Commission from \$4.91 million in the 2013/14 financial year, to \$6.11 million in the 2017/18 financial year. The Northern Territory Government has also invested in a specialist approach to domestic violence matters in the Alice Springs Local Court, which aims to better meet the needs of Aboriginal court users, including defendants and witnesses.

 *The Northern Territory Government does not appear to have taken action towards making provisions for cases to be adjourned as called for Recommendation 108, noting that the Northern Territory Government considers implementation of this recommendation to be the responsibility of the Commonwealth.*

The **Australian Capital Territory** considers funding of ATSILS, and this recommendation broadly, a Commonwealth responsibility. The ACT Government follows the Model Litigant Guidelines, which require that they do not take unfair advantage of a claimant who lacks the resources to litigate a legitimate claim.

 *The Australian Capital Territory Government does not appear to have taken action towards making provisions for cases to be adjourned as called for Recommendation 108, noting that the Australian Capital Territory Government considers implementation of this recommendation to be the responsibility of the Commonwealth.*

## Recommendation 109

*That State and Territory Governments examine the range of non-custodial sentencing options available in each jurisdiction with a view to ensuring that an appropriate range of such options is available.*

### Background information

Alternatives to custody that still achieve the overarching aims of the criminal justice system (including general deterrence and rehabilitation) help to reduce the number of Aboriginal and Torres Strait Islander individuals in prison.

### Responsibility

All State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation

In **New South Wales**, the NSW Law Reform Commission reviewed the sentencing considerations necessary for certain groups of offenders, including Aboriginal individuals. A number of alternatives to incarceration have been implemented by the NSW Government.

● *The New South Wales Government has implemented Recommendation 109 through the function of the NSW Law Reform Commission and the implementation of alternative sentencing options.*

In **Victoria**, the Victorian Sentencing Advisory Council consults and advises on sentencing matters, including non-custodial options. Additionally, the Sentencing Reform Implementation Program outlined as part of the Victorian Government's response to Recommendation 104 also applies to this recommendation.

● *The Victorian Government has implemented Recommendation 109 through the ongoing role of the Victorian Sentencing Advisory Council and continued reforms to sentencing.*

In **Queensland**, a number of non-custodial programs targeted at Aboriginal and Torres Strait Islander individuals have been developed, including 'outstations', which return people to their local communities and the Corrective Services Work Program. The *Penalties and Sentences Act 1992* (Qld) contains a range of options available to the court, including Probation, Intensive Correction Orders and a range of reparation orders as an alternative option to imprisonment. The Queensland Sentencing Advisory Council has been tasked to consider flexible community based sentencing orders that provide for supervision in the community that are used in other jurisdictions and advise on appropriate options for Queensland. The Council's report is due in April 2019.

● *The Queensland Government has implemented Recommendation 109 through the ongoing role of the Queensland Sentencing Advisory Council, alongside the introduction of non-custodial programs and the Penalties and Sentences Act 1992 (Qld).*

**South Australia** retains a number of non-custodial options including probation, parole, community service, fines and home detention. Recent amendments to the Sentencing Act introduced a new non-custodial option - Intensive Correction Order. The South Australian Government is examining alternatives to custody through the *10% by 20* and Transforming Criminal Justice initiatives.

● *The South Australian Government has implemented Recommendation 109 through continued reforms to sentencing, and a number of government reviews into non-custodial sentencing options.*

In **Western Australia**, the *Young Offenders Act 1994* (WA) and *Sentencing Act 1995* (WA) expanded the range of non-custodial orders available to courts. The Department of Justice provides Community Work Projects as a means for offenders to complete community work hours as a non-custodial options, and is currently examining the use of Conditional Release Orders.


● *The Western Australian Government has addressed the requirements of Recommendation 109 through legislation.*

In **Tasmania**, reviews of non-custodial options occur on an ongoing basis. In 2017, the Tasmanian Government extended the availability of drug treatment orders to matters before the Supreme Court; introduced deferred sentencing for adult offenders; and introduced a sentencing option of a fine without recording conviction. The *Sentencing Amendment (Phasing Out of Suspended Sentences) Bill 2017* (Tas) also introduced home detention orders and community correction orders.

● *The Tasmanian Government has implemented Recommendation 109, with non-custodial programs subject to review and evaluation on a regular basis and with the continuing introduction of new options.*


In the **Northern Territory**, non-custodial programs are subject to review and evaluation on a regular basis. The Northern Territory Government draws on programs from interstate and overseas through participation in conferences. In 2012, the Northern Territory Government introduced Community Custody Orders and Community Based Orders under the *Sentencing Act* (NT) as alternatives to

imprisonment and further non-custodial measures are currently being investigated. Measures such as the COMMIT program for parole are also being implemented to reduce incarceration time. The Electric Monitoring initiative was also implemented in 2014 under the *Correctional Services Act 2014* (NT) to support community based sentencing options, including home detention, through monitoring curfews, exclusion zones, and the location and whereabouts of offenders.

 *The Northern Territory Government has implemented Recommendation 109, with non-custodial programs subject to review and evaluation on a regular basis.*

In the **Australian Capital Territory**, non-custodial options include fines, good behaviour orders, the intensive correction order, and suspended sentence of imprisonment with a good behaviour order. These sentences can be tailored to reflect the circumstances of the offence and the offender. Additionally, the Blueprint for Youth Justice involves Aboriginal and Torres Strait Islander communities in strategies to divert young people from entering or continuing in the criminal justice system.

Research has been conducted into the effectiveness of different sentencing options, including by the ACT Government Standing Committee on Justice and Community Safety in their 2015 report on the *Inquiry into Sentencing*. The *Crimes (Sentencing and Restorative Justice) Amendment Act 2016* (ACT) introduced intensive correction orders that allow sentences of imprisonment to be served in the community. The Galambany Circle Sentencing Court provides culturally-relevant sentencing options in the ACT Magistrates Court jurisdiction for eligible Aboriginal and Torres Strait Islander offenders.

 *The Australian Capital Territory Government has implemented Recommendation 109 through a range of sentencing options.*

## Recommendation 110

*That in view of the wide variety of pre-release and post-release support schemes conducted by Corrective Services authorities and other agencies and organisations in various parts of the country it is the view of the Commission that a national study designed to ascertain the best features of existing schemes with a view to ensuring their widespread application is highly desirable. In such a study it is most important that consultation take place with relevant Aboriginal organisations.*

### Background information

It is important to ensure existing schemes are both relevant and effective before any form of national application.

### Responsibility

This recommendation is solely the responsibility of the Commonwealth Government.

### Key actions taken and status of implementation

The **Commonwealth** Government has released a number of reports that relate to Recommendation 110. First, this includes the *2004 Australian Human Rights Commission* report on programs for Aboriginal and Torres Strait Islander women exiting prison that examines Aboriginal and Torres Strait Islander women. Second, the *2009 National Justice Chief Executive Officers Group* report on 36 programs throughout Australia and New Zealand that provide re-entry programs for young Aboriginal and Torres Strait Islander adults. Third, in 2011-12, AGD commissioned evaluations of its prisoner through care providers, the findings of which pointed to good and poor practice of pre- and post-release programmes. Fourth, the *2012 Australian Government strategy* paper reviewing employment opportunities of Indigenous persons upon their release from correctional institutions.

The *Prison to Work* Report, released December 2016, lists possible actions that governments could undertake to improve prisoners' pathways to work, including identifying current best practices. In response to the Report, PM&C is seeking to co-design, develop and test a best-practice prisoner through care model.

As part of the *Closing the Gap – Employment Services* measure announced in the 2017-18 Budget, \$17.6 million has been committed to establish the Prison to Work program which will support Aboriginal and Torres Strait Islander prisoners to make a successful transition from Prison to Work.

- *Recommendation 110 is complete as the intent of the recommendation has been indirectly addressed through other national reports.*

## Recommendation 111

*That in reviewing options for non-custodial sentences governments should consult with Aboriginal communities and groups, especially with representatives of Aboriginal Legal Services and with Aboriginal employees with relevant experience in government departments.*

### Background information

Aboriginal and Torres Strait Islander consultation is a key theme throughout the RCIADIC Report, aimed at ensuring that any reforms align with cultural values.

