14. IMPRISONMENT AS A LAST RESORT (RECOMMENDATIONS 92 – 121)

The rate at which Indigenous people are incarcerated is significantly higher than the rest of the population.\(^\text{1}\) The Royal Commission into Aboriginal Deaths in Custody (‘RCIADIC’) made 30 related Recommendations aimed at reducing the rates at which Indigenous people are imprisoned.\(^\text{2}\) The fundamental recommendation was to encourage governments to "legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort".\(^\text{3}\) The other Recommendations encouraged both legislative amendments and changes to the culture and procedures of the criminal justice system to ensure that imprisonment were only imposed as a last resort. The Recommendations can broadly be categorised as follows:

1. legislating the principle of imprisonment as a last resort (Recommendation 92);
2. phasing out certain laws and practices that have caused high rates of Indigenous incarceration (Recommendations 95, 102, 120, 121a);
3. encouraging more non-custodial sanctions and diversionary programs (Recommendations 94, 103, 109, 112, 113, 118 and 119);
4. improved understanding and involvement of Indigenous communities and culture in the criminal justice system and provision of funding and support (Recommendations 96, 100, 105, 106, 107, 111, 113, 114 and 116); and
5. a range of measures to ensure that Indigenous people are not unduly disadvantaged by a conviction, and are given opportunities for rehabilitation (see Recommendations 93, 99, 98, 108, 110 and 115).

This Chapter examines the extent to which these Recommendations have been implemented by the Federal, State and Territory governments.

1. **Legislate to enforce the principle that imprisonment be imposed as a sanction of last resort**

    **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.**\(^\text{4}\)

All Australian jurisdictions, with the exception of the Northern Territory and Tasmania, report that they have implemented this Recommendation.\(^\text{5}\) In many of

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\(^1\) Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991), vol 1, [1.3.1 - 1.3.3].

\(^2\) Ibid. vol 1 [4.7.4]. Recommendations 92 – 121.

\(^3\) Ibid. vol 3, 22 [22.1.114].

\(^4\) Ibid.

\(^5\) Crimes (Sentencing) Act 2005 (ACT), s 10; Crimes Act 1914 (Cth), s 17A; Crimes (Sentencing Procedure) Act 1991 (NSW), s 5; Sentencing Act 1991 (Vic), ss 4B and 5(4); Children, Youth and Families Act 2005 (Vic), ss 11, 360 and 361; Criminal Law (Sentencing) Act 1988 (SA), s
these jurisdictions the relevant legislation was enacted prior to the RCIADIC's Recommendations. However the introduction of mandatory sentencing in various jurisdictions has eroded the principle of imprisonment being used as a sanction of last resort. In any event, figures indicate that, in the past ten years, Indigenous incarceration rates have continued to rise.

In Tasmania, although the Recommendation has not yet been implemented through legislation, there is a provision for detention as a last resort in the case of youths. In introducing the Breaking the Cycle: Strategic Plan for Tasmanian Corrections 2011-2020 ('Strategic Plan'), the Minister for Corrections and Consumer Protection endorsed the principle that imprisonment should be a last resort, and noted that there is a need for appropriate sentencing options for Courts. However, there is no specific reference in the Strategic Plan to legislating for detention being used as a sanction of last resort.

There is no legislation, regulation or policy document indicating that imprisonment should only be utilised as a sanction of last resort that applies generally, in the Northern Territory. The Justices Act provides that where an accused has pleaded guilty in writing, the Court is not to impose imprisonment in the first instance, however this falls short of the principle of using imprisonment as a sanction of last resort.

Whilst all other jurisdictions have implemented legislation, it is difficult to assess the practical effect of the legislation. There appear to be mixed reports. For example, in the Australian Capital Territory, reports stated that many of the diversionary schemes that had been implemented in the years following the RCIADIC have been underutilised or phased out. However magistrates and judges appear to have embraced the intention of the legislation to utilise imprisonment as a last resort when applying their discretion under sentencing and bail legislation.

The Victorian Implementation Review of Recommendations noted that the legislation in Victoria had "not eradicated the very substantial differentials between the rates of imprisonment for Indigenous as opposed [to] non-Indigenous offenders". The

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6 Including Queensland and New South Wales.
8 Youth Justice Act 1997 (Tas), s 5(1)(g).
10 Justices Act 1928 (NT), s 57B.
Review went further and stated that the legislative section in the *Sentencing Act 1991* (Vic) was not sufficient for situations where Indigenous imprisonment rates far outweigh the rates of the non-Indigenous offenders.14 The Review recommended that pre-sentencing reports may be required to ensure that imprisonment is only utilised as a sanction of last resort.

There has been an increase in the proportion of Indigenous prisoners in Australian prisons. In 1991, when the National Report was published, the proportion of Indigenous prisoners was 14% of the total prison population.15 In 2014 that figure had increased to 27%.16 The imprisonment rate increased across all states and territories from the previous year, with the exceptions of Tasmania and the Australian Capital Territory.17 In 2014, prisoners aged 24 years or younger comprised 26% of all Indigenous prisoners.18

Despite most State and Territory governments reporting implementation of the Recommendation that imprisonment only be utilised as a sanction of last resort, mandatory sentencing legislation has been introduced in most jurisdictions since the release of the National Report.19 The use of mandatory sentencing laws in Australian States and Territories has been examined by independent human rights treaty bodies,20 and each has concluded that the laws violate Australia’s obligations under relevant international human rights instruments.21 For example, on 24 March 2000,
the United Nations Committee on the Elimination of Racial Discrimination (‘CERD’) adopted, amongst others, the following Concluding Observations:

16. The Committee expresses its concern about the minimum mandatory sentencing schemes with regard to minor property offences enacted in Western Australia, and in particular in the Northern Territory. The mandatory sentencing schemes appear to target offences that are committed disproportionately by indigenous Australians, especially juveniles, leading to a racially discriminatory impact on their rate of incarceration. The Committee seriously questions the compatibility of these laws with the State party’s obligations under the Convention and recommends to the State party to review all laws and practices in this field.