### Responsibility

All State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation

In **New South Wales**, the Aboriginal Strategic and Policy Unit advises Corrective Services on services, planning and support for Aboriginal offenders. The NSW Department of Justice held roundtables in 2017 which brought together representatives of victims groups, advocacy groups and representatives including from organisations dedicated to working with Aboriginal people. There were further opportunities for written feedback from Aboriginal organisations, who were able to provide submissions through two rounds of consultation on the draft Sentencing Bill.

- *The New South Wales Government has implemented Recommendation 111, as it consulted with organisations specifically dedicated to working with Aboriginal people when reviewing sentencing options.*

In **Victoria**, the Victorian Sentencing Advisory Council consults and advises on sentencing matters, including non-custodial options. As part of the research undertaken by the Sentencing Advisory Council, the Council consults with the Victorian Aboriginal Legal Service. As noted in AJA 3, the views of Aboriginal and Torres Strait Islander individuals and communities are also taken into account in reviewing sentencing options.

- *The Victorian Government has mostly implemented Recommendation 111, as it does not appear that the ATSILS is consulted when reviewing sentencing options.*

● In **Queensland**, the Aboriginal and Torres Strait Islander Action Plan provides for consultation with Aboriginal and Torres Strait Islander communities in the development and implementation of programs. See Queensland's response to Recommendation 109. The Queensland Government note that ATSILS are consulted in reviewing non-custodial sentences. The current Terms of Reference for the Sentencing Advisory Council on community-based sentencing options must have regard to the impact of any recommendation on the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system.

*The Queensland Government has implemented Recommendation 111 through ongoing consultation with Aboriginal and Torres Strait Islander stakeholders regarding sentencing options, including ATSILS.*

In **South Australia**, the Aboriginal Services Unit advises Corrective Services on services, planning and support for Aboriginal and Torres Strait Islander offenders. The Aboriginal Services Unit provides advocacy for Aboriginal and Torres Strait Islander departmental staff, oversees the development of culturally appropriate services and policies, and actively participates in the growth of partnerships and support for Aboriginal and Torres Strait Islander community organisations.


- *The South Australian Government has mostly implemented Recommendation 111, as it does not appear that the ATSILS is consulted when reviewing sentencing options.*

In **Western Australia**, the *Aboriginal Community Supervision Agreement* involves Aboriginal and Torres Strait Islander communities in the supervision of adult and juvenile offenders. The Western




Australian Government incorporated consultation with the Aboriginal Legal Service and Aboriginal and Torres Strait Islander employees of the Department of Justice in their statutory review of the *Sentencing Act 1995* (WA).

The Department also has regard to the views of the Aboriginal Legal Service in relation to proposed amendments to Conditional Release Orders. Aboriginal and Torres Strait Islander communities are directly involved in the supervision of adult and young offenders through Aboriginal Community Supervision Agreements in remote communities.

 *Recommendation 111 has been implemented in Western Australia through ongoing consultation requirements.*

In **Tasmania**, the Government engaged in community consultations over several reforms to non-custodial sentences that took place after the RCIADIC Report. The Tasmanian Government consults with the public on draft legislation and sentencing policy.


 *The Tasmanian Government has mostly implemented Recommendation 111, as it does not appear that the ATSIILS is consulted when reviewing sentencing options.*

In the **Northern Territory**, Community Supervision, where Aboriginal and Torres Strait Islander organisations supervise local offenders for a fee, serves the intent of this recommendation. In 2010-11 under the *New Era in Corrections*, options for non-custodial sentences were reviewed. Subsequently, the Northern Territory Government has since introduced community custody orders and community based orders. Within corrections, the Northern Territory Correctional Services coordinates an Indigenous Justice Stakeholders Group that includes the legal services. Northern Territory Correctional Services also works with NAAJA and Central Australian Aboriginal Legal Aid Service (CAALAS) and NAAJA. The Visiting Elders Program also provides a platform for representative Aboriginal and Torres Strait Islander services to engage with NTCS regarding services and to provide input into the development of sentencing options.

 *The Northern Territory Government has implemented Recommendation 111 through various initiatives, including the Indigenous Justice Stakeholders Group.*

In the **Australian Capital Territory**, the Blueprint for Youth Justice involves Aboriginal and Torres Strait Islander communities in strategies to divert young people from entering or continuing in the criminal justice system. The ACT Government also engages with Aboriginal and Torres Strait Islander communities through the work of the Justice Reform Strategy to address high incarceration rates.

The ACT Government engages with the Aboriginal and Torres Strait Islander Elected Body on sentencing policy matters, and is committed to the objectives of the Aboriginal and Torres Strait Islander Agreement 2015-18. Currently, consultation is ongoing with stakeholders including the ALS, the United Ngunnawal Elders Council, the ACT Aboriginal and Torres Strait Islander Elected Body and the ACT Government to develop a trial of Aboriginal and Torres Strait Islander Experience Court Reports, which seek to ensure culturally appropriate implementation of non-custodial sentencing options.

 *The Australian Capital Territory Government has implemented Recommendation 111 through ongoing consultations with relevant bodies.*

## Recommendation 112

*That adequate resources be made available to provide support by way of personnel and infrastructure so as to ensure that non-custodial sentencing options which are made available by legislation are capable of implementation in practice. It is particularly important that such support be provided in rural and remote areas of significant Aboriginal population.*

### Background information

Alternatives to custody that still achieve the overarching aims of the criminal justice system (including general deterrence and rehabilitation) help to reduce the number of Aboriginal and Torres Strait


Islander individuals in prison. This recommendation is aimed at ensuring that such programs are adequately resourced.

### Responsibility


All State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation


The **New South Wales** Government increased the number of Aboriginal Program Development Officers and Juvenile Justice caseworkers in locations of need in response to the RCIADIC Report. Contracting with individuals and Aboriginal community agencies allowed the expansion of supervision orders in remote and regional areas.

 *The New South Wales Government has implemented Recommendation 112 through provision of increased resourcing and ongoing monitoring for non-custodial options.*


In **Victoria**, community corrections operations take place across regions, including in areas with significant Aboriginal and Torres Strait Islander populations. The delivery of culturally appropriate community corrections sentencing options is also a key focus under AJA 3, along with the provision of resources to roll-out such options across diverse localities.

 *The Victorian Government has implemented Recommendation 112. Community corrections operations take place across regions and are adequately resourced to ensure their continued delivery under AJA 3.*

**Queensland** Corrective Services asserted in the 1996-97 Queensland Implementation Report that all non-custodial options were “currently resourced”. Currently, the Queensland Corrective Services’ Probation and Parole Service provides supervision across all areas of Queensland. There are also a permanent District Offices and Reporting centres in a number of remote Aboriginal and Torres Strait Islander communities.

 *The Queensland Government has implemented Recommendation 112. Non-custodial options are adequately resourced, and supervised by the Queensland Corrective Services’ Probation and Parole Service. District Offices and reporting centres are also provided for remote communities.*

In **South Australia**, specific funding has been made available to alternative sentencing options in response to the RCIADIC Report. During the period of a community based sanction, offenders are supervised by the Department of Corrective Services through case management by Community Corrections Officers. DCS manages 16 community correctional centres and other outreach services which are located across the state. These outreach services include visiting the APY Lands and Oak Valley. In 2012, the *Statewide Community Youth Justice* model was implemented to ensure the consistent application for all case management and Community Service Order program functions to every young person under supervision across South Australia.

 *The South Australian Government has implemented Recommendation 112. Community corrections operations take place across regions and are adequately resourced to ensure their continued delivery under AJA 3.*

In **Western Australia**, Aboriginal and Torres Strait Islander communities are funded to supervise community-based orders. In rural and remote areas, offenders are assessed for, and placed in, appropriate accommodation in consultation with families and local service providers, toll-free phone numbers are provided to facilitate easy access for the offender, and Departmental officers travel to meet with offenders locally.

Community Supervision Agreements facilitate adults and young people remaining on country, which allow remote community members to be paid for supervising offenders on Community Based Orders. These agreements cover the delivery of programs, community work, and ensuring that people are compliant between visits on nearby circuit courts. Western Australia has eight Sheriffs and Community Development Officers who travel regularly to Aboriginal and Torres Strait Islander communities to facilitate non-custodial sentences.

- *The Western Australian Government has implemented Recommendation 112 through the provision of support to ensure the implementation of non-custodial sentences.*

In **Tasmania**, community service orders cover all areas of the State. Community Corrections has five office locations across Tasmania and provides outreach services to other centres outside of these locations.

- *The Tasmanian Government has implemented Recommendation 112, noting that community service orders cover all areas of Tasmania. These are supported by the provision of offices and outreach services across geographies.*

In the **Northern Territory**, staffing resources are placed where there is clear need, including in remote Aboriginal and Torres Strait Islander communities. The Northern Territory Government allocates resources and personnel to support non-custodial sentencing options across urban, rural and remote Northern Territory. Resourcing provided to facilitate non-custodial sentences included the provision of treatment beds; electronic monitoring; enhanced community based reintegration measures; post release support, additional staff and the expansion of services (existing infrastructure and personnel).

- *The Northern Territory Government has implemented Recommendation 112. Personnel and resources are allocated to support non-custodial sentencing options across geographies.*

In the **Australian Capital Territory**, the 1997 Implementation Report asserted that the range of non-custodial options had expanded and community-based programs were “adequately funded.” In 2014, the ACT Government created the Justice Reform Strategy which focuses on improving sentencing issues, including through intensive correction orders. Additionally, in the 2015-16 ACT Budget provided \$3.2 million over three years to enhance community corrections under the banner of the 2014-16 Justice Reform Strategy. In the 2018-19 Budget, the ACT Government has committed \$6 million to continue the intensive correction orders scheme.

- *The Australian Capital Territory Government has implemented Recommendation 112 through the expansion of non-custodial options and provision of funding.*

## Recommendation 113

*That where non-custodial sentencing orders provide for a community work or development program as a condition of the order the authorities responsible for the program should ensure that the local Aboriginal community participates, if its members so choose, in the planning and implementation of the program. Further, that Aboriginal community organisations be encouraged to become participating agencies in such programs.*

### Background information

Aboriginal and Torres Strait Islander consultation is a key theme throughout the RCIADIC Report, aimed at ensuring that any reforms align with cultural values.

### Responsibility

All State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation


In **New South Wales**, as outlined in Recommendation 112, Aboriginal communities are involved in the delivery of community service programs.

- *The New South Wales Government has implemented Recommendation 113. The New South Wales Government has demonstrated a commitment to encouraging Aboriginal participation in the delivery of non-custodial programs.*


In **Victoria**, a number of Aboriginal and Torres Strait Islander agencies participate in the planning and delivery of non-custodial program conditions, including drug alcohol services for Aboriginal offenders and non-custodial orders (for instance, archaeological surveys on Aboriginal sites and Aboriginal development projects). The Victorian Government noted in AJA 3 an ongoing commitment fostering

Aboriginal and Torres Strait Islander participation in the delivery of non-custodial programs including through the funding of the Local Justice Worker program. The program aims to provide assistance to the Aboriginal and Torres Strait Islander community to meet their outstanding fine and warrant obligations, and to complete Community Correction Orders. It was co-designed with the Aboriginal community and implemented as pilots in 2008, and has expanded to now include 20 Local Justice Workers employed in Aboriginal Community Controlled organisations in 18 locations around Victoria. Examples of community work routinely include:


- maintenance and improvement works at Aboriginal and Torres Strait Islander cemeteries, Aboriginal and Torres Strait Islander cooperatives, Aboriginal and Torres Strait Islander schools and cultural heritage sites;
- working with local government to revitalise disused or run-down community infrastructure such as community halls for the Aboriginal and Torres Strait Islander community; and
- providing services to local elders such as gardening, home maintenance and meal preparation.

 *The Victorian Government has implemented Recommendation 113. The Victorian Government has demonstrated a commitment to encouraging Aboriginal and Torres Strait Islander participation in the delivery of non-custodial programs.*


In **Queensland**, members of Aboriginal and Torres Strait Islander communities and organisations participate in non-custodial sentencing orders and community justice consultations. Queensland Corrective Services has introduced co-facilitated programs and community service projects such as the Positive Futures Program with a community Elders and Community Justice Groups in remote areas of North Queensland. Youth Justice contributes to monitoring and evaluation of program effectiveness.

 *The Queensland Government has incorporated the principles contained in Recommendation 113 to co-facilitated community service programs, and continued consultations over non-custodial sentencing orders.*

In **South Australia**, the Aboriginal Community Work team uses a number of community resources and programs, and regularly consults with Aboriginal and Torres Strait Islander communities in operating community service option programs for Aboriginal offenders. The Youth Justice Community Service Order program has a focus on partner organisations which provide skills, personal development opportunities, cultural education linkages, and tangible community outcomes, with ongoing support.

 *The South Australian Government has mostly implemented Recommendation 113 through community consultations, and initiatives to promote Aboriginal and Torres Strait Islander community engagement in the operation of non-custodial programs. It is unclear if the Government has taken specific actions to encourage Aboriginal and Torres Strait Islander organisations to deliver the programs.*

In **Western Australia**, Aboriginal communities are funded to supervise community-based orders. The Western Australian Government has Community Supervision Agreements for adults and young people to remain on country, which allow remote community members to be paid for supervising an offender on a Community Based Order. Under Community Supervision Agreements, Aboriginal and Torres Strait Islander communities identify and manage the work for individuals on orders, including consulting with the Department of Justice on available options within the community.

 *The Western Australian Government has implemented Recommendation 113 through a range of initiatives to promote the engagement of Aboriginal and Torres Strait Islander people in appropriate programs.*

In **Tasmania**, Aboriginal and Torres Strait Islander community groups assist in the programs appropriate to Aboriginal and Torres Strait Islander people in community service orders. Aboriginal and Torres Strait Islander who have been sentenced to community service orders are given the option to perform their community service with a variety of Aboriginal and Torres Strait Islander organisations.

- *The Tasmanian Government has implemented Recommendation 113 with Aboriginal and Torres Strait Islander communities and organisations involved in programs appropriate to Aboriginal and Torres Strait Islander people.*

In the **Northern Territory**, Aboriginal and Torres Strait Islander community organisations participate in the planning, implementation and administration of many community-based corrections programs, and are consulted above refinements to the programs to meet the needs of Aboriginal and Torres Strait Islander offenders. Community Corrections has Community Work Coordinators based within all regional offices who have responsibility for engaging and consulting with remote organisations on the development of Community Work Projects.

- *The Northern Territory Government has implemented Recommendation 113. Aboriginal and Torres Strait Islander community organisations participate in the planning, implementation and administration of many community-based corrections programs.*

In the **Australian Capital Territory**, it is policy to consult with the community prior to the placement of an Aboriginal and Torres Strait Islander individual on a community service order, specifically where the offender has requested to perform the work within his or her community. In the past, this has involved partnership agreements between the ACT Corrective Services and Aboriginal and Torres Strait Islander organisations.

Currently, detainees on Community Service Work orders have the option of completing their hours at the Ngunnawal Bush Healing Farm, or alternatively by participating in the Continuing Adolescent Life Management (CALM) program. The program integrates aspects of traditional culture, art, music, horticulture and land management embedded with language, literacy and numeracy skills and is delivered in conjunction with ACT Environment and Planning directorate, Greening Australia, and the Winnunga Nimmityjah Aboriginal Health Service.