In response to CERD’s Concluding Observations, Australia released its State Party Report on 1 April 2004, indicating that the Northern Territory Government repealed mandatory sentencing for juvenile and adult offenders. In the same State Party Report, the Australian government reported that it was of the view that mandatory sentencing was an issue best addressed by the States and Territories, and therefore would leave the Western Australian parliament to address its mandatory sentencing legislation. The abrogation of mandatory sentencing in the Northern Territory was welcomed by CERD. However, the absence of mandatory sentencing was short lived. The Northern Territory introduced new mandatory sentencing, namely, the Sentencing Amendment (Violent Offences) Act 2008 (NT) and the Sentencing Amendment (Mandatory Minimum Sentence) Act 2013. CERD is yet to release observations on this matter; however the United Nations’ Committee Against Torture (‘CAT’) released concluding observations in 2014 after considering the combined fourth and fifth periodic reports of Australia. CAT noted concern with the


24 Juvenile Justice Amendment Act (No.2) 2001 (NT).

25 Sentencing Amendment Act (No. 3) 2001 (NT).


continuance of mandatory sentencing as it “continues to disproportionately affect indigenous people”.\textsuperscript{29}

By way of example of recently introduced mandatory sentencing provisions, in 2014 the Queensland government amended its Youth Justice Act 1992 (Qld) by removing, in certain circumstances, the principle that detention should be a last resort.\textsuperscript{30}

Amongst other amendments, the Youth Justice and Other Legislation Amendment Act 2014 (Qld) provides for the automatic transfer of 17 year-olds to detention to adult correction facilities and introduces a mandatory boot camp order for certain recidivist motor vehicle offenders.\textsuperscript{31} Section 150(5) explicitly prevents any application of the principle of detention as a last resort at common law:

This section overrides any other Act or law to the extent that, in sentencing a child for an offence, the court must not have regard to any principle that a detention order should be imposed only as a last resort.

The Explanatory Notes state that the intended effect of these amendments is “to hold young offenders to account for their actions”.\textsuperscript{32} Commentators have viewed the legislation as controversial, out of touch with the rest of Australia and inconsistent with Australia’s obligations under the Convention on the Rights of the Child and associated instruments.\textsuperscript{33}

Mandatory sentencing is by definition inconsistent with the principle that imprisonment only be utilised as a sanction of last resort. The introduction of mandatory sentencing is one element of governmental action since the RCIADIC which has been described as “the very antithesis of the recommendations of the RCIADIC”.\textsuperscript{34}

2. Removing laws and practices that have caused high rates of Indigenous incarceration (Recommendations 121a, 120, 102 & 95)

\textbf{Recommendation 121a:} 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.\textsuperscript{35}

\textbf{Recommendation 120:} That governments consider introducing an ongoing amnesty on the execution of long outstanding warrants of commitment for unpaid fines.\textsuperscript{36}

\begin{thebibliography}{99}
\bibitem{29} Ibid 12.
\bibitem{30} Youth Justice and Other Legislation Amendment Act 2014 (Qld).
\bibitem{31} Ibid Division 2A, s 176B.
\bibitem{34} Commonwealth, Royal Commission into Aboriginal Deaths in Custody, National Report (1991), vol 3, 22 [22.5.118].
\bibitem{35} Ibid [22.5.118].
\end{thebibliography}
**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.\(^{37}\)

**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.\(^{38}\)

The RCIADIC identified that certain (relatively minor) offences represented a substantial category of Indigenous offenders in prison. These included fine default, breaches of non-custodial orders and motor vehicle related offences.

### 2.1 Fine default (Recommendation 121a)

This Recommendation has been implemented. The Indigenous Justice Clearinghouse, a partnership between the Australian Institute of Criminology and the Standing Counsel on Law & Justice, reported that automatic imprisonment for fine default has now been abolished in all jurisdictions.\(^{39}\) In most State and Territory jurisdictions, imprisonment may still be imposed for fine default or breach of community service order.\(^{40}\) However, in those jurisdictions, sentencing to imprisonment may only be imposed by a court.

### 2.2 Ongoing amnesty on long outstanding fines (Recommendation 120)

There has been very little implementation of the Recommendation for governments to introduce an ongoing amnesty on the execution of long standing warrants of commitment for unpaid fines. Queensland and New South Wales partially implemented an ongoing amnesty on long outstanding fines, however, in each instance they were short periods of amnesty. The amnesty in Queensland ran from 27 November 2000 until 27 March 2001. The NSW amnesty ran from 1 October 1997 until 27 January 1998 and then again in 2012 from 14 May until 31st July.\(^{41}\) It is unclear whether these short term amnesty policies were implemented as result of the RCIADIC Recommendations, or for some other purpose.

The Northern Territory has not implemented legislation providing for an amnesty on the execution of long outstanding fines.\(^{42}\) However, in 2002 the Northern Territory set

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37 Ibid [22.4.27].
38 Ibid [22.3.11].
40 Sentencing Act (NT) s 39(4) and (6); Penalties and Sentences Act 1992 (Qld) ss 123, 125, 126 and 127; Crimes (Administration of Sentences) Act 1999 (NSW) s 115; Sentencing Act 1991 (Vic) ss 83AD, 83AE, 83AF, 83AS, 63A; Criminal Law (Sentencing) Act 1988 (SA) s 71; Sentencing Act 1997 (Tas) s 36; Sentencing Act 1995 (WA) ss 132 and 113; Crimes (Sentence Administration) Act 2005 (ACT) Part 6A, ss 116A to 116X.
42 Fines and Penalties (Recovery) Act 2001 (NT) ss 120, 121.
up the Fines Recovery Unit (‘FRU’), one of the principal goals of the FRU is to reduce the number of fine defaulters who are imprisoned by providing a range of payment options.\(^{43}\)

In Western Australia, not only has such an amnesty not been implemented, the Western Australian government has made recent amendments to the legislation to further strengthen the enforcement of outstanding fines.\(^{44}\) The Australian Capital Territory has not implemented an ongoing amnesty for outstanding fines.