- *The Australian Capital Territory Government has implemented Recommendation 113 and it is practice to consult with the Aboriginal and Torres Strait Islander communities before the placement of an offender on a community service order.*

## **Recommendation 114**

*Wherever possible, departments and agencies responsible for non-custodial sentencing programs for Aboriginal persons should employ and train Aboriginal people to take particular responsibility for the implementation of such programs and should employ and train Aboriginal people to assist to educate and inform the community as to the range and implementation of non-custodial sentencing options.*

### **Background information**

Aboriginal and Torres Strait Islander consultation is a key theme throughout the RCIADIC Report, aimed at ensuring that any reforms align with cultural values. This recommendation also supports the employment of Aboriginal and Torres Strait Islander individuals in the criminal justice system.

### **Responsibility**

All State and Territory governments are responsible for this recommendation.

### **Key actions taken and status of implementation**

The State and Territory response for this recommendation is outlined in Recommendations 112 and 113.

**New South Wales** Juvenile Justice also actively recruit Aboriginal people for identified and mainstream positions.


- *The New South Wales Government has implemented Recommendation 114 through the provision of Aboriginal Program Development Officers and Juvenile Justice caseworkers, and other actions taken towards Recommendations 112 and 113.*


- *The Victorian Government has implemented Recommendation 114 through their response to Recommendations 112 and 113.*

**Queensland** Corrective Services employs a number of Aboriginal and Torres Strait Islander officers across the agency, including Cultural Development Officers and Cultural Liaison Officers, with a continuing commitment to increase this number, as per the Queensland Parole System Review. Queensland Corrective Services also works with Aboriginal and Torres Strait Islander people within other government and non-government agencies to support a range of culturally appropriate programs for prisoners and offenders. In addition, re-entry services providers in locations with a high proportion of Aboriginal and Torres Strait Islander offenders are required to employ a minimum 50% Aboriginal and Torres Strait Islander staff. Youth Justice contributes to monitoring and evaluation of program effectiveness.

 *The Queensland Government has implemented Recommendation 114 through the role of Aboriginal and Torres Strait Islander officers, and the introduction of employment targets.*

In **South Australia**, the Department of Correctional Services has created positions for Aboriginal and Torres Strait Islander people and has developed initiatives to increase the number of Aboriginal and Torres Strait Islander employees across all directorates. As of June 2016, the Aboriginal and Torres Strait Islander employment rate was 4.13%. The South Australian Government has also piloted Corrections' Future which targeted Aboriginal and Torres Strait Islander people and provided a pathway to completing a Certificate II in Justice Services, and to gaining subsequent employment. Training is also provided for Aboriginal and Torres Strait Islander people through the Correctional Services Training and Employment Program. The South Australian Government notes that Community Youth Justice is committed to employing Aboriginal staff, and to utilising the Aboriginal Employment Pool to seek opportunities to employ Aboriginal and Torres Strait Islander people for all vacancies.

 *The South Australian Government has implemented Recommendation 114 through their creation of positions for Aboriginal and Torres Strait Islander people within the Department of Correctional Services, and the introduction of the Corrections' Future program.*


 *The Tasmanian Government has implemented Recommendation 114 in their response to Recommendations 112 and 113.*


The **Western Australia** Department of Justice seeks to promote the employment of Aboriginal and Torres Strait Islander people in non-custodial environments through a range of initiatives, including employment drives and targeted selection and training processes. Aboriginal and Torres Strait Islander employees are provided with Aboriginal and Torres Strait Islander mentors when undergoing supported certificate-level training for the role of Community Corrections Officer.

The Department's new RAP and associated Aboriginal Workforce Development Strategy seeks to further boost the employment of Aboriginal and Torres Strait Islander people, including through:

- advertising all vacancies on Aboriginal and Torres Strait Islander media;
- supporting Aboriginal and Torres Strait Islander employees to develop strong networks;
- examining selection panel member composition; and
- implementing best practice support strategies for Aboriginal and Torres Strait Islander employees to improve engagement and retention.

 *The Western Australian Government has implemented Recommendation 114 through a range of initiatives to boost Aboriginal and Torres Strait Islander employment.*

 *The Northern Territory Government has implemented Recommendation 114 in their response to Recommendations 112 and 113.*

 *The Australian Capital Territory Government does not appear to have implemented Recommendation 114. No reference is made to the employment or training of Aboriginal and Torres Strait Islander people for the purposes listed in this recommendation.*

## **Recommendation 115**

*That for the purpose of assessing the efficacy of sentencing options and for devising strategies for the rehabilitation of offenders it is important that governments ensure that statistical and other*

*information is recorded to enable an understanding of Aboriginal rates of recidivism and the effectiveness of various non-custodial sentencing orders and parole.*

### Background information

The lack of specific statistics reporting on the effectiveness of programs to reduce the rate of recidivism amongst Aboriginal and Torres Strait Islander offenders means that governments are unable to understand whether measures they have implemented are effective.

### Responsibility

The Commonwealth, and all State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation

The **Commonwealth's** AIC has published various papers on recidivism that have included information on recidivism amongst Aboriginal and Torres Strait Islander offenders. The AIC has also produced regular reports on the effectiveness of non-custodial sentencing options.

The *Prisoners in Australia*, and *Corrective Services Australia* publications, produced by the ABS, also include information on Aboriginal and Torres Strait Islander offenders. However, the ABS notes that currently they do not have data relating to recidivism or the effectiveness of non-custodial sentencing or parole.

- *The Commonwealth has implemented Recommendation 115 through the collection and publication of data by the AIC and the ABS.*

**New South Wales** Corrective Services have examined on several occasions the effectiveness of non-custodial programs for offenders.

- *The New South Wales Government has implemented Recommendation 115 and the Bureau of Crime Statistics and Research regularly evaluates non-custodial sentencing options.*

The **Victorian** Ombudsman has conducted multiple enquiries into the effectiveness of rehabilitation programs for offenders, including one on alcohol and drug rehabilitation services and another on the rehabilitation and reintegration of prisoners in Victoria. Corrections Victoria provides an annual report to the Aboriginal Justice Forum, which provides data and analysis of the profile and trends in Aboriginal and Torres Strait Islander prisoner and offender populations. Corrections Victoria also provides ongoing data reports and analysis to a number of external agencies including the Australian Bureau of Statistics, the Productivity Commission and to the Victorian Government for input into the Victorian Aboriginal Affairs Framework.


- *The Victorian Government has implemented Recommendation 115 through conducting a number of enquiries into the effectiveness of rehabilitation programs, and annual reporting to the Aboriginal Justice Forum.*

**Queensland** Corrective Services released a report on the rehabilitative needs and treatment of Indigenous offenders in the state in 2010. Queensland Corrective Services has also developed an offender database which incorporates information specific to Aboriginal and Torres Strait Islander offenders. This database includes a measure of recidivism which conforms to the national standard developed for ROGS. Youth Justice contributes to monitoring and evaluation of program effectiveness.


- *The Queensland Government has implemented Recommendation 115 through conducting a report into the rehabilitative needs and treatment of Aboriginal and Torres Strait Islander offenders, the maintenance of a database which collects information on recidivism, and continued monitoring and evaluation of program effectiveness.*

In **South Australia**, Aboriginal and Torres Strait Islander identification information is collected by the Department of Corrective Services for use in recidivism studies; one such study was conducted prior to 1994 on the impact of parole legislation changes in the state. These data can be disaggregated. The South Australia Department of Communities and Social Inclusion Youth Justice also collects and analyses data by Aboriginal and Torres Strait Islander status, and compiles these data into an


evidence base on the efficacy of interventions and to identify opportunities for partnerships to deal with Aboriginal and Torres Strait Islander over-representation.

 *The South Australian Government has implemented Recommendation 115. The Department of Corrective Services collects Aboriginal and Torres Strait Islander identification information for use in recidivism studies.*


In **Western Australia**, data on Aboriginal and Torres Strait Islander recidivism is made available for researchers on request. The Western Australian Government produces data on the rate of adult recidivism for return to prison, return to community corrections and return to corrections for the Productivity Commission's Report on Government Services. The Department of Justice uses recidivism rates and other relevant data when considering the development and implementation of rehabilitation options for offenders.

 *The Western Australian Government has implemented Recommendation 115 through data collection and provision activities which form a basis of non-custodial sentencing policy decisions.*


**Tasmania** observed in its 1995 Implementation Report that statistical information systems were being upgraded to assess the efficiency of sentencing options and rehabilitation of offenders. The Tasmanian Government notes that statistical information relating to recidivism for all offenders is published in the Productivity Commission's Report on Government Services and in the Department of Justice Annual Report. Funding has been allocated for the preparation of detailed requirements for the redevelopment of the Department's key Justice Information Communication Technology (ICT) systems. Additionally, the *Justice Connect* program seeks to enhance efficiency and improve policy outcomes through improved information sharing.

 *The Tasmanian Government has addressed Recommendation 115 through the Department of Justice Annual Report, contribution to the Productivity Commission's Report on Government Services, and the Justice Connect program.*

In the **Northern Territory**, information around recidivism of offenders is provided to the Productivity Commission, though they are not currently published in the Report on Government Services as they are considered experimental. The percentage completion of community orders as a whole for Aboriginal and Torres Strait Islander offenders is published within the report.

 *The Northern Territory Government has not taken specific actions towards the implementation of Recommendation 115 beyond participation in the Productivity's Commissions' Report on Government Services.*

In the **Australian Capital Territory**, rates of recidivism are monitored by Corrective Services and shared nationally. Imprisonment data under the Report on Government Services rules require that two years have passed before there can be meaningful reporting on return to custody/supervision figures. Since 2011-12, the two-year requirement was satisfied and recidivism data have been published in the JACSD Annual Report which is publicly-available on the JACSD website.

 *The Australian Capital Territory Government has implemented Recommendation 115 through ongoing monitoring performed by Corrective Services.*

### **Additional commentary**

The ABS provides a recidivism indicator at a national level, however, there exist limitations in this measure to comprehensively understand the issue. In order to overcome these limitations, the ABS has been working with the justice sector to define recidivism and to identify data needs and availability to support the definition. Additionally, the ABS Criminal Courts collection has investigated the feasibility of including a courts reappearance item to strengthen existing measures of recidivism.

## **Recommendation 116**

*That persons responsible for devising work programs on Community Service Orders in Aboriginal communities consult closely with the community to ensure that work is directed which is seen to have*



*value to the community. Work performed under Community Service Orders should not, however, be performed at the expense of paid employment which would otherwise be available to members of the Aboriginal community.*

### Background information

Submissions to the RCIADIC Report indicated that offenders and the community regarded the work involved in Community Service Orders as being of no social benefit for the individual or the community. Ensuring that community service work supports and integrates with Aboriginal and Torres Strait Islander communities helps to make it more valuable to those communities, increasing engagement. However, the RCIADIC Report also focused on increasing economic opportunity for Aboriginal and Torres Strait Islander individuals in the labour market. If community service work was potentially a cheaper alternative to ordinary employment, this could have an adverse effect on economic prospects for Aboriginal and Torres Strait Islander individuals.


### Responsibility

All State and Territory governments are responsible for this recommendation.


### Key actions taken and status of implementation

In **New South Wales** Community Corrections, CSNSW is responsible for managing community service orders. Community Corrections' policy is to place Aboriginal offenders with Aboriginal organisations, to ensure that work is of value to their communities.

The NSW Government notes that ongoing reforms to community-based sentences are intended to enable more Aboriginal offenders to participate in work and other activities and access community-based sentences. This reform aims to address structural flaws that currently prevent many Aboriginal offenders from accessing the intensive supervision and interventions that it offers; for example, the lack of available paid employment in regional and rural locations. For work programs, Community Corrections engages voluntary community organisations as well as in environmental projects rather than drawing from paid employment providers.


 *The New South Wales Government has partially implemented Recommendation 116 through placement of Aboriginal offenders with Aboriginal organisations. However, it does not appear that specific provisions exist to ensure that this does not replace opportunities for paid employment.*

In **Victoria**, Aboriginal and Torres Strait Islander agencies supervising community work are responsible for developing the form and direction of that work.

 *The Victorian Government has partially completed Recommendation 116 through incorporating it into the process involved in developing the form and direction of community work. However, it does not appear that specific provisions exist to ensure that this does not replace opportunities for paid employment.*


**Queensland** Corrective Services consult closely with Aboriginal and Torres Strait Islander communities in the development of community service programs. Many Community Justice Groups are community service project supervisors which ensure work is culturally appropriate and is giving value to the community. In addition to considering whether work is normally conducted by paid or voluntary staff, the following factors are also considered:

- a sponsor organisation should ideally be a "not-for-profit" or a government agency, exceptions may be approved where a project does not contribute to the organisation's profit; and
- a rigorous assessment for any potential ethical concerns for Queensland Corrective Services.


 *The Queensland Government has partially completed Recommendation 116. Aboriginal and Torres Strait Islander communities are closely consulted in the development of community service programs. However, it does not appear that specific provisions exist to ensure that this does not replace opportunities for paid employment.*

In **South Australia**, the format outlined in the recommendation has been in place since 1987. The South Australian Government notes that the Department for Correctional Services continues to work closely with Aboriginal and Torres Strait Islander communities to ensure that the work performed is


seen to have value and does not come at the expense of paid employment. The Youth Justice Community Service Order program services are provided by, and in consultation with, local Aboriginal Community Providers.

 *The South Australian Government noted that practice was compliant with the principles of Recommendation 116 at the time of the RCIADIC. The South Australian Government continues to consult Aboriginal and Torres Strait Islander communities on the development of new programs.*


In **Western Australia**, communities are consulted on an ongoing basis about community service work; consistent with Trades and Labour Council standards, this work is not at the expense of paid employment otherwise available.

 *The Western Australian Government has implemented Recommendation 116 through ongoing consultation and ensuring that, in lines with Trades and Labour Council standards, work is not at the expense of paid employment otherwise available.*


In **Tasmania**, Community Corrections Officers liaise with Aboriginal and Torres Strait Islander community groups to select significant projects for community service work. This is addressed in Recommendation 113.

 *The Tasmanian Government has completed Recommendation 116 through the function of Community Corrections Officers.*

In the **Northern Territory**, Correctional Services liaises with Aboriginal and Torres Strait Islander communities to ensure that work service programs cooperate with local employment opportunities. Before projects are 'approved' they are assessed to ensure they don't undermine paid employment opportunities. The Northern Territory Government notes that the focus for the community work program is to provide a benefit to the wider community while at the same time providing the offender with portable and relevant skills and experience.

 *The Northern Territory Government has completed Recommendation 116 through incorporating it into the process involved in developing the form and direction of community work.*

In the **Australian Capital Territory**, Corrective Services consults with communities, including the Aboriginal and Torres Strait Islander Elected Body, prior to the placement of an Aboriginal and Torres Strait Islander individual on a community service order. The work available for community service is not otherwise paid employment. Under the *Sentence Administration Act 2005* s 91(6), an offender is not required to do work the offender is not capable of doing, and the direction must avoid interference with the offender's normal attendance at another place for work or at a school or other educational institution.

 *The Australian Capital Territory Government has mostly completed Recommendation 116 and consults with the community prior to placement of an offender. However, no specific provisions seem to exist to ensure that community work does not come at the expense of paid employment.*

### **Additional Commentary**

Although each State and Territory offers community work through Aboriginal and Torres Strait Islander agencies, it is unclear whether the programs run by these Aboriginal and Torres Strait Islander organisations are designed to meet the needs of Aboriginal and Torres Strait Islander communities more broadly.

## **Recommendation 117**

*That where in any jurisdiction the consequence of a breach of a Community Service Order, whether imposed by the court or as a fine default option, may be a term of imprisonment, legislation be amended to provide that the imprisonment must be subject to determination by a magistrate or judge who should be authorised to make orders other than imprisonment if he or she deems it appropriate.*

## Background information

A Community Service Order is, in essence, an alternative to a custodial sentence. Accordingly, the default consequence for breaches of such an order is often imprisonment. However, this may not be proportionate to the original crime committed. This recommendation aims to permit judicial officers to at least consider alternative penalties for a breach of a Community Service Order.