In Tasmania and South Australia,\(^{45}\) legislation provides for an amnesty, but it has not yet been exercised. In Victoria, legislation provides for the expiry of infringement warrants (for unpaid fines). However, in each case, there is a procedure for effective reinstatement. Therefore the Victorian legislation does not provide an effective amnesty on execution of long outstanding warrants.\(^{46}\) For a short period in 2010 the Victorian government implemented a Fines Payment Incentive Program, where all fees were waived. However, those who participated in the program were still required to pay the initial balance of the fine.\(^{47}\)

### 2.3 Proceedings for breach of Non-Custodial Order by summons or attendance notice rather than arrest (Recommendation 102)

This Recommendation appears to have been substantially implemented.

In all jurisdictions except the Australian Capital Territory, issuing a summons or attendance notice in the first instance remains a discretionary power, as courts may still issue an arrest warrant.\(^{48}\) However, State and Territory government policy indicates that whilst the court has discretion, it will ordinarily commence proceedings for breach of a Non-Custodial Order by issuing a summons or attendance notice. For example, Western Australia's Implementation Report 2000 indicates that the Community Based Services policy is that warrants for arrest are a last resort.\(^{49}\) Community Based Services contracts process servers to search for adult offenders


\(^{44}\) Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012 (WA).

\(^{45}\) Monetary Penalties Enforcement Act 2005 (Tas), pt 10; Criminal Law (Sentencing) Act 1988 (SA), pt 4; Statutes Amendment (Fines Enforcement and Recovery) Act 2013 (SA), pt 4.

\(^{46}\) Infringements Act 2006 (Vic), ss 94, 94A, 94B; Magistrates’ Court Act 1989 (Vic) s 58.


\(^{48}\) Crimes (Administration of Sentences) Act 1999 (NSW), s 116; Crimes (Sentencing Procedure) Act 1999 (NSW), s 98; Criminal Law (Sentencing) Act 1988 (SA), s 71; Sentencing Act 1997 (Tas), s 36; Sentencing Act 1991 (Vic), s 83A; Criminal Procedure Act 2004 (WA), s 30; Sentencing Act 1995 (NT), ss 39, 48.

who have gone missing so as to ensure that all possible efforts have been made before resorting to a warrant.\(^{50}\)

In Tasmania and the Northern Territory it is an established practice that, in the first instance, a breach of a non-custodial sentencing order be followed by summons or attendance notice.\(^{51}\)

In the Australian Capital Territory, where an offender breaches any of their good behaviour obligations the sentencing court may only issue summons in the first instance\(^ {52}\). If the offender fails to comply with the summons, then the courts may issue an arrest warrant.\(^ {53}\)

2.4 Programs to reduce the incidences of motor vehicle related offences (Recommendation 95)

The National Report identified motor vehicle convictions as a category of offences having an unnecessary effect on recidivism.\(^ {54}\) The RCIADIC noted that the root of many motor vehicle convictions was that the person never obtained a driver's licence and upon conviction for that first offence, would be disqualified from driving, and may then commit another offence of driving while disqualified.\(^ {55}\)

The Australian Human Rights Commission has noted its concern that a continued problem is "that recommendation 95 has not received sufficient attention from governments. Implementation reports of governments indicate that there are few programs in operation despite claims that this recommendation has been supported or implemented".\(^ {56}\)

In the Northern Territory, two programs were introduced: the Northern Territory Alcohol Ignition Lock Program (which involves attaching an electronic breath testing device to cars which prevents ignition if the driver is intoxicated) and the Drink Driver Education Course (which assists those wishing to re-licence after their licence has been cancelled due to drink driving).\(^ {57}\) Both programs were designed for repeat drink

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50 Ibid.
52 Crimes (Sentencing Administration) Act 2005 (ACT), s 106.
53 Ibid, s 104.
55 Ibid [22.3.11].
drivers. Several States have also implemented similar ignition lock, or interlock, programs.\textsuperscript{58} Research has been undertaken into policing in remote Indigenous communities in the Northern Territory (‘Policing Report’).\textsuperscript{59} The Policing Report states that drink driving education courses are rarely carried out in remote communities and are often a prerequisite for obtaining a new licence.\textsuperscript{60} Motor vehicle related incidents remain the most common form of offence for which people go to court in the Northern Territory.\textsuperscript{61} This is despite a significant use of police discretion in issuing warnings for traffic offences.\textsuperscript{62} The Policing Report also found evidence of Indigenous people often being charged with traffic offences, such as driving without a licence or without registration, on remote Indigenous land off the main roads.\textsuperscript{63}

The New South Wales Government has implemented the Community Based Knowledge -Testing Program, throughout various Indigenous locations, which targets people who have problems understanding and reading driving drivers licence knowledge tests.\textsuperscript{64} The Queensland government’s Indigenous justice strategy, Just Futures 2012-2015, includes an initiative for all prisons to provide driver education support to assist people to get their licence, or to regain it.\textsuperscript{65}


\textsuperscript{60} Ibid 187.

\textsuperscript{61} Ibid 186.

\textsuperscript{62} Ibid 189.

\textsuperscript{63} Pilkington above n 43, 187.


3. Implement a range of alternative sentencing options and ensure that they are made available to Indigenous people

The RCIADIC made a number of recommendations for governments to expand the range of alternative sentencing options available to Indigenous people.