## Responsibility

All State and Territory governments are responsible for this recommendation.


## Key actions taken and status of implementation

In **New South Wales**, a person may be imprisoned upon breach and revocation of a community service order. Where the community service order was imposed by the court, the court has full discretion to impose any other sentence it deems appropriate after revoking the community service order, including a good behaviour bond, suspended sentence, intensive correction order or imprisonment. Where the community service order was imposed in relation to fine default, the Commissioner of Fines Administration has discretion to order that the person should be subject to an intensive correction order rather than imprisonment.


Reforms to sentencing laws in 2017 provide greater flexibility for courts to hand down non-custodial sentences for Aboriginal and other offenders and also gives CSNSW Community Corrections Officers more authority to address breaches of parole conditions.

 *The New South Wales Government has implemented Recommendation 117 through judicial officers having a broader range of sentencing options available in the case of either a breach of community service order or fine default.*


In **Victoria**, judicial officers hearing a breach of a Community Based Order have the full range of sentencing options available.

 *The Victorian Government has implemented Recommendation 117 through judicial officers having the full range of sentencing options available.*


In **Queensland**, the *Penalties and Sentences Act 1992 (Qld)* provides for a number of options in the case of a breach of Community Service Order, including admonition and discharge, a fine, increased hours and extension of time. Under section 245 of the *Youth Justice Act 1992 (Qld)* the court may impose a variety of penalties but may not order detention for a breach of orders other than conditional release orders. For breach of a conditional release order, the court may order the child returned to detention but may instead otherwise vary the order if it chooses.

 *The Queensland Government has implemented Recommendation 117 through the Penalties and Sentences Act 1992 (Qld) which provides a range of options in the case of a breach of Community Service Order.*


In **South Australia**, non-performance of community service work is enforceable by imprisonment, with every 7.5 hours not completed equalling one day in prison, or six months total, whichever is the lesser. If the failure to comply was trivial or there are proper grounds to do so, the court may instead give extra time, cancel some or all of the remaining hours, or impose a fine, under s 47 of the *Fines Enforcement and Debt Recovery Act 2017 (SA)* and s 115 of the *Sentencing Act 2017 (SA)*.

 *The South Australian Government has not implemented Recommendation 117. The non-performance of community service work is enforceable by imprisonment.*


In **Western Australia**, under Division 4 of the *Sentencing Act 1995 (WA)*, a person may be given a fine of no more than \$1,000 for a breach of a community base order. A court can also confirm or amend a community-based order, or impose a sentence as if it had just convicted the person of that offence. The Western Australian Government notes that amendments to fines enforcement legislation have been developed to implement the recommendation.

 *The Western Australian Government has implemented Recommendation 117 through amendments to fines enforcement legislation.*


In **Tasmania**, under the *Sentencing Act 1997* (Tas), an authorised person may apply to the court which made the order if it appears that an offender has breached a condition of a community service order. The Court may confirm the order, increase the number of hours or deal with the offender in any manner in which the court could deal with them had it just found the offender guilty of the offence.

 *The Tasmanian Government has implemented Recommendation 117 through the Sentencing Act 1997 (Tas).*

In the **Northern Territory**, under s 39 of the *Sentencing Act* (NT), a court may re-sentence a person in breach of a court-imposed community work order as if it had just found them guilty of the offence (including by non-custodial options). The court may further impose imprisonment at a rate of one day per 8 hours of community work not completed, or for 7 days, whichever is greater. Where a community work order made by the Fines Recovery Unit is breached an individual may be imprisoned by warrant committing the fine defaulter to the custody of the Commissioner for Corrections. In practice this occurs as a last resort and the Fines Recovery Unit has options to revoke the community work order.

 *The Northern Territory Government has partially implemented Recommendation 117. The court may re-sentence a person in breach of a court-imposed community work order, or may further impose imprisonment. In community work orders made by the Fines Recovery Unit, the Fines Recovery Unit has options to revoke the community work order.*

In the **Australian Capital Territory**, a court dealing with a breach of a good behaviour order (including a community service order) has several options under the *Crimes (Sentence Administration) Act 2005* s 108, including offering a written warning, amending the good behaviour order, or resentencing the offender for the original offence.

 *The Australian Capital Territory Government has implemented Recommendation 117 through the Crimes (Sentence Administration) Act 2005 (ACT).*

## Recommendation 118

*That where not presently available, home detention be provided both as a sentencing option available to courts as well as a means of early release of prisoners.*

### Background information


Where an offender does not pose an excessive risk to themselves or the broader community, home detention can have the same intended effect as imprisonment while keeping the individual out of the prison system.

### Responsibility

All State and Territory governments are responsible for this recommendation.


### Key actions taken and status of implementation

In **New South Wales**, home detention is available as a penalty under the *Crimes (Sentencing Procedure) Act 1999* (NSW) ss 6 and 80. The *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* (NSW) abolished home detention orders. However, home detention will be available as an additional condition for the court or the State Parole Authority to impose on the reformed Intensive Correction Order. The New South Wales Government also notes that reintegration home detention is an option from May 2018, enabling eligible and suitable offenders to be released up to six months before the end of their non-parole period.


 *The New South Wales Government has implemented Recommendation 118. Home detention is available as an alternative sentencing option, and reintegration home detention has been made available recently.*

In **Victoria**, home detention was introduced following the RCIADIC Report, but abolished by the *Sentencing Legislation Amendment (Abolition of Home Detention) Act 2011* (Vic). Community correction orders are available as a sentencing option for most offences in Victoria. Community


correction orders may include conditions relating to residence and place restrictions, and treatment and rehabilitation requirements.

 *The Victorian Government has not implemented Recommendation 118. Home detention as an alternative sentencing option was abolished in the Sentencing Legislation Amendment (Abolition of Home Detention) Act 2011 (Vic).*


In **Queensland**, home detention was previously available for prisoners on parole, but was removed as an option in 2011.

 *The Queensland Government has not implemented Recommendation 118. Home detention is not available as an alternative sentencing option.*


In **South Australia**, home detention is available as a penalty and means of early release under the *Correctional Services Act 1982 (SA)* s 37A. Under s 71 of the *Sentencing Act 2017 (SA)*, Magistrates and Judges are able to impose sentenced Home Detention as a valid sentencing option that fits between an immediate term of imprisonment and a suspended sentence.

 *The South Australian Government has implemented Recommendation 118 through the *Correctional Services Act 1982 (SA)* and the *Sentencing Act 2017 (SA)*.*


In **Western Australia**, home detention is available as a penalty under the *Bail Act 1999 (WA)* Part VIA. This is subject to a report from the Community Corrections Officer on the suitability of the offender and of the place in which the offender will reside during the period of bail. The Statutory Review of the *Sentencing Act 1995 (WA)* found that increased flexibility of conditions for suspending imprisonment should be considered in preference to any proposal for periodic detention.

 *The Western Australian Government has partially implemented Recommendation 118. While home detention is available as a penalty, it does not seem to be a means of early release.*


In **Tasmania**, home detention orders were introduced in Tasmania under the *Sentencing Amendment (Phasing Out of Suspended Sentences) Bill 2017*.

 *The Tasmanian Government has partially implemented Recommendation 118, with home detention introduced for alternative sentencing but not for early release.*

The **Northern Territory** Government notes that home detention is available as a court disposition or sentencing option across the Northern Territory under the *Sentencing Act (NT)*, and the offender is usually subject to electronic monitoring. Additionally, in 2014, the *Correctional Services Act 2014 (NT)* introduced administrative home detention as an option of pre-release home detention for qualifying prisoners.

 *The Northern Territory Government implemented Recommendation 118. Home detention as an alternative sentencing option is available under the *Sentencing Act (NT)* and as an option of pre-release sentencing under the *Correctional Services Act 2014 (NT)*.*

In the **Australian Capital Territory**, intensive correction orders may require an individual to live in a particular premises and comply with a number of other conditions. Such orders may be imposed for offences with maximum penalties of up to 2 years.