**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.66

**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.67

**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.68

**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.69

**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.70

**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.71

Most Australian jurisdictions offer a range of alternative sentencing options including Community Service Orders, rehabilitation and home detention. However, Queensland, the Australian Capital Territory and the Northern Territory have not

67 Ibid [22.4.27].
68 Ibid [22.5.13].
69 Commonwealth, Royal Commission into Aboriginal Deaths in Custody, National Report (1991), vol 3, 22 [22.5.67].
70 Ibid [22.5.13].
71 Ibid [22.5.80].
implemented the Recommendations to the same extent as some of the other jurisdictions.

3.1 The use Community Service Orders as an alternative sentencing option (Recommendation 94)

All States and Territories, with the exception of Queensland, have allowed offenders to serve their Community Service Orders by undertaking personal development courses. The most common personal development courses appear to be rehabilitation programs. In New South Wales, Indigenous offenders have had the opportunity to participate in Aboriginal Cultural Development Programs. These initiatives are designed "raise the participant's self-esteem", and focus on contemporary issues such as substance abuse and anger management. Similarly in Victoria, Indigenous offenders have been given the opportunity to engage in schemes such as the 'Ancestral Trek Program' and the 'Mentoring Program for Aboriginal Women' initiative.

Despite the formal implementation of this Recommendation, it seems that governments have nonetheless struggled to make Community Service Orders (amongst other non-custodial sentences) accessible to Indigenous people in some parts of the country. Some of the reasons for this include the remoteness and the lack of resources available in many Indigenous communities. For instance, in Western Australia, where there are many remote communities, a recent report has indicated that whilst 40% of prisoners in Western Australia are Indigenous, only 32% of those serving Community Correction Orders were Indigenous.

3.2 The dollar value of Community Service where it has been imposed for fine default (Recommendation 103)

Indigenous people who default on fines may be liable for imprisonment if they fail to clear their debts through payment plans or Community Service Orders. The time served in prison, or the time spent in Community Service, may be used to offset the amount owing on a person's outstanding fines.

In the Australian Capital Territory, Northern Territory, Tasmania and New South Wales, the dollar value of a 7 hour day of community service work is equal to the

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72 Crime (Sentencing) Act 2005 (ACT), Part 6.2; Crimes (Administration of Sentences) Act 1999 (NSW), s 3; Sentencing Act (NT), ss 3, 34, 35; Sentencing Act 1991 (Vic), ss 48 C, 48D; Sentencing Act 1997 (Tas), ss 4, 8, pt 3A; Sentencing Act (WA) 1995; Crimes Act 1914 (Cth), s 20AB, which applies in conjunction with State and Territory laws and gives effect to those State or Territory laws.


75 New South Wales, Community based sentencing options for rural and remote areas and disadvantaged populations, Parl Paper No 30 (2006).


77 Crimes (Sentence Administration) Act 2005 (ACT), ss 116ZE, 116ZG.
dollar value of a day of imprisonment. In all other States, the dollar value of a day in imprisonment is still greater than the value of a day of community service work, making imprisonment a more efficient option for a person to reduce the amount owing on their fines.

It is interesting to note that, in Western Australia between 2008 and 2013, the number of Indigenous people sent to prison for fine defaults increased from 101 to 590 persons. This represents a growth of more than 480 percent. The number of fine defaulters as a percentage of the Indigenous prison population also increased from 3% to 16% during this same period. These statistics follow the introduction of stricter conditions on breaches of Community Service Orders by the Western Australia government in 2009, and indicate a movement away from the thrust of the Recommendation.

3.3 Examination of non-custodial sentencing options (Recommendation 109)

In each jurisdiction, with the exception of the Australian Capital Territory and the Northern Territory, there is a commitment to research and implement a range of non-custodial sentencing options. This commitment is also evident at the Commonwealth level. Examples in Queensland and Victoria are set out below.

Queensland has established a number of non-custodial programs that offer support to Indigenous persons who are a risk to themselves (and others) as a result of intoxication. They include the development of outstations (i.e. outlying housing) designed to facilitate the return of Indigenous persons to their local communities. They also include the development of the Queensland Corrective Services Work Program (formerly known as the WORC scheme), which is aimed at delivering labour to regional Queensland. In addition, permanent probation and parole centres have been established in Queensland to enable low risk Indigenous offenders to be...
supervised and given culturally appropriate rehabilitation opportunities by their respective communities.\textsuperscript{87}

Victoria has demonstrated a commitment to ensuring that this Recommendation is adequately implemented.\textsuperscript{88} The Victorian Sentencing Advisory Council, which was established on 1 July 2004, is empowered to consult and advise on sentencing matters. However, it is difficult to establish the effect the Sentencing Advisory Council has had on the utilisation of non-custodial sentences for Indigenous people as, in its recent Community Correction Orders Monitoring Report, it provided no breakdown of statistics on how many Indigenous people had benefitted from Community Correction Orders (since their introduction in Victoria in January 2012).\textsuperscript{89}

3.4 Home detention as a sentencing option (Recommendation 118)

Currently, home detention is available in New South Wales\textsuperscript{90}, South Australia\textsuperscript{91} and Western Australia.\textsuperscript{92} In the Northern Territory, although home detention is not specifically available, parole orders may specify the conditions on parole, one such condition being home detention.\textsuperscript{93}

This Report has found that there are limited statistics in relation to the use of home detention for Indigenous offenders. However, there is some evidence which suggests that home detention is not as readily available in regional or remote areas (where a significant proportion of Indigenous communities live).\textsuperscript{94} While Queensland and Victoria had home detention schemes in place following the RCIADIC, these were subsequently repealed.

Victoria, for instance, introduced a specific home detention regime as a sentencing option in the Sentencing Act 1991 (Vic) and a pre-parole option in the Corrections Act 1986 (Vic) in 2004. This scheme was abolished by the Sentencing Legislation Amendment (Abolition of Home Detention) Act 2011 (Vic), which came into effect in January 2012. Some of the reasons given for the abolition included:\textsuperscript{95}

- community perception that home detention was a “softer” punishment as compared to imprisonment; and

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\textsuperscript{90} Crimes (Sentencing Procedure) Act 1999 (NSW), ss 6, 80.

\textsuperscript{91} Correctional Services Act 1982 (SA) s 37A.

\textsuperscript{92} Bail Act 1982 (WA) Part VIA.

\textsuperscript{93} Sentencing Act (NT), s 44.


the punitive albeit unintentional negative impacts on the co-residents of the detainee.

In Queensland, supervised parole is today the only form of early release available to prisoners. This scheme replaced the use of remission, conditional release, release to work and home detention in 2011. At the time of the change, the Queensland government stated the intention was to introduce “truth in sentencing by making sure that prisoners serve the sentence that was imposed by the court”. 96

3.5 Making adequate resources available to support non-custodial sentencing options (Recommendation 112) and having adequate numbers of trained support staff to ensure monitoring of such orders (Recommendation 119)

The RCIADIC found that there were no formal barriers to accessing probation and parole for Indigenous persons. Despite this, the RCIADIC indicated that the lack of staff and infrastructure in the areas where large numbers of Indigenous people live often resulted in parole and probation being unavailable. 97 The same shortage of staff and infrastructure in remote areas was also reported to affect Indigenous offenders’ access to Community Correction Orders. 98

In most jurisdictions today, there are a range of Indigenous community work and development programs which are designed to operate as an alternative to imprisonment. However, the proportion of Indigenous people subject to Community Corrections Orders is significantly lower than the proportion of Indigenous people in prisons. The Australian Bureau of Statistics reports that Indigenous people represented 27% of the total full-time Australian adult prison population in the September quarter of 2014. During this same period, Indigenous persons represented 20% of the total number of persons in community-based corrections. 99

This Report was not able to ascertain the exact reasons why this is the case.

It is difficult to establish whether the lower representation of Indigenous persons in community work and development programs and on parole or probation orders is a result of inadequate staffing and infrastructure. It appears that most jurisdictions make efforts to hire parole and probation officers (including those of Indigenous descent). 100 There are also reports from New South Wales that parole supervision and Community Service Orders are available to offenders no matter how remote their location. 101

97 Commonwealth, The Royal Commission into Aboriginal Deaths in Custody, National Report (1991), vol 3 [22.5.68] - [22.5.80].
98 Ibid [22.5.1] - [22.5.13].
Indigenous people still face barriers in obtaining parole and probation due to:102

- a lack of access to legal support and information;
- poor literacy and education standards;
- mental health issues;
- lack of housing prior to custody and post-release; and
- drug and alcohol abuse problems.

4. Aboriginal community involvement in the criminal justice system

The RCIADIC recognised that the criminal justice system did not understand the Indigenous community, and that the Indigenous community did not understand the criminal justice system. To address this, the RCIADIC made various recommendations including:

**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.103

**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.104

**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.105

**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.106

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102 Victoria Apted, Rachel Hew & Tanya Sinha, *Barriers to Parole for Aboriginal and Torres Strait Islander People in Australia* (2013) UQ Pro Bono Centre, 3.
104 Ibid.
105 Ibid.
106 Ibid.

May 2015
4.1 Indigenous involvement in review, development and implementation of non-custodial sentencing programs (Recommendations 111, 113, 114 and 116)

New South Wales, South Australia, Western Australia, Queensland, Victoria, Australian Capital Territory and Northern Territory each have implemented programs or policies to involve Indigenous communities in developing and implementing non-custodial sentencing options. However the extent to which Aboriginal Legal Services and Indigenous employees with relevant experience in government departments have been included in developing and implementing such options is not clear. It is not apparent from our research that the Commonwealth and Tasmanian governments have implemented these Recommendations in policy or legislation.

The Western Australian Department of Corrective Services has a program for involving Indigenous communities in the supervision of adult and juvenile offenders, through the Aboriginal Community Supervision Agreement with the Department of Corrective Services. The services include providing monitoring, support and guidance for offenders on community based orders, providing placement options for young offenders, having some community members to provide community conferencing and assist in developing and facilitating programs.\(^{107}\)

The New South Wales government formed the Aboriginal Strategy and Policy Unit (‘ASPU’) in 1993 to address the RCIADIC Recommendations. The ASPU is said to be a "strategic Aboriginal affairs advisory, planning, support, program and policy unit for Corrective Services, particularly in relation to services, planning and support for Aboriginal and Torres Strait Islander offenders in correctional centres and under the supervision of Corrective Services in the community."\(^{108}\) The South Australian government established the Aboriginal Services Unit (‘ASU’) in 1995 with broadly similar aims.\(^{109}\)

The Queensland government has implemented the Aboriginal and Torres Strait Islander Action Plan which provides for there to be extensive consultation with Indigenous communities in the development and implementation of programs.\(^{110}\) The Australian Capital Territory has a "blueprint" policy which seeks to involve Indigenous communities in strategies to divert young people from entering or continuing in the criminal justice systems, including participation in program development and implementation.\(^{111}\) The Victorian Aboriginal Justice Agreement serves a similar purpose in Victoria.\(^{112}\)

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\(^{111}\) Department of Community Services, ACT Government, Blueprint for Youth Justice Annual Progress Report 2014, 27, available at:
Information is not available to gauge the extent of the implementation of the Recommendations or the success that these programs are having in engaging Indigenous communities and stakeholders.

4.2  **Sentencing**

Since the RCIADIC, programs have been established, in all States and Territories except Tasmania, to involve Indigenous communities in sentencing decisions (in certain regional areas and for specified types of offences). These programs each have different names but share the same principles and can broadly be described as ‘circle sentencing’.\(^{113}\) Circle sentencing involves a group of nominated people, often including Indigenous Elders, jointly making sentencing decisions about offenders.\(^{114}\) They typically take into account the background of the offence, the offender’s history and culture, and the ramifications of the offence in a more casual setting than that of a court.