 *The Australian Capital Territory Government has partially implemented Recommendation 118. Home detention is available as an alternative sentencing option, but not as a means of early release.*

## Recommendation 119

*That Corrective Services authorities ensure that Aboriginal offenders are not being denied opportunities for probation and parole by virtue of the lack of adequate numbers of trained support staff or of infrastructure to ensure monitoring of such orders.*

### Background information

The RCIADIC observed that in some cases Aboriginal and Torres Strait Islander offenders were not able to access probation and parole options due to a lack of resources to monitor their compliance with their probation or parole requirements. This was particularly the case in regional and remote areas.


### Responsibility

All State and Territory governments are responsible for this recommendation.


### Key actions taken and status of implementation

An inquiry by the **New South Wales** Legislative Council received many submissions observing that community-based sentencing options were not available uniformly outside of Sydney and large regional centres. The inquiry noted the ongoing expansion, wherever practical, of community based sentencing options in rural and remote areas. The Government's Response to this inquiry indicated positive improvements, including the creation of additional Community Offender Services positions and provision of additional infrastructure (including satellite telephones and motor vehicles) in regional towns. Further recruitment is ongoing, for example 200 additional staff are being recruited to support the recent parole reforms. CSNSW is also implementing reforms to offender management that will improve access to services in regional areas, including using external program facilitators and improving the extent to which CSNSW provides services directly to offenders.


Research conducted by the NSW Government has found that remote and regional offenders are less likely to receive a prison sentence than offenders in inner-metropolitan areas; however there was no interaction effect found for Aboriginal status and area of residence.

 *While it appears that in New South Wales community-based sentences are available state-wide, access to them in regional areas is being increased. Recommendation 119 is partially implemented.*

The **Victorian** Government reported in its 1993 Implementation Report that demand drove the employment of sessional workers in areas where there were a high proportion of Aboriginal and Torres Strait Islander offenders under supervision. Aboriginal Wellbeing Officers are employed in prisons to provide ongoing welfare, advocacy and support for Aboriginal prisoners. The Corrections Victoria Reintegration Pathway provides pre- and post-release programs responsive to each prisoner's transitional needs on entry to prison, throughout their prison sentence and to assist with returning to the community. ReConnect is the post-release program that provides outreach services for prisoners with high transitional needs, with all Aboriginal and Torres Strait Islander prisoners eligible.


 *The Victorian Government noted that employment of sessional workers was demand driven, and a number of programs have been used to offer pre- and post-release programs. It does not appear that research or monitoring into the adequacy of resources is conducted. Thus, Recommendation 119 is mostly implemented in Victoria.*

The **Queensland** Government reported in its 1996-97 Implementation Report that non-custodial options were available throughout the state, with the support of casual staff in regional areas to ensure "the widest possible coverage". Queensland Corrective Services is able to monitor all community-based orders in Queensland and has a presence in many remote and discrete Aboriginal and Torres Strait Islander communities. Queensland Corrective Services utilises a range of reporting methods including in-office reporting, remote visits, phone reports and collateral checks with local police or Community Justice Groups to ensure compliance is monitored.


 *The Queensland Government has implemented Recommendation 119 through the ongoing coverage and monitoring provided by Queensland Corrective Services.*

In **South Australia**, both the 1993 and 1994 Implementation Reports identified "difficulties" for non-custodial sentencing options in country and remote areas. Sixteen Community Correctional Centres exist across the State, with 10 being placed outside of Adelaide. All young people under supervision have access to the same case management function, including when on Conditional Release. The Sentence Management Unit and Serious Offender Committee are not aware of any instances regarding


Aboriginal and Torres Strait Islander offenders being denied access to parole or sentenced home detention.

 *The South Australia Government has mostly implemented Recommendation 119 through the role of Community Correctional Centres, and the Sentence Management Unit and Serious Offender Committee. However, it is not clear that regular monitoring of resourcing adequacy is actively performed.*


In **Western Australia**, the Community & Youth Justice Division operates 30 offices throughout the State, including in regional and remote areas. In its 2000 Implementation Report, the Ministry of Justice (as it was known) stated that “no offenders have been denied access to community based sentences due to lack of resources.” The Western Australian Government has noted that the Department of Justice is satisfied that it employs an adequate number of casual, regionally-based employees, who assist in facilitating the supervision and delivery of community work projects, and conduct home visits as required.

 *The Western Australian Government has implemented Recommendation 119, noting that sufficient resources are available in rural and remote areas to meet the principles of the recommendation.*


The **Tasmanian** Government, in its 1995 implementation report, stated that “Aboriginal and Torres Strait Islander offenders are not denied probation or parole in this State by a lack of support staff or infrastructure.”

 *The Tasmanian Government has implemented Recommendation 119 as noted in their 1995 implementation report.*

In the **Northern Territory**, Community Corrections services almost 80 remote communities. In 2010 under the *New Era in Corrections*, the Northern Territory Government recruited additional staff to support the implementation of enhanced community based orders and electronic monitoring. Pre- and post-release accommodation was also provided in Alice Springs and Darwin, while funding was provided for alcohol and drug rehabilitation in Katherine and Alice Springs.

 *The Northern Territory Government has implemented Recommendation 119 through the Community Corrections Services and the employment of new staff to facilitate electronic monitoring under the New Era in Corrections.*

The **Australian Capital Territory**, in its 1997 implementation report, stated that “ACT Corrective Services has adequate resources to provide services to all clients and meet potential demand needs.” All Community Corrections Probation and Parole Officers participate in Aboriginal and Torres Strait Islander cultural awareness training to assist them in their supervision of Aboriginal and Torres Strait Islander offenders. Currently, the ACT Correctional Services employs two Aboriginal and Torres Strait Islander Probation and Parole Officers, and an Aboriginal Client Support Officer.

 *The Australian Capital Territory Government has implemented Recommendation 119, noting that ACT Corrective Services has adequate resources to provide services to all clients and to meet demand needs.*

So far as non-custodial sentence options beyond parole and probation are relevant to this recommendation, further actions by the States and Territories are outlined for Recommendation 112 above.

## **Recommendation 120**

*That governments consider introducing an ongoing amnesty on the execution of long outstanding warrants of commitment for unpaid fines.*

### **Background information**


Where fines have been unpaid for a long period of time, reintroducing a person to custody may not be in the interests of justice.

## Responsibility


All State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation


In **New South Wales**, police continue to arrest individuals with single warrants for traffic or parking fines over five years old; warrants outstanding for other types of fine that are more than five years are not collected.

 *The New South Wales Government has partially implemented Recommendation 120. Amnesty is provided for fines that are more than five years old, provided that these are not for traffic or parking infringements.*


In **Victoria**, warrants to imprison for non-payment of a fine are of no effect if they are more than five years old under the *Magistrates' Courts Act 1989* (Vic) s 58.

 *The Victorian Government has implemented Recommendation 120 through the *Magistrates' Courts Act 1989* (Vic), which provides that warrants to imprison for non-payment of a fine are of no effect if they are outstanding for more than five years.*


In **Queensland**, warrants of commitment for imprisonment are destroyed after 10 years of existence, subject to assessment of fine amounts and the seriousness of the offences involved. In Queensland, under section 150A the *State Penalties Enforcement Act 1999* (Qld) the registrar may write off all or part of a fine in circumstances permitted by a guideline issued by the minister.

 *The Queensland Government has implemented Recommendation 120. Warrants of commitment for imprisonment are destroyed after 10 years of existence, subject to assessment of fine amounts and the seriousness of the offences involved.*


In **South Australia**, the Governor may cancel a warrant for apprehension if it has not been executed within 15 years from its issue. Other types of warrants may be cancelled within 7 years. However, this process is not automatic. In addition, legislation for an amnesty exists under s 70 of the *Fines Enforcement and Debt Recovery Act 2017* (SA).