The circumstances in which circle sentencing can apply depends on the legislation in each State. However, in general, the offender needs to plead guilty to the crime, and agree to be subjected to circle sentencing. The Australian Capital Territory, Northern Territory, Western Australia, Queensland, Victoria, South Australia and NSW, all currently provide circle sentencing.\(^{115}\)

4.3  **Positive steps to recruit and train more Aboriginal people as court staff and interpreters and in departments and agencies responsible for non-custodial sentencing programs (Recommendation 100)**

**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.\(^{116}\)

Our research has indicated that each State and Territory government (with the exception of Tasmania) has implemented plans or programs designed to increase the employment of Indigenous people within the criminal justice system including as


\(^{113}\) Creative Spirits, *Circle Sentencing* (accessed 1 April 2015) http://www.creativespirits.info/aboriginalculture/law/circle-sentencing>. The list of circle sentencing courts are as follows: In the ACT, Ngambra Circle Court; in the Northern Territory, Community Court; in Queensland, Murri Court and Youth Murri Court; in South Australia, Nunga Court, (Special) Aboriginal Court; in Victoria, Koori Court and in Western Australia, Circle Court, Aboriginal Court and Community Court.


court staff, parole and bail officers and within the departments responsible for corrections. New South Wales, Victoria and the Australian Capital Territory have been reasonably successful in employing more Indigenous staff. South Australia, the Northern Territory and Queensland have each partially implemented the Recommendations but we have not been able to establish the success of the measures implemented.

The New South Wales Attorney General’s Department implemented the Aboriginal and Torres Strait Islander Employment Strategy (2006-2011) aimed at increasing the percentage of Indigenous employment within the New South Wales Attorney General’s Department.117 The goal was to increase Indigenous staff numbers by 6% by 2011, although the eventual increase was only 4% by 2013.118 The New South Wales Attorney General’s Department Annual Report for 2013 indicates that there is a continued commitment to increasing Indigenous staff numbers within the department.119

The Victorian Department of Corrections Implementation Review states that Recommendation 100 has been partially implemented by the Victorian Department of Justice as of 2003.120 This was a result of the appointment of 20 Aboriginal Bail Officers and a Koori Liaison Officer at the Supreme Court.121 As of 2014, the Koori Liaison Officer has become a permanent fixture in the Magistrates Court.122 The Victorian Department of Justice has a Koori Employment Strategy 2011-2015 which is committed to increasing Koori employment within the department.123 In 2013 to 2014, the Victorian Department of Justice employed 16 Koori prison officers. The Koori employment rate of the Department was 1.45% in 2013 with a view to working towards its goal of 2.5%.124

The Australian Capital Territory government has developed a partnership with the Australian Capital Territory Aboriginal and Torres Strait Islander Elected Body.125 Current reports indicate that 2.9% of the Community Services Directorate employees are Indigenous and that the Australian Capital Territory Government aims to

119 Ibid.  
121 Ibid.  
increase the recruitment and retention of Indigenous employees by September 2016.\textsuperscript{126}

In Western Australia, the Department of Corrective Services increased the number of permanent Indigenous staff to 4.7% of staff in 2014.\textsuperscript{127} A target of 7.25% has been set focusing on roles such as prison officers and youth custodial officers.\textsuperscript{128} The Western Australian government has implemented an Aboriginal Employment Strategy 2011-2015 in an attempt to employ more Indigenous people across the Western Australian public service.\textsuperscript{129} The Australian Bureau of Statistics records that this has been partially successful with Indigenous employment in the public sector in Western Australia reaching 2.9% in 2014, up from the Coalition of Australian Government's target of 2.6%.\textsuperscript{130}

In South Australia, as at May 2011, the Department of Corrective Services had 67 Indigenous employees, representing 4.1% of all Departmental employees.\textsuperscript{131} In the Northern Territory, the Department of Justice's annual report 2013-2014 states that 4.7% of the workforce identifies as Indigenous, up from 4.4% in 2012-2013.\textsuperscript{132}

\subsection*{4.4 Cultural training for officials (Recommendation 96)}

\textit{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.}\textsuperscript{133}

New South Wales, Victoria, South Australia and Western Australia have all implemented policy in respect of this Recommendation. Our research was not able to identify implementation by the other States and Territories or the Commonwealth.

\begin{itemize}
  \item \textsuperscript{128} Ibid.
  \item \textsuperscript{131} Department of Correctional Services, Government of South Australia <http://www.corrections.sa.gov.au/aboriginal-services>.
  \item \textsuperscript{133} Commonwealth, Royal Commission into Aboriginal Deaths in Custody, \textit{National Report} (1991), vol 3, 22 [22.4.27].
\end{itemize}
New South Wales has implemented a comprehensive cross-cultural training initiative for judicial officers through the Ngara Yura Program. This program, which was established in the early 1990s, aims to increase understanding and awareness of contemporary Indigenous social and cultural issues.\(^{134}\) This is done through three main strategies:

- visits by judicial officers to Aboriginal communities;
- conferences, workshops and seminars; and
- publications.

In Victoria, the Department of Justice considers that this Recommendation has been fully implemented as of 2003.\(^{135}\) Currently, the roles of Koori Community Engagement Officer and Koori Liaison Officer are embedded within the Victorian Court System and involve the raising of awareness within the court of Indigenous and cross-cultural issues.\(^{136}\)

In South Australia, the South Australian Courts Administration Authority has, since 2003, required attendance by all new staff at its Aboriginal Cultural Awareness training.\(^{137}\)

The Western Australian Supreme Court has adopted the "Aboriginal Benchbook for Western Australian Courts", in response to this Recommendation. It has been formulated to alert the Western Australian judiciary to cross-cultural issues that may arise during the court process.\(^{138}\)

4.5 Aboriginal Legal Service (Recommendations 105, 106 and 107)

**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

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Australia. In fulfilling this role Aboriginal Legal Services require access to, and the opportunity to conduct, research.\(^\text{139}\)

**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.\(^\text{140}\)

**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.\(^\text{141}\)

The Commonwealth Attorney General’s Department provides funding for Aboriginal Legal Services in the Australian States and Territories\(^\text{142}\) as does the Department of Prime Minister and Cabinet.\(^\text{143}\) It appears that Aboriginal Legal Services are not funded by State and Territory governments.

This Report has not been able to identify the extent to which current funding provided for Aboriginal Legal Services accommodates the need for Aboriginal Legal Services to undertake research or address issues of conflicting interests (Recommendations 105 and 106).

It is noted that the current Commonwealth Government funding arrangements for Aboriginal Legal Services are due to come to an end on 30 June 2015. The Commonwealth Government has announced, however, additional funding of $11.5 million to extend Indigenous legal assistance for a further 2 years from 1 July 2015 to 30 June 2017.\(^\text{144}\)


\(^{140}\) Ibid.

\(^{141}\) Ibid.

\(^{142}\) National Aboriginal and Torres Strait Islander Legal Services, Joint Submissions to the Commonwealth Attorney General’s Department Comments on "A National Human Rights Plan for Australia: Background Plan" February 2011, 5. Aboriginal Legal Services funded by Attorney General’s Office - In Queensland Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS); In South Australia Aboriginal Legal Rights Movement Inc (ALRM); In New South Wales and Australian Capital Territory Aboriginal Legal Service NSW/ACT (ALS NSW/ACT); In Western Australia Aboriginal Legal Service of Western Australia (Inc.) (ALSWA) Central Australian Aboriginal Legal Aid Service (CAALAS); In Northern Territory North Australian Aboriginal Justice Agency (NAAJA); and Victorian Aboriginal Legal Service Co-operative Limited (VALS).

\(^{143}\) Aboriginal and Torres Strait Islander Legal Service (Qld), *Funding* <http://www.atsils.org.au/funding/>.

Our research has not been able to identify anything to suggest that Recommendation 107 has been implemented into law or policy, or into funding arrangements, in Australia.

5. Measures to encourage rehabilitation and reduce recidivism

**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.\(^{145}\)

**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.\(^{146}\)

**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.\(^{147}\)

**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.\(^{148}\)

**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.\(^{149}\)

**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.\(^{150}\)

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\(^{146}\) Ibid [22.4.75].

\(^{147}\) Ibid [22.5.13].

\(^{148}\) Ibid.

\(^{149}\) Ibid [22.4.27].

\(^{150}\) Ibid.
5.1 Expunging criminal records in the interests of rehabilitation
(Recommendation 93)

All jurisdictions, with the exception of Victoria, have legislative schemes for expunging criminal records after a lapse of time. In most jurisdictions, the periods are 5 years of not reoffending where the offender was a child at the time of the offence,\(^{151}\) and 10 years where the offender was an adult at the time of the offence.\(^{152}\) In New South Wales, the period required for not reoffending in the case of a child is 3 years,\(^{153}\) and the period in Western Australia is 2 years.\(^{154}\) With the exception of Western Australia, these periods are longer than the period of 2 years for juvenile offenders recommended by the RCIADIC.

In many jurisdictions, certain criminal records, such as those involving sexual offences or where the offender spent over a certain period in prison (commonly 6 months) cannot be expunged.\(^{155}\)

5.2 The need for lawyers to have adequate time to take instructions and prepare cases and community access to lawyers (Recommendation 108)

This Report has not been able to locate specific examples of programs or initiatives to ensure that lawyers have adequate time to take instructions and prepare cases for Indigenous persons in remote communities. It is noted, however, that most Indigenous legal services providers in Australia, which are often the first point of contact for Indigenous persons seeking legal assistance, are based in remote or regional areas, and focus their efforts in these areas.\(^{156}\) We have not been able to gauge how comprehensive the coverage of these services is, given the remoteness of some communities.

5.3 Undertaking a national study to ascertain the best features of existing pre-release and post-release support schemes (Recommendation 110)

There does not appear to have been a comprehensive national study into pre- and post-release schemes undertaken throughout Australia. While the Commonwealth, or groups established by the Commonwealth, have published reports on various pre- and post-release programs for Indigenous persons as per the Recommendation, there does not appear to have been a comprehensive study to ascertain the best features of pre- and post-release schemes undertaken throughout Australia. The reports undertaken have focussed only on aspects of the larger issue.

For instance, in 2004, the Australian Human Rights Commission assessed in extensive detail pre- and post-release programs for Indigenous women exiting

\(^{151}\) Spent Convictions Act 2000 (ACT), s 13; Criminal Records (Spent Convictions) Act (NT), s 6A; Spent Convictions Act 2009 (SA), s 7; Anulled Convictions Act 2003 (Tas), s 6; Criminal Law (Rehabilitation of Offenders Act) 1992 (Qld), s 3.

\(^{152}\) e.g. Criminal Records Act 1991 (NSW), s 9.

\(^{153}\) Criminal Records Act 1991 (NSW), s 10.

\(^{154}\) Young Offenders Act 1994 (WA), s 189.

\(^{155}\) See, e.g. Criminal Records Act 1991 (NSW), s 7.

prison, particularly in relation to housing, welfare and employment.\textsuperscript{157} In 2009, the National Justice Chief Executive Officers Group, which consists of the Chief Executive Officers of Attorney-General’s and Justice Departments from all Australian jurisdictions, reported on 36 programs throughout Australia and New Zealand that provide re-entry programs for young Indigenous adults.\textsuperscript{158} Finally, in 2012, the Australian Government released a strategy paper reviewing relevant existing program on enhancing the employment opportunities of Indigenous persons upon their release from correctional institutions.\textsuperscript{159}

5.4 **Recording statistical and other information to better understand Indigenous rates of recidivism and effectiveness of non-custodial sentencing orders and parole (Recommendation 115)**

Our research indicates that most States and Territories, particularly through government correctional departments, record rates of recidivism among Indigenous and non-Indigenous people.