 *The South Australian Government has partially implemented Recommendation 120. While legislative powers exist to cancel a warrant after it has been long in existence, this is not an automatic process.*

In **Western Australia**, there is no amnesty for long outstanding warrants of commitment for unpaid fines. However, there is a write-off process which is exercised by the Fines Enforcement Registry after a period of applying other inducements to encourage individuals to pay their fines. Due to the restricted capacity to apply sanctions and recovery mechanisms, fines still outstanding in country regions after four years may be listed for write-off after consideration of unsuccessful attempts to seek payment. Fines still outstanding in metropolitan areas may be written off after ten years.


 *The Western Australian Government has partially implemented Recommendation 120 through the introduction of a write-off process for outstanding loans. However, there is no amnesty for long outstanding warrants of commitment for unpaid fines.*

In **Tasmania**, fines which are over 10 years old are "written off" on a continuous basis. Tasmania's Monetary Penalties Enforcement Service has no outstanding Warrants of Commitment, and has not applied for a warrant of commitment against a debtor since 2008 when the *Monetary Penalties Enforcement Act 2005* (Tas) commenced.


 *The Tasmanian Government has implemented Recommendation 120 with warrants expiring after 10 years.*

In the **Northern Territory**, warrants of commitment for imprisonment for non-payment of a fine were of no effect if they are more than ten years old under the *Justices Act* (NT). However, this legislation has been superseded by the *Local Court (Criminal Procedure) Act* (NT), which does not appear to provide for such an amnesty.



 *The Northern Territory Government has partially implemented Recommendation 120 through the Justices Act (NT) under which warrants expire after 10 years. However, this legislation has been superseded by the Local Court (Criminal Procedure) Act (NT), which does not appear to provide for such an amnesty.*

The **Australian Capital Territory's Crimes (Sentence Administration) Act 2005 (ACT)** provides for payment arrangements. This incorporates a tiered approach to fine management, with options including payment by instalment, notifying the Road Transport Authority, voluntary community work orders, and imprisonment. On application, the court may impose a term of imprisonment if satisfied all appropriate enforcement action has been taken under chapter 6A of the Act to secure payment and there is no likelihood for the fine to be paid.

 *The Australian Capital Territory Government has not implemented Recommendation 120. It does not appear that outstanding fines will be written-off or expunged, with imprisonment available in certain circumstances and at the court's discretion for unpaid amounts.*

## Recommendation 121

*That:*

*a. 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; and*

*b. Such legislation should provide alternative sanctions and impose a statutory duty upon sentencers to consider a defendant's capacity to pay in assessing the appropriate monetary penalty and time to pay, by instalments or otherwise.*

### Background information


In a similar vein to Recommendation 117, fines are intended to be an alternative punishment less severe than imprisonment. If the default penalty for non-payment of a fine is imprisonment, then this may introduce individuals to state custody against the principle of detention as a last resort.

### Responsibility


All State and Territory governments are responsible for this recommendation.

### Key actions taken and status of implementation


In **New South Wales**, section 125 of the *Fines Act 1996* (NSW) prohibits the imprisonment of an offender for a fine default. Instead, a range of other sanctions are provided including licence suspension and community service orders. Under section 6 of the *Fines Act 1996*, a court considering the amount of any fine must consider the means of the accused. A person may also apply for additional time to pay or at least have the fine written off on the basis that the person has no capacity to pay. Work and Development Orders are available so a person can work off their fine debt through community service work, medical or mental health treatment, drug and alcohol treatment, education or vocational training or financial counselling.

 *The New South Wales Government has incorporated Recommendation 121 into the Fines Act 1996 (NSW).*


In **Victoria**, a court may only imprison a person under section 160 of the *Infringements Act 2006* (Vic) after they have failed to comply with the conditions of a community work permit issued consequent to a fine default. A court must be satisfied that no other order (including an extension of time, offering of instalments, or discharge of the fine) is appropriate in the circumstances. Such an order cannot be issued if the infringement offender did not have capacity to pay the fine. Under the *Sentencing Act 1991* (Vic) s 52, a court issuing a fine must take into account the financial circumstances of the offender and the nature of the burden that its payment will impose.

 *The Victorian Government has incorporated Recommendation 121 into the Infringements Act 2006 (Vic) and the Sentencing Act 1991 (Vic).*


In **Queensland** the State Penalties Enforcement Registrar may issue a warrant for the arrest and imprisonment of a fine debtor only if satisfied that the unpaid amount cannot be satisfied in any other way, under the *State Penalties Enforcement Act 1999* (Qld) s 119. The Act provides for a number of different mechanisms to ensure payment of fines by offenders in default, and it provides that fines may be referred to the State Penalty Enforcement Registry. For individuals without capacity to pay a fine (in full or in instalments), a fine option order is available, where a person performs community service at a specified equivalent rate to the fine. Under the *Penalties and Sentences Act 1992* (Qld) s 48, a court issuing a fine must take into account the financial circumstances of the offender and the nature of the burden that its payment will impose. Pursuant to section 190 of the *Youth Justice Act*, a court may make an order requiring a child to pay an amount by way of fine only if it is satisfied that the child has the capacity to pay the amount.

 *The Queensland Government has incorporated Recommendation 121 into the State Penalties Enforcement Act 1999 (Qld) and the Penalties and Sentences Act 1992 (Qld).*


In **South Australia**, a community service order issued for a fine default may be enforced by imprisonment, if the person does not comply with the order (under the *Fines Enforcement and Debt Recovery Act 2017* (SA), particularly part 7). If the failure of a person to comply with such an order was trivial, or there are proper grounds on which the failure should be excused (for instance, not having the means to pay a fine), then the court has alternatives (for instance, extending the term of the order or discharging the order).

 *The South Australian Government has mostly implemented Recommendation 121. A community service order issued for fine default may be enforced by imprisonment, however imprisonment is not automatic and there are other avenues should proper circumstances be satisfied.*


In **Western Australia**, a warrant of commitment may be issued after an extended process of more than two years during which alternatives are explored, for a person who fails to comply with a work and development order under s 53 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA). Under s 53 of the *Sentencing Act 1995* (WA), a court must consider the means of the offender in imposing a fine.

 *Recommendation 121 is implemented in Western Australia through the Fines, Penalties and Infringement Notices Enforcement Act 1994 (WA).*

In **Tasmania**, the Monetary Penalties Enforcement Service may only apply to a court for a warrant of commitment against a fine debtor, if satisfied that the unpaid amount cannot be realistically discharged in any other way. There does not appear to be legislation requiring sentencers to consider an offender's means in imposing a fine. The *Monetary Penalties Enforcement Act 2005* (Tas) provides for the Director to apply to a court for a Warrant of Commitment were the amount of an unpaid monetary penalty cannot be discharged in any other way authorised under the Act and the enforcement debtor is unsuitable to perform a community service order.

 *The Tasmanian Government has partially implemented Recommendation 121. A warrant of commitment against a fine debtor may be used where a fine debtor cannot realistically discharge the unpaid amount in another way. However, sentences are not required to consider an offender's means.*

In the **Northern Territory**, a fine defaulter may be issued a warrant to be committed into the custody of the Commissioner of Correctional Services under section 86 of the *Fines and Penalties (Recovery) Act* (NT) after they have failed to comply with the conditions of a community work order issued consequent to a fine default. Under the *Sentencing Act* (NT) s 17, a court issuing a fine must take into account the financial circumstances of the offender and the nature of the burden that its payment will impose.

 *The Northern Territory Government has partially implemented Recommendation 121. Imprisonment is provided for after a failure to comply with the conditions of a community work order issued consequent to a fine default. It is not clear whether other sentencing options exist.*

In the **Australian Capital Territory**, a court may only imprison a person under section 116ZK of the *Crimes (Sentence Administration) Act 2005* (ACT) after all appropriate enforcement action has been taken under the chapter. Under s 33(1)(n) of the *Crimes (Sentencing) Act 2005* (ACT), a sentencing court must consider the financial circumstances of the offender.

- *The Australian Capital Territory Government has incorporated Recommendation 121 into the Crimes (Sentencing) Act 2005 (ACT).*