The Australian Bureau of Statistics collects information from all jurisdictions in Australia regarding the proportion of the prison population that have been imprisoned previously. Specifically, the Australian Bureau of Statistics provides annual updates on the proportion of Indigenous persons and non-Indigenous persons who have returned to prison.\textsuperscript{160}

Since the RCIADIC, a number of state governments or governmental bodies have reported on the effectiveness of rehabilitation programs for offenders, such as programs related to non-custodial sentencing orders and parole. For instance, NSW Corrective Services have conducted a number of extensive studies into the effectiveness of non-custodial and rehabilitative programs for offenders.\textsuperscript{161}

In 2014, the Victorian Ombudsman released a discussion paper addressing the effectiveness of rehabilitation and transitional services for offenders in Victoria.\textsuperscript{162} A more detailed report is expected to follow the discussion paper.

Queensland has recorded and published statistics on the completion rates for Indigenous offenders of their corrective programs and found mixed levels of completion, depending on the type of program and when those programs were


14. IMPRISONMENT AS A LAST RESORT (RECOMMENDATIONS 92-121)
run. The Queensland government has also implemented an Indigenous justice strategy where several Queensland government agencies are cooperating to reduce the numbers of Aboriginal people entering the criminal justice system. A key objective of the strategy is to provide more support for Indigenous offenders leaving prison in order to reduce recidivism. This is an example of where monitoring recidivism enables an understanding of the effectiveness of a corrective program.

Otherwise, there appears to be a lack of specific statistics dealing with the effectiveness of programs that governments have implemented to reduce the rate of recidivism amongst Indigenous offenders.

5.5 Phasing out the use of Justices of the Peace for determination of charges and imposition of penalties (Recommendation 98)

The RCIADIC found that Justices of the Peace were, in general, less likely to impose a non-custodial sentence, and accordingly, it recommended that States and Territories phase out the use of Justices of the Peace to determine charges or impose penalties for offences. This Recommendation has been implemented in all jurisdictions except Queensland, the Northern Territory, Western Australia and Tasmania.

The Queensland government’s effectively rejected this Recommendation on the basis that the use of Justices of the Peace in the Magistrates Court reduces delays, as matters do not need to be adjourned to a place where a magistrate or a clerk is able to hear the matter. The Queensland government, however, has signalled its intention to introduce more Indigenous Justices of the Peace. In this context, it is noted that the Attorney General of Queensland also has the power to appoint a Justice of the Peace in remote or Indigenous communities.

In 2000, the Western Australian government stated that it did not support this Recommendation and that Justices of the Peace are a critical part of the justice system, especially in remote areas.
In Tasmania, a single Justice of the Peace has the power to perform certain judicial functions including receiving complaints, issuing a summons or warrant thereon, and conducting preliminary proceedings upon order of the Supreme Court. It does not appear that a Justice of the Peace has the power to determine charges or impose penalties for offences. Two or more Justices of the Peace acting together, however, appear to have the power to hear and determine a complaint. A complaint includes an allegation of an indictable or summary offence.

5.6 Implementing legislation to ensure the defendant's understanding of proceedings in the English language and if not, the use of an interpreter without cost (Recommendation 99)

In all States and Territories, legislation and court practice provides for the use of interpreters in court where a witness or defendant is unable to understand or speak English. In Western Australia, for instance, the Supreme Court will pay for the cost of providing interpreters in criminal proceedings.

In South Australia, steps have been taken to ensure that interpreters are available for Indigenous people at all stages of the criminal justice process. On 2 June 2008, the Attorney-General announced that the South Australian Government would spend $520,000, over four years, on "attracting suitably skilled interpreters who are currently employed within the South Australian public sector … to do interpreting work as it arises". Since then, Multicultural SA has indicated that during 2010 its Interpreting and Translating Centre had been able to satisfy 86.1% of requests received from the Courts Administration Authority for an interpreter of an Indigenous language and 73.8% of requests for an interpreter to work in a non-court setting.

According to the Aboriginal Legal Service of Western Australia, Western Australia and the Northern Territory lack a state-wide/territory-wide, properly qualified and adequately resourced interpreter service in Indigenous languages available to assist Indigenous people in the court process.

A report released by the Commonwealth Ombudsman has explained that a shortage of interpreter resources for Indigenous people continues to exist for various reasons. Chief among them, the report identified that the majority of Indigenous

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175 Justices Act 1959 (Tas), s 23.
176 Ibid, s 61.
177 Justices Act 1959 (Tas), s 20.
178 Ibid s 3.
179 See Evidence Act 1995 (Cth), s.30; Crimes Act 1914 (Cth), s. 23H; Evidence Act 2001 (Tas), ss. 26 and 30; Criminal Procedure Act 2009 (Vic), s. 335; Justices Act (NT), s.57D; Evidence Act 1995 (NSW), s.30; Criminal Procedure Act 2004 (WA), s.129(2); Criminal Investigation Act 2006 (WA), ss.137 and 138; Evidence Act 1929 (SA), s 14; Evidence Act 1977 (Qld), s 131A.
180 The Supreme Court of Western Australia, Consolidated Practice Directions (2009), 292.
183 Commonwealth Ombudsman, Talking in Language: Indigenous language interpreters and government communication (April 2011)
languages are disappearing, thus reducing the number of potential interpreters. The report also noted that there remains an underlying assumption that most Indigenous people speak English as their first language. Further, those prospective interpreters who do have the suitable interpreter skills are either already employed in another industry, or lack the necessary literacy and numeracy skills required for the position.

While there is a greater recognition of the need for Indigenous language interpreters in the criminal justice system, a deeper and more co-ordinated effort is required to provide training and accreditation for prospective Indigenous language interpreters despite the problem of resources.